

**DEED OF NOVATION AND VARIATION  
OF THE  
SUPPLEMENTAL FUNDING AGREEMENT FOR HILLSVIEW ACADEMY(OUTWOOD  
ACADEMY NORMANBY)**

The Parties to this Deed are:

(1) **THE SECRETARY OF STATE FOR EDUCATION** of Sanctuary Buildings, Great Smith Street, London SW1P 3BT (the "**Secretary of State**");

(2) **OUTWOOD GRANGE ACADEMIES TRUST**, a charitable company incorporated in England and Wales with registered company number 06995649 whose registered address is at Potovens Lane, Outwood, Wakefield, WF1 2PF ( "**OGAT**"), and

(3) **ACADEMIES ENTERPRISE TRUST**, a charitable company incorporated in England and Wales with registered company number 06625091 whose registered address is at 3rd Floor 183 Eversholt Street, London, United Kingdom, NW1 1BU ( "**Company**");

together referred to as the "**Parties**".

## **INTRODUCTION**

- A. Hillsview Academy is an academy within the meaning of the Academies Act 2010 (the "**Academy**") and is currently operated by the Company (a multi academy trust).
- B. The Secretary of State and the Company entered into: a Supplemental Funding Agreement in respect of the maintenance and funding of the Academy on 27 June 2014 (the "**Agreement**") which is attached as Schedule 1.
- C. It is proposed that, with effect from 00.01 am on 1 September 2019 ("**Transfer Date**"), OGAT will assume responsibility for the management and operation of the Academy (which will be known as Outwood Academy Normanby) in succession to the Company.
- D. The Parties wish to novate the Agreement to OGAT and the Secretary of State and OGAT wish to vary the terms of the Agreement subject to the provisions of this Deed.

## **LEGAL AGREEMENT**

1. Any word or phrase used in this Deed shall, if that word or phrase is defined in the Agreement, bear the meaning given to it in the Agreement.

## **NOVATION**

2. The Company transfers all its rights and obligations under the Agreement to OGAT with effect from the Transfer Date. With effect from the Transfer Date, OGAT shall enjoy all the rights and benefits of the Company under the Agreement and all references to the Company in the Agreement shall be read and construed as references to OGAT.

3. The references in the Agreement to the Master Agreement between the Company and the Secretary of State shall be read as a reference to the Master Funding Agreement between OGAT and the Secretary of State.

4. With effect from the Transfer Date, OGAT agrees to perform the Agreement and be bound by its terms in every way as if it were the original party to it in place of the Company.

5. With effect from the Transfer Date, the Secretary of State agrees to perform the Agreement and be bound by its terms in every way as if OGAT were the original party to it in place of the Company.

## **OBLIGATIONS AND LIABILITIES**

6. With effect from the Transfer Date, the Company and the Secretary of State release each other from all future obligations to the other under the Agreement.

7. Each of the Company and the Secretary of State release and discharge the other from all claims and demands under or in connection with the Agreement arising on or after the Transfer Date.

8. Each of OGAT and the Secretary of State will have the right to enforce the Agreement and pursue any claims and demands under the Agreement against the other with respect to matters arising before, on or after the date of this Deed as though OGAT were the original party to the Agreement instead of the Company.

## **VARIATION**

9. The Secretary of State and OGAT agree that with effect from the Transfer Date the Agreement shall be amended and restated so as to take effect in the form set out in Schedule 2 to this Deed.

10. As varied by this Deed, the Agreement shall remain in full force and effect.

11. This Deed shall be governed by and interpreted in accordance with English law.

12. The Parties irrevocably agree that the courts of England and Wales shall have exclusive jurisdiction to settle any dispute or claim that arises out of, or in connection with, this Deed or its subject matter or formation (including non-contractual disputes or claims).

## COUNTERPARTS

13. This Deed may be executed in any number of counterparts and by the parties to it on separate counterparts, each of which when so executed and delivered shall be an original, but all the counterparts shall together constitute one and the same instrument.

IN WITNESS whereof this Deed has been executed by the parties hereto and is intended to be and is hereby delivered on the last date listed below.

EXECUTED as a deed by affixing the corporate seal )  
of **THE SECRETARY OF STATE FOR EDUCATION** )

\_\_\_\_\_

■

\_\_\_\_\_

\_\_\_\_\_ authorised by the **SECRETARY OF STATE FOR EDUCATION**

Date.....

EXECUTED as a deed by

**Outwood Grange**

**Academies Trust** acting by

one director in the presence

of a witness:

Director \_\_\_\_\_

Print \_\_\_\_\_

\_\_\_\_\_

Witness ...

Print name

Address.....

Occupation

\_\_\_\_\_

EXECUTED as a deed by

**Academies Enterprise**

**Trust** acting by one director

in the presence of a witness:

Director

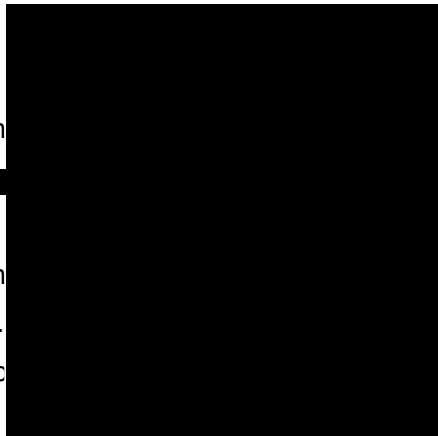
Print name

Witness

Print name

Address...

Occupation



**Schedule 1**  
**Original Supplemental Funding Agreement**

## SCHEDULE 1

### SUPPLEMENTAL AGREEMENT

THIS AGREEMENT made 27 June 2014

#### BETWEEN

(1) THE SECRETARY OF STATE FOR EDUCATION; and

(2) ACADEMIES ENTERPRISE TRUST (The "Company")

IS SUPPLEMENTAL TO THE MASTER FUNDING AGREEMENT made between the same parties and dated (the "**Master Agreement**").

#### 1 DEFINITIONS AND INTERPRETATION

1.1 Except as expressly provided in this Agreement words and expressions defined in the Master Agreement shall have the same meanings in this Agreement as were ascribed to them in the Master Agreement.

1.2 The following words and expressions shall have the following meanings:

"the Academy" means the Hillside Academy to be established at Normanby Road, South Bank, Middlesbrough, TS6 9AG.

"Chief Inspector" means Her Majesty's Chief Inspector of Education, Children's Services and Skills or his successor;

"the Land" means the publicly funded land (including for the avoidance of doubt all buildings, structures landscaping and other erections) situated at and known as Gillbrook Academy, Normaby Road, South Bank, Middlesbrough, TS6 9AG.

"Further Remedial Measures" has the meaning given in clause 5.4

"Insolvency" has the meaning given to it in section 123 of the Insolvency Act 1986;

"Lease" means the lease granted by the LA to the Company in relation to the Academy and dated on or around the date hereof;

"Normal Payment Matters" has the meaning given to it in the Principal Agreement;

"PFI Contractor" means Modern Schools (Redcar and Cleveland) Limited, the counterparty of the LA to the Project Agreement;

"Principal Agreement" means the principal agreement entered into by the Secretary of State, the Company and the LA in connection with the Academy and dated on or around the date of this Agreement;

"Project Agreement" means the agreement between the LA and PFI Contractor for the design, build, finance and operation of facilities within the Redcar and Cleveland Borough Council Group Schools Private Finance Initiative Scheme inter alia (including the Company's facilities) dated 20 April 2005.

"School Agreement" means the school agreement entered into by the LA and the Company relating to the provision of facilities and services to the Academy and dated on or around the date of this Agreement;

"Specified Remedial Measures" has the meaning given in clause 5.3: and

"Termination Warning Notice" has the meaning given in clause 5.2

1.3 Reference in this Agreement to clauses and Annexes shall, unless otherwise stated, be to clauses and annexes of this Agreement.

## 1A TERMINATION OF EXISTING FUNDING AGREEMENT

1A.1 The Secretary of State acknowledges and agrees that Gillbrook Academy and Eston Park Academy have already been established and that this agreement supersedes and replaces the funding agreements dated 3<sup>rd</sup> September 2012 and 30<sup>th</sup> December 2011 entered into between the Secretary of State and the Academies Enterprise Trust in respect of Gillbrook



Academy and Eston Park Academy (together with the Annexes to that agreement) which, from the date of signature of this Agreement and the Supplemental Agreement entered into pursuant to it in respect of Gillbrook Academy and Eston Park Academy, shall have no further effect.

## **2 THE ACADEMY**

2.1 The Company will establish and maintain, and carry on or provide for the carrying on of the Academy in accordance with the Master Agreement and this Agreement.

2.2 The curriculum provided by the Academy to pupils up to the age of 16 shall be broad and balanced.

2.3 The requirements for the admission of pupils to the Academy are set out at Annex 1.

2.3A The Academy shall be conducted in accordance with the Principal Agreement, the School Agreement and the Lease.

## **ACADEMY OPENING DATE**

2.4 The Academy shall open as a school on **1 September 2014** replacing Gillbrook Academy and Eston Park Academy, , which date shall be the conversion date within the meaning of the Academies Act 2010.

2.5 The planned capacity of the Academy is 1200 in the age range 11-18, including a sixth form of 250 places.

## **3 CAPITAL GRANT**

3.1 Pursuant to clause 38 of the Master Funding Agreement, the Secretary of State may, in his absolute discretion provide Capital Expenditure funding in accordance with any arrangements he considers appropriate.

## **4 GAG AND EAG**

4.1 The Secretary of State agrees to pay GAG and EAG to the Company in relation to the Academy in accordance with the Master Agreement.

4.2 The Company shall use the GAG funding it receives prudently in order to cover the normal reasonable running costs of the Academy including, but not limited to, payments which fall due pursuant to the School Agreement and/or the Principal Agreement.

4.3 In the event that the Secretary of State pays the LA any sums pursuant to the Principal Agreement the Secretary of State may, subject to clause 4.4, set off or abate an amount equal to such sums from any GAG payable to the Company in respect of the Academy pursuant to this Agreement in the following financial year.

4.4 Before exercising its right of set off or abatement pursuant to clause 4.3 above, the Secretary of State shall:

4.4.1 notify the Company that such sums have been paid by the Secretary of State to the LA;

4.4.2 take into account (acting reasonably) any representations made by the Company providing reasons why the relevant liabilities were not settled;

4.4.3 take into account (acting reasonably) any representations made by the Company as to the nature of the liabilities under consideration.

#### **4A NOT USED**

### **5 TERMINATION**

5.1 Either party may give not less than seven Academy Financial Years' written notice to terminate this Agreement, such notice to expire on 31 August 2021 or any subsequent anniversary of that date.

#### **Termination Warning Notice**

5.2 The Secretary of State shall be entitled to issue to the Company a written notice of his intention to terminate this Agreement ("Termination Warning Notice") where he considers that:

- a) the Academy is no longer meeting the requirements referred to in clause 12 of the Master Agreement (subject to clause 5.9 of this Agreement);
- b) the conditions and requirements set out in clauses 13-34B of the

Master Agreement are no longer being met;

- c) the standards of performance of pupils at the Academy are unacceptably low;
- d) there has been a serious breakdown in the way the Academy is managed or governed;
- e) the safety of pupils or staff is threatened (whether by breakdown of discipline or otherwise);
- f) the Company is in material breach of the provisions of this Agreement or the Master Agreement.
- g) the Secretary of State is under a liability to make a payment to the LA pursuant to the Principal Agreement and/or the LA has recovered any sums from the Secretary of State pursuant to the Principal Agreement;
- h) the Secretary of State considers that in the immediately preceding 12 month period, the aggregate of payments made by the Company to the LA pursuant to the Principal Agreement in respect of Normal Payment Matters has reached a level which the Secretary of State considers to be excessive and which may (assessed objectively) cause the Company material financial difficulties;

5.3 A Termination Warning Notice issued by the Secretary of State in accordance with clause 5.2 shall specify:

- a) reasons for the Secretary of State's issue of the Termination Warning Notice;
- b) the remedial measures which the Secretary of State requires the Company to carry out, with associated deadlines, in order to rectify the defaults identified ("Specified Remedial Measures"); and
- c) the date by which the Company must respond to the Termination Warning Notice providing its representations with regard thereto or confirm that it accepts and agrees to undertake the Specified Remedial Measures.

5.4 The Secretary of State shall consider any response and representations from the Company which are received by the date specified in accordance with clause 5.3(c) and shall confirm whether he considers that:

a) in the light of the Company's representations in response to the Termination Warning Notice, some or all of the Specified Remedial Measures are not required to be implemented (and if so which) and/or the Specified Remedial Measures are being or will be implemented within the specified timeframe; or

b) subject to any further measures he reasonably requires ("Further Remedial Measures") being implemented by a specified date or any evidence he requires being provided, the implementation of such measures has been or will be successfully completed within the specified timeframes; or

c) he is not satisfied that the Company will rectify the defaults identified in the Termination Warning Notice within the specified timeframes. (In such circumstances, the Secretary of State may notify the Company of his intention to terminate the Agreement on a specified date.)

5.5 The Secretary of State may by notice in writing terminate this Agreement with effect from a specified date in the event that:

a) the Company has not, by the date specified in clause 5.3(c), responded to the Termination Warning Notice either confirming that it accepts and agrees to undertake the Specified Remedial Measures or providing its representations with regard to the Specified Remedial Measures; or

b) the Company has not carried out the Specified Remedial Measures and/or Further Remedial Measures within the specified timeframes;

provided that having considered any representations made by the Academy Trust pursuant to clause 5.3(c), the Secretary of State remains satisfied that it is appropriate to terminate the Agreement.

#### **Notice of Intention to Terminate**

5.6 The Secretary of State may at any time give written notice of his

intention to terminate this Agreement where the Chief Inspector gives notice to the Company in accordance with section 13(3) of the Education Act 2005 stating that in the Chief Inspector's opinion –

(a) special measures are required to be taken in relation to the Academy; or

(b) the Academy requires significant improvement.

5.7 Any notice issued by the Secretary of State in accordance with clause 5.6 shall invite the Company to respond with any representations within a specified timeframe.

5.8 Where the Secretary of State has given notice of his intention to terminate this Agreement in accordance with clauses 5.6 and 5.7 and –

(a) he has not received any representations from the Company within the timeframe specified in clause 5.7; or

(b) having considered the representations made by the Company pursuant to clause 5.7, the Secretary of State remains satisfied that it is appropriate to terminate this Agreement

he may by notice in writing terminate this Agreement with effect from a specified date.

#### **Termination with Immediate Effect**

5.9 If the Secretary of State has cause to serve a notice on the Company under section 165 of the Education Act 2002 and a determination (from which all rights of appeal have been exhausted) has been made that the Academy shall be struck off the Register of Independent Schools, he may terminate this Agreement by notice in writing to the Company such termination to take effect on the date of the notice.

#### **Notice of Intention to Terminate by Company**

5.10 The provisions of this clause 5.10 and of clauses 5.11 to 5.15 (inclusive) shall apply when the Project Agreement has expired or been terminated (for so long as the Project Agreement is extant the provisions of clauses 5.16 to 5.27 below shall apply in place of clauses 5.10 to 5.15). The Secretary of State shall, at a date preceding the start of each Academy Financial Year, provide to the Company an indication of the level of funding to be provided by the Secretary of State to the Company by way of GAG and EAG in the next following Academy Financial Year (the “**Indicative Funding**”). If the Company is of the opinion that, after receipt of the Indicative Funding for the next following Academy Financial Year (the “**Critical Year**”) and of the taking into account all other resources available and likely to be available to the Academy, including such funds as are set out in clause 73 of the Master Agreement and such other funds as are and likely to be available to the Academy from other academies operated by the Company (“**All Other Resources**”), it is likely that the cost of running the Academy during the Critical Year would cause the Company, on the basis of the Indicative Funding, to become insolvent (and for this reason only) then the Company may give notice of its intention to terminate this Agreement at the end of the then current Academy Financial Year.

5.11 Any notice given by the Company under clause 5.10 shall be in writing and shall be served on the Secretary of State not later than 28 February preceding the Critical Year or, if the Secretary of State shall not have given notice of the Indicative Funding to the Company on or before the date specified in clause 5.10 above, within six weeks after the Secretary of State shall have done so. The notice must specify:

5.11.1. the grounds upon which the Company’s opinion is based and include the evidence of those grounds and any professional accounting advice the Company has received and including a detailed statement of steps which the Company proposes to take with a view to ensuring that as soon as reasonably practicable the costs of running the Academy are reduced sufficiently to ensure that such costs are less than the Indicative

Funding and All Other Resources and the period of time within which such steps will be taken; and

5.11.2.the shortfall in the Critical Year between the Indicative Funding and All Other Resources expected to be available to the Company to run the Academy and the projected expenditure on the Academy; and

5.11.3.a detailed budget of income and expenditure for the Academy during the Critical Year (the “**Projected Budget**”).

5.12 Both parties undertake to use their best endeavours to agree whether or not the cost of running the Academy during the Critical Year would cause the Company, on the basis of the Indicative Funding and All Other Resources, to become insolvent. Both parties recognise that they will need to engage in a constructive dialogue at the time about how best to provide education for the pupils at the Academy and undertake to use their best endeavours to agree a practical solution to the problem.

5.13 If no agreement is reached by 30 April (or such other date as may be agreed between the parties) as to whether the cost of running the Academy during the Critical Year on the basis of the Indicative Funding and All Other Resources would cause the Company to become insolvent, then that question shall be referred to an independent expert (the “**Expert**”) for resolution. The Expert’s determination shall be final and binding on both parties. The Expert shall be requested to specify in his determination the amount of the shortfall in funding (the “**Shortfall**”). The Expert shall be an insolvency practitioner with significant professional experience of educational institutions or academies. If the parties fail to agree upon the appointment of the Expert then the Expert shall be appointed by the President for the time being of the Institute of Chartered Accountants in England and Wales. The Expert’s fees shall be borne equally between the parties.

5.14 The Expert shall be required in reaching his determination to take account of advice from an educational specialist who is professionally

familiar with the issues arising from the budget management of schools. If the parties fail to agree upon the appointment of the educational specialist then the educational specialist shall be appointed by the Chairman for the time being of the Specialist Schools and Academies Trust. The educational specialist's fees shall be borne equally between the parties.

5.15 If the Expert determines that the cost of running the Academy during the Critical Year would cause the Company, on the basis of the Indicative Funding and All Other Resources, to become insolvent, and the Secretary of State shall not have agreed to provide sufficient additional funding to cover the Shortfall, then the Company shall be entitled to terminate this Agreement, by notice expiring on 31 August prior to the Critical Year. Any such notice shall be given within 21 days after (a) the Expert's determination shall have been given to the parties or (b), if later, the Secretary of State shall have given written notice of his refusal to provide sufficient additional funding for the Academy to cover the Shortfall.

5.16 The provisions of this clause 5.16 and of clauses 5.17 to 5.27 (inclusive) shall apply when the Project Agreement is subsisting (when the Project Agreement has expired or been terminated the provisions of clauses 5.10 to 5.15 above shall apply in place of clauses 5.16 to 5.27). The Secretary of State will, at a date preceding the start of each Academy Financial Year, provide to the Company an indication of the level of funding to be provided by the Secretary of State to the Company by way of GAG and EAG in the next following Academy Financial Year (the "Indicative Funding").

5.17 For the purpose of clauses 5.17 to 5.27:

"Critical Years" means the then current financial year and, if an annual letter of funding or its equivalent has been received for the following financial year, that following financial year;

"Current Funding" means the funding specified in the annual letters of funding (or their equivalent) for the Critical Years and all other resources available and likely to be available to the Company, including such funds as are set out in the Master Agreement;

A "PFI EAG Refusal" occurs where:



(a) the Company has made a request for EAG funding to cover any costs that the Company has incurred or reasonably considers is likely to incur as a result of meeting its obligations and/or discharging its liabilities under the School Agreement or the Principal Agreement; and

(b) the Secretary of State has not agreed, in accordance with clauses 55 and 56 of the Master Agreement, to provide such EAG funding to the Company.

5.18 Within 30 days of being notified by the Secretary of State of a PFI EAG Refusal, the Company may provide written notice that it considers that, after taking into account its Current Funding, it is likely that the running costs during the Critical Years would cause the Company to go into Insolvency ("Company Insolvency Notice").

5.19 Any Company Insolvency Notice must specify:

5.19.1 the grounds and evidence, including any professional accounting advice, upon which the Company's opinion is based;

5.19.2 a detailed statement of steps which the Company proposes to take with a view to ensuring that as soon as reasonably practicable the running costs are reduced sufficiently in the Critical Years to ensure that such costs are less than its Current Funding and the period of time within which such steps will be taken

5.19.3 the shortfall in the Critical Years between the Current Funding expected to be available to the Company to cover the running costs and the projected expenditure of the Company; and

5.19.4 a detailed budget of income and expenditure for the Academy during the Critical Years.

5.20 Within 15 days of the provision of the Company Insolvency Notice, both parties shall discuss and if possible (using reasonable endeavours) agree whether or not on the basis of the Current Funding, it is likely that the running costs during the Critical Years would cause the Company to go into Insolvency and such Insolvency could not be avoided through prudent financial management (including, but not limited to, using GAG funding prudently in order to cover the normal reasonable running costs of the Academy). Both parties recognise that they will need to engage in a constructive dialogue at the time about how best to provide education for the

pupils at the Academy and undertake to use their reasonable endeavours to agree a practical solution to the problem.

5.21 If the parties are unable to reach an agreement in accordance with clause 5.20 within 15 days of the Company Insolvency Notice being served, then the following questions shall be referred to an independent expert (the "Expert") for determination:

5.21.1 whether, on the basis of the Current Funding, it is likely that the running costs during the Critical Years would cause the Company to go into Insolvency;

5.21.2 whether the Company is using the funds provided under this Agreement and the Master Agreement prudently; and

5.21.3 whether the Company is using the funds provided under this Agreement and the Master Agreement in accordance with the requirements of this Agreement and the Master Agreement.

The Expert's determination shall be final and binding on both parties. The Expert shall be requested to specify in his determination:

(a) the amount of the shortfall (if any) in funding between the running costs and the Current Funding during the Critical Years (the "Shortfall"); and

(b) (if appropriate) recommendations as to future spending and the running costs.

The Expert shall be an insolvency practitioner with significant professional experience of educational institutions or academies. If the parties fail to agree upon the appointment of the Expert then the Expert shall be appointed by the President for the time being of the Institute of Chartered Accountants in England and Wales.

5.22 The parties shall procure that the Expert (together with any educational specialist appointed pursuant to this clause) will act promptly in determining the matters referred to him. The Expert shall be required in performing his role to take account of advice from an educational specialist who is professionally familiar with the issues arising from the budget management of schools. If the parties fail to agree upon the appointment of the educational specialist then the educational specialist shall be appointed by the Chairman for the time being of the Specialist Schools and Academies Trust.

5.23 The Expert's and the educational specialist's fees shall be borne equally between the parties.

5.24 For the purpose of clauses 5.25 and 5.27, "Insolvency Decision" means either:

5.24.1 in accordance with clause 5.20, the Secretary of State agrees with the Company that on the basis of the Current Funding it is likely that the running costs during the Critical Years would cause the Company to go into Insolvency which could not be avoided through prudent financial management (including, but not limited to, using GAG funding prudently in order to cover the normal reasonable running costs of the Academy); or

5.24.2 an Expert determines in accordance with clause 5.21 that on the basis of the Current Funding it is likely that the running costs during the Critical Years would cause the Company to go into Insolvency or that the Company is not using the funds provided under this Agreement and the Master Agreement prudently and in accordance with the requirements of this Agreement and the Master Agreement.

5.25 Within 10 Business Days of an Insolvency Decision, the Secretary of State may either at its option:

5.25.1 withdraw the PFI EAG Refusal and promptly pay to the Company the amount of requested EAG funding or such other sum as shall be appropriate; or

5.25.2 terminate this Agreement on not less than 20 Business Days notice to the Company.

5.26 In the event that the Secretary of State provides additional EAG funding in accordance with clause 5.25, the Secretary of State may within 12 months of paying the additional EAG funding, terminate this Agreement at any time.

5.27 In the event that there is no Insolvency Decision, this Agreement shall continue and the Secretary of State shall not be obliged to pay to the Company the requested EAG funding.

## **6 EFFECT OF TERMINATION**

6.1 In the event of termination of this Agreement however occurring, the school shall cease to be an Academy within the meaning of Sections 1 and 1A of the Academies Act 2010.

6.2 Subject to clauses 6.3 and 6.4, if the Secretary of State terminates this Agreement pursuant to clause 5.1 of this Agreement, the Secretary of State shall indemnify the Company. If the Secretary of State terminates this Agreement otherwise than pursuant to clause 5.1 of this Agreement, the Secretary of State may in his absolute discretion indemnify or (to such extent if any as he may in his absolute discretion consider appropriate) compensate the Company.

6.3 The amount of any such indemnity or compensation shall be determined by the Secretary of State having regard to any representations made to him by the Company, and shall be paid at such times and in such manner as the Secretary of State may reasonably think fit.

6.4 The categories of expenditure incurred by the Company in consequence of the termination of the Agreement in respect of which the Secretary of State shall (where the Secretary of State terminates this Agreement pursuant to clause 5.1) indemnify the Company and may (where the Secretary of State terminates this Agreement otherwise than pursuant to clause 5.1) in his absolute discretion indemnify or compensate the Company include (but not by way of limitation), staff compensation and redundancy payments, compensation payments in respect of broken contracts, expenses of disposing of assets or adapting them for other purposes, legal and other professional fees, and dissolution expenses.

6.5 Subject to clause 6.6, on the termination of this Agreement however occurring, the Company shall in respect of any of its capital assets at the date of termination:

(a) promptly transfer a proportion of the assets to a person nominated by the Secretary of State, if the Secretary of State considers that all or some

of those assets need to be used for any educational purposes by that nominee. The proportion of the assets to be transferred shall be the same as the proportion of the capital contribution made by the Secretary of State to the original value of those assets, whether that contribution was made on the establishment of the Academy or at a later date; or

(b) if the Secretary of State confirms that a transfer under clause 6.5(a) is not required, promptly repay to the Secretary of State a sum equivalent to the percentage of the value of the assets at the date of termination, or, by agreement with the Secretary of State, at the date of subsequent disposal of those assets. Such percentage to be the same as the percentage of the capital contribution made by the Secretary of State to the original value of those assets, whether that contribution was made on the establishment of the Academy or later.

6.6 The Secretary of State may waive in whole or in part the repayment due under clause 6.5(b) if:

- a) the Company obtains his permission to invest the proceeds of sale for its charitable objects; or
- b) the Secretary of State directs all or part of the repayment to be paid to the LA.

6.7 The sale or disposal by other means of publicly funded land held for the purposes of an Academy is now governed by Part 3 of Schedule 1 to the Academies Act 2010.

### **Restrictions on Land transfer**

6A Recognising that they are or will be receiving publicly funded land at nil consideration (which for the purposes of this transaction shall include leases granted at a peppercorn rent) the Company:

a) shall, within 28 days from the transfer to it of the Land, apply to the Land Registry for a restriction in the proprietorship register (under section 43(1)(a) of the Land Registration Act 2002 in Form RX1 as prescribed by Rule 91 and Schedule 4 of the Land Registration Rules 2003) in the following terms:

*No disposition of the registered estate by the proprietor of the registered estate is to be registered without a written consent signed by the Secretary of State for Education, of Sanctuary Buildings, Great Smith Street, London SW1P 3BT*

b) shall take any further steps required to ensure that the restriction referred to in clause 6A(a) is entered on the proprietorship register,

c) shall provide the Secretary of State with confirmation of the entry of the restriction referred to in clause 6A(a) as soon as practicable after it receives notification from the Land Registry,

d) in the event that it has not registered the restriction referred to in clause 6A(a), hereby consents to the entering of the restriction referred to in 6A(a) in the register by the Secretary of State (under s. 43(1)(b) of the Land Registration Act 2002),

e) shall not, without the consent of the Secretary of State, apply to dis-apply, modify or remove (by cancellation or otherwise) a restriction entered in accordance with clause 6A(a) or 6A(d) above, whether by itself, a holding company, a subsidiary company, or a receiver, administrator or liquidator acting in the name of the Company.

## 7 **ANNEX**

7.1 The Annex to this Agreement forms part of and is incorporated into this Agreement.

## 8 **THE MASTER AGREEMENT**

8.1 Except as expressly provided in this Agreement the Master Agreement shall continue in full force and effect.

8.2 Funding shall be allocated to the academy on the basis outlined in Clauses 45-49 of the Master Agreement.

8.3 Clause 62 of the Master Agreement does not apply to the Academy and will be replaced with

62 With regards to the **Academy**, the Company may apply to the Secretary of State for financial assistance in relation to proposed redundancies that it may make. On an application to the Secretary of State, he may (at his absolute discretion) agree to meet a proportion of the Company's costs arising from the inclusion of Academies in the Schedules to the Redundancy Payments (Continuity of Employment in Local Government)(Modification) Order 1999. In response to an application for financial assistance, the Secretary of State may agree to meet the costs of the employees' prior eligible service, being service prior to opening of the Academy, but the Company will be required to meet the costs of service after the opening of the Academy.

## 9 **GENERAL**

9.1 This Agreement shall not be assignable by the Company.

9.2 No delay, neglect or forbearance on the part of the Secretary of State in enforcing (in whole or in part) any provision of this Agreement or in exercising (in whole or in part) any right or remedy conferred on him by this

Agreement shall be or be deemed to be a waiver of such provision or right or remedy or a waiver of any other provision or right or remedy or shall in any way prejudice any right or remedy of the Secretary of State under this Agreement or shall amount to an election not to enforce such provision or exercise such right or remedy (including, for the avoidance of doubt, any right to terminate this Agreement). No single or partial exercise of such right or remedy shall preclude or restrict the further exercise of that or any other right or remedy.

9.3 Termination of this agreement, for any reason, shall not affect the accrued rights, remedies, obligations or liabilities of the parties existing at termination.

9.4 This deed may be executed in any number of counterparts, each of which when executed and delivered shall constitute a duplicate original, but all the counterparts shall together constitute the one agreement.

9.5 This Agreement and any dispute or claim arising out of or in connection with it or its subject matter or formation (including non-contractual disputes or claims) shall be governed by and construed in accordance with the law of England and Wales.

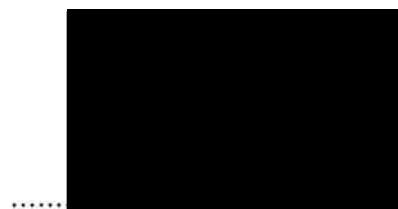
9.6 The parties irrevocably agree that the courts of England and Wales shall have exclusive jurisdiction to settle any dispute or claim that arises out of or in connection with this agreement or its subject matter or formation (including non-contractual disputes or claims).



This Agreement was executed as a Deed <sup>IE</sup>  
on 27 June 2018<sup>14</sup>

Executed on behalf of by:

The Corporate Seal of Academies Enterprise Trust, hereunto affixed is authenticated by:



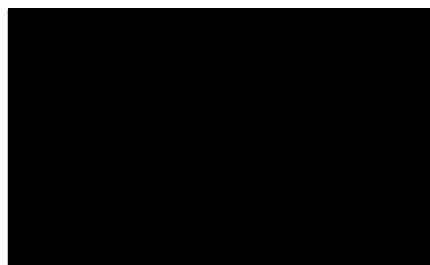
.....  
**Director**



.....  
**Director/Secretary**



The Corporate Seal of the Secretary of State for Education, hereunto affixed is authenticated by:



**Duly Authorised**



# **Annex 1**

## **REQUIREMENTS FOR THE ADMISSION OF PUPILS TO THE ACADEMY**

### **GENERAL**

1. This annex may be amended in writing at any time by agreement between the Secretary of State and the Company.
2. Except as provided in paragraphs 2A to 2B below the Company will act in accordance with, and will ensure that an Independent Appeal Panel is trained to act in accordance with, all relevant provisions of the School Admissions Code, and the School Admission Appeals Code published by the Department for Education (“the Codes”) as they apply at any given time to maintained schools and with equalities law and the law on admissions as they apply to maintained schools. For this purpose, reference in the Codes or legislation to “admission authorities” shall be deemed to be references to the Directors of the Company.
  - 2A The Company is permitted to determine admission arrangements (subject to consultation in accordance with the School Admissions Code) that give priority for admission (but not above looked after children and previously looked after children) to other children attracting the pupil premium, including the service premium (‘the pupil premium admission criterion’). Where a Company exercises this freedom it will provide information in its admission arrangements of eligibility for the premiums.
  - 2B For the purposes of applying the pupil premium admission criterion only, sections 1.9(f) and 2.4(a) of the School Admissions Code do not apply insofar as they prevent admission authorities from giving priority to children according to the financial or occupational status of parents or using supplementary forms that ask for:
    - any personal details about their financial status; or
    - whether parents are serving in the armed forces (of any nation), stationed in England, and exercising parental care and responsibility for the child in question.
3. Notwithstanding the generality of paragraph 2 of this Annex, the Company will participate in the co-ordinated admission arrangements operated by the Local Authority (LA) and the local Fair Access Protocol.
4. Notwithstanding any provision in this Annex, the Secretary of State

may:

- (a) direct the Company to admit a named pupil to the Academy on application from an LA. This will include complying with a School Attendance Order. Before doing so the Secretary of State will consult the Company;
- (b) direct the Company to admit a named pupil to the Academy if the Company has failed to act in accordance with this Annex or has otherwise failed to comply with applicable admissions and equalities legislation or the provisions of the Codes;
- (c) direct the Company to amend its admission arrangements where they fail to comply with the School Admissions Code or the School Admission Appeals Code.

5. The Company shall ensure that parents and 'relevant children' will have the right of appeal to an Independent Appeal Panel if they are dissatisfied with an admission decision of the Company. The Independent Appeal Panel will be independent of the Company. The arrangements for appeals will comply with the School Admission Appeals Code published by the Department for Education as it applies to Foundation and Voluntary Aided schools. The determination of the appeal panel is binding on all parties.<sup>1</sup>

## **Relevant Area**

6. Subject to paragraph 7, the meaning of "Relevant Area" for the purposes of consultation requirements in relation to admission arrangements is that determined by the local authority for maintained schools in the area in accordance with the Education (Relevant Areas for Consultation on Admission Arrangements) Regulations 1999.

7. If the Company does not consider the relevant area determined by the local authority for the maintained schools in the area to be appropriate, it must apply to the Secretary of State by 1 August for a determination of the

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<sup>1</sup> relevant children' means:

a) in the case of appeals for entry to a sixth form, the child, and;

b) in any other case, children who are above compulsory school age, or will be above compulsory school age by the time they start to receive education at the school.

appropriate relevant area for the Academy, setting out the reasons for this view. The Secretary of State will consult the Company and the LA in which the Academy is situated in reaching a decision.

### **Requirement to admit pupils**

8. Pupils on roll in any predecessor maintained or independent school will transfer automatically to the Academy on opening. All children already offered a place at any predecessor school will be admitted.

9. The Company will:

- a. subject to its right of appeal to the Secretary of State in relation to a named pupil, admit all pupils with a statement of special educational needs naming the Academy;
- b. determine admission oversubscription criteria for the Academy that give highest priority to looked after children and previously looked after children, in accordance with the relevant provisions of the School Admissions Code.

### **Oversubscription criteria, admission number, consultation, determination and objections.**

10. The Academy admission arrangements will include oversubscription criteria, and an admission number for each relevant age group. The Company will consult on the Academy's admission arrangements and determine them in line with the requirements within the School Admissions Code.

11. The Office of the School's Adjudicator (OSA) will consider objections to the Academy's admission arrangements. The Company should therefore make it clear, when determining the Academy's admission arrangements, that objections should be submitted to the OSA.

12. A determination of an objection by the OSA will be binding upon the Academy and the Company will make appropriate changes as quickly as possible.

## **Arrangements for pupils with Special Educational Needs ('SEN') and disabilities at Mainstream Academies**

### **Duties in relation to pupils with SEN**

1. The Directors of the Company must, in respect of each **Mainstream Academy**, comply with all of the duties imposed upon the governing bodies of maintained schools in;
  - Part 4 of the Education Act 1996 as amended from time to time;
  - The Education (Special Educational Needs) (Information) Regulations 1999 as amended from time to time;
  - The Education (Special Educational Needs Co-ordinators) (England) (Amendment) Regulations 2008 as amended from time to time.
2. Notwithstanding any provision in this Agreement, the Secretary of State may (whether following a complaint made to him or otherwise) direct the Company to comply with an obligation described in this Annex where the Company has failed to comply with any such obligation.
3. Where a child who has SEN is being educated in a **Mainstream Academy**, those concerned with making special educational provision for the child must secure that the child engages in the activities of the school together with children who do not have SEN, so far as is reasonably practicable and is compatible with:
  - (a) the child receiving the special educational provision which his learning difficulty calls for,
  - (b) the provision of efficient education for the children with whom he will be educated, and
  - (c) the efficient use of resources.
4. In addition to complying with the duties imposed upon the governing bodies of maintained schools set out in The Education (Special Educational Needs) (Information) Regulations 1999 (as amended from time to time) the Company must ensure that the website for each

Academy includes details of the implementation of its policy for pupils with special educational needs; the arrangements for the admission of disabled pupils; the steps taken to prevent disabled pupils from being treated less favourably than other pupils; and the facilities provided to assist access to the Academy by disabled pupils (disabled pupils meaning pupils who are disabled for the purposes of the Equality Act

2010).

### **Admissions**

5. The Company must ensure that for each **Mainstream Academy** pupils with SEN are admitted on an equal basis with others in accordance with the Academy's admissions policy.
6. Where a local authority ("LA") proposes to name a **Mainstream Academy** in a statement of SEN made in accordance with section 324 of the Education Act 1996, it must give the Company written notice that it so proposes. Within 15 days of receipt of the LA's notice that it proposes to name the Academy in a statement, the Company must consent to being named, except where admitting the child would be incompatible with the provision of efficient education for other children; and where no reasonable steps may be made to secure compatibility. In deciding whether a child's inclusion would be incompatible with the efficient education of other children, the Company must have regard to the relevant guidance issued by the Secretary of State to maintained schools.
7. If the Company determines that admitting the child would be incompatible with the provision of efficient education, it must, within 15 days of receipt of the LA's notice, notify the LA in writing that it does not agree that the Academy should be named in the pupil's statement. Such notice must set out all the facts and matters the Company relies upon in support of its contention that: (a) admitting the child would be incompatible with efficiently educating other children; and (b) the Company cannot take reasonable steps to secure this compatibility.

8. After service by the Company on the LA of any notice (further to paragraph 7 above) stating that it does not agree with the LA's proposal that the Academy be named, the Company must seek to establish from the LA, as soon as is reasonably practicable, whether or not the LA agrees with the Company. If the LA notifies the Company that it does not agree with the Company's response, and names the Academy in the child's statement, then the Company must admit the child to the school on the date specified in the statement or on the date specified by the LA.
9. Where the Company consider that the Academy should not have been named in a child's statement, they may ask the Secretary of State to determine that the LA has acted unreasonably in naming the Academy and to make an order directing the LA to reconsider.
10. The Secretary of State's determination shall, subject only to any right of appeal which any parent or guardian of the child may have to the First-tier Tribunal (Special Educational Needs and Disability), be final.
11. If a parent or guardian of a child in respect of whom a statement is maintained by the local authority appeals to the First-tier Tribunal (Special Educational Needs and Disability) either against the naming of an Academy in the child's SEN statement or asking the Tribunal to name an Academy, then the decision of the Tribunal on any such appeal shall be binding and shall, if different from that of the Secretary of State under paragraph 9 above, be substituted for the Secretary of State's decision.
12. Where the Company, the Secretary of State or the First-tier Tribunal (Special Educational Needs and Disability) have determined that it should be named, the Company shall admit the child to the Academy notwithstanding any provision of Annex 1 of the Supplemental Agreement of that Academy.

**Schedule 2**  
**Amended Supplemental Funding Agreement**





Department  
for Education

# **Mainstream academy and free school: supplemental funding agreement**

**March 2018 v6**

# Contents

<b>SUMMARY SHEET</b>	<b>4</b>
Information about the Academy:	4
<b>1. ESTABLISHING THE ACADEMY</b>	<b>8</b>
Definitions and interpretation	8
The Academy	9
<b>2. RUNNING OF THE ACADEMY</b>	<b>10</b>
Teachers and staff	10
Pupils	11
SEN unit	11
Charging	11
Admissions	11
Curriculum	13
<b>3. GRANT FUNDING</b>	<b>15</b>
Calculation of GAG	15
Other relevant funding	16
<b>4. LAND</b>	<b>17</b>
<b>5. TERMINATION</b>	<b>22</b>
Termination by either party	22
Termination Warning Notice	23
Termination by the Secretary of State after inspection	25
Termination by the Secretary of State	26
Funding and admission during notice period	26
Notice of intention to terminate by Academy Trust	26

Effect of termination	33
<b>6. OTHER CONTRACTUAL ARRANGEMENTS</b>	<b>34</b>
Annexes	34
The Master Agreement	34
General	34
<b>ANNEXES</b>	<b>37</b>
<b>7. ADMISSION OF CHILDREN AND YOUNG PEOPLE WITH EDUCATION, HEALTH AND CARE PLANS</b>	<b>37</b>
<b>8. ADMISSION OF CHILDREN WITH A STATEMENT OF SPECIAL EDUCATIONAL NEEDS</b>	<b>37</b>

## **SUMMARY SHEET**

### **Information about the Academy:**

<b>Name of Academy Trust</b>	Outwood Grange Academies Trust
<b>Company number</b>	06995649
<b>Date of Master Funding Agreement</b>	
<b>Name of academy</b>	Outwood Academy Normanby
<b>Opening date</b>	The Academy opened 1 September 2014 and will be run by the Academy Trust from 1 September 2019
<b>Type of academy (indicate whether academy or free school)</b>	Mainstream Academy
<b>Religious designation</b>	N/A
<b>Wholly or partly selective</b>	N/A
<b>Name of predecessor schools (where applicable)</b>	Eston Park Academy Gillbrook Academy
<b>Capacity number</b>	1,200
<b>Age range</b>	11-18
<b>Number of sixth form places</b>	250
<b>Number of boarding places</b>	N/A
<b>SEN unit / Resource provision</b>	N/A
<b>Land arrangements (Version 1-8 or other)</b>	Versions 1 and 2
<b>Address and title number of Land</b>	Hillsview Academy, Normanby Road, South Bank, Middlesbrough, TS6 9AG  With title numbers NYK390344 (freehold), CE212642, CE212837 and CE214508 (leasehold).

**Please confirm which clause variations have been applied or marked as ‘Not used’**

Clause No.	Descriptor	Applied	Not used
1.I	Only applies to free schools and new provision academies		X
2.A.1	Clause applies where an academy was previously a VC or foundation school designated with a religious character		X
2.C, 2.D	Only applies where the academy has an SEN unit		X
2.E	Only applies where there was a predecessor independent school		X
2.G	Clause does not apply to free schools (unless there was a predecessor independent school), or new provision academies	X	
2.M	Clause applies only to academies and free schools designated with a religious character		X
2.N	Clause applies only to academies that were formerly wholly selective grammar schools		X
2.O	Clause applies only to academies that were formerly partially selective grammar schools		X
2.T	Clause applies to free schools and new provision academies designated with a religious character		X
2.W	Clause only applies where the academy is designated with a religious character		X
2.X	Clause only applies where the academy has not been designated with a religious character	X	
2.Y	Clause applies where an academy was previously a VC school or foundation school designated with a religious character		X
2.Yc)	Sub-clause applies if the academy is designated with a denominational religious character – CE etc. rather than ‘Christian’		X

Clause No.	Descriptor	Applied	Not used
3.A – 3.F	Option 1 applies to converter and sponsored academies: if used delete option 2	X	
3.A – 3.F	Option 2 applies to free schools and new provision academies: if used delete option 1		X
3.H	Clause relating to Start-up only applies in some cases (does not apply to academy converters)		X
3.J	Clause only applies to full sponsored and intermediate sponsored academies with approved Academy Action Plans	X	
3.K	Clause does not apply to free schools (unless there was a predecessor independent school), or new provision academies	X	
5.G.1	Clause applies only to a boarding academy/free school.		X
5.I	Clause only applies to sponsored academies	X	
5.K	Clause applies to free schools and may be applied to new provision academies		X
5.L	Clause applies to free schools and may be applied to new provision academies		X
5.M	Clause applies to free schools and may be applied to new provision academies		X
5.N	Clause applies to free schools and may be applied to new provision academies		X
5.O	Clause applies to free schools and may be applied to new provision academies		X
6.H	Clause only applies to schools which are designated with a Church of England or Roman Catholic character		X
	Part of a PFI Scheme	X	

**Please identify any other variations from the model that apply to this academy (e.g. clauses relating to PFI, or any required because the multi academy trust includes academies designated with different religious characters, or a mixture of those designated with a religious character, and those which are not):**

**Additional clauses will be supplied by your project lead if needed.**

<b>Descriptor</b>	<b>Clause No.</b>	<b>Applied</b>	<b>Not used</b>
Only applies to academies which form part of a PFI arrangement	1.J	X	
Only applies to academies which form part of a PFI arrangement	1.K	X	
Only applies to academies which form part of a PFI arrangement	3.L	X	
Only applies to academies which form part of a PFI arrangement	3.M	X	
Only applies to academies which form part of a PFI arrangement	3.N	X	
Only applies to academies which form part of a PFI arrangement	5B(d) – (k)	X	
Only applies to academies which form part of a PFI arrangement	5Z – 5LL	X	

## 1. **ESTABLISHING THE ACADEMY**

- 1.A This Agreement made between the Secretary of State for Education and Outwood Grange Academies Trust is supplemental to the master funding agreement made between the same parties and dated  
(the "**Master Agreement**").

### **Definitions and interpretation**

- 1.B Except as expressly provided in this Agreement words and expressions defined in the Master Agreement will have those same meanings in this Agreement.

- 1.C The following capitalised words and expressions will have the following meanings:

"The **Academy**" means Outwood Academy Normanby.

"**Academy Trust Insolvency Notice**" - clause 5.CC;

"**Coasting**" has the meaning given by regulations under subsection (3) of section 60B of the Education and Inspections Act 2006 in relation to a school to which that section applies.

"**Critical Years**" - clause 5.BB;

"**Current Funding**" - clause 5.BB;

"**Insolvency**" has the meaning given to it in section 123 of the Insolvency Act 1986;

"**Lease**" has the meaning given to it in clause 4 of this Agreement;

"**Normal Payment Matters**" has the meaning given to it in the Principal Agreement;

"**PFI Contractor**" means Modern Schools (Redcar and Cleveland) Limited, the counterparty of the LA to the Project Agreement;

"**PFI EAG Refusal**" - clause 5.BB;



**"Principal Agreement"** means the principal agreement entered into by the Secretary of State, the Academy Trust and the LA in connection with the Academy and dated on or around the date of this Agreement;

**"Project Agreement"** means the PFI project agreement dated on or around 20 April 2005 and entered into by the LA and PFI Contractor (as may be amended from time to time); and

**"School Agreement"** means the deed of novation of governors' agreement entered into by the LA, Academies Enterprise Trust and the Academy Trust relating to the provision of facilities and services to the Academy and dated on or around the date of this Agreement.

**"SEN"** means Special Educational Needs and the expressions **"special educational needs"** and **"special educational provision"** have the meaning set out in sections 20(1) and 21(2) of the Children and Families Act 2014.

**"Shortfall"** - clause 5.FF.

**"Termination Notice"** means a notice sent by the Secretary of State to the Academy Trust, terminating this Agreement on the date specified in the notice.

**"Termination Warning Notice"** means a notice sent by the Secretary of State to the Academy Trust, stating his intention to terminate this Agreement.

1.D The Interpretation Act 1978 applies to this Agreement as it applies to an Act of Parliament.

1.E Reference in this Agreement to clauses and annexes will, unless otherwise stated, be to clauses and annexes to this Agreement.

## **The Academy**

1.F The Academy is a Mainstream Academy as defined in clause 1.4 of the Master Agreement.

1.G The Academy Trust will establish and maintain the Academy in accordance with the Master Agreement and this Agreement.

1.H The Academy opened 1 September 2014 and will be run by the Academy

Trust from 1 September 2019.

- 1.I Not used.
- 1.J The Academy Trust shall enter into the School Agreement, the Principal Agreement and the Lease.
- 1.K The Academy Trust must conduct the Academy within the terms and requirements of the Principal Agreement, the School Agreement and the Lease.

## **2. RUNNING OF THE ACADEMY**

### **Teachers and staff**

- 2.A Subject to clause 2.A.2 and 7.A of this Agreement and section 67 of the Children and Families Act 2014, the Academy Trust may, in accordance with any relevant Guidance, employ anyone it believes is suitably qualified or is otherwise eligible to plan and prepare lessons and courses for pupils, teach pupils, and assess and report on pupils' development, progress and attainment.
- 2.A.1 Not used.
- 2.A.2 The Academy Trust must designate a staff member at the Academy as responsible for promoting the educational achievement of registered pupils at the Academy who are being looked after by an LA, or are no longer looked after by an LA because of an adoption, special guardianship or child arrangements order, or because they have been adopted from 'state care' outside England and Wales, and in doing so must comply with the law, regulations and guidance that apply to maintained schools. The Academy Trust must ensure the designated person undertakes appropriate training and has regard to any guidance issued by the Secretary of State.

## **Pupils**

- 2.B The planned capacity of the Academy is 1,200 in the age range 11-18, including a sixth form of 250 places. The Academy will be an all ability inclusive school.

## **SEN unit**

- 2.C Not used.

- 2.D Not used.

## **Charging**

- 2.E Not used.

## **Admissions**

- 2.F Subject to clauses 2.K– 2.L the Academy Trust will act in accordance with, and will ensure that its Independent Appeal Panel is trained to act in accordance with, the School Admissions Code and School Admission Appeals Code published by the DfE (the “Codes”) and all relevant admissions law as they apply to foundation and voluntary aided schools, and with equalities law. Reference in the Codes or legislation to “admission authorities” will be deemed to be references to the Academy Trust.
- 2.G Pupils on roll in a Predecessor School which was a maintained or independent school will transfer automatically to the Academy on opening. All children already offered a place at that Predecessor School must be admitted to the Academy.
- 2.H The Academy Trust must participate in the local Fair Access Protocol. The Academy Trust must participate in the coordinated admission arrangements operated by the LA in whose area the Academy is situated. If the Academy is a free school, the Academy Trust is not required to participate in coordination for its first intake of pupils.
- 2.I Not used.

- 2.J Not used.
- 2.K Not used.
- 2.L The Secretary of State may:
- a) direct the Academy Trust to admit a named pupil to the Academy:
    - i. following an application from an LA including complying with a school attendance order as defined in section 437 of the Education Act 1996. Before doing so the Secretary of State will consult the Academy Trust; or
    - ii. where in relation to a specific child or children the Academy Trust has failed to act in accordance with the Codes or this Agreement or has otherwise acted unlawfully; or
  - b) direct the Academy Trust to amend its admission arrangements where they do not comply with the Codes or this Agreement, or are otherwise unlawful.
- 2.M Not used.
- 2.N Not used.
- 2.O Not used.
- 2.P The Academy Trust must make arrangements to ensure an independent appeals panel is established for the Academy and its clerk and members are trained to act in accordance with the Codes. The Academy Trust must ensure that parents and ‘relevant children’ (as described in the Codes) are informed of their right to appeal to an Independent Appeal Panel if they are dissatisfied with an admission decision of the Academy Trust. The arrangements for appeals must comply with the Codes as they apply to foundation and voluntary aided schools. The determination of the appeal panel is binding on all parties.
- 2.Q Subject to clause 2.R, the meaning of “**relevant area**” for the purposes of

consultation requirements in relation to admission arrangements is that determined by the relevant LA for maintained schools in the area in accordance with the Education (Relevant Areas for Consultation on Admission Arrangements) Regulations 1999.

- 2.R If the Academy does not consider the relevant area determined by the LA for the maintained schools in the area to be appropriate, it must apply to the Secretary of State by 1 August before the academic year in question for a determination of the appropriate relevant area for the Academy, setting out the reasons for this view. The Secretary of State will consult the Academy Trust and the LA in whose area the Academy is situated in reaching a decision.
- 2.S The Office of the Schools Adjudicator (“OSA”) will consider objections to the Academy’s admission arrangements (except objections against any agreed derogations from the provisions of the Codes specified in this funding agreement, over which it has no jurisdiction). The Academy Trust must therefore make it clear, when determining the Academy’s admission arrangements, that objections should be submitted to the OSA. The OSA’s determination of an objection is binding on the Academy and the Academy Trust must make appropriate changes to its admission arrangements to give effect to the Adjudicator’s decision within two months of the decision (or by 28 February following the decision, whichever is sooner), unless an alternative timescale is specified by the Adjudicator.
- 2.T Not used.

## **Curriculum**

- 2.U The Academy Trust must provide for the teaching of religious education and a daily act of collective worship at the Academy.
- 2.V The Academy Trust must comply with section 71(1)-(6) and (8) of the School Standards and Framework Act 1998 as if the Academy were a community, foundation or voluntary school, and as if references to “religious education” and “religious worship” in that section were references to the religious

education and religious worship provided by the Academy in accordance with clause 2.X.

2.W Not used.

2.X Subject to clause 2.V, **where the academy has not been designated with a religious character** (in accordance with section 124B of the School Standards and Framework Act 1998 or further to section 6(8) of the Academies Act 2010):

- a) provision must be made for religious education to be given to all pupils at the Academy in accordance with the requirements for agreed syllabuses in section 375(3) of the Education Act 1996 and paragraph 2(5) of Schedule 19 to the School Standards and Framework Act 1998;
- b) the Academy must comply with section 70(1) of, and Schedule 20 to, the School Standards and Framework Act 1998 as if it were a community, foundation or voluntary school which does not have a religious character, except that paragraph 4 of that Schedule does not apply. The Academy may apply to the Secretary of State for consent to be relieved of the requirement imposed by paragraph 3(2) of that Schedule.

2.Y Not used.

2.Z The Academy Trust must have regard to any Guidance, further to section 403 of the Education Act 1996, on sex and relationship education to ensure that children at the Academy are protected from inappropriate teaching materials and that they learn the nature of marriage and its importance for family life and for bringing up children. The Academy Trust must also have regard to the requirements in section 405 of the Education Act 1996, as if the Academy were a maintained school.

2.AA The Academy Trust must prevent political indoctrination, and secure the balanced treatment of political issues, in line with the requirements for maintained schools set out in the Education Act 1996, and have regard to any

Guidance.

### 3. **GRANT FUNDING**

#### **Calculation of GAG**

3A-3D. Not used.

3.E The Secretary of State will calculate GAG based on the pupil count at the Academy. In order to calculate GAG for the Academy Financial Year in which the Academy opens, the pupil count will be determined on the same basis as that used by the relevant LA for determining the budget of the maintained Predecessor School.

3.F For Academy Financial Years after that referred to in clause 3.E, the basis of the pupil count for determining GAG will be:

- a) for pupils in Year 11 and below, the Schools Census which is used to fund maintained schools for the financial year overlapping with the Academy Financial Year in question; and
- b) for pupils in Year 12 and above, the formula which is in use at the time for maintained schools.

3.G The Secretary of State may, at his discretion, adjust the basis of the pupil count to take account of any diseconomies of scale which may affect the Academy if it is operating below the planned capacity in clause 2.B. If such an adjustment is made in any Academy Financial Year, this will not change the basis of the pupil count for calculating the following Academy Financial Year's GAG. If the Secretary of State has indicated that additional grant may be payable in such circumstances, the Academy Trust will bid for this additional grant based on need and providing appropriate supporting evidence. The Secretary of State may accept or refuse the bid at his discretion.

3.H Not used.

3.I The Secretary of State recognises that if a Termination Notice or a

Termination Warning Notice is served, or the Master Agreement is otherwise terminated, the intake of new pupils during the notice period may decline and therefore payments based on the number of pupils attending the Academy may be insufficient to meet the Academy's needs. In these circumstances the Secretary of State may pay a larger GAG in the notice period, to enable the Academy to operate effectively.

### **Other relevant funding**

- 3.J The Academy Trust may apply to the Secretary of State for financial assistance in relation to proposed redundancies at the Academy. In response to such an application, the Secretary of State may at his discretion agree to meet a proportion of the Academy Trust's costs arising from the inclusion of academies in the schedules to the Redundancy Payments (Continuity of Employment in Local Government) (Modification) Order 1999. The Secretary of State may agree to meet the costs of an employee's prior eligible service, being service before the Academy opened, but the Academy Trust must meet the costs of service after the Academy opened. The Secretary of State's financial assistance in this respect will only be available in the first two years after the Academy opens.
- 3.K The Secretary of State may pay the Academy Trust's costs in connection with the transfer of employees from a Predecessor School under the Transfer of Undertakings (Protection of Employment) Regulations 2006. Such payment will be agreed on a case-by-case basis. The Academy Trust must not budget for such a payment unless the Secretary of State confirms in writing that it will be paid.
- 3.L The Academy Trust must use the GAG funding it receives prudently to cover the normal reasonable running costs of the Academy including payments which fall due pursuant to the School Agreement or the Principal Agreement and to make payments under the School Agreement which will in turn form a contribution to the LA's obligations to pay the unitary charge under the Project Agreement .
- 3.M If the Secretary of State makes a payment under the Principal Agreement the



Secretary of State may, subject to clause 3.N, set off or abate an equivalent amount from any GAG payable to the Academy Trust pursuant to this Agreement in the following financial year.

3.N Before making any set off or abatement pursuant to clause 3.M above, the Secretary of State shall:

3.N.1. notify the Academy Trust of the payment under the Principal Agreement;

3.N.2. take into account (acting reasonably) any representations made by the Academy Trust providing reasons why the relevant liabilities were not settled;

3.N.3. take into account (acting reasonably) any representations made by the Academy Trust as to the nature of the liabilities under consideration.

#### **Carrying forward of funds**

3.O Any additional grant made in accordance with clause 3.I, for a period after the Secretary of State has served a Termination Notice or a Termination Warning Notice under this Agreement, or otherwise terminates the Master Agreement, may be carried forward without limitation or deduction until the circumstances set out in clause 3.I cease to apply or the Academy closes.

#### **4. LAND**

**“Freehold Land”** means the freehold land at Hillsvie Academy, Normanby Road, South Bank, Middlesbrough, TS6 9AG, being the land registered with title number NYK390344, which is to be part of the permanent site of the Academy.

**“Leasehold Land”** means the land at Hillsvie Academy, Normanby Road, South Bank, Middlesbrough, TS6 9AG, being the land registered with title numbers CE212642, CE212837 and CE214508 and demised by the Lease.

**“Lease”** means the lease or other occupational agreement between the Academy Trust and a third party (the **“Landlord”**) under which the Academy Trust derives title to the Leasehold Land.

**“Property Notice”** means any order, notice, proposal, demand or other requirement

issued by any competent authority (including the Landlord) which materially affects the Academy Trust's ability to use the Freehold Land and/or the Leasehold Land for the purposes of the Academy.

### **Restrictions on Freehold Land and Leasehold Land transfer**

4.A The Academy Trust must:

- a) within 28 days of the signing of this Agreement in circumstances where the Freehold Land and/or the Leasehold Land is transferred to the Academy Trust prior to the date of this Agreement, or otherwise within 28 days of the transfer of the Freehold Land and/or the Leasehold Land to the Academy Trust, apply to the Land Registry using Form RX1 for the following restriction (the "Restrictions") to be entered in the proprietorship registers for the Freehold Land and separately the Leasehold Land:

*No disposition of the registered estate by the proprietor of the registered estate is to be registered without a written consent signed by the Secretary of State for Education, of Sanctuary Buildings, Great Smith Street, London SW1P 3BT;*

- b) take any further steps reasonably required to ensure that the Restrictions are entered on the proprietorship registers;
- c) promptly confirm to the Secretary of State when the Restrictions have been registered;
- d) if they have not registered the Restrictions, permit the Secretary of State to do so in its place; and
- e) not, without the Secretary of State's consent, apply to disapply, modify, cancel or remove the Restrictions, whether by itself, a holding company, a subsidiary company, or a receiver, administrator or liquidator acting in the name of the Academy Trust.

### **Obligations of the Academy Trust**

- 4.B Save to the extent that any of the Academy Trust's obligations are the responsibility of the PFI Contractor (whereupon the Academy Trust must use reasonable endeavours to procure the PFI Contractor's compliance with its obligations under the Project Agreement), the Academy Trust must keep the Freehold Land and the Leasehold Land clean and tidy and make good any damage or deterioration to the Freehold Land and the Leasehold Land. The Academy Trust must not do anything to lessen the value or marketability of the Freehold Land or the Leasehold Land without the Secretary of State's consent.
- 4.C The Academy Trust must comply with the Lease and promptly enforce its rights against the Landlord.
- 4.D The Academy Trust must not, without the Secretary of State's consent:
- a) Terminate, vary, surrender, renew, dispose of or agree any revised rent under the Lease
  - b) grant any consent or licence; or
  - c) create or allow any encumbrance; or
  - d) part with or share possession or occupation; or
  - e) enter into any onerous or restrictive obligations,
- in respect of all or part of the Freehold Land and the Leasehold Land.

### **Option**

- 4.E The Academy Trust grants and the Secretary of State accepts an option (the "**Option**") to acquire all or part of the Freehold Land and the Leasehold Land at nil consideration. The Secretary of State may exercise the Option in writing on termination of this Agreement. If the Option is exercised, completion will take place 28 days after the exercise date in accordance with the Law Society's Standard Conditions of Sale for Commercial Property in force at that date.

## Option Notice

### 4.F The Academy Trust:

- a) must, within 14 days after acquiring the Freehold Land and/or the Leasehold Land or, if later, after signing this Agreement, apply to the Land Registry on Form AN1 (including a copy of this Agreement) for notices of the Option (the “**Option Notices**”) to be entered in the registers, taking any further steps required to have the Option Notices registered and promptly confirming to the Secretary of State when this has been done;
- b) if it has not registered the Option Notices, agrees that the Secretary of State may apply to register them using Form UN1;
- c) must not, without the Secretary of State’s consent, apply to disapply, modify or remove the Option Notices, whether by itself, a holding company, a subsidiary company, or a receiver, administrator or liquidator acting in the name of the Academy Trust, and
- d) must, in the case of previously unregistered land, within 14 days after acquiring the Freehold Land and/or the Leasehold Land or, if later, after signing this Agreement, apply to register Class C(iv) land charges in the Land Charges Registry, and send the Secretary of State a copies of the relevant entries within 7 days after the registrations have been completed. If the Secretary of State considers that the Academy Trust has not complied with this clause, he may apply to secure the registration.

## Property Notices

### 4.G If the Academy Trust receives a Property Notice, it must:

- a) send a copy of it to the Secretary of State within 14 days, stating how the Academy Trust intends to respond to it;
- b) promptly give the Secretary of State all the information he asks for

about it;

- c) allow the Secretary of State to take all necessary action, with or instead of the Academy Trust, to comply with it, and
- d) use its best endeavours to help the Secretary of State in connection with it.

### **Breach of Lease**

4.H If the Academy Trust is, or if it is reasonably foreseeable that it will be, in material breach of the Lease, the Academy Trust must immediately give written notice to the Secretary of State stating what the breach is and what action the Academy Trust has taken or proposes to take to remedy it, including timescales where appropriate.

4.I After notifying the Secretary of State under clause 4.H, the Academy Trust must:

- a) promptly give the Secretary of State all the information he asks for about the breach;
- b) allow the Secretary of State to take all necessary action, with or instead of the Academy Trust, to remedy or prevent the breach, and
- c) use its best endeavours to help the Secretary of State to remedy or prevent the breach.

### **Sharing the Freehold Land and the Leasehold Land**

4.J Where:

- a) the Secretary of State identifies basic or parental need for additional places in the area in which the Academy is situated; and
- b) the Secretary of State then considers that not all the Freehold Land and/or the Leasehold Land is needed for the operation of the Academy at planned capacity,

The Secretary of State must consult with the Academy Trust to determine

whether part of the Freehold Land and/or the Leasehold Land could be demised, leased or sublet (as the case may be) to another Academy Trust, as the Secretary of State considers appropriate, for the purpose of that Academy Trust establishing and maintaining an educational institution on the Freehold Land and/or the Leasehold Land.

4.K To the extent the Academy Trust and the Secretary of State agree to part of the Freehold Land and/or the Leasehold Land being demised leased or sublet in accordance with clause 4.J, the Academy Trust must use its best endeavours to procure all necessary consents (and in the case of the Leasehold Land, either the approval of the Landlord or any necessary amendments to the Lease) in order to enable it to share occupation of the Freehold Land and/or the Leasehold Land with the incoming Academy Trust and to provide the incoming Academy Trust with security of tenure over the Freehold Land and/or the Leasehold Land occupied by it, and shall enter into any legal arrangements which the Secretary of State requires for this purpose. The Secretary of State shall meet the necessary and reasonable costs incurred by the Academy Trust in connection with this clause.

4.L For the purposes of clause 4.J:

- a) a basic need will arise when the forecast demand for pupil places in the area where the Academy is situated is greater than the existing capacity to provide them;
- b) a parental need will arise when the DfE is actually aware of an additional demand for pupil places in the area where the Academy is situated, following representations from parents in that area; and
- c) planned capacity has the meaning given in clause 2.B.

## **5. TERMINATION**

### **Termination by either party**

5.A Either party may give at least seven Academy Financial Years' notice to terminate this Agreement. Such termination would take effect on 31 August of

the relevant year.

### **Termination Warning Notice**

5.B The Secretary of State may serve a Termination Warning Notice where he considers that:

- a) the Academy Trust has breached the provisions of this Agreement or the Master Agreement; or
- b) the standards of performance of pupils at the Academy are unacceptably low; or
- c) there has been a serious breakdown in the way the Academy is managed or governed; or
- d) the safety of pupils or staff is threatened, including due to breakdown of discipline; or
- e) the Secretary of State is obliged to make a payment under the Principal Agreement; or
- f) the Secretary of State considers that in the immediately preceding 12 month period, the aggregate of payments made by the Academy Trust to the LA under the Principal Agreement has reached a level which the Secretary of State considers to be excessive and which may (assessed objectively) cause the Academy Trust material financial difficulties; or
- g) the Secretary of State considers (acting reasonably) that the Academy Trust's compliance with the School Agreement or the Principal Agreement is such that claims or disputes are of a number or nature likely to materially and adversely impact on the provision of educational services at the Academy; or
- h) the Academy Trust has committed a material breach of the School Agreement or the Principal Agreement; or
- i) the Secretary of State has received a notice from the LA informing it of

instances of breaches or non-compliance by the Academy Trust with the School Agreement or Principal Agreement that may have the consequence of causing the LA to be in breach or default of the Project Agreement; or

- j) the Academy Trust has failed to take the action referred to in clause 5.C by the date specified in clause 5.C; or
- k) the circumstances envisaged by clauses 5.II and 5.JJ of this Agreement in respect of EAG funding are applicable; or
- l) the Academy is coasting provided he has notified the Academy Trust that it is coasting.

Each of a) to l) (inclusive) above is a default event for the purposes of this Agreement.

5.C A Termination Warning Notice served under clause 5.B will specify:

- a) the action the Academy Trust must take;
- b) the date by which the action must be completed; and
- c) the date by which the Academy Trust must make any representations, or confirm that it agrees to undertake the specified action.

5.D The Secretary of State will consider any representations from the Academy Trust which he receives by the date specified in the Termination Warning Notice. The Secretary of State may amend the Termination Warning Notice to specify further action which the Academy Trust must take, and the date by which it must be completed.

5.E If the Secretary of State considers that the Academy Trust has not responded to the Termination Warning Notice as specified under clause 5.C(c), or has not completed the action required in the Termination Warning Notice as specified under clauses 5.C(a) and (b) (and any further action specified under clause 5.D) he may serve a Termination Notice.



## **Termination by the Secretary of State after inspection**

5.F If the Chief Inspector gives notice to the Academy Trust that:

- a) special measures are required to be taken in relation to the Academy;  
or
- b) the Academy requires significant improvement

the Secretary of State may serve a Termination Warning Notice, specifying the date by which the Academy Trust must make any representations.

5.G In deciding whether to give notice of his intention to terminate under clause 5.F, the Secretary of State will have due regard to the overall performance of the Academy Trust.

5.G.1 Not used.

5.H If the Secretary of State has served a Termination Warning Notice under clause 5.F and:

- a) has not received any representations from the Academy Trust by the date specified in the notice; or
- b) having considered the representations made by the Academy Trust remains satisfied that this Agreement should be terminated;

he may serve a Termination Notice.

5.I If the Chief Inspector gives a notice referred to in clause 5.F to the Academy Trust within two years after the Academy opened, the Secretary of State may only serve a Termination Warning Notice under clause 5.F if:

- a) the Chief Inspector has held a monitoring inspection under section 8 of the Education Act 2005 later than two years after the Academy opened; and
- b) the Chief Inspector considers that the Academy is not making enough progress towards the removal of the designation referred to in his

notice.

Nothing in this clause prevents or prejudices the Secretary of State exercising any other rights arising from or under this Agreement (including, for the avoidance of doubt, any rights under clauses 5.B to 5.E).

### **Termination by the Secretary of State**

5.J If the Secretary of State has determined that the Academy will be removed from the Register of Independent Schools and no appeal against that determination is pending, he may serve a Termination Notice.

5.K Not used.

5.L Not used.

5.M Not used.

5.N Not used.

5.O Not used.

### **Funding and admission during notice period**

5.P If the Secretary of State serves a Termination Notice under clause 5.A, the Academy Trust may continue during the notice period to admit pupils to the Academy, and to receive GAG and EAG, in accordance with this Agreement.

5.Q If the Secretary of State serves a Termination Warning Notice or a Termination Notice otherwise than under clause 5.A, the Academy Trust may continue during the notice period to admit pupils to the Academy (unless the Secretary of State specifies otherwise), and to receive GAG and EAG, in accordance with this Agreement.

### **Notice of intention to terminate by Academy Trust**

5.R The provisions of this clause 5R and of clauses 5.S to 5.Y (inclusive) shall apply when the Project Agreement has expired or been terminated. The Secretary of State will, before the start of each Academy Financial Year,

provide the Academy Trust with a final funding allocation indicating the level of GAG and EAG to be provided in the next Academy Financial Year (the “**Funding Allocation**”).

- 5.S If the Academy Trust is of the opinion that, after receipt of the Funding Allocation for the next Academy Financial Year (the “**Critical Year**”) and after taking into account all other resources likely to be available to the Academy, including other funds that are likely to be available to the Academy from other academies operated by the Academy Trust (“**All Other Resources**”), it is likely that the cost of running the Academy during the Critical Year would cause the Academy Trust to become insolvent (and for this reason only) then the Academy Trust may give written notice of its intention to terminate this Agreement on 31 August before the Critical Year.
- 5.T Any notice given by the Academy Trust under clause 5.S must be provided to the Secretary of State within six weeks of the Secretary of State issuing the Funding Allocation. The notice given by the Academy Trust under clause 5.S must specify:
- a) the grounds upon which the Academy Trust’s opinion is based, including:
    - i. evidence of those grounds;
    - ii. any professional accounting advice the Academy Trust has received;
    - iii. a detailed statement of steps which the Academy Trust proposes to take to ensure that the running costs of the Academy are reduced such that costs are less than the Funding Allocation and All Other Resources, and the period of time within which such steps will be taken; and
  - b) the shortfall in the Critical Year between the Funding Allocation and All Other Resources expected to be available to the Academy Trust to run the Academy and the projected expenditure on the Academy; and

- c) a detailed budget of income and expenditure for the Academy during the Critical Year (the “**Projected Budget**”).
- 5.U Both parties will use their best endeavours to agree whether or not the cost of running the Academy during the Critical Year would cause the Academy Trust to become insolvent. Both parties recognise that they will need to engage in a constructive dialogue at the time about how best to provide education for the pupils at the Academy and use their best endeavours to agree a practical solution to the problem.
- 5.V If no agreement is reached by 30 April (or another date if agreed between the parties) as to whether the cost of running the Academy during the Critical Year would cause the Academy Trust to become insolvent, then that question will be referred to an independent expert (the “**Expert**”) for resolution. The Expert’s determination will be final and binding on both parties. The Expert will be requested to specify in his determination the amount of the shortfall in funding (the “**Shortfall**”).
- 5.W The Expert will be an insolvency practitioner with significant professional experience of educational institutions or academies. If the parties fail to agree upon the appointment of the Expert then the Expert will be appointed by the President of the Institute of Chartered Accountants in England and Wales. The Expert’s fees will be borne equally between the parties.
- 5.X The Expert will be required in reaching his determination to take account of advice from an educational specialist who is professionally familiar with the issues arising from the budget management of schools. If the parties fail to agree upon the appointment of the educational specialist then the educational specialist will be appointed by the Chairman of the Specialist Schools and Academies Trust (or any successor or equivalent body). The educational specialist’s fees will be borne equally between the parties.
- 5.Y If the Expert determines that the cost of running the Academy during the Critical Year would cause the Academy Trust to become insolvent, and the Secretary of State will not have agreed to provide sufficient additional funding to cover the Shortfall, then the Academy Trust will be entitled to terminate this

Agreement, by notice expiring on 31 August before the Critical Year. Any such notice will be given within 21 days after (a) the Expert's determination will have been given to the parties or (b), if later, the Secretary of State will have given written notice of his refusal to provide sufficient additional funding for the Academy to cover the Shortfall.

5.Z The provisions of this clause 5.Z and of clauses 5.AA to 5.LL (inclusive) shall apply when the Project Agreement is subsisting.

5.AA The Secretary of State will, before the start of each Academy Financial Year, provide the Academy Trust with a final allocation indicating the level of GAG and EAG to be provided in the next following Academy Financial Year (the "Indicative Funding").

5.BB For the purpose of clauses 5.BB to 5.LL:

**"Critical Years"** means the current financial year and, if an annual letter of funding or its equivalent has been received for the following financial year, that financial year;

**"Current Funding"** means the funding specified in the annual letters of funding (or their equivalent) for the Critical Years and all other resources available and likely to be available to the Academy Trust, including funds detailed in the Master Agreement;

A **"PFI EAG Refusal"** occurs where:

- (a) the Academy Trust has made a request for EAG funding in connection with its obligations or discharging its liabilities under the School Agreement or the Principal Agreement; and
- (b) the Secretary of State has not agreed, in accordance with clauses 3.16 and 3.17 of the Master Agreement, to provide such EAG funding to the Academy Trust.

5.CC Within 30 days of being notified by the Secretary of State of a PFI EAG Refusal, the Academy Trust may provide written notice that it considers that,

after taking into account its Current Funding, it is likely that the running costs during the Critical Years would cause the Academy Trust to go into Insolvency ("Academy Trust Insolvency Notice").

5.DD Any Academy Trust Insolvency Notice must specify:

5.DD.1 the grounds upon which the Academy Trust's opinion is based, including:

- (i) evidence of those grounds;
- (ii) any professional accounting advice, upon which the Academy Trust's opinion is based;
- (iii) a detailed statement of steps which the Academy Trust proposes to take to ensure that as soon as reasonably practicable the running costs are reduced sufficiently in the Critical Years to ensure that such costs are less than its Current Funding and the period of time within which such steps will be taken;
- (iv) the shortfall in the Critical Years between the Current Funding expected to be available to the Academy Trust to cover the running costs and the projected expenditure of the Academy Trust; and
- (v) a detailed budget of income and expenditure for the Academy during the Critical Years

5.EE Within 15 days of the provision of the Academy Trust Insolvency Notice, both parties shall discuss and if possible (using reasonable endeavours) agree whether or not it is likely that the running costs during the Critical Years would cause the Academy Trust to go into Insolvency and such Insolvency could not be avoided through prudent financial management (including, by using GAG funding prudently). Both parties recognise that they will need to engage in a constructive dialogue at the time about how best to provide education for the pupils at the Academy and agree to use their reasonable endeavours to agree a practical solution to the problem.

5.FF If no agreement is reached in accordance with clause 5.EE within 15 days of the Academy Trust Insolvency Notice being served, then the following questions shall be referred to an independent expert (the "Expert") for determination:

5.FF.1 whether, on the basis of the Current Funding, it is likely that the running costs during the Critical Years would cause the Academy Trust to go into Insolvency;

5.FF.2 whether the Academy Trust is using the funds provided under this Agreement and the Master Agreement prudently; and

5.FF.3 whether the Academy Trust is using the funds provided under this Agreement and the Master Agreement in accordance with the requirements of this Agreement and the Master Agreement.

The Expert's determination shall be final and binding on both parties. The Expert shall be requested to specify in his determination:

- (a) the amount of the shortfall (if any) in funding between the running costs and the Current Funding during the Critical Years (the "Shortfall"); and
- (b) (if appropriate) recommendations as to future spending and the running costs.

The Expert will be an insolvency practitioner with significant professional experience of educational institutions or academies. If the parties fail to agree upon the appointment of the Expert then the Expert shall be appointed by the President of the Institute of Chartered Accountants in England and Wales.

5.GG The parties shall procure that the Expert (together with any educational specialist appointed pursuant to this clause) will act promptly in determining the matters referred to him. The Expert will be required to take account of advice from an educational specialist who is professionally familiar with the issues arising from the budget management of schools. If the parties fail to agree upon the appointment of the educational specialist then the educational specialist shall be appointed by the Chairman of the Specialist Schools and

Academies Trust.

- 5.HH The Expert's and the educational specialist's fees shall be borne equally between the parties.
- 5.II For the purpose of clauses 5.JJ and 5.LL, "Insolvency Decision" means either:
- 5.II.1 in accordance with clause 5.EE, the Secretary of State agrees with the Academy Trust that on the basis of the Current Funding it is likely that the running costs during the Critical Years would cause the Academy Trust to go into Insolvency which could not be avoided through prudent financial management (including, using GAG funding prudently); or
- 5.II.2 an Expert determines in accordance with clause 5.FF that on the basis of the Current Funding it is likely that the running costs during the Critical Years would cause the Academy Trust to go into Insolvency or that the Academy Trust is not using the funds provided under this Agreement and the Master Agreement prudently and in accordance with the requirements of this Agreement and the Master Agreement.
- 5.JJ Within 10 Business Days of an Insolvency Decision, the Secretary of State may either at its option:
- 5.JJ.1 withdraw the PFI EAG Refusal and promptly pay to the Academy Trust the amount of requested EAG funding or such other sum as shall be appropriate; or
- 5.JJ.2 terminate this Agreement on not less than 20 Business Days notice to the Academy Trust.
- 5.KK In the event that the Secretary of State provides additional EAG funding in accordance with clause 5.JJ, the Secretary of State may within 12 months of paying the additional EAG funding, terminate this Agreement at any time.
- 5.LL In the event that there is no Insolvency Decision, this Agreement shall continue and the Secretary of State shall not be obliged to pay to the Academy Trust the requested EAG funding.



## **Effect of termination**

- 5.MM If this Agreement is terminated, the Academy will cease to be an Academy within the meaning of sections 1 and 1A of the Academies Act 2010.
- 5.NN Subject to clauses 5.OO and 5.PP, if the Secretary of State terminates this Agreement under clause 5.A, he will indemnify the Academy Trust. If the Secretary of State terminates this Agreement otherwise than under clause 5.A, he may at his discretion indemnify or compensate the Academy Trust.
- 5.OO The amount of any such indemnity or compensation will be determined by the Secretary of State, having regard to representations made to him by the Academy Trust, and will be paid as and when the Secretary of State considers appropriate.
- 5.PP The categories of expenditure incurred by the Academy Trust in consequence of termination, for which the Secretary of State may indemnify the Academy Trust under clauses 5.NN, may include:
- a) staff compensation and redundancy payments;
  - b) compensation payments in respect of broken contracts;
  - c) expenses of disposing of assets or adapting them for other purposes;
  - d) legal and other professional fees; and
  - e) dissolution expenses.
- 5.QQ If this Agreement is terminated, and the Academy Trust owns capital assets which have been partly or wholly funded by HM Government, the Academy Trust must, as soon as possible after the termination date:
- a) transfer a proportion of those capital assets, equal to the proportion of the original financial contribution made by HM Government, to a nominee of the Secretary of State to use for educational purposes; or
  - b) if the Secretary of State directs that a transfer under clause 5.QQ(a) is not required, pay to the Secretary of State at the termination date (or,

by agreement with the Secretary of State, at the date of their subsequent disposal) a sum equivalent to the proportion of the original financial contribution made by HM Government.

5.RR The Secretary of State may:

- a) Waive all or part of the repayment due under sub-clause 5.QQ(b) if the Academy Trust obtains his permission to invest the sale proceeds for its charitable purposes; or
- b) direct the Academy Trust to pay all or part of the sale proceeds to the relevant LA.

## **6. OTHER CONTRACTUAL ARRANGEMENTS**

### **Annexes**

6.A Any annexes to this Agreement form part of and are incorporated into this Agreement.

### **The Master Agreement**

6.B Except as expressly provided in this Agreement, all provisions of the Master Agreement have full force and effect.

### **General**

6.C The Academy Trust cannot assign this Agreement.

6.D Failure to exercise, or a delay in exercising, any right or remedy of the Secretary of State under this Agreement (including the right to terminate this Agreement), or a single or partial exercise of such a right or remedy, is not a waiver of, and does not prevent or restrict any initial or further exercise of, that or any other right or remedy.

6.E Termination of this Agreement will not affect the accrued rights, remedies, obligations or liabilities of the parties existing at termination.

6.F This Agreement may be executed in any number of counterparts, each of

which when executed and delivered shall constitute a duplicate original, but all of which will together constitute the same agreement.

6.G This Agreement and any dispute or claim arising out of or in connection with it or its subject matter or formation (including non-contractual disputes or claims) shall be governed by and construed in accordance with the law of England and Wales, and submitted to the exclusive jurisdiction of the courts of England and Wales.

6.H Not used.

This Agreement was executed as a Deed on

2019

Executed on behalf of the **Academy Trust** by:



and

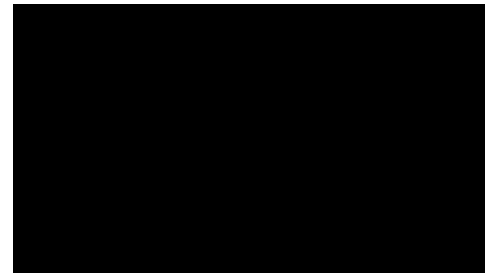


**Director**

**Witness**

Name:

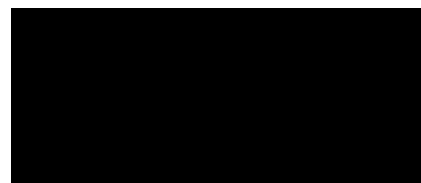
Address:



The Corporate Seal of

**THE SECRETARY OF STATE FOR EDUCATION**

affixed to this deed is authenticated by:



**Duly Authorised**

## **ANNEXES**

### **7. ADMISSION OF CHILDREN AND YOUNG PEOPLE WITH EDUCATION, HEALTH AND CARE PLANS**

“**EHC plan**” means an Education, Health and Care plan made under section 37 of the Children and Families Act 2014.

7.A Except as set out in clause 8 below, the Children and Families Act 2014 imposes duties directly on Academies in respect of pupils with special educational needs, including the admission of pupils with EHC plans. If an Academy Trust considers that a LA should not have named the Academy in an EHC plan, it may ask the Secretary of State to determine whether the LA has acted unreasonably, and to make an order directing the LA to reconsider. The Academy Trust must admit the pupil if such a determination is pending. The Secretary of State’s determination as to whether the LA acted unreasonably will be final, subject to any right of appeal which a parent of the pupil may have to the First Tier Tribunal (Special Educational Needs and Disability) or the Upper Tribunal Administrative Appeals Chamber.

### **8. ADMISSION OF CHILDREN WITH A STATEMENT OF SPECIAL EDUCATIONAL NEEDS**

(Clauses 8.A-8.G only apply where the pupil has a statement of special educational needs (SEN) rather than an EHC plan and where they therefore continue to be subject to the relevant provisions of the Education Act 1996. EHC plans are replacing statements of SEN but although all statements of SEN should have been converted to an EHC plan by the 1 April 2018 this clause is retained to protect pupils who still have a statement of special education need after this date. The detail on the drafting of a statement below is retained to protect pupils in exceptional circumstances.)

“**Statement of SEN**” means a statement made under section 324 of the Education Act 1996.

8.A The Academy Trust must admit all children with a Statement of SEN naming the Academy.

- 8.B The Academy Trust must have regard to the Special Educational Needs Code of practice 2001 when dealing with statements of SEN.
- 8.C Where the LA sends the Academy Trust a draft statement with a proposal that the Academy is named in the final statement, the Academy Trust must respond within 15 working days unless the time period falls within a school holiday that is longer than two weeks in which case the Academy Trust should respond within 15 working days of the end of the school holiday.
- 8.D In its response the Academy Trust must either:
- a. consent to being named in the final statement or
  - b. explain why it believes that admitting the child would be incompatible with the provision of efficient education for other children and the efficient use of resources, including why no reasonable steps could secure compatibility. In doing so the Academy Trust must have regard to the relevant legislation and Code of Practice. If the LA does not agree with the Academy Trust's response, and names the Academy in the child's Statement of SEN, the Academy Trust must admit the child to the school as specified in the statement or otherwise by the LA. The final decision as to whether to name the Academy falls to the LA.
- 8.E If the Academy Trust considers that the LA should not have named the Academy in the statement of SEN, it may ask the Secretary of State to determine whether the LA has acted unreasonably, and to make an order directing the LA to reconsider. The Academy Trust must admit the pupil if such a determination is pending. The Secretary of State's determination will be final, subject only to any right of appeal which a parent of the child may have to the First-tier Tribunal (Special Educational Needs and Disability) or the Upper Tribunal Administrative Appeals Chamber.
- 8.F If a parent of a child for whom the LA maintains a statement appeals to the First-tier Tribunal (Special Educational Needs and Disability) or the Upper Tribunal Administrative Appeals Chamber, either for or against the naming of

the Academy in the child's statement, then the Tribunal's decision will be binding, even if it is different from that of the Secretary of State.

8.G Where it has been finally determined that the Academy be named in a child's Statement of SEN, the Academy Trust must admit the child to the Academy, notwithstanding any other admissions requirements in this Agreement.

8.H Clauses 8.A to 8.G only apply insofar as the relevant provisions of the Children and Families Act 2014 relating to SEN and disability do not apply to Academies and Free Schools.



Department  
for Education

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