

## FREEDOM OF INFORMATION REDACTION SHEET

### Ingelby Manor Free School DoV

#### Exemptions in full

n/a

#### Partial exemptions

Personal Information has been redacted from this document under Section 40 of the Freedom of Information (FOI) Act.

Section 40 of the FOI Act concerns personal data within the meaning of the Data Protection Act 1998.

#### Factors for disclosure

- further to the understanding of and increase participation in the public debate of issues concerning Academies.
- to ensure transparency in the accountability of public funds

#### Factors for Withholding

- To comply with obligations under the Data Protection Act

#### Reasons why public interest favours withholding information

Whilst releasing the majority of **Ingelby Manor Free School DoV** will further the public understanding of Academies, the whole of these documents cannot be revealed. If the personal information redacted were to be revealed under the FOI Act, Personal Data and Commercial interests would be prejudiced.

**DEED OF VARIATION OF FUNDING AGREEMENT  
2024**

The Parties to this Deed are:

(1) **The Secretary of State for Education** of Sanctuary Buildings, Great Smith Street, London SW1P 3BT (the "**Secretary of State**");

- and -

(2) **Delta Academies Trust**, a charitable company incorporated in England and Wales with registered company number 07386086 whose registered address is at Education House, Spawd Bone Lane, Knottingley, WF11 0EP (the "**Company**").

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

## **INTRODUCTION**

- A. The Parties have entered into a Supplementary Funding Agreement in respect of Ingley Manor Free School & Sixth Form on 26<sup>th</sup> August 2014, a copy of which is contained in Schedule 1 (the "**Existing Supplemental Funding Agreement**");
- B. The Parties have agreed to amend and re-state the terms of the Existing Supplemental Funding Agreement on the terms set out in this Deed.

## **LEGAL AGREEMENT**

1. Words, expressions and interpretations used in this Deed shall, unless the context expressly requires otherwise, have the meaning given to them in, and shall be interpreted in accordance with, the Amended Supplemental Funding Agreement (as defined in clause 2 below).
2. The Secretary of State and the Company agree that with effect from 1 September 2025, the Existing Supplemental Funding Agreement shall be amended and re-stated in the form of the Amended Supplemental Funding Agreement set out in Schedule 2 (the "**Amended Supplemental Funding Agreement**"). For the avoidance of doubt, the Amended Supplemental Funding Agreement does not terminate or suspend the Existing Supplemental Funding Agreement but amends and re-states it.

## **GOVERNING LAW AND JURISDICTION**

3. This Deed, and any dispute or claim arising out of or in connection with it, its subject matter or formation (including non-contractual disputes or claims) shall be governed by and interpreted in accordance with the law of England and Wales.
4. The Parties irrevocably agree that the courts of England and Wales shall have exclusive jurisdiction to settle any dispute or claim that arises out of, or in connection with, this deed or its subject matter or formation (including non-contractual disputes or claims).

## **COUNTERPARTS**

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

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

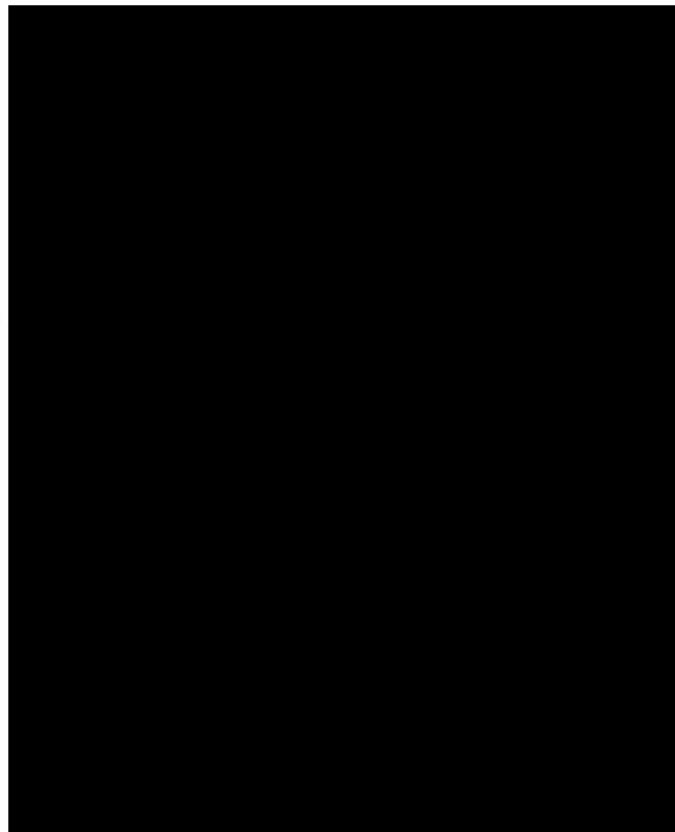
**EXECUTED** as a deed by affixing the corporate )  
seal of the **Secretary of State for Education** )  
authenticated by:- )



Duly authorised by the Secretary of State for Education

Date.....19/12/24.....

**EXECUTED** as a deed by  
**Delta Academies Trust**  
acting by:





**Schedule 1**

**Existing Supplemental Funding Agreement**

**SUPPLEMENTAL AGREEMENT FOR**  
**INGLEBY MANOR FREE SCHOOL & SIXTH FORM**

**THIS AGREEMENT** made on

26 August

2014

**BETWEEN**

- (1) **THE SECRETARY OF STATE FOR EDUCATION**; and
- (2) **SCHOOL PARTNERSHIP TRUST ACADEMIES** (company number 7386086)  
(the "**Company**")

**IS SUPPLEMENTAL TO THE MASTER FUNDING AGREEMENT** made between the same parties and dated 21 October 2010, 1 May 2013 and 21 August 2013 as subsequently consolidated and amended by a Deed of Variation dated 22 August 2014 (the "**Master Agreement**").

**1. DEFINITIONS AND INTERPRETATION**

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

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

"**Academy**" means the Mainstream Free School called Ingleby Manor Free School & Sixth Form;

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

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

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

- (i) the Legal Charge registered with Companies House as against the Company;
- (ii) the Legal Charge from the charges register at the Land Registry against the title for the Land;
- (iii) the restriction in the proprietorship register referred to in clause 10B(a); and
- (iv) the notice in the proprietorship register referred to in clause 10F(a);

**"Insured Risks"** means fire, lightning, explosion, earthquake, storm, tempest, flood, subsidence, landslip, heave, impact, terrorism, bursting or overflowing of water tanks and pipes, damage by aircraft and other aerial devices or articles dropped therefrom, riot and civil commotion, labour disturbance, malicious damage and such other risks as the Company insures against from time to time, subject in all cases to any exclusions or limitations as may from time to time be imposed by the insurers or underwriters;

**"Land"** means the leasehold land (including for the avoidance of doubt all buildings, structures landscaping and other erections) at the Low Lane site in Ingleby Barwick, Stockton-on-Tees shown edged red on the plan attached marked Annex A and making up the permanent site of the Academy, or the part of such land remaining in the ownership of the Company, following any disposal in accordance with clauses 10I(c)(ii) or 10K;

**"Landlord"** means the landlord under a Lease;

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

- (a) where there has been a disposal of the Land as a result of the enforcement of the Legal Charge by the Secretary of State, the proceeds of that disposal after payment of any necessary and reasonable costs incurred by the seller in connection with such disposal; or
- (b) in any other case, the Market Value of the Land;

**"Lease"** means either Lease 1 or Lease 2, and "Leases" means both of them;

**"Lease 1"** means the lease between the Company and North East Property Partnership Limited or its assignees in respect of the Temporary Site;

**"Lease 2"** means the lease between the Company and a third party in respect of the Land;

**"Legal Charge"** means the legal charge over the Land to be entered into by the Company in favour of the Secretary of State on the acquisition of the legal interest in the Land, in a form and substance satisfactory to the Secretary of State;

**"Market Value"** the market value of the relevant part of the Land (as that term is defined or referred to in the RICS Appraisal and Valuation Manual (current

edition) published by RICS), as determined by a professionally qualified independent valuer;

**"Rent"** means a payment made by the Company to a third party pursuant to Lease 1, but subject to the terms of clause 4A.1 of this Agreement;

**"School Premises"** means the sites on which the Academy is situated, comprising the Land and the Temporary Site;

**"Start-up Period"** means up to seven (7) Academy Financial Years and covers the period up to the first Academy Financial Year in which all age groups are present at the Academy (that is, all the pupil cohorts relevant to the age-range of the Academy will have some pupils present);

**"Temporary Site"** means the leasehold land at Unit BT50/72, Teesside Industrial Estate, Thornay, Stockton on Tees as shown edged red on the plan attached marked Annex B and making up the temporary site of the Academy;

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

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

## 2. THE ACADEMY

- 2.1. The Company will establish and maintain, and carry on or provide for the carrying on of the Academy in accordance with the Master Agreement and this Agreement.
- 2.2. The curriculum provided by the Academy to pupils up to the age of 16 shall be broad and balanced.
- 2.3. The requirements for the admission of pupils to the Academy are set out at Annex 1.
- 2.3A. The Company must ensure that so far as is reasonably practicable and consistent with clause 27 of the Master Agreement, 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.

#### **ACADEMY OPENING DATE**

- 2.4. The Academy shall open as a school on 1 September 2014.
- 2.5. The planned capacity of the Academy is 750 in the age range 11-18, including a sixth form of 150 places.

#### **RUNNING OF THE ACADEMY**

##### **School meals**

Clauses 32 and 33 of the Master Agreement are disapplied and replaced with the following clauses 2.6, 2.7 and 2.8.

- 2.6. The Company must provide school lunches and free school lunches in accordance with the provisions of sections 512(3) and 512ZB(1) of the Education Act 1996 as if references in sections 512 and 512ZB to a local authority were to the Company and as if references to a school maintained by a local authority were to any of its Academies.
- 2.7. The Company must comply with school food standards legislation as if its Academies were maintained schools.
- 2.8. Where the Company provides milk to pupils, it must be provided free of charge to pupils who would be eligible for free milk if they were pupils at a maintained school.

##### **Governance**

- 2.9. The Company must provide to the Secretary of State the names of all new or replacement Directors and Members of the Company, stating whether they have been appointed or elected, the date of their appointment or election and, where applicable, the name of the Director or Member they replaced as soon as is practicable and in any event within 14 days of their appointment or election.
- 2.10. The Company must not appoint any new or replacement Directors or Members until it has first informed them, and they have agreed, that their names will be shared with the Secretary of State to enable him to assess their suitability.

### **3. CAPITAL GRANT**

- 3.1. Pursuant to clause 35 of the Master Agreement, the Secretary of State may, in his absolute discretion provide Capital Expenditure funding in accordance with any arrangements he considers appropriate.

### **4. GAG AND EAG**

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

### **4A. ADDITIONAL FUNDING**

- 4A.1. The Secretary of State shall meet the Company's costs arising from Rent. Such costs shall include those costs arising from any rent rise payable by the Company under the terms of Lease 1, so long as the relevant rent rise is properly evidenced in writing by the Company to the Secretary of State as soon as is reasonably practicable, but such costs shall not include any amount in respect of service charge payments or insurance premiums. Where the definition of rent in Lease 1 includes service charge payments or insurance premiums, the Secretary of State shall exclude from the total grant payable in respect of Rent an amount in respect of such service charge payments or insurance premiums.
- 4A.2. The Secretary of State may pay further grant in the Start-up Period, as determined and specified by him, for costs which cannot otherwise be met from GAG.

### **4B. LEASE**

- 4B.1. If the Company is in material breach of the provisions of the Lease or if it is reasonably foreseeable that the Company will be in material breach of the Lease, the Company shall forthwith give written notice to the Secretary of State specifying the exact nature of the material breach or reasonably foreseeable material breach and such notice shall set out the steps taken or to be taken by the Company to remedy the material breach or reasonably foreseeable material breach and, where appropriate, shall include the timescales relating to any remedial action.
- 4B. 2. The Company will, at its own cost, provide all information reasonably required by the Secretary of State in respect of any material breach or reasonably foreseeable material breach referred to in clause 4B.1.

- 4B.3. Following the receipt by the Secretary of State of the written notice under clause 4B.1, the Company shall permit the Secretary of State to take all such steps in conjunction with or instead of the Company as may be necessary to remedy or prevent the material breach referred to in the said notice. The Company shall, in such circumstances, use its best endeavours to assist the Secretary of State to remedy or prevent such material breach.
- 4B.4. The Company shall, within 14 days of receiving any order, notice, proposal, demand or any other requirement materially affecting the ability of the Company to use the School Premises for the purposes of the Academy from any competent authority (including the Landlord), give full particulars by written notice to the Secretary of State and deliver to the Secretary of State copies of such documents as he may require. Such notice shall state what steps, if any actions are required, the Company intends to take in response to the order, notice, proposal, demand or other requirement affecting the Land.
- 4B.5. The Company will, at its own cost, provide all information reasonably required by the Secretary of State in respect of an order, notice, proposal, demand or any other requirement affecting the Land as referred to in clause 4B.4.
- 4B.6. Following the receipt by the Secretary of State of the written notice under clause 4B.4, the Company shall permit the Secretary of State to take all steps in conjunction with or instead of the Company as may be necessary to comply with any order, notice, proposal, demand or other requirement affecting the Land referred to in the said notice. The Company shall, in such circumstances, use all reasonable endeavours to assist the Secretary of State to take the appropriate required steps.

## **5. TERMINATION**

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

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

- 5.2. The Secretary of State shall, at a date preceding the start of each Academy Financial Year, provide to the Company an indication of the level of funding to be provided by the Secretary of State to the Company by way of GAG and EAG in the next following Academy Financial Year (the "Indicative Funding"). If the Company is of the opinion that, after receipt of the Indicative Funding for the next following Academy Financial Year (the "**Critical Year**") and of the taking into



account all other resources available and likely to be available to the Academy, including such funds as are set out in clause 73 of the Master Agreement and such other funds as are and likely to be available to the Academy from other academies operated by the Company ("**All Other Resources**"), it is likely that the cost of running the Academy during the Critical Year would cause the Company, on the basis of the Indicative Funding, to become insolvent (and for this reason only) then the Company may give notice of its intention to terminate this Agreement at the end of the then current Academy Financial Year.

- 5.3. Any notice given by the Company under clause 5.2 shall be in writing and shall be served on the Secretary of State not later than 28 February preceding the Critical Year or, if the Secretary of State shall not have given notice of the Indicative Funding to the Company on or before the date specified in clause 5.2 above, within six weeks after the Secretary of State shall have done so. The notice must specify:

5.3.1. the grounds on which the Company's opinion is based and include the evidence of those grounds and any professional accounting advice the Company has received and including a detailed statement of steps which the Company proposes to take with a view to ensuring that as soon as reasonably practicable the costs of running the Academy are reduced sufficiently to ensure that such costs are less than the Indicative Funding and All Other Resources and the period of time within which such steps will be taken; and

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

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

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

- 5.5. If no agreement is reached by 30 April (or such other date as may be agreed between the parties) as to whether the cost of running the Academy during the



Critical Year on the basis of the Indicative Funding and All Other Resources would cause the Company to become insolvent, then that question shall be referred to an independent expert (the "**Expert**") for resolution. The Expert's determination shall be final and binding on both parties. The Expert shall be requested to specify in his determination the amount of the shortfall in funding (the "**Shortfall**"). The Expert shall be an insolvency practitioner with significant professional experience of educational institutions or academies. If the parties fail to agree on the appointment of the Expert then the Expert shall be appointed by the President for the time being of the Institute of Chartered Accountants in England and Wales. The Expert's fees shall be borne equally between the parties.

- 5.6. The Expert shall be required in reaching his determination to take account of advice from an educational specialist who is professionally familiar with the issues arising from the budget management of large schools. If the parties fail to agree on the appointment of the educational specialist then the educational specialist shall be appointed by the Chairman for the time being of the Specialist Schools and Academies Trust. The educational specialist's fees shall be borne equally between the parties.
- 5.7. If the Expert determines that the cost of running the Academy during the Critical Year would cause the Company, on the basis of the Indicative Funding and All Other Resources, to become insolvent, and the Secretary of State shall not have agreed to provide sufficient additional funding to cover the Shortfall, then the Company shall be entitled to terminate this Agreement, by notice expiring on 31 August before the Critical Year. Any such notice shall be given within 21 days after (a) the Expert's determination shall have been given to the parties or (b), if later, the Secretary of State shall have given written notice of his refusal to provide sufficient additional funding for the Academy to cover the Shortfall.

#### **Termination Warning Notice**

- 5.7A. The Secretary of State shall be entitled to issue to the Company a written notice of his intention to terminate this Agreement ("**Termination Warning Notice**") where he considers that:
- (a) the Academy is no longer meeting the requirements set out in clause 12 of the Master Agreement and clauses 2.1 to 2.10 of this Agreement (subject to clause 5.11);
  - (b) the conditions and requirements set out in clauses 2.2 and 2.3 of this Agreement and clauses 13-34C of the Master Agreement (where applicable to a Mainstream Free School) are no longer being met;

- (c) the standards of performance of pupils at the Academy are unacceptably low;
- (d) there has been a serious breakdown in the way the Academy is managed or governed;
- (e) the safety of pupils is threatened (whether by breakdown of discipline or otherwise); or
- (f) the Company is otherwise in material breach of the provisions of this Agreement.

5.7B. A Termination Warning Notice issued by the Secretary of State in accordance with clause 5.7A shall specify:

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

5.7C. The Secretary of State shall consider any response and representations from the Company which are received by the date specified in accordance with clause 5.7B(c) and shall confirm whether he considers that:

- (a) in light of the Company's representations in response to the Termination Warning Notice, some or all of the Specified Remedial Measures are not required to be implemented (and if so which) and/or the Specified Remedial Measures are being or will be implemented with the specified timeframe; or
- (b) subject to any further measures he reasonably requires ("**Further Remedial Measures**") being implemented by a specified date or any evidence he requires being provided, the implementation of such measures has been or will be successfully completed within the specified timeframes; or

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

5.7D. The Secretary of State may by notice in writing terminate this Agreement with effect from a specified date if:

- (a) the Company has not by the date specified in clause 5.7B(c) responded to the Termination Warning Notice either confirming that it accepts and agrees to undertake the Specified Remedial Measures or providing its representations with regard to the Specified Remedial Measures; or
- (b) the Company has not carried out the Specified Remedial Measures and/or Further Remedial Measures within the specified timeframes;

provided that, having considered any representations made by the Company pursuant to clause 5.7B(c), the Secretary of State remains satisfied that it is appropriate to terminate the Agreement.

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

5.7E. The Secretary of State may at any time give written notice of his intention to terminate the Agreement where the Chief Inspector gives notice to the Company in accordance with section 13(3) of the Education Act 2005 stating that in the Chief Inspector's opinion:

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

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

5.7G. Where the Secretary of State has given notice of his intention to terminate this Agreement in accordance with clauses 5.7E and 5.7F and:

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

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

he may by notice in writing terminate this Agreement, such termination to take effect from the date of the notice.

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

5.7H. If at any time after signing this Agreement and before the Academy opens, the total number of prospective pupils having accepted offers of places to attend at the Academy in September 2014 is less than 75, the Secretary of State may by written notice to the Company:

- (a) require the Company not to open the Academy until 75 prospective pupils have accepted offers of places to attend at the Academy; or
- (b) terminate this Agreement such termination to take effect on the date specified in the notice.

5.7I. If, at any time after signing this Agreement and after the Academy has opened, the Secretary of State is of the opinion that, by virtue of low pupil numbers, the Academy is not financially viable, then the Secretary of State may:

- (a) give a Warning Notice to the Company; or
- (b) by written notice terminate this Agreement forthwith; or
- (c) (by written notice provide such notice as he deems appropriate in the circumstances to terminate this Agreement.

For the purposes of this clause a "**Warning Notice**" means a notice in writing by the Secretary of State to the Company requiring the Company to procure the admission of a sufficient number of pupils by such date as he deems appropriate in the circumstances and setting out the consequences of not procuring the admission of a sufficient number of pupils by the date specified in such Warning Notice.

5.7J. If, at any time after signing this Agreement, the Parties agree that, by virtue of low pupil numbers, the Academy is not financially viable, then the Parties jointly may terminate this Agreement having agreed first the precise terms of termination.

5.8. If the Company has not obtained full planning permission (including where relevant listed building consent), in respect of the Temporary Site by 30 June 2014, the Secretary of State may terminate this Agreement by notice in writing to the Company, such termination to take effect on the date of the notice.

5.9. If, at any time before the Academy opening date, the Secretary of State is of the view that:

1. the Academy would, on opening, provide an unacceptably low standard of education; or
2. the safety of pupils or staff at the Academy would, on opening, be threatened; or
3. the staff employed at the Academy are unsuitable;
4. there is a serious breakdown in the way the Company is being managed or governed; or
5. the buildings and other structures on the School Premises are unsuitable or the Company has not obtained Building Regulations approval;

he may in writing either:

- (a) require the Company (i) not to open the Academy; and/or (ii) not to admit pupils of a particular age range, to be determined by the Secretary of State; and/or (iii) not to use any building or other structure on the School Premises until such time as each relevant matter listed in paragraphs 1 to 5 above has been resolved to the Secretary of State's satisfaction; or
- (b) terminate this Agreement by notice in writing to the Company such termination to take effect on the date of the notice.

5.10. If the Company has not entered into Lease 2 by 31 August 2014, the Secretary of State may terminate this Agreement by notice in writing to the Company such termination to take effect on the date of the notice.

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

notice in writing to the Company such termination to take effect on the date of the notice.

5.12 If

- a) Any Director or Member of the Company refuses to consent to any checks required under this Agreement, or as otherwise requested by the Secretary of State; or
- b) The Secretary of State determines that any Director or Member of the Company is unsuitable,

the Secretary of State may:

- i. direct the Company to ensure that the Director or Member resigns or is removed within 42 days, failing which the Secretary of State may serve a Termination Notice; or
- ii. serve a Termination Notice.

5.13 For the purposes of clause 5.12 a Director or Member of the Company will be "unsuitable" if that Director or Member:

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

as a result of which, the Secretary of State considers that that Director or Member is unsuitable to take part in the management of the Academies.

5.14 For the purposes of clause 5.13:

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

- iii. so inappropriate that, in the opinion of the Secretary of State, it makes that Director or Member unsuitable to take part in the management of the Academy.

## **6. EFFECT OF TERMINATION**

- 6.1. In the event of termination of this Agreement however occurring, the school shall cease to be an academy within the meaning of sections 1 and 1A of the Academies Act 2010.
- 6.2. Subject to clauses 6.3 and 6.4, if the Secretary of State terminates this Agreement pursuant to clause 5.1, the Secretary of State shall indemnify the Company. If the Secretary of State terminates this Agreement other than pursuant to clause 5.1, the Secretary of State may in his absolute discretion indemnify or (to such extent if any as he may in his absolute discretion consider appropriate) compensate the Company.
- 6.3. The amount of any such indemnity or compensation shall be determined by the Secretary of State having regard to any representations made to him by the Company, and shall be paid at such times and in such manner as the Secretary of State may reasonably think fit.
- 6.4. The categories of expenditure incurred by the Company in consequence of the termination of the Agreement in respect of which the Secretary of State shall (where the Secretary of State terminates this Agreement pursuant to clause 5.1) indemnify the Company and may (where the Secretary of State terminates this Agreement otherwise than pursuant to clause 5.1) in his absolute discretion indemnify or compensate the Company include (but not by way of limitation), staff compensation and redundancy payments, compensation payments in respect of broken contracts, expenses of disposing of assets or adapting them for other purposes, legal and other professional fees, and dissolution expenses.
- 6.5. Subject to clause 6.6, on the termination of this Agreement however occurring, the Company shall in respect of any of its capital assets at the date of termination:
  - (a) promptly transfer a proportion of the assets to a person nominated by the Secretary of State, if the Secretary of State considers that all or some of those assets need to be used for any educational purpose by that nominee. The proportion of the assets to be transferred shall be the same as the proportion of the capital contribution made by the Secretary of State to the original value of those assets, whether that contribution was made on the establishment of the Academy or later; or



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

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

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

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

## **7. ANNEX**

7.1. The Annexes to this Agreement form part of and are incorporated into this Agreement.

## **8. GENERAL**

8.1. This Agreement shall not be assignable by the Company.

8.2. No delay, neglect or forbearance on the part of the Secretary of State in enforcing (in whole or in part) any provision of this Agreement or in exercising (in whole or in part) any right conferred on him by this Agreement shall be or be deemed to be a waiver of such provision or right or a waiver of any other provision or right or shall in any way prejudice any right of the Secretary of State under this Agreement or shall amount to an election not to enforce such provision or exercise such right (including, for the avoidance of doubt, any right to terminate this Agreement).

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



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

**9. MASTER AGREEMENT**

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

**10. ENGLISH LAW**

- 10.1. 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.
- 10.2. The parties irrevocably agree that the courts of England and Wales shall have exclusive jurisdiction to settle any dispute or claim that arises out of or in connection with this agreement or its subject matter or formation (including non-contractual disputes or claims).

**LAND CLAUSES**

**Debt**

- 10A(a). The Secretary of State has agreed to make payments of Capital Grant to the Company pursuant to Clause 38 of the Master Agreement;
- 10A(b). The payments referred to in clause 10A(a) are made available to the Company on an interest-free basis;
- 10A(c). In consideration of the Secretary of State making the payments referred to in clause 10A(a) and financing the acquisition of the Land, the Company shall pay the Debt on termination of this Agreement or in accordance with clauses 10H(b) or 10K(a) or on any disposition by way of sale of the whole or part of the Land, whether or not such sale has been consented to by the Secretary of State; and
- 10A(d). The Debt shall be secured by the Legal Charge.

## Restrictions on Land transfer

10B. In consideration that it has or will be obtaining a legal interest in the Land, such acquisition being financed by the Secretary of State, the Company:

- (a) shall, within 28 days from the acquisition of the legal interest in the Land or the signing of this Agreement, whichever is the latter, apply to the Land Registry for restrictions in the proprietorship register to the Land (under section 43(1)(a) of the Land Registration Act 2002 in Form RX1 as prescribed by Rule 91 of and Schedule 4 to the Land Registration Rules 2003) in the following terms:

*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]<sup>1</sup> in favour of The Secretary of State for Education referred to in the charges register, or by its conveyancer.*

- (b) shall take any further steps required to ensure that the restriction referred to in clause 10B(a) is entered on the proprietorship register,
- (c) shall provide the Secretary of State with confirmation of the entry of the restriction referred to in clause 10B(a) as soon as reasonably practicable after it receives notification from the Land Registry,
- (d) if it has not registered the restriction referred to in clause 10B(a), hereby consents to its registration by the Secretary of State (under section 43(1)(b) of the Land Registration Act 2002); and
- (e) shall not, without the consent of the Secretary of State, apply to dis-apply, modify or remove (by cancellation or otherwise) a restriction entered in accordance with clause 10B(a) or 10B(d) above, whether by itself, a holding company, a subsidiary company, or a receiver, administrator or liquidator acting in the name of the Company.

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<sup>1</sup> Date to be inserted should be date charge is entered into. This is not inserted into the clause in the Funding Agreement, but sets out what the restriction should be when registered with the Land Registry.

## **Obligations of the Company**

10C)(i). The Company shall keep the School Premises clean and tidy and make good any damage it causes to the School Premises and any deterioration to their condition that may arise from the date of this Agreement, save that the Company shall ensure that any actions undertaken in compliance with this clause shall be consistent with the terms of the relevant Lease. In compliance with this clause, the Company shall not do or cause or permit to be done anything to lessen the value or marketability of the School Premises save with the express written consent of the Secretary of State.

10C)(ii). The Company shall observe and comply with its obligations under each Lease and shall promptly enforce its rights against each Landlord.

10C)(iii). The Company agrees it shall seek and obtain the prior written consent of the Secretary of State, not to be unreasonably withheld or delayed before taking any steps to:

- (a) terminate, vary, surrender or dispose of any Lease; or
- (b) grant any consent or licence in respect of the School Premises or any part of them; or
- (c) create or permit to arise or continue any encumbrance affecting the School Premises or any part of them; or
- (d) part with or share possession or occupation of the School Premises or any part of them; or
- (e) enter into any onerous or restrictive obligations affecting the School Premises or any part of them.

10C)(iv). The Company agrees that before taking any steps, including but not limited to the service of any notice or waiver of any condition, under any contractual arrangement entered into in respect of the acquisition of the legal interest in the Land, it shall seek and obtain the written consent of the Secretary of State, not to be unreasonably withheld or delayed.

## **Insurance**

10D. The Company shall, from the date of the relevant Lease, save where the terms of the relevant Lease provide for the Landlord to obtain insurance in respect of the School Premises:-

- (a) keep the School Premises insured as in accordance with the terms of the relevant Lease and in any event with a reputable insurance office against loss or damage by the Insured Risks in the sum the Company is advised represents the reinstatement value of the School Premises from time to time or opt into the Department for Education's arrangements as set out in the Academies Financial Handbook;
- (b) pay the premiums for insurance promptly as they become due and maintain in force the policies of insurance on the School Premises;
- (c) following the incidence of damage to or destruction of the School Premises and subject to receipt of all necessary consents licences permissions and the like apply the proceeds of the policy of the insurance received for those purposes in rebuilding and reinstating the School Premises (provided that this clause should be satisfied if the Company provides premises not necessarily identical to the School Premises as they existed before the damage or destruction occurred) as soon as may be reasonably practicable;
- (d) produce to the Secretary of State a copy of the insurance policy whenever reasonably requested and the receipt for the last premium or other evidence of renewal and up-to-date details of the amount of cover (but no more often than once in any period of 12 months in both cases);
- (e) not knowingly do anything whereby any policy of insurance relating to the School Premises may become void or voidable.
- (f) insure against liability in respect of property owners' and third party risks including occupier's liability or opt into the Department for Education's arrangements as set out in the Academies Financial Handbook.

## **Transfer of Land**

10E. In consideration that it has or will be obtaining a legal interest in the Land, such acquisition being financed by the Secretary of State, the Company hereby grants and the Secretary of State hereby accepts an option, exercisable by the Secretary

of State or his nominee, to acquire the said Land or any part thereof at nil consideration. The option hereby granted shall be exercisable (by notice in writing by or on behalf of the Secretary of State) on the termination of this Funding Agreement for whatever cause or in circumstances where the Company is unable to use all or part of the Land as the permanent site of the Academy in accordance with clauses 10H or 10K. On the exercise of this option, the Law Society's Standard Conditions of Sale for Commercial Property in force at the date of such exercise shall apply to the transaction and completion shall take place 28 days after such exercise.

10F. In consideration that it has or will be obtaining a legal interest in the Land, such acquisition being financed by the Secretary of State, the Company:

- (a) shall, within 14 days from the transfer to it of the Land or the signing of this Agreement, whichever is the latter, apply to the Land Registry in Form AN1 as prescribed by Rule 81 of the Land Registration Rules 2003 for a notice to be entered in the register (under section 34(3)(a) of the Land Registration Act 2002) to protect the option granted under clause 10E and including a copy of this Agreement as evidence of that option,
- (b) shall take any further steps reasonably required to ensure that the notice referred to in clause 10F(a) is entered on the proprietorship register,
- (c) shall provide the Secretary of State with confirmation of the entry of the notice referred to in clause 10F(a) as soon as practicable after it receives notification from the Land Registry,
- (d) if it has not registered the notice referred to in clause 10F(a), hereby consents to the entering of the notice referred to in clause 10F(a) in the register by the Secretary of State (by application in Form UN1 under section 34(3)(b) of the Land Registration Act 2002),
- (e) shall not, without the consent of the Secretary of State, apply to dis-apply, modify or remove (by cancellation or otherwise) a notice entered in accordance with clause 10F(a) or 10F(d) above, whether by itself, a holding company, a subsidiary company, or a receiver, administrator or liquidator acting in the name of the Company, and
- (f) in the case of previously unregistered land, for the further protection of the option granted in clause 10E the Company shall within 14 days of the acquisition of the legal interest in the Land or the signing of this Agreement, whichever is the later, make application to register a Class C

(iv) land charge in the Land Charges Registry and a Caution against First Registration in the Land Registry and shall provide the Secretary of State with copies of the entries secured thereby within 7 days of completing each registration, respectively. If the Secretary of State is of the view that the Company has failed to perform the registration obligations in this sub-clause he shall be at liberty to make his own applications to secure these registrations.

### **Legal Charge**

10G. In consideration that it has or will be obtaining a legal interest in the Land, such acquisition being financed by the Secretary of State, the Company:

- (a) shall enter into the Legal Charge on completion of the acquisition of said interest in the Land;
- (b) shall, within 21 days after entering into the Legal Charge, register it with Companies House or if required by the Secretary of State shall use all reasonable endeavours to assist the Secretary of State to register the Legal Charge at Companies House, including signing and executing any documents, deeds and forms as required;
- (c) shall, 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, using forms AP1 (Rule 13 LRR 2003) and CH1 (Rule 103 LRR 2003) or such form as may be required by the Secretary of State;
- (d) shall take any further steps required to ensure that the Legal Charge is entered on the charges register;
- (e) shall provide the Secretary of State with confirmation of the registration of the Legal Charge as soon as reasonably practicable after it receives notification from the Land Registry; and
- (f) if it has not registered the Legal Charge, hereby consents to the registration of the Legal Charge by the Secretary of State. To enable the Secretary of State to do so, the Company shall use all reasonable endeavours to assist the Secretary of State to register the Legal Charge, including signing and executing any documents, deeds and forms as required, specifically but not limited to providing the Secretary of State with the executed Legal Charge and completed AP1/CH1 forms, and dealing with any requisitions raised by the Land Registry.

### **Failure to use the Land for the purposes of the Academy**

10H. If the Company is unable to use the Land or any part thereof 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 give notice to the Company that:

- (a) he intends to exercise the option granted under clause 10E to transfer the Land or the relevant part thereof for nil consideration to himself or his nominee;
- (b) the Company pays the Debt or the Market Value; and/or
- (c) the Company shall dispose of the Land or the relevant part thereof and that, pursuant to clause 86 of the Master Agreement, the Company may retain some or all of the proceeds of sale of the Land or the relevant part thereof in order to fulfil its charitable purposes by funding the purchase of an alternative permanent site for the Academy, save that any proceeds not used to fund the purchase of an alternative permanent site shall be accounted for to the Secretary of State or his nominee.

### **Sharing of the Land**

10I. The Company agrees that if:

- (a) the Academy does not reach its planned capacity over a period of seven (7) Academy Financial Years; or
- (b) notice of termination is served by either the Company or the Secretary of State in accordance with clause 5.1 of this Agreement; or
- (c) in the reasonable opinion of the Secretary of State the operation of the Academy at planned capacity does not require the use of the full extent of the Land,
  - (i) it will share occupation of the Land with such other academies as the Secretary of State deems appropriate in the circumstances and enter into such legal arrangements in respect of the same as are required by the Secretary of State; or
  - (ii) it will dispose of part of the Land as required by the Secretary of State and account for any proceeds of such disposal to the Secretary of State or his nominee as part payment of the Debt. On



such disposal and part payment of the Debt, the Secretary of State will discharge the Legal Charge in respect of the part of the Land that has been disposed of.

### **Exercise of Rights**

10J. On the termination of this Agreement, the Secretary of State may give notice of his intention to exercise the rights conferred on the Secretary of State pursuant to clauses 6.5, 6.6 and 10E and the Legal Charge:

- (a) any such notice shall be in writing and shall confirm which clause of this Agreement the Secretary of State intends to exercise without prejudice to the Secretary of State's right to exercise all and any other rights available to him;
- (b) if, on termination of this Agreement for whatever reason, the Secretary of State exercises his option granted and the legal interest in the Land is transferred to the Secretary of State or his nominee for nil consideration by the Company pursuant to clause 10E, the Company's obligation to pay the Debt shall be deemed to have been satisfied in full, the obligation on the Company to pay a proportion of the proceeds of sale of the Land to the Secretary of State under clause 6.5(b) shall be deemed to have been complied with, and the Secretary of State shall take all steps reasonably required to carry out the Discharge Process;
- (c) if, on termination of this Agreement for whatever reason the Secretary of State enforces the Legal Charge, the Company's obligation to pay the Debt shall be deemed to have been satisfied in full following the realisation of the Debt by any receiver, the obligation on the Company to pay a proportion of the proceeds of sale of the Land to the Secretary of State under clause 6.5(b) shall be deemed to have been complied with, and the Secretary of State shall take all steps reasonably required to carry out the Discharge Process;
- (d) if, on termination of this Agreement for whatever reason, the Secretary of State exercises his rights under clause 6.5, the Company's obligations to pay the Debt shall be deemed to have been satisfied in full and the Secretary of State shall take all steps reasonably required to carry out the Discharge Process; and
- (e) if, on termination of this Agreement for whatever reason, the Secretary of State agrees that pursuant to clause 6.6 the Company may invest the



proceeds of the sale of the Land for its charitable objects or directs the Company to pay all or part of the proceeds of sale of the Land to the LA, the Company's obligations to pay the Debt shall be deemed to have been satisfied in full and the Secretary of State shall take all steps reasonably required to carry out the Discharge Process.

10K. On the Company applying to the Secretary of State for consent to the disposal of all or part of the Land during the lifetime of this Agreement, the Secretary of State shall, should he agree that the Land is no longer required or cannot be used for the purposes of the Academy, subject to clause 84 of the Master Agreement,

(a) consent to the disposal subject to any one or more of the following conditions:

- (i) that (notwithstanding the provisions of clause 86 of the Master Agreement) the Company pays the Debt in full or, in the event of a proposed disposal of part, repays to the Secretary of State the Market Value;
- (ii) that pursuant to clause 86 of the Master Agreement, the Company may retain some or all proceeds of the disposal for its charitable purposes, subject to the Company accounting to the Secretary of State for any remaining proceeds of sale that the Secretary of State does not agree that the Company may retain for such charitable purposes; or
- (iii) that pursuant to clause 87 of the Master Agreement, the Company pays all or some of the proceeds of sale to the LA and may reinvest all or some of the proceeds of sale for its charitable purposes,

and any such notice of consent and conditions shall be in writing; or

(b) exercise the option granted to him pursuant to clause 10E to transfer the relevant part of the Land to him or his nominee for nil consideration.

10L. If the Secretary of State consents to the disposal of the Land during the lifetime of this Agreement, subject to any of the conditions in clause 10K(a):

(a) if the Secretary of State enforces the Legal Charge, the Company's obligation to pay the Debt shall be deemed to have been satisfied in full following the realisation of the Debt by any receiver, the obligations on the Company to pay a proportion of the proceeds of sale of the Land to the Secretary of State under clause 86 of the Master Agreement shall be

deemed to have been complied with, and the Secretary of State shall take all steps reasonably required to carry out the Discharge Process;

- (b) if the Secretary of State agrees that the Company may retain some or all proceeds of the disposal for its charitable purposes, subject to the Company accounting to the Secretary of State for any remaining proceeds of sale that the Secretary of State does not agree that the Company may retain for such charitable purposes, the Company's obligations to pay the Debt shall be deemed to have been satisfied in full, its obligations to pay a proportion of the proceeds of sale of the Land to the Secretary of State under clause 86 of the Master Agreement shall be deemed to have been complied with and the Secretary of State shall take all steps reasonably required to carry out the Discharge Process, provided that in the event of a disposal of part of the Land, the Company's obligation to pay the Debt shall be deemed to have been satisfied to the extent of the Market Value, the Company's obligation under clause 86 of the Master Agreement shall be deemed to have been satisfied in relation to the relevant part of the Land, the Legal Charge shall be released and the restriction and the notice shall be removed in relation to such part and the Legal Charge, the restriction and the notice shall remain in place in relation to the balance of the Land.
  - (c) if the Secretary of State directs the Company to pay all or part of the proceeds of sale of the Land to the LA pursuant to clause 87 of the Master Agreement or agrees that the Company may reinvest the proceeds of the sale for its charitable purposes, the Secretary of State shall take all steps reasonably required to carry out the Discharge Process, provided that in the event of a disposal of part of the Land the restriction and notice shall remain in place in relation to the balance of the Land.
- 10M. If the Secretary of State exercises his option during the lifetime of this Agreement under clause 10K(b) and the legal interest in the Land is transferred to the Secretary of State or his nominee for nil consideration by the Company pursuant to clause 10E, the Company's obligation to pay the Debt shall be deemed to have been satisfied in full, the obligations on the Company to pay a proportion of the proceeds of sale of the Land to the Secretary of State under clause 86 of the Master Agreement shall be deemed to have been complied with, and the Secretary of State shall take all steps reasonably required to carry out the Discharge Process, provided that in the event of the exercise of the option in relation to part of the Land, the Company's obligation to pay the Debt shall be deemed to have been satisfied to the extent of the Market Value, the Company's obligation under clause 86 of the Master Agreement shall be deemed to have

been satisfied in relation to the relevant part of the Land and the Legal Charge shall be released and the restriction and notice shall be removed in relation to such part and the Legal Charge, the restriction and the notice shall remain in place in relation to the balance of the Land.

#### **Payment of Debt**

10N. If the Company pays all the Debt, on termination of this Agreement or at any other time, the Secretary of State shall take all steps reasonably required to carry out the Discharge Process.

10O. If the Company:

(a) disposes of any or all of the Land in accordance with clause 10K, or

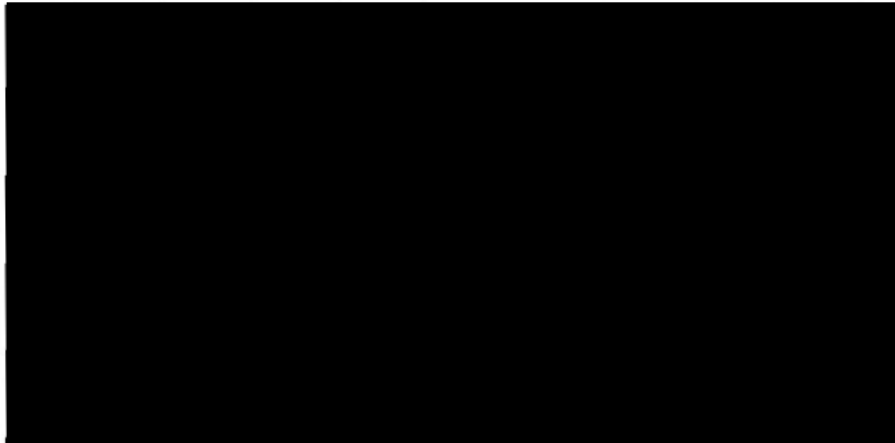
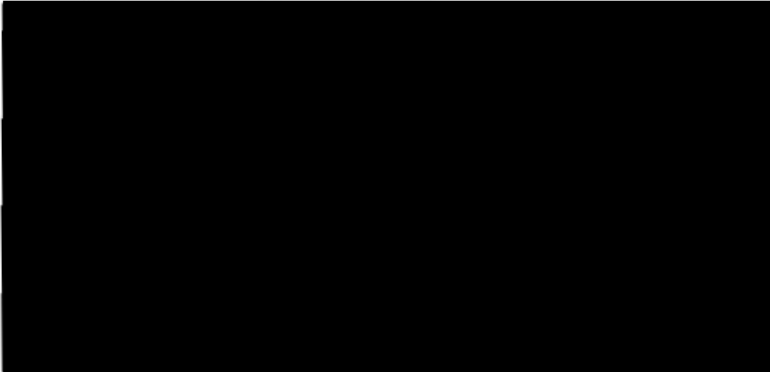
(b) make payment to the Secretary of State to pay the Debt in full,

it shall enter into negotiations with the Secretary of State in respect of a deed of variation for this Agreement.

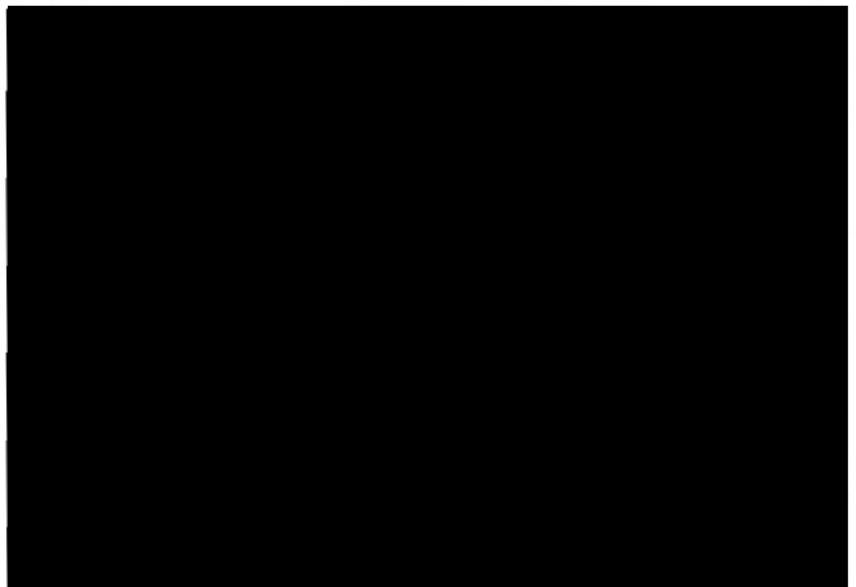
This Agreement was executed as a Deed on

26 August

2014



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



been satisfied in relation to the relevant part of the Land and the Legal Charge shall be released and the restriction and notice shall be removed in relation to such part and the Legal Charge, the restriction and the notice shall remain in place in relation to the balance of the Land.

#### **Payment of Debt**

10N. If the Company pays all the Debt, on termination of this Agreement or at any other time, the Secretary of State shall take all steps reasonably required to carry out the Discharge Process.

10O. If the Company:

- (a) disposes of any or all of the Land in accordance with clause 10K, or
- (b) make payment to the Secretary of State to pay the Debt in full,

it shall enter into negotiations with the Secretary of State in respect of a deed of variation for this Agreement.

## **ANNEXES TO THIS SUPPLEMENTAL AGREEMENT**

Requirements for the Admission for pupils at the Academy	Annex 1
Plan - the Land	Annex A
Plan – the Temporary Site	Annex B

# Annex 1

## **REQUIREMENTS FOR THE ADMISSION OF PUPILS TO INGLEBY MANOR FREE SCHOOL & SIXTH FORM**

### **GENERAL**

1. This annex may be amended in writing at any time by agreement between the Secretary of State and the Company.
2. Except as provided in paragraphs 2A to 3 below the Company will act in accordance with, and will ensure that an Independent Appeal Panel is trained to act in accordance with, all relevant provisions of the School Admissions Code, and the School Admission Appeals Code published by the Department for Education ("the Codes") as they apply at any given time to maintained schools and with equalities law and the law on admissions as they apply to maintained schools. For this purpose, reference in the Codes or legislation to "admission authorities" shall be deemed to be references to the Directors of the Company.
- 2A. The Company is permitted to determine admission arrangements (subject to consultation in accordance with the School Admissions Code) that give priority for admission (but not above looked after children and previously looked after children<sup>1</sup>) to other children attracting the pupil premium, including the service premium ('the pupil premium admission criterion'). Where the Company exercises this freedom it will provide information in its admission arrangements of eligibility for the premiums.
- 2B. For the purposes of applying the pupil premium admission criterion only, sections 1.9(f) and 2.4(a) of the School Admissions Code (2012) do not apply insofar as they prevent admission authorities from giving priority to children according to the financial or occupational status of parents or using supplementary forms that ask for:
  - any personal details about their financial status; or
  - whether parents are serving in the armed forces (of any nation), stationed in England, and exercising parental care and responsibility for the child in question.

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<sup>1</sup> As defined in the School Admissions Code.

- 2C. The Company is also permitted by the Secretary of State to determine admission arrangements that give priority for admission (but not above looked after children and previously looked after children) to children whose parents have permitted Founders status. The Company should ensure that they grant Founders status according to the requirements of Charity law, which permit special provision to be made for a small group of the general beneficiaries of the Charity providing that the greatest benefit is to the wider community. The Company should only grant Founders status to a parent or guardian whom the Company has identified in its discretion as having genuinely played a material role in setting up the school and, where appropriate, whose continued role is deemed by the Company to be needed to establish the school in its early years for the benefit of the public as a whole.
3. Notwithstanding the generality of paragraph 2 of this Annex, the Company will not participate in the co-ordinated admission arrangements operated by the LA for the first year of opening but will participate in the co-ordinated admission arrangements operated by the LA in subsequent years and the local Fair Access Protocol.
4. Notwithstanding any provision in this Annex, the Secretary of State may:
- (a) direct the Company to admit a named pupil to Ingleby Manor Free School & Sixth Form on application from an LA. This will include complying with a School Attendance Order<sup>2</sup>. Before doing so the Secretary of State will consult the Company;
  - (b) direct the Company to admit a named pupil to Ingleby Manor Free School & Sixth Form if the Company has failed to act in accordance with this Annex or has otherwise failed to comply with applicable admissions and equalities legislation or the provisions of the Codes;
  - (c) direct the Company to amend its admission arrangements where they fail to comply with the School Admissions Code or the School Admission Appeals Code.
5. The Company shall ensure that parents and 'relevant children'<sup>3</sup> will have the right of appeal to an Independent Appeal Panel if they are dissatisfied with an

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<sup>2</sup> Local authorities are able to issue school attendance orders if a child is not attending school. These are legally binding upon parents. Such an order might, for instance, be appropriate where a child has a place at an Academy but his/her parents are refusing to send him/her to school. The order will require a parent to ensure his/her child attends a specified school.

<sup>3</sup> 'relevant children' means:

- a) in the case of appeals for entry to a sixth form, the child, and;
- b) in any other case, children who are above compulsory school age, or will be above compulsory school age by the time they start to receive education at the school.



admission decision of the Company. The Independent Appeal Panel will be independent of the Company. The arrangements for appeals will comply with the School Admission Appeals Code published by the Department for Education as it applies to Foundation and Voluntary Aided schools. The determination of the appeal panel is binding on all parties.

### **Relevant Area**

6. Subject to paragraph 7, the meaning of "Relevant Area" for the purposes of consultation requirements in relation to admission arrangements is that determined by the local authority for maintained schools in the area in accordance with the Education (Relevant Areas for Consultation on Admission Arrangements) Regulations 1999.
7. If the Company does not consider the relevant area determined by the local authority for the maintained schools in the area to be appropriate, it must apply to the Secretary of State by 1 August for a determination of the appropriate relevant area for the Academy, setting out the reasons for this view. The Secretary of State will consult the Company and the LA in which the Academy is situated in reaching a decision.

### **Requirement to admit pupils**

8. Pupils on roll in any predecessor maintained or independent school will transfer automatically to the Academy on opening. All children already offered a place at any predecessor school will be admitted.
9. The Company will:
  - (a) subject to its right of appeal to the Secretary of State in relation to a named pupil, admit all pupils with a statement of special educational needs naming the Academy;
  - (b) determine admission oversubscription criteria for the Academy that give highest priority to looked after children and previously looked after children, in accordance with the relevant provisions of the School Admissions Code.

- 2C. The Company is also permitted by the Secretary of State to determine admission arrangements that give priority for admission (but not above looked after children and previously looked after children) to children whose parents have permitted Founders status. The Company should ensure that they grant Founders status according to the requirements of Charity law, which permit special provision to be made for a small group of the general beneficiaries of the Charity providing that the greatest benefit is to the wider community. The Company should only grant Founders status to a parent or guardian whom the Company has identified in its discretion as having genuinely played a material role in setting up the school and, where appropriate, whose continued role is deemed by the Company to be needed to establish the school in its early years for the benefit of the public as a whole.
3. Notwithstanding the generality of paragraph 2 of this Annex, the Company will not participate in the co-ordinated admission arrangements operated by the LA for the first year of opening but will participate in the co-ordinated admission arrangements operated by the LA in subsequent years and the local Fair Access Protocol.
4. Notwithstanding any provision in this Annex, the Secretary of State may:
- (a) direct the Company to admit a named pupil to Ingleby Manor Free School & Sixth Form on application from an LA. This will include complying with a School Attendance Order<sup>2</sup>. Before doing so the Secretary of State will consult the Company;
  - (b) direct the Company to admit a named pupil to Ingleby Manor Free School & Sixth Form if the Company has failed to act in accordance with this Annex or has otherwise failed to comply with applicable admissions and equalities legislation or the provisions of the Codes;
  - (c) direct the Company to amend its admission arrangements where they fail to comply with the School Admissions Code or the School Admission Appeals Code.
5. The Company shall ensure that parents and 'relevant children'<sup>3</sup> will have the right of appeal to an Independent Appeal Panel if they are dissatisfied with an

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<sup>2</sup> Local authorities are able to issue school attendance orders if a child is not attending school. These are legally binding upon parents. Such an order might, for instance, be appropriate where a child has a place at an Academy but his/her parents are refusing to send him/her to school. The order will require a parent to ensure his/her child attends a specified school.

<sup>3</sup> 'relevant children' means:

- a) in the case of appeals for entry to a sixth form, the child, and;
- b) in any other case, children who are above compulsory school age, or will be above compulsory school age by the time they start to receive education at the school.

## **Annex A**

### **Plan – the Land**



DO NOT SCALE FROM THIS DRAWING.  
ALL DIMENSIONS TO BE CHECKED ON  
SITE. COPYRIGHT RESERVED.

AREAS	
PHASE 1	22,347 m <sup>2</sup> 2.23 ha
2	19,208 m <sup>2</sup> 1.92 ha
3	20,251 m <sup>2</sup> 2.02 ha
4	27,410 m <sup>2</sup> 2.75 ha
TOTAL	88,703 m <sup>2</sup> 8.8 ha

HOUSING NUMBERS, PHASING AND SCHOOL SPLIT INDICATIVE ONLY

Asy

Utilidades	—	—	—	—
------------	---	---	---	---

Utilities (Water) & Easement (Dashed)
— — — — —

Utilities (Gas) & Easement (Dashed)




School site

area	Existing	Proposed
...	...	...

△

Landscape layout and land parcels as shown  
In The Appleton Group ref. TAG 5 Landscape  
Proposals

Highways layout as shown in Transport  
Planning Associates ref. IB Internal Highway  
Alignment 021012

Rev D	29.03.13	Half pitch exchanged for tennis courts	AD
Rev C	29.03.13	Half pitch added adjacent to road	AD
Rev B	24.03.13	Location of school football pitches revised	N5
Rev A	26.03.13	First issue for Comments	N5

REVISIONS

---

CLIENT

Thru Way Investments Ltd

PROJECT LOW JUNE

Low lane,  
Ingleby Barwick,  
Stockton-on-Tees

TITLE
Proposed School Site

SCALE	DATE	DRAWN	CHECKED
1:1250 @ A1	MAR 13	HS	AD

30 Road  
12 Caroline Street  
Birmingham  
B3 1TR

**3D  
REID**

T +44(0)121 212 2321  
F +44(0)234 2759  
[www.3dreid.com](http://www.3dreid.com)

Birmingham, Edinburgh's Fabbrik  
Glasgow, London, Manchester

DRAWING NO.  
110096 - B - 035 - D



## **Annex B**

### **Plan – the Temporary Site**



Copyright of this drawing is vested in the architect and it must not be copied or reproduced without consent. Figured dimensions only are to be taken from this drawing.

[illegible]

NORTH POINT

PROJECT NO:  
081

PROJECT:  
IMFS - Temporary School

CLIENT: **MACE**  
TITLE:

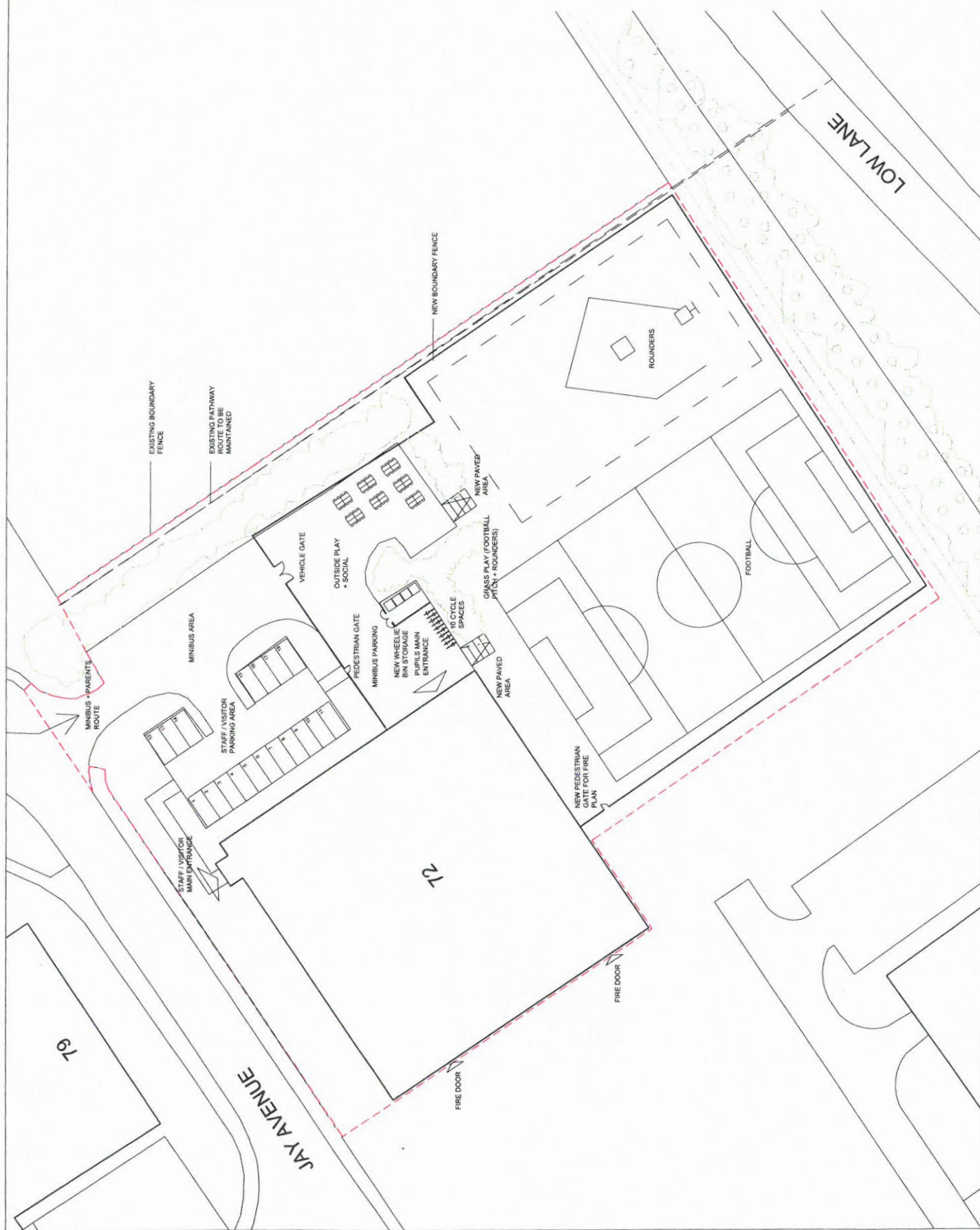
Proposed Site Plan

081 01 01  
SCALE

1:500 @ A3  
ISSUE TYPE  
For info

FOR INFORMATION  
INNES ASSOCIATES

THE OLD SCHOOL, EXTON STREET, LONDON SE1 8JF  
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## **Schedule 2**

### **Amended Supplemental Funding Agreement**



Department  
for Education

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

**December 2020 v7**



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## **SUMMARY SHEET**

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

<b>Name of Academy Trust</b>	Delta Academies Trust
<b>Company number</b>	07386086
<b>Date of Master Funding Agreement</b>	28 <sup>th</sup> September 2018
<b>Name of Academy</b>	Ingleby Manor Free School
<b>Opening date</b>	1 <sup>st</sup> September 2014
<b>Type of academy (indicate whether academy or free school)</b>	Free school
<b>Religious designation</b>	N/A
<b>Wholly or partly selective</b>	N/A
<b>Name of predecessor school (where applicable)</b>	Ingleby Manor Free School & Sixth Form
<b>Capacity number (of statutory school age places)</b> <b>(if the Academy has a nursery provision, please provide a breakdown of capacity for nursery pupils and statutory school age places)</b>	750
<b>Age range (including nursery provision where the nursery is part of the school)</b>	11 – 16 years
<b>Number of sixth form places</b>	N/A
<b>Number of boarding places</b>	N/A
<b>SEN unit / Resource provision</b>	N/A
<b>Land arrangements</b> <b>(Version 1-8 or other)</b>	Version 2
<b>Academy and title number of Land</b>	Welwyn Road, Ingleby Barwick, Stockton-on-Tees, Cleveland, TS17 0FA

	Title Number: CE223130
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**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		✓

Clause No.	Descriptor	Applied	Not used
	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 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		✓

Clause No.	Descriptor	Applied	Not used
	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.		✓
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

Descriptor	Clause No.	Applied	Not used

## 1. **ESTABLISHING THE ACADEMY**

1.A This Agreement made between the Secretary of State for Education and Delta Academies Trust is supplemental to the master funding agreement made between the same parties and dated 28<sup>th</sup> September 2018 (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 Ingleby Manor Free School.

“**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.

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

“**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.

“**Termination Notice**” means a notice sent by the Secretary of State to the

Academy Trust, terminating this Agreement on the date specified in the notice.

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

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

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

### **The Academy**

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

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

1.H The Academy Trust opened the Academy on 1<sup>st</sup> September 2014.

1.I The Academy Trust must ensure that so far as is reasonably practicable and consistent with clause 2.X 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



## **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 Not used.

2.A.2 The Academy Trust must designate a staff member at the Academy as responsible for promoting the educational achievement of registered pupils at the Academy who are being looked after by 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 750 and the age range is 11 to 16 years. 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 mixed sex school.

### **SEN Unit or Resourced Provision**

2.C Not used.

2.D Not used.

## **Charging**

2.E Not used.

2.E.1 Not used.

## **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 Not used.

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 Not used.

2.N Not used.

2.O Not used.

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

2.P.1 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 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 Not used.

## **Curriculum**

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

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

2.W Not used.

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

- a) provision must be made for religious education to be given to all pupils at the Academy in accordance with the requirements for agreed syllabuses in section 375(3) of the Education Act 1996 and paragraph 2(5) of Schedule 19 to the School Standards and Framework Act 1998;
- b) the Academy must comply with section 70(1) of, and Schedule 20 to, the School Standards and Framework Act 1998 as if it were a community 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 Not used.

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**

- 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

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

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

3.H 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. Not used.

### **Other relevant funding**

3.J Not used.

3.K Not used.

### **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**

**“Land”** means the land at Ingleby Manor Free School at Welwyn Road, Ingleby Barwick, Stockton-on-Tees, Cleveland, TS17 0FA with title number CE223130 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.

## **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 Not used.

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

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

he may serve a Termination Notice.

5.I Not used.

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

5.J If the Secretary of State has determined that the Academy will be removed from the Register of Independent Schools and no appeal against that determination

is pending, he may serve a Termination Notice.

5.K Not used.

5.L 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 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 Not used.

5.O. 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 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,

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 Not used.

### **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.





Department  
for Education

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