

**DEED OF NOVATION AND VARIATION  
OF THE  
SUPPLEMENTAL FUNDING AGREEMENT FOR THE DUSTON SCHOOL**

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) **ACADEMIES ENTERPRISE TRUST**, a charitable company incorporated in England and Wales with registered company number 06625091 whose registered address is at Kilnfield House, Foundry Business Park, Station Approach, Hockley, Essex, SS5 4HS "AET"); and

(3) **THE DUSTON EDUCATION TRUST**, a charitable company incorporated in England and Wales with registered company number 09299605 whose registered address is at The Duston School, Berrywood Road, Duston, Northampton, NN5 6XA (the "Trust"),

together referred to as the "Parties".

## **INTRODUCTION**

- A. The Duston School is an academy within the meaning of the Academies Act 2010 (the "academy") and is currently operated by AET (a multi academy trust).
- B. The Secretary of State and AET entered into a supplemental funding agreement on 1 June 2012 as amended by a deed of variation dated 24 January 2014 (the "**Funding Agreement**"), such Funding Agreement being pursuant to a master funding agreement entered into by AET and the Secretary of State on 10 July 2008, as amended by a deed of variation dated 28 August 2009 and further amended by a deed of variation dated 24 January 2014 ("**Master Funding Agreement**"), for the maintenance and funding of the academy.
- C. It is proposed that, with effect from 00.01 am on 1 March 2015 ("**Transfer Date**"), the Trust will assume responsibility for the management and operation of the academy in succession to AET.
- D. The Parties wish to novate the Funding Agreement to the Trust, and the Secretary of State and the Trust wish to vary the terms of the Funding 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 Funding Agreement, bear the meaning given to it in the Funding Agreement.

## **NOVATION**

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

3. Not used.

4. The Trust agrees to perform the Funding Agreement and be bound by its terms in every way as if it were the original party to it in place of AET, with effect from the Transfer Date.

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

## **OBLIGATIONS AND RESPONSIBILITIES**

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

(i) the Funding Agreement; and

(ii) the Master Funding Agreement in so far as it relates to the academy.

7. Each of AET and the Secretary of State release and discharge the other from all claims and demands under or in connection with:

(i) the Funding Agreement; and

(ii) the Master Funding Agreement in so far as it relates to the academy,

arising after the Transfer Date, whether such claim or demand relates to the period being before or after the Transfer Date.

8. Each of the Trust and the Secretary of State will have the right to enforce the Funding Agreement and, in so far as it relates to the academy, the Master Funding Agreement and pursue any claims and demands under the Funding Agreement and, in so far as it relates to the academy, the Master Funding Agreement against the other with respect to matters arising before, on or after the date of this Deed as though the Trust were the original party to the Funding Agreement instead of AET.

## **INDEMNITIES**

9. Subject to clauses 12 to 17, where the Secretary of State makes any claim or takes any other action against the Trust as a result of AET's failure to satisfy its obligations under the Funding Agreement or in so far as it relates to the academy the Master Funding Agreement before, or in respect of a period prior to, the Transfer Date, AET agrees to indemnify the Trust against any losses, liabilities, claims, damages or costs (such costs to be reasonably incurred) that the Trust suffers or incurs in compensating the Secretary of State in respect of such claim or action, and in taking such actions as may be reasonably necessary to remedy the failings identified by the Secretary of State.

10. Subject to clauses 12 to 17, where the Secretary of State makes any claim or takes any other action against AET as a result of the Trust's failure to satisfy its obligations under the Funding Agreement after, or in respect of a period after, the Transfer Date, the Trust agrees to indemnify AET against any losses, liabilities, claims, damages or costs (such costs to be reasonably incurred) that AET suffers or incurs in compensating the Secretary of State in respect of such claim or action, and in taking such actions as may be reasonably necessary to remedy the failings identified by the Secretary of State.

11. The Secretary of State agrees that it will make no claim against the Trust based on any breach of the Funding Agreement or the Master Funding Agreement, in so far as it relates to the academy, committed or occurring before or in respect of a period prior to the Transfer Date where:

- (i) the Secretary of State would not, acting reasonably, have taken action to enforce the breach or pursue the claim against AET in the absence of this Deed;

(ii) the claim is notified to the Trust in excess of two years from the Transfer Date

11A. Where the Secretary of State proposes to make any claim against the Trust in relation to a breach of the Funding Agreement committed or occurring before or in respect of a period prior to the Transfer Date (whether or not the Secretary of State was aware of such breach before the Transfer Date) the Secretary of State shall first give notice to the Trust and AET and shall discuss in good faith why the Secretary of State would acting reasonably have taken action against AET in the absence of this Deed.

11B. Following such discussions referred to in clause 11A the Secretary of State's decision as to whether to make a claim against the Trust shall be final.

12. The Indemnities given pursuant to clause 9 and 10 shall only be actionable by the Trust or AET (as appropriate).

13. Before a party makes a claim against the other party under the indemnity at clause 9 or 10 (as appropriate) it shall, acting in good faith, use all reasonable endeavours to minimise and mitigate any and all losses, liabilities, claims, damages or costs that have given rise to such claim.

14. No claim shall be brought under the indemnities at clause 9 or clause 10 unless notice of such claim has been provided to the party against which the claim is made within two years of the Transfer Date.

## **VARIATION**

15. The Secretary of State and the Trust agree that with effect from the Transfer Date the Funding Agreement shall be amended and restated so as to take effect in the form set out in Schedule 1 to this Deed.

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

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

18. 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**

19. 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** )  
authenticated by:- )

.....  
Duly authorised by the **SECRETARY OF STATE FOR EDUCATION**  
Date.....

EXECUTED AS A DEED by  
affixing the Common Seal of  
**ACADEMIES ENTERPRISE**  
**TRUST** in the presence of:



Authorised Officers Signature:..... *K Redmond*  
Name:..... *KAREN REDMOND*  
Job Title:..... *EXECUTIVE PA*  
Date:..... *26 FEB 2015*

Authorised Officers Signature:..... *Clare Varlow*  
Name:..... *HR + LEGAL ASSISTANT*  
Job Title:..... *CLARE VARLOW*  
Date:..... *26 FEB 2015*

EXECUTED as a deed by **THE**  
**DUSTON EDUCATION TRUST**  
acting by one director in the  
presence of a witness:

Director .....  
Print name.....  
Date .....

Witness .....  
Print name.....  
Address.....  
Occupation.....

**Schedule 1**  
**Amended Funding Agreement**





Department  
for Education

# **Mainstream academy and free school: single model funding agreement**

**July 2014**

## **MODEL FUNDING AGREEMENT: SINGLE, MAINSTREAM ACADEMIES**

### **CONTENTS**

SUMMARY	5
1 ESTABLISHING THE ACADEMY	9
Introduction to this agreement	9
General Obligations of the Academy Trust	12
Academy opening date	14
Governance	14
2. RUNNING OF THE ACADEMY	14
Length of school day and year	14
Teachers and staff	14
Pupils	16
School meals	16
Pupil Premium	17
Charging	17
Admissions	18
Exclusions	21
Curriculum	21
Assessment	23
3. GRANT FUNDING	25
Recurrent Expenditure grants	25
Capital Grant	25
General Annual Grant (GAG)	27

Calculation of GAG	30
Earmarked Annual Grant (EAG)	31
Arrangements for paying GAG and EAG	31
Other relevant funding	36
4. FINANCIAL AND ACCOUNTING REQUIREMENTS	37
General	37
Application of the Academies Financial Handbook	38
Budgeting for funds	38
Carrying forward of funds	39
Annual accounts and audit	39
Keeping financial records	40
Access to financial records	40
Acquiring and disposing of Publicly Funded Assets	41
Retaining proceeds from the disposal of capital assets	41
Transactions outside the usual planned range	42
Borrowing	42
5. LAND CLAUSES	42
Existing freehold site	42
6. COMPLAINTS	45
7. TERMINATION	46
Termination by either party	46
Termination Warning Notice	47
Termination by the Secretary of State after inspection	48
Termination by the Secretary of State	49

Change of Control	52
Funding and admission during notice period	52
Effect of Termination	53
<b>8. OTHER CONTRACTUAL ARRANGEMENTS</b>	<b>54</b>
Information	54
Access by the Secretary of State's Officers	54
Notices	55
General provisions	56
<b>9. PUPILS WITH SPECIAL EDUCATIONAL NEEDS (SEN) AND DISABILITIES</b>	<b>58</b>
<b>10. ADMISSION OF PUPILS WITH SEN AND DISABILITIES</b>	<b>59</b>

## SUMMARY

### Information about the Academy:

<b>Name of Academy Trust</b>	The Duston Education Trust
<b>Company number</b>	09299605
<b>Name of academy</b>	The Duston School
<b>Opening date</b>	1 June 2012
<b>Type of academy (indicate whether free school, special, etc)</b>	Converter Academy
<b>Religious designation</b>	NA
<b>Wholly or partly selective</b>	NA
<b>Name of predecessor school (where applicable)</b>	The Duston School
<b>Capacity</b>	1410
<b>Age range</b>	11-18
<b>Number of sixth form places</b>	210
<b>SEN unit / Resource provision</b>	N/A
<b>Land arrangements (Version 1-7 or other)</b>	Version 1
<b>Address and title number of Land</b>	The Duston School, Berrywood Road, Northampton  Registered under title numbers NN244720, NN267707, NN26830, and NN26849.
<b>Contact details for the Chair of Board of Charity Trustees</b>	The Chair of the Board of the Charity Trustees The Duston Education Trust The Duston School Northampton NN5 6XA

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

<b>Clause No</b>	<b>Descriptor</b>	<b>Applied</b>	<b>Not used</b>
1.19	Only applies to free schools and new provision academies		X
2.9.A	Clause applies where an academy was previously a VC or foundation school designated with a religious character		X
2.12, 2.13	Only applies where the academy has an SEN unit		X
2.23	Only applies where there was a predecessor independent school		X
2.24	Only applies where the academy provides boarding		X
2.26	Clause does not apply to free schools (unless there was a predecessor independent school), or new provision academies	X	
2.32	Clause applies only to academies and free schools designated with a religious character		X
2.33	Clause applies only to academies that were formerly wholly selective grammar schools		X
2.34	Clause applies only to academies that were formerly partially selective grammar schools		X
2.39	Clause applies to free schools and new provision academies designated with a religious character		X
2.50	Clause only applies where the academy is designated with a religious character		X
2.51	Clause only applies where the academy has not been designated with a religious character	X	
2.52	Clause applies where an academy was previously a VC school or foundation school designated with a religious character		X
2.52c)	Sub-clause applies if the academy is designated with a denominational religious character – CE etc. rather than 'Christian'		X
3.16 –	Option 1 applies to converter and sponsored	X	

Clause No	Descriptor	Applied	Not used
3.21	academies: if used delete option 2		
3.16 – 3.21	Option 2 applies to free schools and new provision academies: if used delete option 1		X
3.23	Clause does not apply to academy converters		X
3.33	Clause only applies to full sponsored and intermediate sponsored academies with approved Academy Action Plans		X
3.34	Clause does not apply to free schools (unless there was a predecessor independent school), or new provision academies	X	
4.5	Clause applies where the academy has 16-19 provision	X	
4.5A	Clause only applies to free schools		X
4.11	Clause to be included where relevant circumstances apply – and only in relation to academy converters		X
4.16	Clause only applies where a Start-Up period applies to the academy		X
6.1 – 6.4	Clauses do not apply to free schools and new provision academies	X	
7.8	Clause only applies to sponsored academies		X
7.15	Clause applies to free schools and may be applied to new provision academies		X
7.16	Clause applies to free schools and may be applied to new provision academies		X
7.17	Clause applies to free schools and may be applied to new provision academies		X
7.18	Clause applies to free schools and may be applied to new provision academies		X
7.19	Clause applies to free schools and may be applied to new provision academies		X
8.12	Clause only applies to schools which are designated with a Church of England or Roman Catholic character		X

**Please identify any other variations from the model that apply to this academy  
(e.g. clauses relating to PFI):**

<b>Clause No</b>	<b>Descriptor</b>	<b>Applied</b>	<b>Not used</b>
1.3A-B	Only applies to academies which form part of a PFI arrangement	X	
1.4	Additional definitions to reflect that the academy forms part of a PFI arrangement	X	
1.15(e)-(f)	Only applies to academies which form part of a PFI arrangement	X	
1.21	Drafting amended to reflect that the Academy originally opened on 1 June 2012, but transferred to the operation of The Duston Education Trust on 1 March 2015	X	
3.12A	Only applies to academies which form part of a PFI arrangement	X	
3.30A	Only applies to academies which form part of a PFI arrangement	X	
3.30B	Only applies to academies which form part of a PFI arrangement	X	
3.32A	Only applies to academies which form part of a PFI arrangement	X	
4.33(a)	Amendment to reflect that the academy forms part of a PFI arrangement	X	
5.1(a)	Amendment to reflect that the obligation to register the restriction can only take place after the land has transferred to the Academy Trust.	X	
5.2	Amendment to reflect that the academy forms part of a PFI arrangement	X	
7.2(e)-(k)	Only applies to academies which form part of a PFI arrangement	X	
Execution Clause	This clause has been removed as the Deed of Variation and Novation is to be executed rather than the Funding Agreement.	X	



## 1 ESTABLISHING THE ACADEMY

### Introduction to this agreement

- 1.1. This Agreement is between the Secretary of State for Education (the "**Secretary of State**") and the Duston Education Trust (the "**Academy Trust**"), and is an academy agreement as defined by section 1 of the Academies Act 2010.
- 1.2. The Academy Trust is a company limited by guarantee incorporated in England and Wales with company number 09299605. The Academy Trust is a charity and its directors are the Charity Trustees of the Academy Trust.
- 1.3. In order for the Academy Trust to establish and run an independent school in England, according to the provisions of the Academies Act 2010, to be known as The Duston School (the "**Academy**"), and in order for the Secretary of State to make payments to the Academy Trust, the Academy Trust must meet the requirements in this Agreement.
- 1.3A As part of the Academy's transfer to the Academy Trust, the Academy Trust shall enter into the School Agreement and the Principal Agreement.
- 1.3B The Academy Trust must conduct the Academy within the terms and requirements of the School Agreement and the Principal Agreement.
- 1.4. In this Agreement these capitalised words and expressions will have the following meanings:

"**Academies Financial Handbook**" means the document with that title published by the EFA and amended from time to time, on behalf of the Secretary of State.

"**Academy Financial Year**" means the year from 1 September to 31 August, or a different period notified in writing by the Secretary of State.

"**Academy Trust Insolvency Notice**" - clause 3.32A.4;

"**Articles**" means the Academy Trust's articles of association.

"**Charity Trustees**" means the directors of the Academy Trust, who are responsible for the general control and management of the administration of the Academy Trust.

**"Chief Inspector"** means Her Majesty's Chief Inspector of Education, Children's Services and Skills.

**"Control"** means the power of an organisation or individual ('A') to ensure that the affairs of another organisation are conducted in accordance with A's wishes, whether through share ownership or voting power, by agreement, because of powers conferred by articles of association or any other document, or otherwise; and **"Controls"** will be construed accordingly.

**"Critical Years"** - clause 3.32A.3.

**"Current Funding"** - clause 3.32A.3.

**"DfE"** means the Department for Education.

**"EFA"** means the Education Funding Agency.

**"Guidance"** means guidance issued by or on behalf of the Secretary of State, as amended from time to time.

**"Independent School Standards"** means the independent school standards prescribed under section 157 of the Education Act 2002.

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

**"LA"** means a local authority.

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

**"Parents"** means parents or guardians.

**"PFI Contractor"** means Northampton Schools Limited Partnership (registered number LP010896) (acting by its general partner Northampton Schools Limited) (registered number 05613429) whose registered office is at Two London Bridge, London SE1 9RA, the counterparty of the LA to the Project Agreement.

**"PFI EAG Refusal"** - clause 3.32A.3.

**"Predecessor School"** means the school which the Academy has replaced, where applicable.

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

**"Project Agreement"** means the PFI project agreement dated 22 December 2005 and entered into by the LA and PFI Contractor (as may be amended from time to time).

**"Publicly Funded Assets"** means (a) assets or property funded wholly or partly using payments made by or on behalf of the Secretary of State, and (b) publicly funded land as defined in paragraph 22(3) of Schedule 1 to the Academies Act 2010.

**"Pupil Premium"** means an amount equivalent to the pupil premium as defined in the School and Early Years Finance (England) Regulations 2013.

Any reference to **"Secretary of State"** includes a reference to the EFA acting on the Secretary of State's behalf.

**"School Agreement"** means the school agreement entered into by way of a deed of novation dated on or around the date of this Agreement by the Academy Trust and the LA relating to the provision of facilities and services to the Academy.

**"Secretary of State's consent"** means the Secretary of State's specific, prior written consent, which will not be unreasonably withheld or delayed.

**"SEN"** means Special Educational Needs and the expressions **"special educational needs"** and **"special educational provision"** have the meaning set out in section 312 of the Education Act 1996.

**"Shortfall"** - clause 3.32A.7.

**"Teaching Staff"** means teachers and the principal or head teacher employed at the Academy.

**"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.

- 1.5. The Interpretation Act 1978 applies to this Agreement as it applies to an Act of Parliament.
- 1.6. A reference in this Agreement to any party or body includes its successors.
- 1.7. Any words following the terms 'include', 'including' or 'in particular' are by way of illustration, not limitation.
- 1.8. A reference in this Agreement to land includes any buildings or structures on the land.
- 1.9. References to this Agreement include any and all annexes.
- 1.10. Where any legislation, legal requirement or published guidance is referred to, unless otherwise stated, the following terms should be interpreted as follows:
- a) the "school" refers to the Academy;
  - b) the "head teacher" may refer to the Academy's head teacher or principal;
  - c) the Academy Trust will be deemed to be the "responsible authorities"; and
  - d) references to registered pupils will be treated as references to registered pupils at the Academy.
- 1.11. References in this Agreement to any named legislation, legal requirement or published guidance, should be taken to include any amendment to or replacement of it.
- 1.12. If any questions arise about how this Agreement should be interpreted, the answer will be decided by the Secretary of State, after discussion with the Academy Trust.

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

- 1.13. The Academy Trust must ensure that the Academy meets the requirements in section 1A of the Academies Act 2010.

- 1.14. To the extent that it is compatible with the Academy Trust fulfilling its charitable purpose of advancing education in the United Kingdom for the public benefit, the Academy Trust must ensure that the Academy is at the heart of its community, promoting community cohesion and sharing facilities with other schools and the wider community.
- 1.15. The Academy Trust must conduct the Academy within the terms and requirements of:
- a) the Articles;
  - b) any legislation or legal requirement that applies to academies, including the Independent School Standards and legislation about meeting the needs of pupils with SEN and disabilities;
  - c) the Academies Financial Handbook, as stated in clauses 4.6–4.8;
  - d) this Agreement
  - e) the Principal Agreement; and
  - f) the School Agreement.
- 1.16. The Academy Trust must, as soon as is reasonable, establish an appropriate mechanism for receiving and managing donations for the purpose of its aims as specified in the Articles.
- 1.17. The Academy Trust must obtain the Secretary of State's consent before applying for the Academy to be designated as a school with religious character. The Secretary of State may at his discretion refuse or consent to the Academy Trust making such an application.
- 1.18. Unless the Academy Trust is designated as a school with a religious character under the Religious Character of Schools (Designation Procedure) (Independent Schools) (England) Regulations 2003, it agrees to be bound by the prohibition against discrimination in section 85 of the Equality Act 2010.
- 1.19. Not used.

- 1.20. The Academy Trust is not required to publish information under this Agreement if to do so would breach its obligations under the Data Protection Act 1998.

#### **Academy opening date**

- 1.21. The Academies Enterprise Trust opened the Academy on 1 June 2012 and the operation of the Academy transferred to the Academy Trust on 1 March 2015 in accordance with a deed of novation and variation.

#### **Governance**

- 1.22. The Academy will be governed by a board comprising the Charity Trustees of the Academy Trust (the “**Board of Charity Trustees**”).
- 1.23. The Board of Charity Trustees must have regard to any Guidance on the governance of academy trusts.
- 1.24. The Academy Trust must provide to the Secretary of State the names of all new or replacement members of the Academy Trust, stating the date of their appointment and, where applicable, the name of the member they replaced as soon as is practicable and in any event within 14 days of their appointment.
- 1.25. The Academy Trust must not appoint any new or replacement members until it has first informed them, and they have agreed, that their names will be shared with the Secretary of State to enable him to assess their suitability.

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

#### **Length of school day and year**

- 2.1. The length of the school day and year is the responsibility of the Academy Trust.

#### **Teachers and staff**

- 2.2. In complying with the Independent School Standards, the Academy Trust must require enhanced Disclosure and Barring Service (“**DBS**”) certificates as appropriate for members of staff, supply staff, members of the Academy Trust, individual Charity Trustees and the chair of the Board of Charity Trustees.

- 2.3. The Academy Trust must promptly submit to the Secretary of State, on request, the information contained in any enhanced DBS certificate that it receives.
- 2.4. Subject to clauses 2.5 and 9.1 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.
- 2.5. 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, and in doing so must comply with the law, regulations and guidance that apply to maintained schools.
- 2.6. Teachers' pay and conditions of service are the responsibility of the Academy Trust.
- 2.7. The Academy Trust must ensure that all teachers employed at the Academy have access to the Teachers' Pension Scheme and, in so doing, must comply with the requirements of this scheme and with Fair Deal for staff pensions guidance published by HM Treasury.
- 2.8. The Academy Trust must, in accordance with the Local Government Pension Scheme (Administration) Regulations 2008 and with Fair Deal for staff pensions guidance published by HM Treasury, ensure that all affected staff employed in the Academy other than teachers have access to the Local Government Pension Scheme, unless an individual expressly chooses to opt out of the Scheme in accordance with the regulations.
- 2.9. Where a member of the Teaching Staff employed at the Academy applies for a teaching post at another academy, a maintained school, or a further education institution, the Academy Trust must at the request of the board of governors or academy trust of that other educational institution:

- a) advise in writing whether or not, in the previous two years, there have been any formal capability considerations or proceedings for that teacher at the Academy or the Predecessor School;
- b) give written details of the concerns which gave rise to any such consideration of that teacher's capability, the duration of the proceedings and their outcome.

2.9.A Not used.

### **Pupils**

2.10. The planned capacity of the Academy is 1410 in the age range 11 to 18, including a sixth form of 210 places. With effect from 1 September 2015, the planned capacity of the Academy will be 1830 in the age range 4 to 18, including a sixth form of 210 places and a primary phase of 420 places. The Academy will be an all ability inclusive school.

2.11. The Academy Trust must ensure that the Academy meets the needs of individual pupils, including pupils with SEN and disabilities.

2.12. Not used

2.13. Not used

### **School meals**

2.14. The Academy Trust must provide school lunches and free school lunches in accordance with the provisions of sections 512(3) and 512ZB(1) of the Education Act 1996 as if references in sections 512 and 512ZB to a local authority were to the Academy Trust and as if references to a school maintained by the local authority were to the Academy.

2.15. The Academy Trust must comply with school food standards legislation as if it were a maintained school.

2.16. Where the Academy Trust provides milk to pupils, it must be provided free of charge to pupils who would be eligible for free milk if they were pupils at a maintained school.



## **Pupil Premium**

2.17. For each Academy Financial Year the Academy Trust must publish, on the Academy's website, information about:

- a) the amount of Pupil Premium allocation that it will receive during the Academy Financial Year;
- b) what it intends to spend its Pupil Premium allocation on;
- c) what it spent its Pupil Premium allocation on in the previous Academy Financial Year; and
- d) the impact of the previous year's Pupil Premium allocation on educational attainment.

2.18. For each Academy Financial Year the Academy Trust must, where applicable, publish, on the Academy's website, information about:

- a) the amount of year 7 literacy and numeracy catch-up premium grant that it will receive during the Academy Financial Year;
- b) what it intends to spend its year 7 literacy and numeracy catch-up premium grant on;
- c) what it spent its year 7 literacy and numeracy catch-up premium grant on in the previous Academy Financial Year; and
- d) the impact of the previous year's year 7 literacy and numeracy catch-up premium grant on educational attainment, and how that effect was assessed.

## **Charging**

2.19. The Academy Trust must comply with sections 402, 450-457 and 459-462 of the Education Act 1996 with regard to public examinations, charging, providing information, inviting voluntary contributions and recovering civil debts, as if the Academy were a maintained school.

2.20. There must be no charge for admission to or attendance at the Academy and the Academy will only charge pupils where the law allows maintained schools to charge.

2.21. Clause 2.20 does not prevent the Academy Trust receiving funds from an LA or a charity in respect of the admission and attendance of a pupil with SEN to the Academy.

2.22. Notwithstanding clause 2.20, the Academy Trust may charge people who are not registered pupils at the Academy for education provided or use of facilities.

2.23. Not used.

2.24. Not used.

### **Admissions**

2.25. Subject to clauses 2.30 and 2.31 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.

2.26. 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.

2.27. 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.

2.28. The Academy Trust may determine admission arrangements (subject to consultation in line with the Codes) that give priority for admission to children

attracting the Pupil Premium, including the service premium (the “pupil premium admission criterion”), but not above looked-after children and previously looked-after children.

2.29. Where the Academy Trust applies the pupil premium admission criterion, it must provide information in its admission arrangements about eligibility for the premiums.

2.30. 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:

- a) any personal details about their financial status; or
- b) 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.

2.31. 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.

2.32. Not used.

2.33. Not used.

2.34. Not used.

2.35. The Academy Trust must ensure that parents and 'relevant children' (as described in the Codes) have the 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.

2.36. Subject to clause 2.37, 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.

2.37. 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.

2.38. The Office of the Schools Adjudicator ("**OSA**") will consider objections to the Academy's admission arrangements (except objections against the agreed variations from the Codes specified at clause 2.30, 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 as quickly as possible.

2.39. Not used.

## **Exclusions**

2.40. If asked to by an LA, the Academy Trust must enter into an agreement with that LA that has the effect that where:

a) the Academy admits a pupil who has been permanently excluded from a maintained school, the Academy itself or another academy with which the LA has a similar agreement; or

b) the Academy Trust permanently excludes a pupil from the Academy,

the arrangements for payment will be the same as if the Academy were a maintained school, under regulations made under section 47 of the School Standards and Framework Act 1998.

## **Curriculum**

2.41. The curriculum is the responsibility of the Academy Trust.

2.42. The Academy Trust must ensure that the curriculum provided to pupils up to the age of 16 is balanced and broadly based, and includes English, mathematics and science.

2.43. The Academy Trust must publish on the Academy's website information about its curriculum, including:

a) the content of the curriculum;

b) its approach to the curriculum;

c) where applicable, the names of any phonics or reading schemes in operation for Key Stage 1;

d) where applicable, the GCSE options and other Key Stage 4 qualifications, or other future qualifications specified by the Secretary of State, offered by the Academy; and

e) how parents (including parents of prospective pupils) can obtain more information about the Academy's curriculum.

- 2.44. The Academy Trust must not allow any view or theory to be taught as evidence-based if it is contrary to established scientific or historical evidence and explanations. This clause applies to all subjects taught at the Academy.
- 2.45. The Academy Trust must provide for the teaching of evolution as a comprehensive, coherent and extensively evidenced theory.
- 2.46. 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.
- 2.47. The Academy Trust must ensure that principles are promoted which support fundamental British values, of: respect for the basis on which the law is made and applied in England; respect for democracy and support for participation in the democratic processes; support for equality of opportunity for all; support and respect for the liberties of all within the law; and respect for and tolerance of different faiths and religious and other beliefs.
- 2.48. The Academy Trust must provide for the teaching of religious education and a daily act of collective worship at the Academy.
- 2.49. 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 2.51.
- 2.50. Not used.
- 2.51. Subject to clause 2.49, 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.

2.52. Not used.

2.53. 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.

2.54. The Academy Trust must ensure that careers guidance is provided at the Academy, in accordance with the requirements on maintained schools in the Education Act 1997.

### **Assessment**

2.55. The Academy Trust must:

- a) ensure that pupils are entered for examinations in line with the requirements on maintained schools in section 402 of the Education Act 1996;
- b) comply with the relevant Guidance, as it applies to maintained schools, to ensure that pupils at the Academy take part in assessments, and in teacher assessments of pupils' performance;

- c) report on assessments as the Secretary of State requires, or provide any information on assessments, on the same basis that maintained schools are required to provide the information;
- d) for all Key Stages, allow monitoring and moderation of the Academy's assessment arrangements as required by the Secretary of State.

2.56. Unless specifically approved in writing by the Secretary of State, the Academy Trust must not use GAG to offer any course of education or training which leads to a qualification, if that qualification is not approved by the Secretary of State for the purpose of section 96 of the Learning and Skills Act 2000.

2.57. Unless informed by the Secretary of State that alternative information must be published, the Academy Trust must ensure that the following information is published on the Academy's website:

- a) where applicable, the Academy's most recent Key Stage 2 results as published by the Secretary of State in the School Performance Tables, broken down as follows:
  - i. "% achieving Level 4 or above in reading, writing and maths";
  - ii. "% making expected progress in reading", "% making expected progress in writing", and "% making expected progress in maths";
  - iii. in relation to reading, "% achieving Level 5 or above";
  - iv. in relation to writing, "% achieving Level 5 or above"; and
  - v. in relation to maths, "% achieving Level 5 or above";
- b) where applicable, the Academy's most recent Key Stage 4 results as published by the Secretary of State in the School Performance Tables, broken down as follows:
  - i. "% achieving 5 + A\* - C GCSEs (or equivalent) including English and maths GCSEs";
  - ii. "% achieving the English Baccalaureate"; and



- iii. “% of pupils making expected progress”;
- c) information about where and how parents (including parents of prospective pupils) can access the most recent report about the Academy published by the Chief Inspector; and
- d) information about where and how parents (including parents of prospective pupils) can access the School Performance Tables published by the Secretary of State.

2.58. The Secretary of State may direct the Academy to participate in international education surveys under the Education Act 1996, as if it were a maintained school.

### 3. **GRANT FUNDING**

#### **Recurrent Expenditure grants**

- 3.1. The Secretary of State will pay grants towards Recurrent Expenditure and may pay grants towards Capital Expenditure for the Academy.
- 3.2. “**Recurrent Expenditure**” means any money spent on the establishment, conduct, administration and maintenance of the Academy which does not fall within Capital Expenditure.
- 3.3. In respect of Recurrent Expenditure, the Secretary of State will pay **General Annual Grant (“GAG”)**, and may additionally pay **Earmarked Annual Grant (“EAG”)**. These are two separate and distinct grants.
- 3.4. Except with the Secretary of State’s consent, the Academy Trust must not make commitments to spending which have substantial implications for future grant. No decision by the Academy Trust will commit the Secretary of State to paying any particular amount of grant.

#### **Capital Grant**

- 3.5. The Secretary of State may pay a grant (“**Capital Grant**”) to the Academy Trust for the purpose of spending on items of Capital Expenditure.
- 3.6. “**Capital Expenditure**” means expenditure on:

- a) acquiring land and buildings;
- b) erecting, enlarging, improving or demolishing any building including any fixed plant, installation, wall, fence or other structure, or any playground or hard standing;
- c) installing electrical, mechanical or other services other than necessary repairs and maintenance due to normal wear and tear;
- d) buying vehicles;
- e) installing and equipping premises with furnishings and equipment, other than necessary repairs and maintenance due to normal wear and tear;
- f) installing and equipping premises with computers, networking for computers, operating software and ICT equipment, other than necessary updates or repairs and maintenance due to normal wear and tear;
- g) providing and equipping premises, including playing fields and other facilities for social activities and physical recreation other than necessary repairs and maintenance due to normal wear and tear;
- h) works of a permanent character other than the purchase or replacement of minor day-to-day items;
- i) any major repairs or replacements which are specified as capital expenditure in any grant letter relating to them;
- j) such other items (whether like or unlike any of the foregoing) of a substantial or enduring nature which the Secretary of State agrees are capital expenditure for the purposes of this Agreement;
- k) professional fees properly and reasonably incurred in connection with the provision of any of the above; and
- l) VAT and other taxes payable on any of the above.

3.7. Any Capital Grant funding that may be made available to the Academy Trust will be notified to it by the Secretary of State.

- 3.8. The Academy Trust must spend Capital Grant only on items of Capital Expenditure approved by the Secretary of State and in accordance with conditions specified by the Secretary of State. Further, the Academy Trust must provide evidence that it has obtained all planning and other consents required for any proposed building and infrastructure development to be funded using Capital Grant.
- 3.9. In order to receive payments of Capital Grant, the Academy Trust must provide supporting invoices and certificates in the format specified by the Secretary of State.
- 3.10. The Academy Trust must provide an account of Capital Grant received, and associated spending on Capital Expenditure using Capital Grant, in the Academy Trust's financial statements and any other financial reports or returns that the Secretary of State may require.
- 3.11. If in its use of Capital Grant the Academy Trust does not comply with this Agreement or any of the conditions specified by the Secretary of State, or the project does not accord with the original specification or has not been completed, the Secretary of State may at his discretion not make any further payments of Capital Grant and require the Academy Trust to repay all or part of the Capital Grant.

#### **General Annual Grant (GAG)**

- 3.12. The Secretary of State will pay GAG to the Academy Trust to cover the Academy's normal running costs or capital expenditure, including:
- a) teachers' salaries and related costs (including pension contributions, full- and part-time teaching staff and payments in respect of seconded teachers);
  - b) non-teaching staff salaries and related costs (including pension contributions);
  - c) employees' expenses;

- d) buying, maintaining, repairing and replacing teaching and learning materials and other educational equipment, including books and stationery;
- e) buying, maintaining, repairing and replacing other assets including ICT equipment and software, sports equipment and laboratory equipment and materials;
- f) examination fees;
- g) repairs, servicing and maintenance of buildings (including redecoration, heating, plumbing and lighting); maintenance of grounds (including boundary fences and walls); insurance; cleaning materials and contract cleaning; water and sewerage; fuel and light (including electricity and gas); rents; rates; purchase, maintenance, repairs and replacement of furniture and fittings;
- h) medical equipment and supplies;
- i) staff development (including in-service training);
- j) curriculum development;
- k) the costs of providing school meals for pupils (including the cost of providing free school lunches to pupils who are eligible to receive them), and any discretionary grants to pupils to meet the cost of pupil support, including support for pupils with SEN or disabilities;
- l) administration; and
- m) establishment expenses and other institutional costs.

### 3.12A The Academy Trust must use GAG funding:

- a) prudently to cover the normal reasonable running costs of the Academy including payments which fall due under the School Agreement or the Principal Agreement, and

- b) 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.

3.13. GAG for each Academy Financial Year for the Academy will include:

- a) funding equivalent to that which would be received by a maintained school with similar characteristics, determined by the Secretary of State and taking account of the number of pupils at the Academy;
- b) funding to cover necessary functions which would be carried out by the relevant LA if the Academy were a maintained school;
- c) payment of any additional specific grants made available to maintained schools, where the Academy meets the criteria for those grants, and at the Secretary of State's discretion; and
- d) funding for any other costs to the Academy which the Secretary of State considers necessary.

3.14. The Academy Trust must use GAG only for maintaining, carrying on, managing and developing the Academy in accordance with this Agreement, except where the Secretary of State has given specific consent for the Academy Trust to use GAG for another charitable purpose.

3.15. In particular, the Academy Trust must not use GAG for:

- a) education and training for adults who are not pupils of the Academy, other than staff professional development;
- b) nursery provision for which parents are charged a fee;
- c) nursery provision to children outside the Academy's age range in clause 2.10;
- d) Children's Centres; or
- e) any additional cost of providing sport and leisure facilities for a purpose not permitted in clause 3.14.

## **Calculation of GAG**

3.16 – 3.19. Not used.

3.20. 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.

3.21. For Academy Financial Years after that referred to in clause 3.20, 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.

3.22. 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 2.10. 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

3.23. Not used.

3.24. The Secretary of State recognises that if he serves a Termination Notice or a Termination Warning Notice, 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.

### **Earmarked Annual Grant (EAG)**

- 3.25. The Secretary of State may pay EAG to the Academy Trust for specific purposes, agreed between the Secretary of State and the Academy Trust, and described in the relevant funding letter. The Academy Trust must spend EAG only in accordance with that letter.
- 3.26. Where the Academy Trust is seeking a specific EAG for any Academy Financial Year, it must send a letter to the DfE outlining its proposals and the reasons for the request.

### **Arrangements for paying GAG and EAG**

- 3.27. Before each Academy Financial Year, the Secretary of State will notify the Academy Trust of the GAG and EAG amounts which, subject to parliamentary approval, the Secretary of State plans for that Academy Financial Year and how they have been calculated.
- 3.28. The amount of GAG for an Academy Financial Year will be decided annually by the Secretary of State, and notified to the Academy Trust in a funding letter sent before the relevant Academy Financial Year begins (the “**Annual Letter of Funding**”).
- 3.29. Amounts of EAG will be notified to the Academy Trust wherever possible in the Annual Letter of Funding or as soon as is practicable afterwards.
- 3.30. The Annual Letter of Funding will, as well as stating the grant amounts, set out how they have been calculated. It will not include grants which cannot be calculated in time because there is not enough information, or for other administrative reasons. Any such grants will be notified as soon as practicable.
- 3.30A If the Secretary of State makes a payment under the Principal Agreement the Secretary of State may, subject to clause 3.30B, set off or abate an equivalent amount from any GAG payable to the Academy Trust pursuant to this Agreement in the following financial year.
- 3.30B Before making any set off or abatement pursuant to clause 3.30A above, the Secretary of State shall:

- a) notify the Academy Trust of the payment under the Principal Agreement;
- b) take into account (acting reasonably) any representations made by the Academy Trust providing reasons why the relevant liabilities were not settled; and
- c) take into account (acting reasonably) any representations made by the Academy Trust as to the nature of the liabilities under consideration.

3.31. The Secretary of State will pay GAG in monthly instalments on or before the twenty-fifth day of each month, to fund the salaries and other payroll costs for the relevant month of all monthly paid employees and all other costs payable during the following month. The detailed arrangements for payment will be set out in the Annual Letter of Funding, or an equivalent.

3.32. If GAG or EAG is miscalculated:

- a) because of a mistake by the Secretary of State, which leads to an underpayment to the Academy Trust, the Secretary of State will correct the underpayment in the same or subsequent Academy Financial Years;
- b) because the Academy Trust provided incorrect information, which leads to an underpayment to the Academy Trust, the Secretary of State may correct the underpayment in the same or subsequent Academy Financial Years;
- c) for any reason which results in an overpayment to the Academy Trust, the Secretary of State may recover any overpaid grant in the same or subsequent Academy Financial Years, having considered all the relevant circumstances and taking into account any representations from the Academy Trust.

3.32A.1. The provisions of this clause 3.32A shall apply when the Project Agreement is subsisting.



3.32A.2. 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").

3.32A.3. For the purpose of clauses 3.32A.3 to 3.32A.13:

**"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 clause 3.13 of this 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 3.25 and 3.26, to provide such EAG funding to the Academy Trust.

3.32A.4. 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").

3.32A.5. Any Academy Trust Insolvency Notice 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, 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.

3.32A.6. 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, 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.

3.32A.7. If no agreement is reached in accordance with clause 3.32A.6 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:

- (i) 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;

- (ii) whether the Academy Trust is using the funds provided under this Agreement prudently; and
- (iii) whether the Academy Trust is using the funds provided under this Agreement in accordance with the requirements of this 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.

3.32A.8. 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.

3.32A.9. The Expert's and the educational specialist's fees shall be borne equally between the parties.

3.32A.10. For the purpose of clauses 3.32A.11 and 3.32A.13, "Insolvency Decision" means either:

- a) in accordance with clause 3.32A.6, 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

- b) an Expert determines in accordance with clause 3.32A.7 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 prudently and in accordance with the requirements of this Agreement.

3.32A.11. Within 10 Business Days of an Insolvency Decision, the Secretary of State may either at its option:

- a) 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
- b) terminate this agreement on not less than 20 Business Days notice to the Academy Trust.

3.32A.12. In the event that the Secretary of State provides additional EAG funding in accordance with clause 3.32A.11(a), the Secretary of State may within 12 months of paying the additional EAG funding, terminate this Agreement at any time.

3.32A.13. 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.

#### **Other relevant funding**

3.33. Not used.

3.34. 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.

- 3.35. The Academy Trust may receive additional funding from an LA under an agreement with that LA for the provision for pupils who require high levels of support for SEN. The Academy Trust must ensure that all provision received under that agreement is provided for those pupils.

#### **4. FINANCIAL AND ACCOUNTING REQUIREMENTS**

##### **General**

- 4.1. In order for the Secretary of State to provide grant funding to the Academy Trust, the Academy Trust must be fulfilling the financial and reporting requirements in this Agreement.
- 4.2. In its conduct and operation, the Academy Trust must apply financial and other controls which meet the requirements of regularity, propriety and value for money.
- 4.3. The Academy Trust must appoint an accounting officer and must notify the Secretary of State of that appointment. The Academy Trust must assign to the accounting officer the responsibilities of the role set out in the Academies Financial Handbook and HM Treasury's publication 'Managing Public Money'.
- 4.4. The Academy Trust must abide by the obligations of, and have regard to the guidance for, charities and charity trustees issued by the Charity Commission and, in particular, the Charity Commission's guidance on 'Protecting Charities from Harm'. Any references in this document which require charity trustees to report to the Charity Commission should instead be interpreted as reporting to the body or person prescribed as the principal regulator under the Charities Act 2011.
- 4.5. The Academy Trust must comply with the 16 to 19 Funding Guidance published by the Secretary of State, in respect of its provision for pupils above compulsory school age until the academic year in which they reach the age of 19.

4.5A Not used.

### **Application of the Academies Financial Handbook**

- 4.6. In relation to the use of grant paid to the Academy Trust by the Secretary of State, the Academy Trust must follow the requirements of, and have regard to the guidance in, the Academies Financial Handbook.
- 4.7. The Academy Trust must have adequate insurance cover or opt in to the Department's arrangements as set out in the Academies Financial Handbook.
- 4.8. The Academy Trust must submit information about its finances to the Secretary of State in accordance with the Academies Financial Handbook, or as otherwise specified by the Secretary of State.

### **Budgeting for funds**

- 4.9. The Academy Trust must balance its budget from each Academy Financial Year to the next. For the avoidance of doubt, this does not prevent the Academy Trust from:
  - a) subject to clause 4.14, carrying a surplus from one Academy Financial Year to the next; or
  - b) carrying forward from previous Academy Financial Years sufficient cumulative surpluses on grants from the Secretary of State to meet an in-year deficit on such grants in a subsequent financial year, in accordance with clauses 4.14-4.17; or
  - c) incurring an in-year deficit on funds from sources other than grants from the Secretary of State in any Academy Financial Year, provided it does not affect the Academy Trust's responsibility to ensure that the Academy balances its overall budget from each Academy Financial Year to the next.
- 4.10. The Academy Trust may spend or accumulate funds from private sources or public sources, other than grants from the Secretary of State. Any surplus from private or public sources other than grants from the Secretary of State must be separately identified in the Academy Trust's accounts.

4.11. Not used.

4.12. The Academy Trust's budget must be approved for each Academy Financial Year by the Board of Charity Trustees.

4.13. The approved budget must be submitted to the Secretary of State in a form, and by a date, to be notified by the Secretary of State.

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

4.14. At the end of any Academy Financial Year the Academy Trust may carry forward unspent GAG from previous Academy Financial Years without limit (unless a limit is specified in the Academies Financial Handbook, or otherwise specified in writing by the Secretary of State, in which case that limit will apply).

4.15. The Academy Trust must use any GAG carried forward only for the purposes of GAG as set out in this Agreement, or otherwise as specified in the Academies Financial Handbook or in writing by the Secretary of State.

4.16. Not used.

4.17. Any additional grant made in accordance with clause 3.24, for a period after the Secretary of State has served a Termination Notice or a Termination Warning Notice, may be carried forward without limitation or deduction until the circumstances set out in clause 3.24 cease to apply, or the Academy closes.

4.18. Any unspent grant not allowed to be carried forward under clauses 4.14-4.17 may be taken into account in the payment of subsequent grant.

#### **Annual accounts and audit**

4.19. The Academy Trust must prepare and file with Companies House the annual reports and accounts required by the Companies Act 2006.

4.20. In addition, the Academy Trust must prepare its annual reports and accounts for each Academy Financial Year:

- a) in accordance with the Charity Commission's 'Accounting and Reporting by Charities: Statement of Recommended Practice', as if the Academy Trust were a registered charity; and

- b) additionally as the Secretary of State directs.
- 4.21. The Academy Trust's accounts must be audited annually by independent auditors appointed in line with the Academies Financial Handbook.
- 4.22. The accounts must carry an audit report stating whether, in the auditors' opinion, the accounts show a true and fair view of the Academy Trust's affairs. The accounts must also be accompanied by such other audit reports, relating to the use of grants and other matters, as the Secretary of State directs.
- 4.23. The Academy Trust's annual report must include the names of all members of the Academy Trust who served during the year.
- 4.24. The Academy Trust's annual reports and accounts, and the auditor's reports, must be submitted to the Secretary of State by 31 December each Academy Financial Year, or as otherwise specified by the Secretary of State.
- 4.25. The Academy Trust must publish on its website its annual reports and accounts, current memorandum of association, Articles and Funding Agreement and the names of its Charity Trustees and members. The Secretary of State may also publish the Academy Trust's annual reports and accounts, and the audit report, as he sees fit.

#### **Keeping financial records**

- 4.26. The Academy Trust must keep proper accounting records. Statements of income and expenditure, statements of cash flow and balance sheets must be produced in such form and frequency as the Secretary of State directs.

#### **Access to financial records**

- 4.27. The books of accounts and all relevant records, files and reports of the Academy Trust, including those relating to financial controls, must be open at all reasonable times to officials of the DfE and the National Audit Office, and to their agents and contractors, for inspection or carrying out value for money assessments. The Academy Trust must give those officials and contractors reasonable assistance with their enquiries. For the purposes of this clause



'relevant' means in any way relevant to the provision and use of grants provided by the Secretary of State under this Agreement.

- 4.28. The Secretary of State may, at his expense, instruct auditors to report to him on the adequacy and effectiveness of the Academy Trust's accounting systems and internal controls to standards determined by the Secretary of State, and to make recommendations for improving the Academy Trust's financial management.

#### **Acquiring and disposing of Publicly Funded Assets**

- 4.29. In relation to Publicly Funded Assets, the Academy Trust must not, without the Secretary of State's consent:

- a) acquire or dispose of freehold land;
- b) take up or grant a lease of land;
- c) dispose of any other class of capital asset,

except as permitted in the Academies Financial Handbook, and subject to Part 3 of Schedule 1 to the Academies Act 2010.

- 4.30. The Academy Trust must give 30 days' notice to the Secretary of State, whether or not the circumstances require his approval, of its intention to take any of the actions in clause 4.29.

#### **Retaining proceeds from the disposal of capital assets**

- 4.31. Except as permitted in the Academies Financial Handbook, if the Academy Trust sells capital assets which were acquired or enhanced wholly or partly using payments made by or on behalf of HM Government, the Academy Trust must pay to the Secretary of State, at his request, an amount of the sale proceeds equivalent to the proportion of the original cost of the acquisition or enhancement which was met by or on behalf of HM Government.

- 4.32. If the Academy Trust sells a capital asset which was transferred to it for no or nominal consideration from an LA, the Predecessor School or the Predecessor School's foundation, the Academy Trust must, if required by the Secretary of

State, pay all or part of the sale proceeds to the LA or to the Secretary of State, taking into account the amount of the proceeds to be reinvested by the Academy Trust.

#### **Transactions outside the usual planned range**

4.33. In relation to Publicly Funded Assets, the Academy Trust must not, without the Secretary of State's consent:

- a) give any guarantees, indemnities or letters of comfort, except such as are given in normal contractual relations or as provided in the Principal Agreement; or
- b) write off any debts or liabilities owed to it; or
- c) offer to make any special payments as defined in HM Treasury's publication 'Managing Public Money' (including ex gratia payments, staff severance payments and compensation payments)

above any values specified in the Academies Financial Handbook.

4.34. The Academy Trust must give the Secretary of State 30 days' notice, whether or not the circumstances require his consent, of its intention to do any of the actions in clause 4.33.

4.35. The Academy Trust must promptly notify the Secretary of State of any loss arising from suspected theft or fraud in line with the requirements in the Academies Financial Handbook, or otherwise specified by the Secretary of State.

#### **Borrowing**

4.36. Except as permitted in the Academies Financial Handbook, the Academy Trust must not borrow against Publicly Funded Assets, or so as to put Publicly Funded Assets at risk, without the Secretary of State's consent.

### **5. LAND CLAUSES**

#### **Existing freehold site**

**"Land"** means the freehold land at The Duston School, Berrywood Road, Northampton, being the land registered with title numbers NN244720, NN26707 and NN26849 which is the permanent site of the Academy.

**"Property Notice"** means any order, notice, proposal, demand or other requirement issued by any competent authority which materially affects the Academy Trust's ability to use the Land for the purposes of the Academy.

### **Restrictions on Land transfer**

5.1. The Academy Trust must:

- a) within 28 days from the transfer to it of the Land, apply to the Land Registry using Form RX1 for the following restriction (the **"Restriction"**) to be entered in the proprietorship register for the 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 Restriction is entered on the proprietorship register;
- c) promptly confirm to the Secretary of State when the Restriction has been registered;
- d) if it has not registered the Restriction, 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 Restriction, 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**

5.2. 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 Land clean and tidy and make good any damage or deterioration to the Land. The Academy Trust must not do anything to lessen the value or marketability of the Land without the Secretary of State's consent.

5.3. The Academy Trust must not, without the Secretary of State's consent:

- a) grant any consent or licence; or
  - b) create or allow any encumbrance; or
  - c) part with or share possession or occupation; or
  - d) enter into any onerous or restrictive obligations,
- in respect of all or part of the Land.

#### **Option**

5.4. The Academy Trust grants and the Secretary of State accepts an option (the "**Option**") to acquire all or part of the 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**

5.5. The Academy Trust:

- a) must, within 14 days after acquiring the Land or, if later, after signing this Agreement, apply to the Land Registry on Form AN1 (including a copy of this Agreement) for a notice of the Option (the "**Option Notice**") to be entered in the register, taking any further steps required to have the Option Notice registered and promptly confirming to the Secretary of State when this has been done;
- b) if it has not registered the Option Notice, agrees that the Secretary of State may apply to register it using Form UN1;

- c) must not, without the Secretary of State's consent, apply to disapply, modify or remove the Option Notice, 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 Land or, if later, after signing this Agreement, apply to register a Class C(iv) land charge in the Land Charges Registry, and send the Secretary of State a copy of the relevant entry within 7 days after the registration has 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**

5.6. 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.

## **6. COMPLAINTS**

6.1. If a complaint is made about matters arising wholly or partly before the Academy opened, and all or part of that complaint was investigated by the Local Government Ombudsman under Part III of the Local Government Act 1974 ("**Part III**"), or could have been investigated under Part III if the Predecessor School had remained a maintained school, the Academy Trust:

- a) must abide by the provisions of Part III as if the Academy were a maintained school;

- b) agrees that the Secretary of State will have the power to investigate the subject of the complaint as if it had taken place after the Academy opened; and
  - c) must act in accordance with any recommendation from the Secretary of State as if that recommendation had been made under Part III and the Academy were a maintained school.
- 6.2. If the Secretary of State could have given an order or a direction under sections 496 or 497 of the Education Act 1996 to the governing body of the Predecessor School relating to matters occurring within the 12 months immediately before the Academy opened, the Academy Trust:
- a) agrees that the Secretary of State may give orders or directions to the Academy Trust as though the Academy were a maintained school and sections 496 and 497 applied to the governing body of that maintained school; and
  - b) must act in accordance with any such order or direction from the Secretary of State.
- 6.3. If a complaint made to the governing body of the Predecessor School has not been fully investigated when the Academy opens, the Academy Trust must continue to investigate that complaint in accordance with the complaints procedures established by that governing body.
- 6.4. If a complaint is made to the Academy Trust about matters arising wholly or partly during the 12 months before the Academy opened, the Academy Trust agrees to investigate that complaint as if the matter complained of had taken place after the Academy opened.

## **7. TERMINATION**

### **Termination by either party**

- 7.1. 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**

7.2. 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
- 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 by a breakdown of discipline; or
- e) the Secretary of State is obliged to make a payment under the Principal Agreement; or
- f) in the immediately preceding 12 month period, the aggregate of the payments made by the Academy Trust to the LA under the Principal Agreement has reached more than 5% of GAG;
- g) the Secretary of State considers (acting reasonably) that there has been a Persistent Breach of the School Agreement or the Principal Agreement likely to materially and adversely impact on the provision of educational services at the Academy, and for the purposes of this clause 7.2g "Persistent Breach" means: (i) a particular breach which has recurred three (3) or more times in any rolling six (6) month period; or (ii) the occurrence of five (5) or more different breaches in any rolling six (6) month period;
- h) the Academy Trust has committed a material breach of the School Agreement or the Principal Agreement;
- 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 7.3 by the date specified in accordance with clause 7.3; or
- k) the circumstances envisaged by clauses 3.32A.9 and 3.32A.10 of this Agreement in respect of EAG funding are applicable

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

7.3. A Termination Warning Notice served under clause 7.2 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.

7.4. 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.

7.5. If the Secretary of State considers that the Academy Trust has not responded to the Termination Warning Notice as specified under clause 7.3(c), or has not completed the action required in the Termination Warning Notice under clauses 7.3(a) and (b) (and any further action specified under clause 7.4) he may serve a Termination Notice.

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

7.6. 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.

7.7. If the Secretary of State has served a Termination Warning Notice under clause 7.6 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.

7.8. Not used.

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

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

7.10. The Secretary of State may serve a Termination Notice if any of the following events occurs, or if he considers that there is a serious risk that any of them may occur:

a) the Academy Trust calls a formal or informal meeting of its creditors or enters into any formal or informal composition or arrangement with its creditors; or

b) the Academy Trust proposes a voluntary arrangement within section 1 of the Insolvency Act 1986; or

c) the Academy Trust cannot pay its debts within the meaning of section 123 of the Insolvency Act 1986 with, for the purposes of this clause, section 123 (1)(a) of this Act having an effect as if £10,000 were

substituted for £750. The Academy Trust will not be considered unable to pay its debts for the purposes of this clause if it is contesting any such demand in good faith ; or

- d) the Academy Trust has a receiver and manager (except those appointed by the Charity Commission under the Charities Act 2011), administrator or administrative receiver appointed over all or part of its undertakings, assets or income; or
- e) any distraint, execution or other process is levied or enforced on any of the Academy Trust's property and is not paid out, withdrawn or discharged within 15 business days; or
- f) the Academy Trust has passed a resolution for its winding up; or
- g) an order is made for the winding up or administration of the Academy Trust.

7.11. The Academy Trust must promptly notify the Secretary of State, with an explanation of the circumstances, after receiving any petition which may result in an order for its winding up or administration.

7.12. If

- a) Any Charity Trustee or member of the Academy Trust refuses to consent to any checks required under this Agreement, or as otherwise requested by the Secretary of State; or
- b) The Secretary of State determines that any Charity Trustee or member of the Academy Trust is unsuitable,

the Secretary of State may:

- i. direct the Academy Trust to ensure that the Charity Trustee or member resigns or is removed within 42 days, failing which the Secretary of State may serve a Termination Notice; or
- ii. serve a Termination Notice.

7.13. For the purposes of clause 7.12 a Charity Trustee or member of the Academy Trust will be “unsuitable” if that Charity Trustee or member:

- a) has been convicted of an offence;
- b) has been given a caution in respect of an offence;
- c) is subject to a relevant finding in respect of an offence; or
- d) has engaged in relevant conduct,

as a result of which, the Secretary of State considers that that Charity Trustee or member is unsuitable to take part in the management of the Academy.

7.14. For the purposes of clause 7.13:

- a) a Charity Trustee or member of the Academy Trust will be subject to a “relevant finding” in respect of an offence if:
  - i) that Charity Trustee or member has been found not guilty of the offence by reason of insanity;
  - ii) that Charity Trustee or member has been found to be under a disability and to have done the act charged against them in respect of the offence; or
  - iii) a court outside the United Kingdom has made a finding equivalent to that described in paragraphs (i) and (ii) above.
- b) “relevant conduct” is conduct by a Charity Trustee or member of the Academy Trust which is:
  - i) aimed at undermining the fundamental British values of democracy, the rule of law, individual liberty and mutual respect and tolerance of those with different faiths and beliefs; or
  - ii) found to be in breach of professional standards by a professional body; or

- iii) so inappropriate that, in the opinion of the Secretary of State, it makes that Charity Trustee or member unsuitable to take part in the management of the Academy.

7.15. Not used.

7.16. Not used.

7.17. Not used.

7.18. Not used.

7.19. Not used.

### **Change of Control**

7.20. The Secretary of State may at any time, subject to clause 7.21, serve a Termination Notice if there is a change:

- a) in the Control of the Academy Trust; or
- b) in the Control of a legal entity that Controls the Academy Trust.

7.21. Where a person ('P') is a member or director of a body corporate (as a corporation sole or otherwise) by virtue of an office, no change of Control arises merely by P's successor becoming a member or director in P's place.

7.22. The Academy Trust must promptly notify the Secretary of State if there is a proposed or actual change of Control of the Academy Trust, or of a legal entity that Controls the Academy Trust.

7.23. When notifying the Secretary of State under clause 7.22, the Academy Trust must seek his agreement that, if he is satisfied with the change of Control, he will not exercise his right to terminate this Agreement under clause 7.20.

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

7.24. If the Secretary of State serves a Termination Notice under clause 7.1, 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.

7.25. If the Secretary of State serves a Termination Warning Notice or a Termination Notice otherwise than under clause 7.1, 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.

### **Effect of Termination**

7.26. 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.

7.27. Subject to clauses 7.28 and 7.29, if the Secretary of State terminates this Agreement under clause 7.1, he will indemnify the Academy Trust. If the Secretary of State terminates this Agreement otherwise than under clause 7.1, he may at his discretion indemnify or compensate the Academy Trust.

7.28. 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.

7.29. 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 7.27, 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.

7.30. 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 7.30(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.

7.31. The Secretary of State may:

- a) waive all or part of the repayment due under sub-clause 7.30(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.

## **8. OTHER CONTRACTUAL ARRANGEMENTS**

### **Information**

- 8.1. The Academy Trust must promptly provide to the Secretary of State any information that he requests about the Academy Trust or the Academy, which he regards as necessary to fulfil his role and responsibilities.
- 8.2. The Secretary of State will give the Academy Trust any information it reasonably requires of him for the running of the Academy.

### **Access by the Secretary of State's Officers**

- 8.3. The Academy Trust must allow DfE officials to enter the Academy at any reasonable time. All records, files and reports relating to the running of the Academy must be available to them at any reasonable time. Two DfE officials may attend and speak at any meetings of the Board of Charity Trustees or any other meetings of Charity Trustees of the Academy Trust, but will withdraw from any discussion of the Academy's or the Academy Trust's relationship with

the Secretary of State or any discussion of bids for funding to the Secretary of State.

8.4. The following documents must be provided to any interested party or the Secretary of State on request:

- a) the agenda for every meeting of the Board of Charity Trustees or any committee to which it delegates any of its functions;
- b) the draft minutes of every such meeting, if they have been approved by the chairman of that meeting;
- c) the signed minutes of every such meeting; and
- d) any report, document or other paper considered at any such meeting.

8.5. The Academy Trust may exclude from items provided under clause 8.4 any content relating to:

- a) a named teacher or other person employed, or proposed to be employed, at the Academy;
- b) a named pupil at, or candidate for admission to, the Academy; and
- c) any matter which, the Academy Trust reasonably believes should remain confidential.

## **Notices**

8.6. A notice or communication to a party in connection with this Agreement:

- a) must be in writing (excluding email, except where agreed in advance) and in English;
- b) must be delivered by hand or sent by pre-paid first-class post or other next working day delivery service;
- c) will be deemed to have been received:
  - i. if delivered by hand, at the time when a delivery receipt is signed or when the notice is left at the address in paragraph (d), or

ii. if posted, at 9.00 am on the second working day after posting;  
and

d) must be sent to the party for the attention of the contact and at the address listed as follows (or to a different contact or address previously notified to the sending party, the change taking effect five business days after deemed receipt of the notice):

<b>Name of party</b>	<b>Position of contact</b>	<b>Address</b>
Secretary of State	Head of Academies Division	Department for Education, Sanctuary Buildings, Great Smith Street, London SW1P 3BT
Academy Trust	Executive Headteacher	The Duston Education Trust The Duston School Northampton NN5 6XA

### **General provisions**

8.7. The Academy Trust cannot assign this Agreement.

8.8. 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 it), 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.

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

8.10. This Agreement may be executed in any number of counterparts, each of which when executed and delivered will constitute a duplicate original, but all of which will together constitute the same agreement.



8.11. 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) will 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.

8.12. Not used.

## **ANNEXES**

### **9. PUPILS WITH SPECIAL EDUCATIONAL NEEDS (SEN) AND DISABILITIES**

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

- 9.1. Clause 2.4 does not apply to anyone whom the Academy Trust appoints as the Special Educational Needs Co-ordinator under section 317(3A) of the Education Act 1996, who must instead meet the requirements in Regulation 3 of the Education (Special Educational Needs Co-ordinators) (England) Regulations 2008.
- 9.2. The Academy Trust must comply with all the duties imposed on maintained schools, with regard to pupils with SEN and disabilities, in:
- a) Part 4 of the Education Act 1996;
  - b) The Education (Special Educational Needs) (Information) Regulations 1999; and
  - c) The Education (Special Educational Needs Co-ordinators) (England) (Amendment) Regulations 2008.
- 9.3. Where a child who has SEN is being educated in the 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, as 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.
- 9.4. The Academy's website must include details of the implementation of its policy for pupils with SEN; 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 (disability being as defined for the purposes of the Equality Act 2010).

10. **ADMISSION OF PUPILS WITH SEN AND DISABILITIES**

- 10.1. The Academy Trust must, subject to its right of appeal to the Secretary of State, admit all pupils with a Statement of SEN naming the Academy.
- 10.2. Where an LA proposes to name the Academy in a Statement of SEN, it must give the Academy Trust written notice of this, stating why it considers the Academy to be suitable for the pupil in question. Within 15 days of receipt of the LA's notice, the Academy Trust must consent to being named, except where admitting the child would be incompatible with the provision of efficient education for other children, and no reasonable steps could secure compatibility. In deciding whether a child's inclusion would be incompatible with the efficient education of other children or the efficient use of resources, the Academy Trust must have regard to the relevant Guidance issued to maintained schools.
- 10.3. If the Academy Trust decides that admitting the child would be incompatible with the provision of efficient education or the efficient use of resources, it must, within the 15 days, notify the LA in writing, giving its reasons for its decision.
- 10.4. The Academy Trust must then seek to establish from the LA whether or not it agrees with this determination. 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.
- 10.5. If in such case, the Academy Trust considers that the LA should not have named the Academy in the statement, 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 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.

- 10.6. 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.
- 10.7. 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.
- 10.8. Clauses 9.1 to 10.7 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.