Department for Education

Mainstream academy and free school: supplemental funding agreement

December 2020 v7

Contents

Information about the Academy: 4

1.ESTABLISHING THE ACADEMY 8

Definitions and interpretation 8

The Academy 9

2.RUNNING OF THE ACADEMY 10

Teachers and staff 10

Pupils 11

SEN Unit or Resourced Provision 12

Charging 12

Admissions 12

Curriculum 16

3.GRANT FUNDING 19

Calculation of GAG 19

Other relevant funding 22

4.LAND 23

[Version 1: to be used if, before conversion, the governing body holds the freehold, which is to be transferred on conversion to the academy trust] 24

[Version 2: to be used if, before conversion, the local authority (or another third party) holds the freehold and is to grant, on conversion, a lease to the academy trust] 29

[Version 3: existing site to be held under church supplemental agreement or lease from site trustees] 34

[Version 4: NO LONGER USED] 34

[Version 5: NO LONGER USED] 34

[Version 6: new leasehold site provided by Department for Education (ESFA) with a legal charge in favour of the Secretary of State] 35

[Version 7: new leasehold site provided by Department for Education (ESFA) without a legal charge where the Secretary of State is not the landlord - use this version if a new school is being established under the presumption route and a local authority is providing the land] 46

[Version 8: new leasehold site provided by Department for Education where the Secretary of State is the landlord] 52

5.TERMINATION 56

Termination by either party 56

Termination Warning Notice 56

Termination by the Secretary of State after inspection 57

Termination by the Secretary of State 58

Funding and admission during notice period 60

Notice of intention to terminate by Academy Trust 61

Effect of termination 63

6.OTHER CONTRACTUAL ARRANGEMENTS 64

Annexes 64

The Master Agreement 64

General 65

Information Sharing with Local Authorities – Statutory Responsibilities 65

ANNEXES 68

7.ADMISSION OF CHILDREN AND YOUNG PEOPLE WITH EDUCATION, HEALTH AND CARE PLANS 68

8.[THIS CLAUSE ONLY APPLIES TO FORMER GRAMMAR SCHOOLS CONVERTING TO ACADEMY STATUS] PROCESS FOR REMOVAL OF SELECTION AT WHOLLY SELECTIVE ACADEMIES 68

SUMMARY SHEET

Information about the Academy:

Name of Academy Trust	
Company number	
Date of Master Funding Agreement	
Name of Academy	
Opening date	
Type of academy (indicate whether academy or free school)	
Religious designation	
Wholly or partly selective	
Name of predecessor school (where applicable)	
Capacity number (of statutory school age places) **(if the Academy has a nursery provision, please provide a breakdown of capacity for nursery pupils and statutory school age places)**	
Age range (including nursery provision where the nursery is part of the school)	
Number of sixth form places	
Number of boarding places	
SEN unit / Resource provision	
Land arrangements **(Version 1-8 or other)**	
Academy and title number of Land (and Temporary Site)	[Temporary Site: land at xxxxx] [Permanent Site: xxxxx]

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

Clause No.	Descriptor	Applied	Not used
1.I	Only applies to free schools and new provision academies		
2.A.1	Clause applies where an academy was previously a VC or foundation school designated with a religious character		
2.C, 2.D	Only applies where the Academy has an SEN unit or Resourced Provision		
2.E	Only applies where there was a predecessor independent school		
2.E.1	Only applies to free Schools with nursery provision		
2.G	Clause does not apply to free schools (unless there was a predecessor independent school), or new provision academies		
2.M	Clause applies only to academies and free schools designated with a religious character		
2.N	Clause applies only to academies that were formerly wholly selective grammar schools		
2.O	Clause applies only to academies that were formerly partially selective grammar schools		
2. P.1	Clause only applies to free schools or academy converter schools where there was a predecessor maintained school		
2.T	Clause applies to free schools and new provision academies designated with a religious character		
2.W	Clause only applies where the Academy is designated with a religious character but was not previously a VC school or foundation school designated with a religious character (in which case use clause 2.Y instead). Also use 2.W where an		

Clause No.	Descriptor	Applied	Not used
	academy was previously a VC school but has gone through a significant change process to adopt VA characteristics in parallel with converting to an academy		
2.X	Clause only applies where the Academy has not been designated with a religious character		
2.Y	Clause only applies where an academy was previously a VC school or foundation school designated with a religious character and should be used instead of clause 2.W. Where an academy was previously a VC school but has gone through a significant change process to adopt VA characteristics in parallel with converting to an academy, use clause 2.W instead.		
2.Yc)	Sub-clause applies if the Academy is designated with a denominational religious character – CE etc. rather than 'Christian'		
3.A – 3.F	Option 1 applies to converter and sponsored academies: if used delete option 2		
3.A – 3.F	Option 2 applies to free schools and new provision academies: if used delete option 1		
3.H	Clause relating to Start-up only applies in some cases (does not apply to academy converters)		
3.I.1	Only applies to Free schools with nursery provision		
3.J	Clause only applies to full sponsored and intermediate sponsored academies with approved Academy Action Plans		
3.K	Clause does not apply to free schools (unless there was a predecessor independent school), or new provision academies		
5.G.1	Clause applies only to a boarding academy/free school.		

Clause No.	Descriptor	Applied	Not used
5.I	Clause only applies to sponsored academies		
5.K	Clause applies to free schools and may be applied to new provision academies		
5.L	Clause applies to free schools and may be applied to new provision academies		
5.M	Clause applies to free schools and may be applied to new provision academies		
5.N	Clause applies to free schools and may be applied to new provision academies		
5.O	Clause applies to free schools and may be applied to new provision academies		
6.H	Clause only applies to schools which are designated with a Church of England or Roman Catholic character		

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

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

Descriptor	Clause No.	Applied	Not used

1. ESTABLISHING THE ACADEMY

1.A This Agreement made between the Secretary of State for Education and [INSERT NAME OF ACADEMY TRUST] is supplemental to the master funding agreement made between the same parties and dated [INSERT] (the "**Master Agreement**").

Definitions and interpretation

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

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

"The **Academy**" means the [INSERT] Academy.

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

"Funded Hours" means the current applicable government funded entitlement to free childcare. *[This definition is to be included if clause 2.E.1 is used in the Agreement]*

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

"**National Minimum Standards**" ***[This definition should be removed if the Academy or free school does not provide boarding]***[1] means the National Minimum Standards for Boarding Schools published by the Secretary of State under section 87C(1) of the Children Act 1989 as amended by the Care Standards Act

[1] Throughout document remove instructions set out in bold, italics

2000.

"**SEN**" means special educational needs and has the meaning set out in sections 20(1) and 21(2) of the Children and Families Act 2014.

"**Start-Up Period**" **[*This definition should be removed if all pupil cohorts relevant to the age-range of the Academy will have some pupils present on the Academy opening date. It will normally apply to free schools with the exception of free schools which had previously been independent schools who are not expanding their capacity and will not be in receipt of start-up/post opening grant*]** means up to the first [X] Academy Financial Years of being open. ["X" is normally defined as 7 for primary, secondary with post-16 provision or all-through schools; or 5 for secondary schools.

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

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

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

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

The Academy

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

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

1.H The Academy Trust will open the Academy on [INSERT DATE].

1.I [***This clause applies only to free schools and new provision academies – otherwise mark clause 1.I as 'Not used'***] The Academy Trust must ensure that so far as is reasonably practicable and consistent with [clause 2.T and]

clause [2.W]/[2.X]/[2.Y][***Select as appropriate***] of this Agreement and the Equality Act 2010, the policies and practices adopted by the Academy (in particular regarding curriculum, uniform and school food) enable pupils of all faiths and none to play a full part in the life of the Academy, and do not disadvantage pupils or parents of any faith or none. For the avoidance of doubt, this requirement applies irrespective of the proportion of pupils of any faiths or none currently attending or predicted to join the school.

[Where the governance arrangements of the Academy differ from the MAT it is joining, an extra clause must be added here (at 1.J) to protect the governance of the Academy, through a Local Governing Body. For example:

- ***where a school designated with a religious character that is not a voluntary controlled (VC) or a foundation school is joining a MAT that does not have Church majority governance; or***
- ***where a school without a religious designation is joining a MAT with Church majority or minority governance; or***
- ***where a school designated with a religious character – that is a voluntary controlled (VC) or a foundation school is joining a MAT that does not have at least Church minority governance;***

In the case of schools designated with a religious character, the Local Governing Body should be set up in line with the school's Trust Deed].

2. RUNNING OF THE ACADEMY

Teachers and staff

2.A Subject to clause 2.A.2 and Annex A of this Agreement and section 67 of the Children and Families Act 2014, the Academy Trust may, in accordance with any relevant Guidance, employ anyone it believes is suitably qualified or is otherwise eligible to plan and prepare lessons and courses for pupils, teach pupils, and assess and report on pupils' development, progress and attainment.

2.A.1 [***This clause applies where an academy was previously a VC school or foundation school designated with a religious character – otherwise mark clause 2.A.1 as 'Not used'***]The Academy Trust shall in relation to:

a) any person who may apply for a position as an employee or to be otherwise engaged by the Academy Trust, and

b) any employee with whom the Academy Trust enters into a contract of employment or a contract for services,

act in accordance with and hereby agrees to be bound by section 124AA of the School Standards and Framework Act 1998 ("SSFA"), so far as those provisions apply to, and as if the Academy Trust were, a voluntary controlled or foundation school designated by an order under section 69(3) of the SSFA as a school having a religious character. For the avoidance of doubt, the Academy Trust agrees and acknowledges that section 124AA of the SSFA shall not therefore apply to it in relation to the persons referred to at (a) and (b) above.

2.A.2 The Academy Trust must designate a staff member at the Academy as responsible for promoting the educational achievement of registered pupils at the Academy who are being looked after by a la, or are no longer looked after by a la because of an adoption, special guardianship or child arrangements order, or because they have been adopted from 'state care' outside England

and Wales, and in doing so must comply with the law, regulations and Guidance that apply to maintained schools. The Academy Trust must ensure the designated person undertakes appropriate training and has regard to any Guidance.

Pupils

2.B The planned capacity of the Academy is [insert] and the age range is [insert], [plus nursery provision of [insert] places] [and] [including a sixth form of [insert] places][and][including [insert] boarding places][which for the avoidance of doubt includes pupils with designated places pursuant to clause 2.C]. For the avoidance of doubt, notwithstanding that an individual applicant's age might be outside the specified age range of the Academy, the Academy is not prevented from considering an application made by the child's Parent(s) in order to comply with the relevant paragraph of the Schools Admissions Code ('Admission of children outside their normal age group'), to request that the child be admitted to the school outside of the child's normal age group. Where such a request is agreed, the child should be educated in an existing year group. [The Academy will be an all ability inclusive single/mixed sex school.]

SEN Unit or Resourced Provision

[***Clauses 2.C and 2.D only apply where the Academy has an SEN unit or Resourced Provision – for all other cases, these clauses should be marked 'Not used'***]

2.C The Academy must operate designated places reserved for pupils with SEN (SEN Unit or Resourced Provision) with up to [insert] planned places for pupils with [insert SEN category] in the age range [insert]. [***If this clause does not apply, mark clause 2.C as 'Not used'***]

2.D The Secretary of State may at any time determine that the SEN Unit or Resourced Provision should cease to operate. In making such a determination, the Secretary of State will:

a) consider the views of the Academy and relevant LAs (in their strategic role in the commissioning of SEN provision); and

b) consider how his determination will affect the LAs' ability to secure suitable SEN provision for children and young people in the area. [***If this clause does not apply, mark clause 2.D as 'Not used'***]

Charging

2.E [Not Used]

2.E.1 **[This clause only applies to Free Schools and Academies with nursery provision within an Academy's age range]** Clause 2.16 of the Master Agreement does not prevent the Academy Trust charging fees for nursery provisions outside the Funded Hours.

Admissions

2.F Subject to clauses 2.L and 2.M 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 Department for Education (the "Codes") and all relevant admissions law as they apply to foundation and voluntary aided schools, and with equalities law. Reference in the Codes or legislation to "admission authorities" will be deemed to be references to the Academy Trust.

2.G ***[This clause does not apply to free schools (unless there was a predecessor independent school), or new provision academies – in these cases mark clause 2.G as 'Not used']*** Pupils on roll in a Predecessor School which was a maintained or independent school will transfer automatically to the Academy on opening. All children already offered a place at that Predecessor School must be admitted to the Academy.

2.H The Academy Trust must participate in the local Fair Access Protocol. The Academy Trust must participate in the coordinated admission arrangements operated by the LA in whose area the Academy is situated. If the Academy is a free school, the Academy Trust is not required to participate in coordination for its first intake of pupils.

2.I [Not used]

2.J [Not used]

2.K [Not used]

2.L The Secretary of State may:

a) direct the Academy Trust to admit a named pupil to the Academy:

i. following an application from a LA including complying with a school attendance order as defined in section 437 of the Education Act 1996. Before doing so the Secretary of State will consult the Academy Trust; or

ii. where in relation to a specific child or children the Academy Trust has failed to act in accordance with the Codes or this Agreement or has otherwise acted unlawfully; or

b) direct the Academy Trust to amend its admission arrangements where they do not comply with the Codes or this Agreement, or are otherwise unlawful.

2.M ***[This clause only applies to academies and free schools designated with a religious character - otherwise mark clause 2.M as 'Not used'. Where this clause is used, please complete the relevant religious character and religious authority (where applicable) in the [ ]s marked [insert] and [NAME] below]*** The Academy is an Academy designated with a [**insert**] religious character. The relevant religious authority is [**NAME**].

2.N ***[This clause only applies to academies that were formerly wholly selective schools - otherwise mark clause 2.N as 'Not used'***] Where the Academy is a former maintained grammar school designated as such under section 104 of the School Standards and Framework Act 1998 and the Education (Grammar School Designation) Order 1998, then it may continue to select its intake by reference to ability. Annex B sets out the procedures for removing selective arrangements.

2.O ***[This clause only applies to academies that were formerly partially***

selective schools – otherwise mark clause 2.O as 'Not used'] Where the Academy is a former maintained school with pre-existing partially selective admissions permitted by section 100 of the School Standards and Framework Act 1998, then it may retain such admissions so long as the proportion of selective admissions remains at the level at which they were previously set and the basis of selection is unchanged (unless selection is removed entirely). The Academy's partially selective proportions are [X][2].

2.P The Academy Trust must make arrangements to ensure an independent appeals panel is established for the Academy and its clerk and members are trained to act in accordance with the Codes. The Academy Trust must ensure that parents and 'relevant children' (as described in the Codes) are informed of their right to appeal to an Independent Appeal Panel if they are dissatisfied with an admission decision of the Academy Trust. The arrangements for appeals must comply with the Codes as they apply to foundation and voluntary aided schools. The determination of the Independent Appeal Panel is binding on all parties.

2.P.1 [***This clause only applies to free schools or academy converter schools where there was a predecessor maintained school, in all other cases mark clause 2.P.1 as 'Not used'***] The Academy Trust will treat any decision of an Independent Appeal Panel constituted further to arrangements made by the admission authority of a Predecessor School under section 94 of the School Standards and Framework Act 1998 as binding on the Academy Trust, as though the Academy Trust had made the decision subject to the appeal.

2.Q Subject to clause 2.R, the meaning of "**relevant area**" for the purposes of consultation requirements in relation to admission arrangements is that determined by the relevant LA for maintained schools in the area in accordance with the Education (Relevant Areas for Consultation on Admission Arrangements) Regulations 1999.

2.R If the Academy does not consider the relevant area determined by the LA for

[2] This must be the proportions in place at the beginning of the 1997-98 school year and which have remained unchanged ever since, or any lower proportion determined since 1997-1998.

the maintained schools in the area to be appropriate, it must apply to the Secretary of State by 1 August before the academic year in question for a determination of the appropriate relevant area for the Academy, setting out the reasons for this view. The Secretary of State will consult the Academy Trust and the LA in whose area the Academy is situated in reaching a decision.

2.S The Office of the Schools Adjudicator ("OSA") will consider objections to the Academy's admission arrangements (except objections against any agreed derogations from the provisions of the Codes specified in this Agreement, over which it has no jurisdiction). The Academy Trust must therefore make it clear, when determining the Academy's admission arrangements, that objections should be submitted to the OSA. The OSA's determination of an objection is binding on the Academy and the Academy Trust must make appropriate changes to its admission arrangements to give effect to the Adjudicator's decision within two months of the decision (or by 28 February following the decision, whichever is sooner), unless an alternative timescale is specified by the Adjudicator.

2.T ***[This clause only applies to free schools and new provision academies designated with a religious character – otherwise mark clause 2.T as 'Not used']***The Academy Trust must ensure that the Academy adopts admission criteria that provide that, if oversubscribed, at least 50% of its places available each year will be allocated without reference to faith-based admission criteria.

Curriculum

2.U The Academy Trust must provide for the teaching of religious education and a daily act of collective worship at the Academy.

2.V The Academy Trust must comply with section 71(1)-(6) and (8) of the School Standards and Framework Act 1998 as if the Academy were a community, foundation or voluntary school, and as if references to "religious education" and "religious worship" in that section were references to the religious education and religious worship provided by the Academy in accordance with

clause [2.W]/[2.X]/[2.Y][***select as appropriate].***

[Clauses 2.W – 2.Y reflect the requirements for religious education and daily collective worship – mark the clauses that <u>do not</u> apply as 'Not used']

2.W **[This clause applies where an academy is designated with a religious character but was not previously a VC school or a foundation school designated with a religious character. Please also use this clause if an academy was previously a VC school but has gone through a significant change process to adopt VA characteristics in parallel with converting to an academy]** Subject to clause 2.V, **where the Academy is 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 tenets of the Academy's specified religion or religious denomination. This is subject to paragraph 4 of Schedule 19 to the School Standards and Framework Act 1998, which applies as if the Academy were a voluntary aided school with a religious character;

b) the Academy Trust must comply with section 70(1) of, and Schedule 20 to, the School Standards and Framework Act 1998 as if the Academy were a foundation school with a religious character or a voluntary school, and as if references to "the required collective worship" were references to collective worship in accordance with the tenets and practices of the Academy's specified religion or religious denomination;

c) the Academy Trust must ensure that the quality of religious education given to pupils at the Academy and the contents of the Academy's collective worship given in accordance with the tenets and practices of its specific religion or religious denomination are inspected. The inspection must be conducted by a person chosen by the Academy Trust, and the Academy Trust must ensure that the inspection complies with the statutory provisions and regulations which would apply if the

Academy were a foundation or voluntary school designated as having a religious character.

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

a) provision must be made for religious education to be given to all pupils at the Academy in accordance with the requirements for agreed syllabuses in section 375(3) of the Education Act 1996 and paragraph 2(5) of Schedule 19 to the School Standards and Framework Act 1998;

b) the Academy must comply with section 70(1) of, and Schedule 20 to, the School Standards and Framework Act 1998 as if it were a community school or foundation school without a religious character, except that paragraph 4 of that Schedule does not apply. The Academy may apply to the Secretary of State for consent to be relieved of the requirement imposed by paragraph 3(2) of that Schedule.

2.Y ***[This clause only applies where an academy was previously a VC school or foundation school designated with a religious character. If an academy was previously a VC school but has gone through a significant change process to adopt VA characteristics in parallel with converting to an academy then please use clause 2.W instead]*** Subject to clause 2.V, the requirements for religious education and collective worship are as follows:

a) subject to paragraph 3 of Schedule 19 to the School Standards and Framework Act 1998, which will apply as if the Academy were a foundation school or voluntary controlled school with a religious character, 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;

b) the Academy Trust must comply with section 70(1) of, and Schedule 20 to, the School Standards and Framework Act 1998 as if the Academy

were a foundation school with a religious character or a voluntary school, and as if references to "the required collective worship" were references to collective worship in accordance with the tenets and practices of the Academy's specified religion or religious denomination;

c) ***[Additional sub-clause to be added if the academy is designated with a denominational religious character - CE etc. rather than 'Christian']*** the Academy Trust must ensure that the quality of the religious education given to pupils at the Academy and the contents of the Academy's collective worship, given in accordance with the tenets and practices of its specific religion or religious denomination, is inspected. The inspection must be conducted by a person chosen by the Academy Trust and the Academy Trust must secure that the inspection complies with statutory provisions and regulations which would apply if the Academy were a foundation or voluntary school designated as having a religious character.

2.Z The Academy Trust must comply with paragraph 2A of the Schedule to The Education (Independent School Standards) Regulations 2014 in relation to the provision of Relationships Education, Relationships and Sex Education and Health Education.

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

3. GRANT FUNDING

Calculation of GAG

[***Option 1 for converter and sponsored academies: use these clauses 3.A-3.F and delete option 2****]*

3A-3D. Not used.

3.E The Secretary of State will calculate GAG based on the pupil count at the

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

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

a) for pupils in Year 11 and below, the Schools Census which is used to fund maintained schools for the financial year overlapping with the Academy Financial Year in question; and

b) for pupils in Year 12 and above, the formula which is in use at the time for maintained schools.

[***Option 2 for free schools and new provision academies: use these clauses 3.A-3.F and delete option 1***]

3.A Subject to clause 3.C, the basis of the pupil number count for the purposes of determining GAG for an Academy Financial Year will be the Academy Trust's most recent estimate provided in accordance with clause 3.B.

3.B The Secretary of State will, in advance of each Academy Financial Year for the Academy, request that the Academy Trust provides an estimate of the number of pupils on roll in the following September for the purposes of determining GAG for an Academy Financial Year. The Academy Trust must provide the requested estimate to the Secretary of State as soon as reasonably practicable.

3.C In the Academy Financial Year which immediately follows the Academy Financial Year in which all planned year groups will be present at the Academy (that is, all the pupil cohorts relevant to the age range of the Academy will have some pupils present), the basis of the pupil number count for the purpose of determining GAG will no longer be the estimate provided in accordance with clause 3.B, but in that and all following Academy Financial Years will be determined in accordance with clause 3.F.

3.D For any Academy Financial Year in which GAG for the Academy has been calculated in accordance with clauses 3.A and 3.B, an adjustment may be made to the following Academy Financial Year's formula funding element of GAG for the Academy to recognise any variation from that estimate. The Secretary of State may for this purpose use the Census for the relevant month (determined at the Secretary of State's discretion) for the Academy Financial Year in question as a means of determining pupil numbers. The additional or clawed-back grant will be only the amount relevant to the number of pupils above or below that estimate.

3.E Not used

3.F For Academy Financial Years which immediately follow the Academy Financial Year in which all planned year groups will be present at the Academy, 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

a) for pupils in Year 12 and above, the formula which is in use at the time for maintained schools.

[*End of options 1 and 2*]

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

3.H ***[This clause should be removed for academy converters. If removed,***

mark clause 3.H 'Not used'] The Secretary of State may pay post opening grant to the Academy Trust during the Start-Up Period, in order to allow the Academy to:

a) purchase a basic stock of teaching and learning materials (including library books, textbooks, software, stationery, science equipment and equipment for physical education) and other consumable materials; and

b) meet the costs associated with the recruitment and induction of additional staff.

After the Start-Up Period these costs will be met through the ordinary GAG. The post opening grant allocation for the whole of the Start-Up Period shall be specified prior to the Academy's opening.

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

3.I.1. **[This clause only applies to Free schools and Academies with nursery provision within an Academies age range]** For the avoidance of doubt, the pupil number count for the purposes of determining GAG excludes nursery provision pupils. Clauses 3.A-3.I must be read with this exclusion in mind.

Other relevant funding

3.J **[*This clause only applies to full sponsored and intermediate sponsored academies with approved Academy Action Plans – otherwise mark clause 3.J as 'Not used'*]** The Academy Trust may apply to the Secretary of State for financial assistance in relation to proposed redundancies at the Academy. In response to such an application, the Secretary of State may at his discretion agree to meet a proportion of the Academy Trust's costs arising

from the inclusion of academies in the schedules to the Redundancy Payments (Continuity of Employment in Local Government) (Modification) Order 1999. The Secretary of State may agree to meet the costs of an employee's prior eligible service, being service before the Academy opened, but the Academy Trust must meet the costs of service after the Academy opened. The Secretary of State's financial assistance in this respect will only be available in the first two years after the Academy opens.

3.K ***[This clause does not apply to free schools (unless there was a predecessor independent school), or new provision academies – in these cases mark clause 3.K as 'Not used']*** 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.

Carrying forward of funds

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

4. LAND

**[*The land clauses deal with the Academy Trust's obligations in respect of the academy site, and with protecting the public investment in the land used for the academy.*

Other clauses and definitions may need to be inserted into this Agreement, depending on the specific land arrangements for the school site; for example, if the academy is to open on a temporary site before moving to its permanent site, or if any of the land is unregistered.

Choose from the options below the version of the land clauses that seems most appropriate when considered from the viewpoint of initial establishment of the academy or free school, and delete the other

versions. More than one version may be required if different parts of the site are in different ownership.

Is the academy site being newly provided - e.g. by the Department for Education (ESFA)?

No (e.g. because a maintained school is converting to an academy and either the governing body or the local authority holds the freehold to its site:

Use version 1 if, before conversion, the governing body holds the freehold, which is to be transferred on conversion to the academy trust.

Use Version 2 if, before conversion, the governing body holds the freehold which is to be transferred on conversion to the local authority, who will then grant a lease to the academy trust. Use version 2 if, before conversion, the local authority (or another third party) holds the freehold and is to grant, on conversion, a lease to the academy trust. (Use version 7 if a new school is being established under the presumption route and a local authority is providing the land).

Use version 3 if the academy's existing site is to be made available under a church supplemental agreement or lease from site trustees.

Use <u>both</u> version 2 and version 3 if the academy's existing site is to be occupied partly under a lease provided by the LA or a third party landlord and partly under a church supplemental agreement or a lease provided by site trustees.

Yes (e.g. because the academy will be or is a free school or a new school established under the presumption route):

Use version 6 if the Secretary of State <u>is not the landlord and is</u> taking a legal charge over the new site.

Use version 7 if the Secretary of State <u>is neither the landlord nor</u> taking a legal charge over the new site e.g. if a new school is being established under the presumption route and a local authority is providing the land.

Use version 8 if the Secretary of State is the landlord – i.e. granting the lease.]

[Version 1: to be used if, before conversion, the governing body holds the freehold, which is to be transferred on conversion to the academy trust]

[If as a result of an academy conversion or trust-to-trust transfer a legal charge is required then please request legal assistance to insert appropriate provisions.]

"**Land**" means the freehold land at [ADDRESS], being [part of] the land registered with title number [●], which is to be 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 or any correspondence that affects the extent of the Land.

Restrictions on Land transfer

4.A The Academy Trust must:

a) within 28 days of the signing of this Agreement in circumstances where the Land is transferred to the Academy Trust prior to the date of this Agreement, or otherwise within 28 days of the transfer of the Land to the Academy Trust, 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, or by the proprietor of any registered charge, not being a charge registered before the entry of this restriction, 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

4.B 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.

4.C 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 provided that the Academy Trust may grant a licence or share occupation of part of the Land with a proprietor or proposed proprietor of an academy or a body or individual providing services or facilities which are for community, fundraising or recreational purposes ancillary to educational services and where no relationship of landlord and tenant arises as a result of such occupation.

Option

4.D 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;

a) if this Agreement is terminated for any reason:

b) at any time on or after the issue of a Termination Notice;

c) if, under clause 4.H, the Academy Trust and the Secretary of State agree that part of the Land should be demised or leased to another academy trust; or

d) if, under clause 4.J, the Academy Trust cannot use all or part of the Land as the permanent site of the Academy.

4.D.1 If the Option is exercised, completion will take place:

a) 28 days after the exercise date where a Termination Notice has not been issued; or

b) where a Termination Notice has been issued, the date specified in the Termination Notice as to when this Agreement shall terminate.

and in either case in accordance with the Law Society's Standard Conditions of Sale for Commercial Property in force at that date.

Option notice

4.E 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

4.F 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.

Sharing the Land

4.G Where:

a) the Secretary of State identifies basic or parental need for additional places in the area in which the Academy is situated; and

b) the Secretary of State then considers that not all the Land is needed for the operation of the Academy at planned capacity,

the Secretary of State must consult with the Academy Trust to determine whether part of the Land could be demised or leased to another academy trust, as the Secretary of State considers appropriate, for the purpose of that academy trust establishing and maintaining an educational institution on the Land.

4.H To the extent the Academy Trust and the Secretary of State agree to part of the Land being demised or leased in accordance with clause 4.G, the Academy Trust must use its best endeavours to procure all necessary consents in order to enable it to share occupation of the Land with the incoming academy trust and to provide the incoming academy trust with security of tenure over that part of the Land occupied by it, and shall enter into any legal arrangements which the Secretary of State requires for this purpose. The Secretary of State shall meet the necessary and reasonable

legal costs incurred by the Academy Trust in connection with entering into any such arrangements under this clause.

4.I For the purposes of clause 4.G:

a) a **basic need** will arise when the forecast demand for pupil places in the area where the Academy is situated is greater than the existing capacity to provide them;

b) a **parental need** will arise when the Department for Education is actually aware of an additional demand for pupil places in the area where the Academy is situated, following representations from parents in that area; and

c) **planned capacity** has the meaning given in clause 2.B.

4.J If the Academy Trust cannot use all or part of the Land as the permanent site of the Academy but the Secretary of State agrees not to terminate this Agreement on that basis, the Secretary of State may notify the Academy Trust that he intends to exercise the Option to transfer all or part of the Land for nil consideration to himself or his nominee.

4.K On or following the issue of a Termination Notice, the Secretary of State may give notice that he intends to exercise his rights under clause 4.D. Any such notice is without prejudice to his right to exercise any other rights available to him.

[Version 2: to be used if, before conversion, the local authority (or another third party) holds the freehold and is to grant, on conversion, a lease to the academy trust]

***(*Use version 7 if a new school is being established under the presumption route and a local authority is providing the land.) [If as a result of an academy conversion or trust-to-trust transfer a legal charge is required then please request legal assistance to insert appropriate provisions].**

"**Land**" means the land at [●], being [part of] the land registered with title number [●] and demised by the Lease.

"**Lease**" means the lease, any subsequent variations to the lease or other occupational agreement between the Academy Trust and a third party (the "**Landlord**") under which the Academy Trust derives title to the Land.

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

Restrictions on Land transfer

4.A The Academy Trust must:

a) within 28 days of the signing of this Agreement in circumstances where the Land is transferred to the Academy Trust prior to the date of this Agreement, or otherwise within 28 days of the transfer of the Land to the Academy Trust, 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, or by the proprietor of any registered charge, not being a charge registered before the entry of this restriction, 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

4.B 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.

4.C The Academy Trust must comply with the Lease and promptly enforce its rights against the Landlord.

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

a) terminate, vary, surrender, renew, dispose of or agree any revised rent under the Lease;

b) grant any consent or licence; or

c) create or allow any encumbrance; or

d) part with or share possession or occupation; or

e) enter into any onerous or restrictive obligations,

in respect of all or part of the Land provided that the Academy Trust may grant a licence or share occupation of part of the Land with a proprietor or proposed proprietor of an academy or a body or individual providing services or facilities which are within the uses permitted by the Lease and where no relationship of landlord and tenant arises as a result of such occupation.

Option

4.E The Academy Trust grants and the Secretary of State accepts an option (the "**Option**") to acquire the Land at nil consideration. The Secretary of State may exercise the Option in writing:

a) if this Agreement is terminated for any reason;

b) at any time on or after the issue of a Termination Notice; or

c) if, under clause 4.K, the Academy Trust and the Secretary of State agree that part of the Land should be demised or subleased to another academy trust;

d) if, under clause 4.M, the Academy Trust cannot use all or part of the Land as the permanent site of the Academy.

4.E.1 If the Option is exercised, completion will take place

a) 28 days after the exercise date where a Termination Notice has not been issued; or

b) where a Termination Notice has been issued, the date specified in the Termination Notice as to when this Agreement shall terminate

and in either case in accordance with the Law Society's Standard Conditions of Sale for Commercial Property in force at that date.

Option notice

4.F The Academy Trust:

a) must, within 14 days after acquiring the 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

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

a) send a copy of it to the Secretary of State within 14 days, stating how the Academy Trust intends to respond to it;

b) promptly give the Secretary of State all the information he asks for about it;

c) allow the Secretary of State to take all necessary action, with or instead of the Academy Trust, to comply with it, and

d) use its best endeavours to help the Secretary of State in connection with it.

Breach of Lease

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

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

a) promptly give the Secretary of State all the information he asks for about the breach;

b) allow the Secretary of State to take all necessary action, with or instead of the Academy Trust, to remedy or prevent the breach, and

c) use its best endeavours to help the Secretary of State to remedy or prevent the breach.

Sharing the Land

4.J Where:

a) the Secretary of State identifies basic or parental need for additional places in the area in which the Academy is situated; and

b) the Secretary of State then considers that not all the Land is needed for the operation of the Academy at planned capacity,

the Secretary of State must consult with the Academy Trust to determine whether part of the Land could be demised or sublet to another academy trust, as the Secretary of State considers appropriate, for the purpose of that academy trust establishing and maintaining an educational institution on the Land.

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

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

a) a **basic need** will arise when the forecast demand for pupil places in the area where the Academy is situated is greater than the existing capacity to provide them;

b) a **parental need** will arise when the Department for Education is actually aware of an additional demand for pupil places in the area

where the Academy is situated, following representations from parents in that area; and

c) **planned capacity** has the meaning given in clause 2.B.

4.M If the Academy Trust cannot use all or part of the Land as the permanent site of the Academy but the Secretary of State agrees not to terminate this Agreement on that basis, the Secretary of State may notify the Academy Trust that he intends to exercise the Option to transfer the Land for nil consideration to himself or his nominee.

4.N On or following the issue of a Termination Notice, the Secretary of State may give notice that he intends to exercise his rights under clause 4.E. Any such notice is without prejudice to his right to exercise any other rights available to him.

[Version 3: existing site to be held under church supplemental agreement or lease from site trustees]

[If a church supplemental agreement:-]

The parties rights and obligations in respect of the Land are set out in the Church Supplemental Agreement dated [DATE] and made between (1) the Secretary of State; (2) the Academy Trust; (3) [SITE TRUSTEES OR FOUNDATION]; and (4) [RELIGIOUS AUTHORITY such as diocesan board of education or Bishop]. For the purposes of this clause, the Land has the meaning given in the Church Supplemental Agreement.

[If a lease:-]

The parties' rights and obligations in respect of the Land are set out in the lease dated [DATE] and made between (1) the Academy Trust and (2) [SITE TRUSTEES OR FOUNDATION] [Include any other parties as appropriate]. For the purposes of this clause, the Land has the meaning given in the lease.

[Version 4: NO LONGER USED]

[Version 5: NO LONGER USED]

[Version 6: new leasehold site provided by Department for Education (ESFA) with a legal charge in favour of the Secretary of State]

"**Debt**" means an amount equal to 100% of the Land Value;

"**Discharge Process**" means the removal of:

i. the Legal Charge registered with Companies House against the Academy Trust;

ii. the Legal Charge from the charges register at the Land Registry against the title for the Permanent Land;

iii. the restriction in the proprietorship register referred to in clause 4.C(a); and

iv. the notice in the proprietorship register referred to in clause 4.M(a).

"**Permanent Land**" means the land at [●], being [part of] the land registered with title number [●] and demised by the Permanent Lease.

"**Permanent Lease**" means the lease, any subsequent variations to the lease or other occupational agreement between the Academy Trust and a third party (the "**Permanent Landlord**") under which the Academy Trust derives or will derive title to the Permanent Land.

"**Land Value**" means, at any time:

i. where the Permanent Land has been disposed of as a result of the enforcement of the Legal Charge by the Secretary of State, the proceeds of that disposal after payment of the seller's necessary and reasonable costs in connection with the disposal; or

ii. in any other case, the Market Value.

"**Legal Charge**" means the legal charge over the Permanent Land to be entered into by the Academy Trust in favour of the Secretary of State, in a form and substance satisfactory to the Secretary of State.

"**Market Value**" means the market value (as defined in the current edition of the RICS Valuation Standards) of the relevant part of the Permanent Land as determined by a professionally qualified independent valuer.

"**Property Notice**" means any order, notice, proposal, demand or other requirement issued by any competent authority (including the Permanent Landlord [and/or the

Temporary Landlord unless the Temporary Landlord is the Secretary of State for Housing, Communities and Local Government]) which materially affects the Academy Trust's ability to use the Permanent Land [or the Temporary Land] for the purposes of the Academy or any correspondence that affects the extent of the Permanent Land [or the Temporary Land].

["Temporary Land" means the land at [*insert address of temporary site*] as edged red on the plan attached to this Agreement at Annex [ ] and demised or to be demised by the Temporary Lease.]

["Temporary Lease" means the lease, any subsequent variations to the lease or other occupational agreement between the Academy Trust and a third party (the **"Temporary Landlord")** under which the Academy Trust derives title or will derive title to the Temporary Land.]

Debt

4.A The Academy Trust must pay the Debt to the Secretary of State on termination of this Agreement or in accordance with clauses 4.O(b) or 4.V(b)(i) or on a sale of all or part of the Permanent Land with or without the Secretary of State's consent.

4.B The Debt is secured by the Legal Charge.

Restrictions on Permanent Land transfer

4.C The Academy Trust must:

a) apply to the Land Registry using form RX1 for the following restrictions (each a "**Restriction**") to be entered in the proprietorship register for the Permanent Land by the following deadlines:

i. within 28 days after acquiring the Permanent Land:

"*No disposition of the registered estate by the proprietor of the registered estate, or by the proprietor of any registered charge, not being a charge registered before the entry of this restriction, 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*"; and

iii. within 28 days after entering into the Legal Charge:

"No disposition of the registered estate by the proprietor of the registered estate or by the proprietor of any registered charge, not being a charge registered before the entry of this restriction, is to be registered without a written consent signed by the proprietor for the time being of the charge dated [date of charge] in favour of The Secretary of State for Education referred to in the charges register or by its conveyancer";

b) take any further steps required to ensure that each Restriction is entered on the proprietorship register of the Academy Trust's title;

c) promptly confirm to the Secretary of State when each Restriction has been registered;

d) if it has not registered each Restriction, allow 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 a 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

4.D The Academy Trust must keep the Permanent Land [and the Temporary Land] clean and tidy and make good any damage or deterioration to the Permanent Land [and the Temporary Land]. The Academy Trust must not do anything to lessen the value or marketability of the Permanent Land [or the Temporary Land] without the Secretary of State's consent. The Academy Trust must comply with the Permanent Lease [and the Temporary Lease] and promptly enforce its rights against the Landlord [and, where the Temporary Landlord is not the Secretary of State for Housing, Communities and Local Government, the Temporary Landlord].

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

a) terminate, renew, vary, surrender, dispose of or agree any revised rent under the Permanent Lease [or, where the Temporary Landlord is not the Secretary of State for Housing, Communities and Local Government, the Temporary Lease]; or

b) grant any consent or licence; or

c) create or allow any encumbrance; or

d) part with or share possession or occupation; or

e) enter into any onerous or restrictive obligations,

in respect of all or part of the Permanent Land [or the Temporary Land] Provided that the Academy Trust may grant a licence or share occupation of part of the Permanent Land with a proprietor or proposed proprietor of an academy or a body or individual providing services or facilities which are within the uses permitted by the Permanent Lease [or the Temporary Lease] and where no relationship of landlord and tenant arises as a result of such occupation.

4.F The Academy Trust must obtain the Secretary of State's consent before taking any action, including the service of any notice or waiver of any condition, under any contract relating to the acquisition of the Permanent Land [or the Temporary Land].

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

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

a) promptly give the Secretary of State all the information he asks for about the breach;

b) allow the Secretary of State to take all necessary action, with or instead of the Academy Trust, to remedy or prevent the breach, and

c) use its best endeavours to help the Secretary of State to remedy or prevent the breach.

4.I If the Academy Trust has not entered into the Permanent Lease by [DATE] [or the Temporary Lease by [DATE], the Secretary of State may serve a Termination Notice.

4.J If any part of the property situated on the Permanent Land [or the Temporary Land] is damaged or destroyed by an insured risk and the Academy Trust receives the proceeds of insurance but it cannot apply those proceeds to rebuild or reinstate the property because it is impossible or impractical to do so, then the Academy Trust shall pay the insurance proceeds to the Secretary of State in full.

Property notices

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

a) send a copy of it [(where not issued by the Secretary of State for Housing, Communities and Local Government in his capacity as the Temporary Landlord)] 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.

Option

4.L The Academy Trust grants and the Secretary of State accepts an option (the "**Option**") to acquire the Permanent Land at nil consideration. The Secretary of State may exercise the Option in writing:

a) if this Agreement is terminated for any reason;

b) at any time on or after the issue of a Termination Notice; or

c) if any of the conditions (a) to (c) in clause 4.P applies; or

d) if the Academy Trust cannot use all or part of the Permanent Land as the permanent site of the Academy under clause 4.O.

4.L.1 If the Option is exercised, completion will take place−

a) 28 days after the exercise date where a Termination Notice has not been issued; or,

b) where a Termination Notice has been issued, the date specified in the Termination Notice as to when this Agreement shall terminate;

and in either case in accordance with the Law Society's Standard Conditions of Sale for Commercial Property in force at that date.

Option notice

4.M The Academy Trust:

a) must, within 14 days after acquiring the Permanent 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 Permanent 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 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.

Legal Charge

4.N The Academy Trust must

a) enter into the Legal Charge:

i. on completion of the acquisition of the Permanent Land, if at that time the Academy Trust is an exempt charity for the purposes of the Charities Act 2011, or

ii. within two weeks after the Academy opens, if the Academy Trust is not an exempt charity for the purposes of the Charities Act 2011 when it acquires the Permanent Land;

b) within 21 days from the date of the Legal Charge, register it with Companies House or, if required by the Secretary of State, use all reasonable endeavours to assist the Secretary of State in doing so, including signing and executing any necessary documents;

c) within 28 days from the date of the Legal Charge, apply to the Land Registry for the Legal Charge to be entered on the charges register, taking any other steps required to have the Legal Charge registered and promptly confirming to the Secretary of State when this has been done; and

d) if it has not registered the Legal Charge, allow the Secretary of State to register it, and use all reasonable endeavours to help register the Legal Charge, including signing and executing any necessary documents and dealing with requisitions from the Land Registry.

Permanent Land not used for the purposes of the Academy

4.O If the Academy Trust cannot use all or part of the Permanent Land as the permanent site of the Academy but the Secretary of State agrees not to terminate this Agreement on that basis, the Secretary of State may notify the Academy Trust that:

a) he intends to exercise the Option to transfer the Permanent Land for nil consideration to himself or his nominee;

b) the Academy Trust must pay the Debt or the Market Value; and/or

c) the Academy Trust must sell the Permanent Land keeping some or all of the sale proceeds to fulfil its charitable purposes by funding the purchase of an alternative permanent site for the Academy, and accounting to the Secretary of State for any proceeds not so used.

Sharing the Permanent Land

4.P If:

a) the Academy does not reach its planned capacity, as stated in clause 2.B, within [●] Academy Financial Years; or

b) the Academy Trust or the Secretary of State serves notice to terminate this Agreement under clause 5.A; or

c) the Secretary of State considers that not all the Permanent Land is needed for the operation of the Academy at planned capacity,

then:

i. the Academy Trust must share occupation of the Permanent Land with such other academy trust as the Secretary of State considers appropriate and enter into any legal arrangements which the Secretary of State requires for this purpose provided that the Secretary of State shall meet the necessary and reasonable legal costs incurred by the Academy Trust in connection with entering into any such arrangements under this clause; or

ii. the Academy Trust must sell the Permanent Land as required by the Secretary of State and account for the sale proceeds to the Secretary of State in payment of the Debt, after which the Secretary of State will carry out the Discharge Process over the Permanent Land.

Exercise of Rights

4.Q On termination of this Agreement, the Secretary of State may give notice that he intends to exercise his rights under clauses 4.L, 5.DD or 5.EE or under the

Legal Charge. Any such notice must state which clause of this Agreement the Secretary of State intends to exercise, and is without prejudice to his right to exercise any other rights available to him.

4.R If the Secretary of State exercises the Option on termination of this Agreement, then:

a) the Academy Trust will be deemed to have paid the Debt to the Secretary of State;

b) the Academy Trust will be deemed to have paid to the Secretary of State a proportion of the proceeds from the sale of the Permanent Land under clause 5.DD b); and

c) the Secretary of State will carry out the Discharge Process;

4.S If the Secretary of State enforces the Legal Charge on the termination of this Agreement, then:

a) the Academy Trust will be deemed to have paid the Debt to the Secretary of State after the Debt has been realised by a receiver;

b) the Academy Trust will be deemed to have paid to the Secretary of State a proportion of the proceeds from the sale of the Permanent Land as required under clause 4.29 of the Master Agreement; and

c) the Secretary of State will carry out the Discharge Process.

4.T If, on termination of this Agreement, the Secretary of State exercises his rights under clause 5.DD, then:

a) the Academy Trust will be deemed to have paid the Debt to the Secretary of State; and

b) the Secretary of State will carry out the Discharge Process.

4.U If, on termination of this Agreement, the Secretary of State agrees under clause 5.EE that the Academy Trust may invest the proceeds from the sale of the Permanent Land for its charitable objects, or directs the Academy Trust to pay all or part of the sale proceeds to the relevant LA, then:

a) the Academy Trust will be deemed to have paid the Debt to the Secretary of State; and

b) the Secretary of State will carry out the Discharge Process.

4.V If the Academy Trust applies to the Secretary of State for consent to sell all or part of the Permanent Land, and if the Secretary of State agrees that the Permanent Land is no longer needed or cannot be used for the purposes of the Academy, he may:

a) exercise the Option; or

b) consent to the sale subject to one or more of the following conditions:

i. that (notwithstanding clause 4.29 of the Master Agreement) the Academy Trust pays the Debt (or, if it proposes to sell only part of the Permanent Land, pays the Market Value of the part sold) to the Secretary of State;

ii. that pursuant to clause 4.29 of the Master Agreement, the Academy Trust keeps some or all of the sale proceeds for its charitable purposes, accounting to the Secretary of State for the remainder; or

iii. that pursuant to clause 4.30 of the Master Agreement, the Academy Trust pays all or some of the sale proceeds to the relevant LA and may reinvest all or some of the sale proceeds for its charitable purposes.

4.W If the Secretary of State consents to the sale of the Permanent Land, subject to any of the conditions in clause 4.V(b):

a) if the Secretary of State enforces the Legal Charge, then:

i. the Academy Trust will be deemed to have paid the Debt to the Secretary of State after the Debt has been realised by a receiver;

ii. the Academy Trust will be deemed to have paid a proportion of the sale proceeds to the Secretary of State as required under clause 4.29 of the Master Agreement; and

iii. the Secretary of State will carry out the Discharge Process;

b) if all of the Permanent Land is sold and the Secretary of State agrees that the Academy Trust may keep some or all of the sale proceeds for its charitable purposes, accounting to the Secretary of State for the remainder, then:

i. the Academy Trust will be deemed to have paid the Debt to the Secretary of State;

ii. the Academy Trust will be deemed to have paid a proportion of the sale proceeds to the Secretary of State as required under clause 4.29 of the Master Agreement; and

iii. the Secretary of State will carry out the Discharge Process;

c) if part of the Permanent Land is sold, and the Secretary of State agrees that the Academy Trust may keep some or all of the sale proceeds for its charitable purposes, accounting to the Secretary of State for the remainder, then:

i. the Academy Trust will be deemed to have paid the Debt to the Secretary of State to the extent of the Market Value;

ii. the Academy Trust will be deemed to have paid a proportion of the sale proceeds to the Secretary of State, as required under clause 4.29 of the Master Agreement, in relation to the relevant part of the Permanent Land; and

iii. the Secretary of State will carry out the Discharge Process in relation to the part of the Permanent Land which has been sold;

d) if the Secretary of State directs the Academy Trust to pay some or all of the proceeds from the sale of the Permanent Land to the relevant LA under clause 4.30 of the Master Agreement, or agrees that the Academy Trust may reinvest the sale proceeds for its charitable purposes, the Secretary of State will carry out the Discharge Process in relation to the part of the Permanent Land which has been sold.

4.X If the Secretary of State exercises the Option over all of the Permanent Land and the Academy Trust transfers all of the Permanent Land to the Secretary of State for nil consideration, then:

a) the Academy Trust will be deemed to have paid the Debt to the Secretary of State;

b) the Academy Trust will be deemed to have paid a proportion of the sale proceeds to the Secretary of State as required under clause 4.29 of the Master Agreement; and

c) the Secretary of State will carry out the Discharge Process.

4.Y Not used.

Payment of Debt

4.Z If the Academy Trust pays the Debt to the Secretary of State, the Secretary of State will carry out the Discharge Process.

4.AA If the Academy Trust:

a) sells some or all of the Permanent Land in accordance with clause 4.V, or

b) pays the Debt to the Secretary of State,

it will negotiate in good faith with the Secretary of State to agree a deed of variation for this Agreement.

[Version 7: new leasehold site provided by Department for Education (ESFA) without a legal charge where the Secretary of State is not the landlord - use this version if a new school is being established under the presumption route and a local authority is providing the land]

"**Permanent Land**" means the land at [●], being [part of] the land registered with title number [●] and demised by the Permanent Lease.

"**Permanent Lease**" means the lease, any subsequent variations to the lease or other occupational agreement between the Academy Trust and a third party (the "**Permanent Landlord**") under which the Academy Trust derives or will derive title to the Permanent Land.

"**Property Notice**" means any order, notice, proposal, demand or other requirement issued by any competent authority (including the Permanent Landlord [and/or the Temporary Landlord unless the Temporary Landlord is the Secretary of State for Housing, Communities and Local Government]) which materially affects the Academy Trust's ability to use the Permanent Land [or the Temporary Land] for the purposes of the Academy or any correspondence that affects the extent of the Permanent Land [or the Temporary Land].

[**"Temporary Land"** means the land at [*insert address of temporary site*] as edged red on the plan attached to this Agreement at Annex [ ] and demised or to be demised by the Temporary Lease.]

["**Temporary Lease**" means the lease, any subsequent variations to the lease or other occupational agreement between the Academy Trust and a third party (the "**Temporary Landlord**") under which the Academy Trust derives title or will derive title to the Temporary Land.]

Restrictions on Permanent Land transfer

4.A The Academy Trust must:

a) within 28 days of the signing of this Agreement in circumstances where the Permanent Land is transferred to the Academy Trust prior to the date of this Agreement, or otherwise within 28 days of the transfer of the Permanent Land to the Academy Trust, apply to the Land Registry using Form RX1 for the following restriction (the "**Restriction**") to be entered in the proprietorship register for the Permanent Land:

"*No disposition of the registered estate by the proprietor of the registered estate, or by the proprietor of any registered charge, not being a charge registered before the entry of this restriction, 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 required to ensure that the Restriction is entered on the proprietorship register of the Academy Trust's title;

c) promptly confirm to the Secretary of State when the Restriction has been registered;

d) if it has not registered the Restriction, allow 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

4.B The Academy Trust must keep the Permanent Land [and the Temporary Land] clean and tidy and make good any damage or deterioration to the Permanent Land [and the Temporary Land]. The Academy Trust must not do anything to lessen the value or marketability of the Permanent Land [or the Temporary Land] without the Secretary of State's consent. The Academy Trust must comply with the Permanent Lease [and the Temporary Lease] and promptly enforce its rights against the Permanent Landlord [and, where the Temporary Landlord is not the Secretary of State for Housing, Communities and Local Government, the Temporary Landlord].

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

a) terminate, renew, vary, surrender, dispose of or agree any revised rent under the Permanent Lease [or, where the Temporary Landlord is not the Secretary of State for Housing, Communities and Local Government, the Temporary Lease]; or

b) grant any consent or licence; or

c) create or allow any encumbrance; or

d) part with or share possession or occupation; or

e) enter into any onerous or restrictive obligations,

in respect of all or part of the Permanent Land [or the Temporary Land] Provided that the Academy Trust may grant a licence or share occupation of part of the Permanent Land with a proprietor or proposed proprietor of an academy or a body or individual providing services or facilities which are within the uses permitted by the Permanent Lease [or the Temporary Lease] and where no relationship of landlord and tenant arises as a result of such occupation.

4.D The Academy Trust must obtain the Secretary of State's consent before taking any action, including the service of any notice or waiver of any

condition, under any contract relating to the acquisition of the Permanent Land [or the Temporary Land].

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

4.F After notifying the Secretary of State under clause 4.E, the Academy Trust must:

a) promptly give the Secretary of State all the information he asks for about the breach;

b) allow the Secretary of State to take all necessary action, with or instead of the Academy Trust, to remedy or prevent the breach, and

c) use its best endeavours to help the Secretary of State to remedy or prevent the breach.

4.G If the Academy Trust has not entered into the Permanent Lease by [DATE] [or the Temporary Lease by [DATE]], the Secretary of State may serve a Termination Notice.

4.H If any part of the property situated on the Permanent Land [or the Temporary Land] is damaged or destroyed by an insured risk and the Academy Trust receives the proceeds of insurance but it cannot apply those proceeds to rebuild or reinstate the property because it is impossible or impractical to do so, then the Academy Trust shall pay the insurance proceeds to the Secretary of State in full.

Property notices

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

a) send a copy of it [(where not issued by the Secretary of State for Housing, Communities and Local Government in his capacity as the Temporary Landlord)] 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.

Option

4.J The Academy Trust grants and the Secretary of State accepts an option (the "**Option**") to acquire the Permanent Land at nil consideration. The Secretary of State may exercise the Option in writing:

a) if this Agreement is terminated for any reason;

b) at any time on or after the issue of a Termination Notice; or

c) if any of the conditions (a) to (c) in clause 4.M applies; or

d) if the Academy Trust cannot use all or part of the Permanent Land as the permanent site of the Academy under clause 4.L.

4.J.1 If the Option is exercised, completion will take place

a) 28 days after the exercise date where a Termination Notice has not been issued; or,

b) where a Termination Notice has been issued, the date specified in the Termination Notice as to when this Agreement shall terminate

and in either case in accordance with the Law Society's Standard Conditions of Sale for Commercial Property in force at that date.

Option notice

4.K The Academy Trust:

a) must, within 14 days after acquiring the Permanent 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 Permanent 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 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.

Permanent Land not used for the purposes of the Academy

4.L If the Academy Trust cannot use all or part of the Permanent Land as the permanent site of the Academy but the Secretary of State agrees not to terminate this Agreement on that basis, the Secretary of State may notify the Academy Trust that he intends to exercise the Option to transfer the Permanent Land for nil consideration to himself or his nominee.

Sharing the Permanent Land

4.M If:

a) the Academy does not reach its planned capacity, as stated in clause 2.B, within [●] Academy Financial Years or

b) the Academy Trust or the Secretary of State serves notice to terminate this Agreement under clause 5.A or

c) the Secretary of State considers that not all the Permanent Land is needed for the operation of the Academy at planned capacity,

the Academy Trust must share occupation of the Permanent Land with such other Academy as the Secretary of State considers appropriate and enter into any legal arrangements which the Secretary of State requires for this purpose provided that the Secretary of State shall meet the necessary and reasonable legal costs incurred by the Academy Trust in connection with entering into any such arrangements under this clause.

Exercise of Rights

4.N. On or following the issue of a Termination Notice, the Secretary of State may give notice that he intends to exercise his rights under clause 4.J or 4.K. Any such notice is without prejudice to his right to exercise any other rights available to him.

[Version 8: new leasehold site provided by Department for Education where the Secretary of State is the landlord]

"**Permanent Land**" means the land at [●], being [part of] the land registered with title number [●] and demised by the Permanent Lease.

"**Permanent Lease**" means the lease, any subsequent variations to the lease or other occupational agreement between the Academy Trust and the Secretary of State for Housing, Communities and Local Government (**the "Permanent Landlord"**) under which the Academy Trust derives title or will derive title to the Permanent Land.

"**Property Notice"** means any order, notice, proposal, demand or other requirement issued by any competent authority [(including the Temporary Landlord unless the Temporary Landlord is the Secretary of State for Housing, Communities and Local Government)] which materially affects the Academy Trust's ability to use the Permanent Land [or the Temporary Land] for the purposes of the Academy or any correspondence that affects the extent of the Permanent Land [or the Temporary Land].

[**"Temporary Land"** means the land at [*insert address of temporary site*] as edged red on the plan attached to this Agreement at Annex [ ] and demised or to be demised by the Temporary Lease].

[**"Temporary Lease"** means the lease, any subsequent variations to the lease or other occupational agreement between the Academy Trust and a third party (the "**Temporary Landlord**" under which the Academy Trust derives title or will derive title to the Temporary Land.]

Restrictions on Permanent Land transfer

[***This clause applies only if the lease is registrable at the Land Registry – otherwise mark clause 4.A as 'Not used'.***]

4.A The Academy Trust must:

a) within 28 days of the signing of this Agreement in circumstances where the Permanent Land is demised to the Academy Trust prior to the date of this Agreement, or otherwise within 28 days of the demise of the Permanent Land to the Academy Trust, apply to the Land Registry using Form RX1 for the following restriction (the "**Restriction**") to be entered in the proprietorship register for the Permanent Land:

No disposition of the registered estate by the proprietor of the registered estate, or by the proprietor of any registered charge, not being a charge registered before the entry of this restriction, 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 required to ensure that the Restriction is entered on the proprietorship register of the Academy Trust's title;

c) promptly confirm to the Secretary of State when the Restriction has been registered;

d) if it has not registered the Restriction, allow 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

4.B The Academy Trust must keep the Permanent Land [and the Temporary Land] clean and tidy and make good any damage or deterioration to the Permanent Land [and the Temporary Land]. The Academy Trust must not do anything to lessen the value or marketability of the Permanent Land [and the Temporary Land] without the Secretary of State's consent. The Academy Trust must comply with the Permanent Lease [and the Temporary Lease and where the Temporary Landlord is not the Secretary of State for Housing, Communities and Local Government promptly enforce its rights against the Temporary Landlord].

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

a) [where the Temporary Landlord is not the Secretary of State for Housing, Communities and Local Government, terminate, renew, vary,

surrender, dispose of or agree any revised rent under the Temporary Lease, or]

b) grant any consent or licence; or

c) create or allow any encumbrance including charging the land; or

d) part with or share possession or occupation; or

e) enter into any onerous or restrictive obligations,

in respect of all or part of the Permanent Land [or the Temporary Land] Provided that the Academy Trust may grant a licence or share occupation of part of the Permanent Land with a proprietor or proposed proprietor of an academy or a body or individual providing services or facilities which are within the uses permitted by the Permanent Lease and where no relationship of landlord and tenant arises as a result of such occupation.

4.D The Academy Trust must obtain the Secretary of State's consent before taking any action, including the service of any notice or waiver of any condition, under any contract relating to the acquisition of the Permanent Land [or the Temporary Land].

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

4.F After notifying the Secretary of State under clause 4.E, the Academy Trust must:

a) promptly give the Secretary of State all the information he asks for about the breach;

b) allow the Secretary of State to take all necessary action, with or instead of the Academy Trust, to remedy or prevent the breach, and

c) use its best endeavours to help the Secretary of State to remedy or prevent the breach.

4.G If the Academy Trust has not entered into the Permanent Lease by [DATE] [or the Temporary Lease by [DATE], the Secretary of State may serve a Termination Notice.

4.H If any part of the property situated on the Permanent Land [or the Temporary Land] is damaged or destroyed by an insured risk and the Academy Trust receives the proceeds of insurance but it cannot apply those proceeds to

rebuild or reinstate the property because it is impossible or impractical to do so, then the Academy Trust shall pay the insurance proceeds to the Secretary of State in full.

Property Notices

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

a) send a copy of it (where not issued by the Secretary of State for Housing, Communities and Local Government in its capacity as the Temporary Landlord) 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.

Sharing the Permanent Land

[***This clause applies only if the permanent lease is in the long form – if the lease takes the short form, mark clause 4.J as 'Not used'.***]

4.J If:

a) the Academy does not reach its planned capacity, as stated in clause 2.B, within [●] Academy Financial Years from and including the first year of opening; or

b) the Academy Trust or the Secretary of State serves notice to terminate this Agreement under clause 5.A; or

c) the Secretary of State considers, having consulted with the Academy, that not all the Permanent Land is needed for the operation of the Academy at planned capacity,

the Academy Trust must share occupation of the Permanent Land with such other Academy as the Secretary of State considers appropriate and enter into any legal arrangements which the Secretary of State requires for this purpose Provided that the Secretary of State shall meet the necessary and reasonable legal costs incurred by the Academy Trust in connection with entering into any such arrangements under this clause.

4.K In the event of any inconsistency between the provisions of this Agreement and the Permanent Lease, the provisions of this Agreement will prevail and,

for the avoidance of doubt, nothing in the Permanent Lease precludes any requirement for the Academy Trust to obtain the consent of the Secretary of State for any matters or dealings relating to the Permanent Land.

5. TERMINATION

Termination by either party

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

Termination Warning Notice

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

a) the Academy Trust has breached the provisions of this Agreement or the Master Agreement; or

b) the standards of performance of pupils at the Academy are unacceptably low; or

c) there has been a serious breakdown in the way the Academy is managed or governed; or

d) the safety of pupils or staff is threatened, including due to breakdown of discipline; or

e) the Academy is Coasting provided he has notified the Academy Trust that it is Coasting.

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

a) the action the Academy Trust must take;

b) the date by which the action must be completed; and

c) the date by which the Academy Trust must make any representations, or confirm that it agrees to undertake the specified action.

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

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

Termination by the Secretary of State after inspection

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

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

b) the Academy requires significant improvement

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

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

5.G.1 **[*This clause applies to a boarding academy/boarding free school only, otherwise mark clause 5.G.1 'Not used'*]**If, following an inspection, the Chief Inspector makes a notification to the Secretary of State in respect of the Academy under section 87(4) of the Children Act 1989, or the Chief Inspector is otherwise of the opinion that the Academy Trust has not met the National Minimum Standards or the Independent School Standards in respect of the Academy, the Secretary of State may serve a Termination Warning Notice, specifying the date by which the Academy Trust must make any representations.

5.H If the Secretary of State has served a Termination Warning Notice under clause 5.F [*or clause 5.G.1][***insert if clause 5.G.1 used***]and:

a) has not received any representations from the Academy Trust by the date specified in the notice; or

b) having considered the representations made by the Academy Trust remains satisfied that this Agreement should be terminated;

he may serve a Termination Notice.

5.I ***[This clause applies to sponsored academies only – otherwise mark clause 5.I as 'Not used']***If the Chief Inspector gives a notice referred to in clause 5.F [*or clause 5.G.1][***insert if clause 5.G.1 used***] to the Academy Trust within two years after the Academy opened, the Secretary of State may only serve a Termination Warning Notice under clause 5.F [*or clause 5.G.1] [***insert if clause 5.G.1 used***] if:

a) the Chief Inspector has held a monitoring inspection under section 8 of the Education Act 2005 later than two years after the Academy opened; and

b) the Chief Inspector considers that the Academy is not making enough progress towards the removal of the designation referred to in his notice.

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

Termination by the Secretary of State

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

5.K ***[This clause applies to free schools, and may be applied to new provision academies in some cases – otherwise mark clause 5.K as 'Not***

used']If at any time before the Academy opens, the total number of prospective pupils excluding any pupils receiving nursery provision who have accepted offers of places to attend the Academy in [month and year] is less than [NUMBER], the Secretary of State may:

a) require the Academy Trust not to open the Academy until [NUMBER] prospective pupils have accepted offers of places to attend the Academy; or

b) serve a Termination Notice.

5.L ***[This clause applies to free schools, and may be applied to new provision academies in some cases – otherwise mark clause 5.L as 'Not used']***If at any time after the Academy has opened, the Secretary of State considers that the Academy is not financially viable because of low pupil numbers, then he may:

a) serve a Termination Warning Notice; or

b) serve a Termination Notice.

5.M ***[This clause applies to free schools, and may be applied to new provision academies in some cases – otherwise mark clause 5.M as 'Not used']***If both parties agree that the Academy is not financially viable because of low pupil numbers, they may jointly terminate this Agreement after agreeing the precise terms of termination.

5.N ***[This clause applies to free schools, and may be applied to new provision academies in some cases – otherwise mark clause 5.N as 'Not used']***If full planning permission (including where relevant listed building consent) in respect of the Permanent Land [or the Temporary Land] has not been obtained by [DATE], the Secretary of State may serve a Termination Notice.

5.O ***[This clause applies to free schools, and may be applied to new provision academies in some cases – otherwise mark clause 5.O as 'Not used']***If at any time before the Academy opening date, the Secretary of State

considers that:

a) the Academy would, on opening, provide an unacceptably low standard of education; or

b) the safety of pupils or staff at the Academy would, on opening, be threatened; or

c) the staff employed at the Academy are unsuitable; or

d) there is a serious breakdown in the way the Academy Trust is being managed or governed; or

e) the buildings and other structures on the Permanent Land [or the Temporary Land] are unsuitable or the Academy Trust has not obtained Building Regulations approval,

he may either:

A. require the Academy Trust:

i. not to open the Academy; or

ii. not to admit pupils of a particular age range, to be determined by the Secretary of State; or

iii. not to use any building or other structure on the Permanent Land [or the Temporary Land],

until each relevant matter in paragraphs (a) to (e) above has been resolved to the Secretary of State's satisfaction; or

B. serve a Termination Notice.

Funding and admission during notice period

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

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

Notice of intention to terminate by Academy Trust

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

5.S If the Academy Trust is of the opinion that, after receipt of the Funding Allocation for the next Academy Financial Year (the "**Critical Year**") and after taking into account all other resources likely to be available to the Academy, including other funds that are likely to be available to the Academy from other academies operated by the Academy Trust ("**All Other Resources**"), it is likely that the cost of running the Academy during the Critical Year would cause the Academy Trust to become insolvent (and for this reason only) then the Academy Trust may give written notice of its intention to terminate this Agreement on 31 August before the Critical Year.

5.T Any notice given by the Academy Trust under clause 5.S must be provided to the Secretary of State within six weeks of the Secretary of State issuing the Funding Allocation. The notice given by the Academy Trust under clause 5.S must specify:

a) the grounds upon which the Academy Trust's opinion is based, including:

i. evidence of those grounds;

ii. any professional accounting advice the Academy Trust has received;

iii. a detailed statement of steps which the Academy Trust proposes

to take to ensure that the running costs of the Academy are reduced such that costs are less than the Funding Allocation and All Other Resources, and the period of time within which such steps will be taken; and

b) the shortfall in the Critical Year between the Funding Allocation and All Other Resources expected to be available to the Academy Trust to run the Academy and the projected expenditure on the Academy; and

c) a detailed budget of income and expenditure for the Academy during the Critical Year (the "**Projected Budget**").

5.U Both parties will use their best endeavours to agree whether or not the cost of running the Academy during the Critical Year would cause the Academy Trust to become insolvent. Both parties recognise that they will need to engage in a constructive dialogue at the time about how best to provide education for the pupils at the Academy and use their best endeavours to agree a practical solution to the problem.

5.V If no agreement is reached by 30 April (or another date if agreed between the parties) as to whether the cost of running the Academy during the Critical Year would cause the Academy Trust to become insolvent, then that question will be referred to an independent expert (the "**Expert**") for resolution. The Expert's determination will be final and binding on both parties. The Expert will be requested to specify in his determination the amount of the shortfall in funding (the "**Shortfall**").

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

5.X The Expert will be required in reaching his determination to take account of advice from an educational specialist who is professionally familiar with the issues arising from the budget management of schools. If the parties fail to

agree upon the appointment of the educational specialist then the educational specialist will be appointed by the Chairman of the Specialist Schools and Academies Trust (or any successor or equivalent body). The educational specialist's fees will be borne equally between the parties.

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

Effect of termination

5.Z If this Agreement is terminated, the Academy will cease to be an Academy within the meaning of sections 1 and 1A of the Academies Act 2010.

5.AA Subject to clauses 5.BB and 5.CC, if the Secretary of State terminates this Agreement under clause 5.A, he will indemnify the Academy Trust. If the Secretary of State terminates this Agreement otherwise than under clause 5.A, he may at his discretion indemnify or compensate the Academy Trust.

5.BB The amount of any such indemnity or compensation will be determined by the Secretary of State, having regard to representations made to him by the Academy Trust, and will be paid as and when the Secretary of State considers appropriate.

5.CC The categories of expenditure incurred by the Academy Trust in consequence of termination, for which the Secretary of State may indemnify the Academy Trust under clauses 5.AA, may include:

a) staff compensation and redundancy payments;

b) compensation payments in respect of broken contracts;

c) expenses of disposing of assets or adapting them for other purposes;

d) legal and other professional fees; and

e) dissolution expenses.

5.DD If this Agreement is terminated, and the Academy Trust owns capital assets which have been partly or wholly funded by HM Government, the Academy Trust must, as soon as possible after the termination date:

a) transfer a proportion of those capital assets, equal to the proportion of the original financial contribution made by HM Government, to a nominee of the Secretary of State to use for educational purposes; or

b) if the Secretary of State directs that a transfer under clause 5.DD(a) is not required, pay to the Secretary of State at the termination date (or, by agreement with the Secretary of State, at the date of their subsequent disposal) a sum equivalent to the proportion of the original financial contribution made by HM Government.

5.EE The Secretary of State may:

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

b) direct the Academy Trust to pay all or part of the sale proceeds to the relevant LA.

6. OTHER CONTRACTUAL ARRANGEMENTS

Annexes

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

The Master Agreement

6.B Except as expressly provided in this Agreement, all provisions of the Master

Agreement have full force and effect.

General

6.C The Academy Trust cannot assign this Agreement.

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

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

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

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

6.H ***[Clause only applies to schools which are designated with a Church of England or Roman Catholic character, otherwise mark 6H 'not used'.]*** The Secretary of State agrees that this Agreement shall be interpreted in a way which is compatible with the provisions of clauses 20-20F and 23A-G (if used) of the Church Supplemental Agreement dated [DATE] and made between (1) the Secretary of State; (2) the Academy Trust; (3) [SITE TRUSTEES OR BOARD]; and (4) [DIOCESAN AUTHORITY].

Information Sharing with Local Authorities – Statutory Responsibilities

6.I The Academy Trust must provide:

a) the name, address and date of birth of the pupil or student;

b) the name and address of a parent of the pupil or student;

c) information in the institution's possession about the pupil or student (except if the pupil or student concerned (in the case of a pupil or student who has attained the age of 16) or a parent of the pupil or student concerned (in the case of a pupil or student who has not attained the age of 16) has instructed the Academy Trust not to provide information of that kind);

upon request under section 14 of the Education and Skills Act 2008 from a local authority (for the purpose of enabling or assisting it to exercise its functions under Part 1 of that Act); or

upon request under section 72 of that Act from a body providing services under sections 68 or 70(1)(b) of the Act (for the purposes of providing such services).

This Agreement was executed as a Deed on [DATE]

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

……..	and	……..
Director		**Director**
	or	……..
		Company Secretary
	in the presence of	……..
		Witness
		Name:
		Address:

The Corporate Seal of

THE SECRETARY OF STATE FOR EDUCATION

affixed to this deed is authenticated by:

……..

Duly Authorised

ANNEXES

Annex A

ADMISSION OF CHILDREN AND YOUNG PEOPLE WITH EDUCATION, HEALTH AND CARE PLANS

"**EHC Plan**" means an education, health and care plan made under section 37 of the Children and Families Act 2014.

The Children and Families Act 2014 imposes duties directly on Academies in respect of pupils with SEN, including the admission of pupils with EHC plans. If an Academy Trust considers that a LA should not have named the Academy in an EHC plan, it may ask the Secretary of State to determine whether the LA has acted unreasonably, and to make an order directing the LA to reconsider. The Academy Trust must admit the pupil if such a determination is pending. The Secretary of State's determination as to whether the LA acted unreasonably will be final, subject to any right of appeal which a pupil (who is over compulsory school age) or parent of the pupil may have to the First-tier Tribunal (Special Educational Needs and Disability) or the Upper Tribunal Administrative Appeals Chamber.

Annex B

[THIS ANNEX ONLY APPLIES TO FORMER GRAMMAR SCHOOLS CONVERTING TO ACADEMY STATUS] PROCESS FOR REMOVAL OF SELECTION AT WHOLLY SELECTIVE ACADEMIES

Schools which are maintained grammar schools are subject to a parental ballots process to remove selection. To ensure that they remain subject to a parental ballot process after they convert to become a wholly selective academy school, they must adopt the appropriate document via the link below as an annex to this Agreement.

The guidance at the link sets out which annex is appropriate for which school. Depending on the school's current status under the Education (Grammar School Ballots) Regulations 1998 (as amended) the annex will either be a 'stand-alone', 'group' or 'area' annex. https://www.gov.uk/government/publications/academy-conversion-model-ballot-documents-for-grammar-schools

Department for Education

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