DEED OF NOVATION
OF THE FUNDING AGREEMENT FOR
LIGHTCLIFFE ACADEMY

The Parties to this Deed are:

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

(2) **HLHS ACADEMY TRUST LIMITED**, a charitable company incorporated in England and Wales with registered company number 07657998 whose registered address is at Hipperholme and Lightcliffe High School, Stoney Lane, Lightcliffe, Halifax ("**the Company**"); and

(3) **ABBEY MULTI ACADEMY TRUST**, a charitable company incorporated in England and Wales with registered company number 07705552 whose registered address is at Abbey Grange Academy, Butcher Hill, Leeds, LS16 5EA ("Abbey "),

together referred to as the "Parties".

INTRODUCTION

A. Hipperholme and Lightcliffe High School (to be renamed Lightcliffe Academy) (the "**Academy**") is an academy within the meaning of the Academies Act 2010 and is currently operated by the Company

B. The Secretary of State and the Company entered into a Funding Agreement on for the maintenance and funding of the Academy (the "**Agreement**") attached at Schedule 1.

C. It is proposed that, with effect from 00.01 am on 1 March 2015 ("**Transfer Date**"), Abbey will assume responsibility for the management and operation of the Academy in succession to the Company.

D. The Parties wish to novate the Agreement to Abbey and the Secretary of State and Abbey wish to vary the terms of the Agreement subject to the provisions of this Deed.

LEGAL AGREEMENT

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

NOVATION

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

3. With effect from the Transfer Date, Abbey agrees to perform the Agreement (as varied by this Deed) and be bound by its terms in every way as if it were the original party to it in place of the Company.

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

OBLIGATIONS AND LIABILITIES

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

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

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

INDEMNITY

8. The Company agrees to indemnify Abbey against any losses, liabilities, claims, damages or costs the Abbey suffers or incurs under or in connection with the Agreement as a result of the Company's failure to perform or satisfy its obligations under the Agreement before the Transfer Date.

9. Abbey agrees to indemnify the Company against any losses, liabilities, claims, damages or costs the Company suffers or incurs under or in connection with the

Agreement as a result of the Abbey's failure to perform or satisfy its obligations under the Agreement on or after the Transfer Date.

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

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

COUNTERPARTS

10. 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 25 February 2015

EXECUTED as a deed by **the Company** acting by one director in the presence of a witness:

Director .....

Print name .....

Date 23/2/15

Witness [redacted]

Print nam

Address...

Occupati

EXECUTED as a deed by **Abbey** acting by one director in the presence of a witness:

Director .....

Print name.....

Date .....

Witness .....

Print name.....

Address.....

Occupation.....

Schedule 1

Existing Funding Agreement

Witness .....

Print name.....

Address.....

Occupation.....

EXECUTED as a deed by **Abbey** acting by one director in the presence of a witness:

Director .....

Print name.....

Date .....

Witness [redacted]

Print na

Address

Occupat

FREEDOM OF INFORMATION REDACTION SHEET

HLHS ACADEMY

FUNDING AGREEMENT

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	Factors for Withholding
▪ 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	▪ To comply with obligations under the Data Protection Act

<u>Reasons why public interest favours withholding information</u>

Whilst releasing the majority of the HLHS Academy Funding Agreement will further the public understanding of Academies. The whole of the HLHS Academy Funding Agreement cannot be revealed. If the personal information redacted was to be revealed under the FOI Act, Personal Data and Commercial interests would be prejudiced.

SINGLE ACADEMY MODEL

HLHS ACADEMY

MODEL FUNDING AGREEMENT

~~{Insert 2011}~~

1/8/2011

SINGLE ACADEMY MODEL

HLHS ACADEMY
FUNDING AGREEMENT
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INTRODUCTION

1) This Agreement is made under section 1 of the Academies Act 2010 between the Secretary of State for Education ("the Secretary of State") and HLHS Academy Trust Limited (the "Academy Trust").

2) The Academy Trust is a Company incorporated in England and Wales, limited by guarantee with registered Company number 076579998 .

3) The following expressions used in this Agreement have the respective meanings assigned to them by the numbered clauses of this Agreement referred to immediately after the reference to the expressions -

   a) "Academies Financial Handbook" - clause 72;

   b) "Academy Financial Year" - clause 62;

   c) "Accounting Officer" – clause 71;

   d) "Annual Letter of Funding" - clause 65;

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

   f) "GAG" – clause 35;

   g) "Capital Expenditure" - clause 36;

   h) "Capital Grant" – clause 36;

   i) "EAG" - clause 35;

   j) "Recurrent Expenditure" – clause 35;

   k) "Start-up Period" – clause 55;

4) In this Agreement the following words and expressions shall have the following meanings:-

   "Business Day" means any day other than a Saturday, Sunday, Christmas Day, Good Friday or a day which is a bank holiday with the meaning given to that expression in the Banking and Financial Dealings Act 1971;

"DfE" means Department for Education;

"Further Governors" means Governors who may be appointed by the Secretary of State under the Articles of Association if a Special Measures Termination Event, as defined in this Agreement, occurs;

"Insured Risks" means fire lightning explosion earthquake storm tempest flood subsidence landslip heave impact terrorism bursting or overflowing of water tanks and pipes earthquake damage by aircraft and other aerial devices or articles dropped there from riot and civil commotion labour disturbance and malicious damage and such other risks as the Academy Trust 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 ".

"Additional Governors" means Governors who may be appointed by the Secretary of State under the Articles of Association.

"Principal" means the head teacher of the Academy;

"Principal Regulator" means the body or person appointed as the Principal Regulator under the Charities Act 2006.

"LA" means the Local Authority in the area in which the Academy is situated;

"the Land" means the land (including for the avoidance of doubt all buildings, structures landscaping and other erections) situated at and known as Stoney Lane, Lightcliffe, Halifax, HX3 8TL registered under WYK606003 and WYK58589 and also The Maltings, Maltings Road, Ovenden Wood, Halifax, HX2 0JJ registered under WYK934146 "

"Memorandum" and "Articles" means the Memorandum and Articles of Association of the Academy Trust for the time being in force, a copy of the current version of which is annexed to this Agreement as Annex A;

"parents" means parents or guardians;

"persons" includes a body of persons, corporate or incorporate;

references to "school" shall where the context so admits be references to the Academy;

"SEN" means Special Educational Needs;

5) The Interpretation Act 1978 shall apply for the interpretation of this Agreement as it applies for the interpretation of an Act of Parliament.

6) Expressions defined in this Agreement shall have the same meaning where used in any Annex to this Agreement.

7) Questions arising on the interpretation of the arrangements in this Agreement shall be resolved by the Secretary of State after consultation with the Academy Trust.

8) Section 1 (3) of the Academies Act 2010 states that:

(3) An Academy agreement is an agreement between the Secretary of State and the other party under which-

(a) the other party gives the undertakings in subsection (5), and

(b) the Secretary of State agrees to make payments to the other party in consideration of those undertakings.

LEGAL AGREEMENT

9) In consideration of the Academy Trust undertaking to establish and maintain, and to carry on or provide for the carrying on of, an independent school in England to be known as the HLHS Academy ("the Academy") and having such characteristics as are referred to in clause 10, the Secretary of State agrees to make payments to the Academy Trust in accordance with the conditions and requirements set out in this Agreement. For the avoidance of doubt, any obligations imposed upon or powers given to the Academy by this Agreement are also imposed upon the Academy Trust.

CHARACTERISTICS OF THE ACADEMY

10) The characteristics of the Academy set down in Section 1(6) of the Academies Act 2010, are that:

(a) the school has a curriculum satisfying the requirements of section 78 of EA 2002 (balanced and broadly based curriculum)

(b) if the school provides secondary education, its curriculum for the secondary education has an emphasis on a particular subject area, or particular subject areas, specified in the Agreement;

(c) the school provides education for pupils of different abilities

(d) the school provides education for pupils who are wholly or mainly drawn from the area in which the school is situated.

ACADEMY OPENING DATE

11) The Academy shall open as a school on 01.07.2011 replacing Hipperholme and Lightcliffe High School which shall cease to be maintained by the Local Authority on that date, which date shall be the conversion date within the meaning of the Academies Act 2010.

CONDITIONS OF GRANT

General

12) Other conditions and requirements in respect of the Academy are that:

(a) the school will be at the heart of its community, promoting community cohesion and sharing facilities with other schools and the wider community;
(b) there will be assessments of pupils performance as they apply to maintained schools and the opportunity to study for external qualifications in accordance with clause 29 (d);
(c) the admissions policy and arrangements for the school will be in accordance with admissions law, and the DfE Codes of Practice, as they apply to maintained schools;
(d) teachers' levels of pay and conditions of service for all employees will be the responsibility of the Academy Trust save that when entering into a contract of employment with any person the Academy Trust shall be bound by and act in accordance with such guidance as the Secretary of State may publish in relation to the maximum salary that may be paid to employees of Academies;
(e) there will be an emphasis on the needs of the individual pupils including pupils with special education needs (SEN), both those with and without statements of SEN;
(f) there will be no charge in respect of admission to the school and the school will only charge pupils where the law allows maintained schools to charge;
(g) the Academy Trust shall as soon as reasonably practicable establish an appropriate mechanism for the receipt and management of donations and shall use reasonable

endeavours to procure donations through that mechanism for the purpose of the objects specified in the Articles.

Governance

13) The Academy will be governed by a governing body ("the Governing Body") who are the Directors of the company constituted under the Memorandum and Articles of the Academy Trust.

14) The Governing Body shall have regard to (but for the avoidance of doubt shall not be bound by) any guidance as to the governance of academies that the Secretary of State may publish.

Conduct

15) The Academy shall be conducted in accordance with:

a) the Memorandum and Articles, which shall not be amended by the Academy Trust without the written consent of the Secretary of State, such consent not to be unreasonably withheld;
b) all provisions by or under statute which confer rights or impose obligations on Academies including, without limitation, the independent schools standards prescribed under section 157 of the Education Act 2002 to the extent they apply to the Academy;
c) the terms of this Agreement.

Criminal Records Bureau Checks

16) The Academy shall comply with the requirements of paragraph 4 of the Schedule to the Education (Independent School Standards) (England) Regulations 2003 (as amended) in relation to carrying out enhanced criminal records checks, obtaining enhanced criminal records certificates and making any further checks, as required and appropriate for members of staff, supply staff, individual Governors and the Chair of the Governing Body.

Pupils

17) The planned capacity of the Academy is 1392 in the age range 11-18, including a sixth form of 192 places. The Academy will be an all ability inclusive school whose requirements for:

a) the admission of pupils to the Academy are set out in Annex B to this Agreement;
b) the admission to the Academy of and support for pupils with SEN and with disabilities (for pupils who have and who do not have statements of SEN) are set out in Annex C to this Agreement;
c) pupil exclusions are set out in Annex D to this Agreement.

Designated Teacher for Looked After Children

17A) The Academy Trust will in respect of the Academy act in accordance with, and be bound by, all relevant statutory and regulatory provisions and have regard to any guidance and codes of practice issued pursuant to such provisions, as they apply at any time to a maintained school, relating to the designation of a person to manage the teaching and learning programme for children who are looked after by an LA and are registered pupils at the school. For the purpose of this clause, any reference to the governing body of a maintained school in such statutory and regulatory provisions, or in any guidance and code of practice issued pursuant to such provisions, shall be deemed to be references to the Governing Body of the Academy Trust.

Teachers and other staff

18) Subject to clause 19, the Academy Trust shall not employ anyone under a contract of employment or for services to carry out planning and preparing lessons and courses for pupils, delivering lessons to pupils, assessing the development, progress and attainment of pupils, and reporting on the development, progress and attainment of pupils ("specified work") who is not either:-

a) a qualified teacher within the meaning of regulations made under section 132 of the Education Act 2002; or
b) otherwise eligible to do specified work under the Education (Specified Work and Registration) (England) Regulations 2003 (SI 2003/1663), which for the purpose of this clause shall be construed as if the Academy were a maintained school.

19) Clause 18 does not apply to anyone who:

a) was transferred to the employment of the Academy Trust by virtue of the Transfer of Undertakings (Protection of Employment) Regulations 2006;
b) immediately prior to the transfer, was employed to do specified work; and
c) immediately prior to the transfer, was not:
    (i) a qualified teacher within the meaning of regulations made under

section 132 of the Education Act 2002 and registered with full registration with the appropriate body, or

(ii) eligible to do specified work under the Education (Specified Work and Registration) (England) Regulations 2003 (SI 2003/1663)

("transferred staff member"). The Academy Trust shall use its best endeavours to ensure that any transferred staff member who undertakes specified work and does not meet the requirements of clause 18(a) or clause 18(b) meets such requirements as soon as possible.

20) The Academy Trust shall ensure that all teachers employed at the Academy have access to the Teachers Pension Scheme and, in so doing, will comply with the statutory provisions underlying the scheme.

21) The Academy Trust shall ensure that all employees at the Academy other than teachers have access to the Local Government Pension Scheme.

Curriculum, curriculum development and delivery and RE and collective worship

22) The curriculum provided by the Academy to pupils up to the age of 16 shall be broad and balanced with an emphasis in its secondary curriculum on sport.

23) The Academy Trust shall ensure that the broad and balanced curriculum includes English, Mathematics and Science.

24) The Academy Trust shall make provision for the teaching of religious education and for a daily act of collective worship at the Academy.

25) Where the Academy is designated with a religious character in accordance with section 124B of the School Standards and Framework Act 1998 or further to section 6(8) of the Academies Act 2010:

a) subject to clause 27, the Academy Trust shall ensure that provision is made for Religious Education to be given to all pupils at the Academy in accordance with the tenets of the specified religion or religious denomination of the Academy;

b) subject to clause 27, the Academy Trust shall comply with the requirements of section 70(1) of, and Schedule 20 to, the School Standards and Framework Act 1998 as if the Academy were a foundation school with a religious character or a voluntary

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

c) the Academy Trust shall ensure that the quality of Religious Education given to pupils at the Academy and the contents of the Academy's collective worship given in accordance with the tenets and practice of the specific religion or religious denomination are inspected. Such inspection shall be conducted by a person chosen by the Academy Trust and the Academy shall secure that such inspection shall comply with the requirements set out in any statutory provision and regulations as if the Academy were a foundation of voluntary school which has been designated under section 69(3) of the School Standards and Framework Act 1998 as having a religious character.

26) 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) subject to clause 27, the Academy Trust shall ensure that provision shall 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) subject to clause 27, the Academy Trust shall ensure that the Academy complies with the requirements of section 70(1) of, and Schedule 20 to, the School Standards and Framework Act 1998 as if it were a community, foundation or voluntary school which does not have a religious character, except that the provisions of paragraph 4 of that Schedule do 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, the Secretary of State's consent to such an application not to be unreasonably withheld or delayed.

27) Section 71(1) – (6) and (8) of the School Standards and Framework Act 1998 shall apply as if the Academy were a community, foundation or voluntary school, and as if references to "Religious Education" and to "Religious Worship" in that section were references to the religious education and religious worship provided by the Academy in accordance with clauses 25 or 26 as appropriate.

28) The Academy Trust shall have regard to any guidance issued by the Secretary of State

on sex and relationship education to ensure that children at the Academy are protected from inappropriate teaching materials and they learn the nature of marriage and its importance for family life and for bringing up children.

Assessment

29) The Secretary of State will notify the appropriate body for assessment purposes about the Academy.

a) The Academy Trust shall ensure that the Academy complies with any guidance issued by the Secretary of State from time to time to ensure that pupils take part in assessments and in teacher assessments of pupil's performance as they apply to maintained schools.

b) The Academy Trust shall report to any body on assessments under clause 29 as the Secretary of State shall prescribe and shall provide such information as may be required by that body as applies to maintained schools.

c) In respect of all Key Stages, the Academy Trust will submit the Academy to monitoring and moderation of its assessment arrangements as prescribed by the Secretary of State.

d) The Academy Trust may not offer courses at the Academy which lead to external qualifications, as defined in section 96 of the Learning and Skills Act 2000, unless the Secretary of State gives specific approval for such courses.

Exclusions Agreement

30) The Academy Trust shall, if invited to do so by an LA, enter into an agreement in respect of the Academy with that LA, which has the effect that where:

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

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

payment will flow between the Academy Trust and the LA in the same direction and for the same amount that it would, were the Academy a maintained school, under Regulations made under section 47 of the School Standards and Framework Act 1998 relating to the addition or deduction of a maintained school's budget following a

permanent exclusion or the admission of a permanently excluded pupil. At the date of this Agreement, the applicable Regulation is Regulation 23 of the School Finance (England) Regulations 2008.

School Meals

31) The Academy Trust shall, if requested to do so by or on behalf of any pupils at the Academy, provide school lunches for those pupils unless it would be unreasonable for it to do so. Subject to the provisions of clause 32 charges may be levied for lunches, but the Academy Trust shall otherwise fund the cost of such school lunches from its GAG.

32) In relation to a pupil who is himself or whose parents are in receipt of benefits mentioned in section 512ZB of the Education Act 1996 (or equivalent provision governing the entitlement to free school lunches of pupils at maintained schools), the Academy Trust shall ensure that a school lunch is provided for such a pupil free of charge to be funded out of the Academy Trust's GAG.

Charging

33) Sections 402 (Obligation to enter pupils for public examinations), 450 - 457 (charges), 459 (regulations about information about charges and school hours) and 460 (voluntary contributions), 461 (recovery of sums as civil debt) - 462 (Interpretation re charges) of the Education Act 1996 shall be deemed to apply to the Academy with the following modifications:

a) references to any maintained school shall be treated as references to the Academy;
b) references to registered pupils shall be treated as references to registered pupils at the Academy;
c) references to the governing body or the local education authority shall, in each case, be treated as references to the Academy Trust;
d) the charging and remissions policies required to be determined under section 457, and any amendment thereto, shall require the approval of the Secretary of State; and
e) the Academy Trust may charge persons who are not registered pupils at the Academy for education provided or for facilities used by them at the Academy.

GRANTS TO BE PAID BY THE SECRETARY OF STATE

General

34) The Secretary of State shall pay grants towards capital and Recurrent Expenditure for the Academy. Except with the Secretary of State's prior agreement, the Academy Trust shall not budget for its expenditure in any Academy Financial Year in excess of expected income. The Academy Trust shall not enter into commitments which are likely to have substantial implications for future levels of grant, or for the period for which grant may be required. No decision by the Academy Trust shall commit the Secretary of State to paying any particular amount of grant.

35) "Recurrent Expenditure" means any expenditure on the establishment, conduct, administration and maintenance of the Academy which does not fall within the categories of capital expenditure set out at clause 36. The Secretary of State shall pay two separate and distinct grants in respect of Recurrent Expenditure: General Annual Grant ("GAG") and Earmarked Annual Grant ("EAG").

Capital Grant

36) "Capital Expenditure" means expenditure on:

a) the acquisition of land and buildings;
b) the erection, enlargement, improvement or demolition of any building including fixed plant, installation, wall, fence or other structure, or any playground or hard standing;
c) the installation of electrical, mechanical or other services;
d) the purchase of vehicles and other self-propelled mechanical equipment;
e) the installation and equipping of premises with furnishings and equipment, other than necessary replacements, repairs and maintenance due to normal wear and tear;
f) the installation and equipping of premises with computers, networking for computers, operating software and information and communication technology equipment, other than necessary updates or necessary replacements, repairs and maintenance due to normal wear and tear;
g) the provision and equipping of premises, including playing fields and other facilities for social activities and physical recreation;
h) works of a permanent character other than the purchase or replacement of minor day-to day items;
i) any major repairs or replacements which are specified as constituting capital expenditure in any grant letter relating to them;
j) such other items (whether of a like or dissimilar nature to any of the foregoing) of a

substantial or enduring nature as the Secretary of State may agree shall constitute capital expenditure for the purposes of this Agreement;

k) all professional fees properly and reasonably incurred in connection with the provision of any of the above;

l) VAT and other taxes payable on any of the above.

"Capital Grant" means grant paid to the Academy Trust in respect of Capital Expenditure.

37) Where the Academy is to open in new premises, or where existing premises are to be substantially refurbished or remodelled to enable the Academy to open in such premises, the Secretary of State, may, in his absolute discretion be responsible for meeting the incurred Capital Expenditure for that Academy. To that end, the Secretary of State will consider providing funding in accordance with any arrangements as he considers appropriate.

38) Any Capital Expenditure incurred in respect of the Academy on which Capital Grant payments are sought from the Secretary of State will require the specific prior written agreement of the Secretary of State, which agreement shall not be unreasonably withheld or delayed.

39) Any payment of Capital Grant to the Academy Trust under this Agreement is subject to the fulfilment of the following conditions:

a) such grants are used solely to defray expenditure approved by the Secretary of State;

b) the Academy Trust certifying and providing evidence that all planning and other consents necessary for the development and all related infrastructure to be completed have been obtained or put in place.

Arrangements for Payment of Capital Grant

40) Capital Grant will be paid by the Secretary of State to the Academy Trust on the basis of claims for grant submitted to the Secretary of State in the notified format with supporting invoices and certificates as required by the Secretary of State. Capital Grant will be paid within 21 days from the day on which a claim for grant is received if the claim is in the proper format, supported by the appropriate documentation and the conditions on its payment set out at clause 39 are complied with. If a dispute arises as to whether a claim is or is not acceptable both parties undertake to attempt to resolve it in good faith. In the event of such a dispute, the Secretary of State shall pay to the Academy Trust so much of the claim as shall not be in dispute.

Implementation Grant[1]

41) "Implementation Grant" means payments towards Recurrent Expenditure incurred for the establishment of the Academy prior to it opening.

42) The Secretary of State may enter into an agreement with a third party ("Project Management Company") for the provision of project management services to assist in the establishment of the Academy. Where such an agreement has been entered into, the Secretary of State shall pay Implementation Grant to the Project Management Company in accordance with that agreement.

43) If the Secretary of State has indicated that Implementation Grant will be payable, the Academy Trust shall prepare and submit to the Secretary of State a budget showing expected Recurrent Expenditure to be incurred by the Academy Trust before the Academy opens and for which grant is sought. This budget must either be agreed to or modified by the Secretary of State as he considers appropriate ("Approved Implementation Budget").

44) Both parties recognise that as the project develops it may be necessary to revise individual costs in the Approved Implementation Budget and to move costs between budget headings in order to ensure that the project remains within its approved budget. Where the Academy Trust wishes to make such an adjustment of over £10,000, the reason for the change and a revised budget must be submitted to the Secretary of State for approval.

45) The Secretary of State will pay Implementation Grant to the Academy Trust on the basis of claims for grant submitted to the Secretary of State in accordance with the Approved Implementation Budget and in the notified format with supporting invoices, receipts and documents as required by the Secretary of State. If the grant claim is acceptable, the Secretary of State undertakes to pay the amount due within 21 days from the day on which it was received. If a dispute arises over whether a grant claim or part of it is acceptable, both parties undertake to attempt to resolve the dispute in good faith.

46) Any amount in the Approved Implementation Budget in respect of which the expenditure has not been incurred by the Academy Trust by the date on which the Academy opens will lapse and no Implementation Grant will be payable in respect of that part of the Approved Implementation Budget. Any amount of Implementation Grant which has been

[1] Note that the Secretary of State will not pay Implementation Grant pursuant to these clauses in relation to schools applying to convert further to the Academies Act 2010.

paid but remains unexpended on relevant expenditure by the date on which the Academy opens will, without prejudice to any other mode of recovery, be taken into account in determining the total amount of grant to be paid to the Academy Trust after the Academy has opened. Any amount of Implementation Grant which is found to have been used on ineligible expenditure will, without prejudice to any other mode of recovery, be taken into account in determining the total amount of grant to be paid to the Academy Trust.

General Annual Grant

47) GAG will be paid by the Secretary of State to the Academy Trust in order to cover the normal running costs of the Academy. These will include, but are not limited to:

a) teachers' salaries and related costs (including full and part time teaching staff and seconded teachers);
b) non-teaching staff salaries and related costs (including pension contributions, educational support staff, administrative and clerical staff and manual and premises related staff);
c) employees' expenses;
d) the purchase, maintenance, repair and replacement:
    (i) of teaching and learning materials and other educational equipment, including books, stationery and ICT equipment and software, sports equipment and laboratory equipment and materials;
    (ii) of other supplies and services;
e) examination fees;
f) repairs, servicing and maintenance of buildings (including redecoration, heating, plumbing, lighting etc); maintenance of grounds (including boundary fences and walls); cleaning materials and contract cleaning; water and sewage; fuel and light (including fuel oil, solid and other fuel, electricity and gas); rents; rates; purchase, maintenance, repairs and replacement of furniture and fittings;
g) insurance;
h) medical equipment and supplies;
i) staff development (including in-service training);
j) curriculum development;
k) the costs of providing school meals for pupils (including the cost of providing free school meals to pupils who are eligible to receive them), and discretionary grants to pupils to meet the cost of pupil support, including support for pupils with special

educational needs or disabilities (taking account of the fact that separate additional money will be available for pupils with statements of special educational needs);

l) administration;

m) establishment expenses and other institutional costs.

48) Subject to clauses to 56-57, GAG for each Academy Financial Year for the Academy will be the total of the following areas of funding;

a) Formula Funding: Funding equivalent to the level of funding which would be provided through the funding formula of the LA to a maintained school which had all of that Academy's relevant characteristics, including its number of pupils;

b) Local Authority Central Spend Equivalent: Funding representing a proportion of the LA Education Budget money which the LA would be able to retain, from the non-delegated elements of the Schools Budget and the relevant items in the LA Budget, if the Academy were a maintained school. The proportion which this funding will represent will be based on the elements of the LA's Section 251 Budget Return which are relevant to that Academy.

c) Specialist Schools Allowance: Funding equivalent to that which a maintained school with the Academy's characteristics would receive in respect of their participation in the specialist schools programme. In the year of conversion, this may continue to be paid by the Local Authority;

49) The GAG for each Academy Financial Year for the Academy will also include, payable on a basis equivalent to that applied to maintained schools:

a) funding for matters for which it is necessary for the Academy to incur extra costs, for as long as those costs are deemed necessary by the Secretary of State; and

b) payments in respect of further, specific grants made available to maintained schools, where the Academy meets the requisite conditions and criteria necessary for a maintained school to receive these grants.

50) Subject to clause 51, the basis of the pupil number count for the purposes of determining GAG for an Academy Financial Year for the Academy will be, in the first year of conversion, the same basis as that used by the Local Authority for determining the budget share of the predecessor maintained school as adjusted by numbers counted in any subsequent Schools Census, as determined by the Secretary of State. In subsequent years the basis of the pupil count will be as determined by the Secretary of State.

51) Once the conditions specified in clause 52 have been satisfied with respect to the Academy for the Academy Financial Year for which funding is being calculated, the basis of the pupil number count for the purpose of determining GAG for the Academy will be:

a) for the pupil number count for pupils in Year 11 and below, the Schools Census for the January preceding the Academy Financial Year in question; and
b) for the pupil number count for pupils in Year 12 and above, the formula which for the time being is in use for maintained schools for the calculation of pupil numbers for pupils in Year 12 and above for the purpose of calculating their level of funding.

52) For the purpose of clause 51, the conditions are:

a) 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); and
b) the total number of pupils as measured in the Schools Census for the preceding January is 90% or more of the planned final size of the Academy, which is 1,392

c) The Secretary of State has determined that the basis shall be as provided for in Clause 51.

53) For any Academy Financial Year in which GAG for the Academy has been calculated in accordance with clause 50, no adjustment shall be made to the following Academy Financial Year's formula funding element of GAG to recognise variation from the pupil count basis used.

54) For any Academy Financial Year in which GAG for the Academy is calculated in accordance with clause 51, no adjustment will be made to the formula funding element in the following Academy Financial Year's formula funding element of GAG unless the Academy Trust demonstrates to the satisfaction of the Secretary of State that there has been a significant impact on costs, such as an extra class. For any other element of GAG the Secretary of State may make adjustments to recognise a variation in pupil numbers from that used to calculate the element of grant in question; the basis of these will be set out in the annual letter of funding.

55) The Secretary of State recognises that:

a) Where the Academy opens with an intake representing only a proportion of the final planned size of the Academy, payments based simply upon the number of pupils present are unlikely to be sufficient to meet the Academy's needs in the Academy

Financial Years before all age groups are present at their planned size (the "Start-up Period") because of a lack of economies of scale. The Secretary of State may pay an appropriately larger GAG in the Start-up Period than would be justified solely on the basis of the methods set out in clauses 48-54, in order to enable the Academy to operate effectively;[2]

b) Where the Academy opens with pupils transferred from one or more maintained schools which have closed, additional GAG resources may be required to take account of transitional costs including any costs associated with supporting the integration of pupils from the closed schools and, where necessary, to offer a dual curriculum. If the Secretary of State has indicated that such additional GAG will be payable, the Academy Trust will make a bid for this addition to GAG based upon need and providing appropriate supporting evidence.

56) During the Start-up Period or during the period when year groups are present who have transferred from a predecessor school or schools, the Secretary of State will pay a further element of GAG additional to that calculated in accordance with the methods set out in clauses 48-54 to allow the Academy to:

a) purchase a basic stock of teaching and learning materials (including library books, text books, software, stationery, science equipment and equipment for physical education) and other consumable materials;
b) meet the costs associated with the recruitment and induction of additional teaching and other staff.

After the Start-up Period these costs will be met through the ordinary GAG.

57) The Secretary of State recognises that if he serves notice of intention to terminate this Agreement, the intake of new pupils during the notice period is likely to decline and that in such circumstances payments based simply upon the number of pupils attending the Academy are unlikely to be sufficient to meet the Academy's needs during the notice period. The Secretary of State undertakes to pay a reasonable and appropriately larger GAG with respect to the Academy in the notice period than would be justified solely on the basis of the methods set out in clauses 48-54, in order to enable the Academy to operate effectively.

58) The Secretary of State also recognises that if this Agreement is terminated for any

[2] Note that a larger GAG for the Start-Up Period is not applicable to schools applying to convert further to the Academies Act 2010.

reason by either party the number of pupils at the Academy is likely to decline. In these circumstances both parties undertake to attempt to resolve issues arising from such termination in good faith and with the aim of protecting the interests and the education of the pupils at the Academy.

59) GAG paid by the Secretary of State shall only be spent by the Academy Trust towards the normal running costs of the Academy.

Earmarked Annual Grant

60) Earmarked Annual Grant ("EAG") shall be paid by the Secretary of State to the Academy Trust in respect of either recurrent or Capital Expenditure for such specific purposes as may from time to time be agreed between the Secretary of State and the Academy Trust and as described in the relevant funding letter. The Academy Trust shall only spend EAG in accordance with the scope, terms and conditions of the grant set out in the relevant funding letter.

61) Where the Academy Trust is seeking a specific EAG in relation to any Academy Financial Year, it shall submit a letter outlining its proposals and the reasons for its request to Academies Division, Sanctuary Buildings, Great Smith Street, London SW1P 3BT.

Arrangements for Payment of GAG and EAG

62) The Secretary of State shall notify the Academy Trust at a date preceding the start of each Academy Financial Year of the GAG and EAG figures in respect of the Academy which, subject to Parliamentary approval, the Secretary of State plans for that Academy Financial Year and of the assumptions and figures on which these are based.

63) If GAG or EAG is calculated incorrectly due to a mistake of the Secretary of State then:

a) if this leads to an underpayment of GAG, the Secretary of State will correct the underpayment in subsequent Academy Financial Years;

b) if this leads to an overpayment of GAG, the Secretary of State reserves the right to recover any overpaid grant in subsequent Academy Financial Years, as appropriate, having considered all the relevant circumstances and taking into account any representations from the Academy Trust.

64) If GAG or EAG is calculated incorrectly because the Academy Trust provides incorrect

information to the Secretary of State then;

a) if this leads to an underpayment of GAG, the Secretary of State may correct the underpayment in subsequent Academy Financial Years;
b) If this leads to an overpayment of GAG, the Secretary of State reserves the right to recover any overpaid grant in subsequent Academy Financial Years, as appropriate, having considered all the relevant circumstances and taking into account any representations from the Academy Trust.

65) The amounts of GAG for an Academy Financial Year will be determined annually by the Secretary of State. The amount of GAG for the Academy for the initial Academy Financial Year will be notified to the Academy Trust in a funding letter at a date preceding that year. For subsequent years the amount of GAG will be notified to the Academy Trust in a funding letter not later than 1 April preceding that Academy Financial Year (the "Annual Letter of Funding"). The Annual Letter of Funding will not include the amount that the Academy Trust will receive in respect of grants for which information to enable timely calculation is not available or is incomplete, such grants will be notified as soon as practicable later in the year. Amounts of EAG will be notified to the Academy Trust wherever possible in the Annual Letter of Funding or as soon as practicable thereafter.

66) For the purposes of this Agreement, an Academy Financial Year shall be deemed to run from September to August, in order to align it to the school academic year. The Secretary of State undertakes to pay GAG in monthly instalments on or before the twenty fifth day of each month, each such instalment to fund the salaries and other payroll costs for the relevant month of all monthly paid employees and all other costs payable during the next following month. The detailed arrangements for payment will be set out in the Annual Letter of Funding.

Other relevant funding

67) Not used.

68) The Secretary of State may meet costs incurred by the Academy Trust in connection with the transfer of employees from any predecessor school under the Transfer of Undertakings (Protection of Employment) Regulations 2006. Payment of grant in respect of such costs is to be agreed between the parties on a case by case basis and the Academy Trust shall not budget on the basis that it will receive any grant in respect of such costs unless it is specifically notified that such grant will be paid.

69) The Academy Trust may also receive funding from an LA in respect of the provision detailed in statements of SEN for pupils attending an Academy in accordance with the provisions of Section 483A of the Education Act 1996 and regulations made under that section. The Academy Trust shall ensure that all provision detailed in statements of SEN is provided for such pupils.

70) The Academy Trust may also receive grant funding for the Academy from the LA's Standards Fund. The extent of any grant funding received by the Academy Trust from the Local Authority may be equivalent to that which a Local Authority would pay to a maintained school using grant monies paid to it by the Secretary of State. Grants paid to the Academy Trust from the Standards Fund are not paid under this Agreement.

Financial and Accounting Requirements

71) The Academy Trust shall appoint an Accounting Officer and shall notify the Secretary of State of that appointment.

72) In relation to the use of grant paid to the Academy Trust by the Secretary of State, the Academy Trust shall abide by the requirements of and have regard to the guidance in the Academies Financial Handbook published by the DfE and amended from time to time, which sets out in detail provisions for the financial management of the Academy including guidance on financial systems and controls and accounting and reporting requirements, in so far as these are not inconsistent with any accounting and reporting requirements and guidance that it may be subject to by virtue of its being a charity.

73) The formal budget plan must be approved each Academy Financial Year by the Governing Body.

74) Any payment of grant by the Secretary of State in respect of the Academy is subject to his being satisfied as to the fulfilment by the Academy Trust of the following conditions:

a) in its conduct and operation it shall apply financial and other controls which conform to the requirements both of propriety and of good financial management;
b) arrangements have been made to maintain proper accounting records and that statements of income and expenditure and balance sheets may be produced in such form and frequency as the Secretary of State may from time to time reasonably direct;
c) in addition to the obligation to fulfil the statutory requirements referred to in sub-clause f) below, the Academy Trust shall prepare its financial statements, Directors'

report, Annual Accounts and its Annual Return in accordance with the Statement of Recommended Practice as if the Academy Trust was a non-exempt Charity and/or in such form or manner as the Secretary of State may reasonably direct and shall file these with the Secretary of State and the Principal Regulator by 31 December each Academy Financial Year;

d) A statement of the accounting policies used should be sent to the Secretary of State with the financial statements and should carry an audit report stating that, in the opinion of the auditors, the statements show a true and fair view of the Academy Trust's affairs and that the grants were used for the purposes intended;

e) the Academy Trust shall ensure that its accounts are audited annually by independent auditors appointed under arrangements approved by the Secretary of State;

f) the Academy Trust prepares and files with the Companies Registry such annual accounts as are required by the Companies Act 2006;

g) the Academy Trust shall publish on its website its Annual Accounts, Annual Report, Memorandum and Articles of Association, Funding Agreement and a list of the names of the Governors of the Academy Trust;

h) the Academy Trust insures or procures insurance by another person of its assets in accordance with normal commercial practice or under the terms of any subsisting leases in respect of the leasehold interest of the site upon which the Academy is situated.

75) In addition, and at his expense, the Secretary of State may instruct auditors to report to him on the adequacy and effectiveness of the accounting systems and internal controls maintained by the Academy Trust to standards determined by the Secretary of State and to make recommendations for improving the financial management of the Academy Trust.

76) The books of accounts and all relevant records, files and reports of the Academy Trust including those relating to financial controls, shall be open at all reasonable times to officials of the DfE and the National Audit Office and to contractors retained by the DfE or the National Audit Office for inspection or the carrying out of value for money studies; and the Academy Trust shall secure that those officials and contractors are given reasonable assistance with their enquiries. For the purposes of this clause 'relevant' means in any way relevant to the provision and use of grants provided by the Secretary of State under this Agreement.

77) The Academy Trust shall submit indicative budgets relating to the Academy to the Secretary of State by not later than 15 February before the start of each Academy Financial Year. Such budgets shall set out clearly the prospective income and expenditure of the Academy and shall differentiate, and give adequate details of:

a) a statement of expected income for that Academy Financial Year including cash donations and gifts in kind from sources other than GAG, EAG and grants from the Secretary of State towards capital and revenue expenditure, distinguishing between income from public funds including the national lottery and income from other sources. Income from cash donations and gifts in kind from sources other than GAG, EAG and grants from the Secretary of State towards capital expenditure will not be taken into account by the Secretary of State in the calculation of GAG;
b) a statement of proposed recurrent expenditure for that Academy Financial Year;
c) a statement of proposed capital expenditure for that Academy Financial Year.

78) At the beginning of any Academy Financial Year the Academy Trust may hold unspent GAG from previous Academy Financial Years amounting to 12% of the total GAG payable for the Academy in the Academy Financial Year just ended or such higher amount as may from time to time be agreed. This carried forward amount may be used as follows:

a) equivalent to 2% of the total GAG payable in the Academy Financial Year just ended may be used by the Academy Trust for any of the purposes for which GAG is paid;
b) equivalent to 12% of the total GAG payable in the Academy Financial Year just ended, or such higher figure as may from time to time be agreed, minus any amount used under sub-clause (a) above, may be used on the upkeep and improvement of premises, including the costs of equipment and routine repairs and maintenance of the Academy, and on capital expenditure relating to the Academy.

79) Notwithstanding clause 78, any additional grant provided over and above that set out in clauses 48-54, and made in accordance with clauses 55-57 may be carried forward without limitation or deduction until the Start-up Period or the circumstances set out in clause 57 come to an end.

80) Any savings of GAG not allowed to be carried forward under clauses 78-79 will be taken into account in the payment of subsequent grant.

81) The Academy Trust may also accumulate funds from private sources or public sources other than grants from the Secretary of State for application to the benefit of the

Academy as it sees fit. Any surplus arising from private sources or public sources other than grants from the Secretary of State shall be separately identified in the Academy Trust's balance sheet.

82) The Academy Trust shall not, in relation to assets or property funded (whether in whole or in part) by the Secretary of State, without the prior written consent of the Secretary of State which shall not be unreasonably withheld or delayed:

a) except such as are given in normal contractual relations, give any guarantees, indemnities or letters of comfort;
b) write off any debts or liabilities owed to it above a value to be set out in the annual letter of funding, nor offer to make any ex gratia payments;
c) make any sale or purchase of freehold property; or
d) grant or take up any leasehold or tenancy agreement for a term exceeding three years.

83) The Academy Trust shall provide 30 days notice to the Secretary of State, whether or not the circumstances require the Secretary of State's approval, of its intention to:

a) give any guarantees, indemnities or letters of comfort;
b) write off any debts owed to it or offer to make any ex gratia payments;
c) make any sale or purchase of freehold property; or
d) grant or take up any leasehold or tenancy agreement for a term exceeding three years.

84) Each discovered loss of an amount exceeding the amount set out in the annual letter of funding, and arising from suspected theft or fraud, shall be reported by the Academy Trust to the Secretary of State at the earliest opportunity.

85) It is the responsibility of the Academy Trust to ensure that the Academy balances its budget from Academy Financial Year to Academy Financial Year. For the avoidance of doubt, this does not prevent the Academy Trust from:

a) carrying a surplus from one Academy Financial Year to the next; or
b) carrying forward from a previous Academy Financial Year or Academy Financial Years a sufficient surplus or sufficient cumulative surpluses on grants from the Secretary of State to meet an in-year deficit on such grants in a subsequent financial year; or
c) incurring an in-year deficit on funds from sources other than grants from the

Secretary of State in any Academy Financial Year, provided it does not affect the Academy Trust's responsibility to ensure that the Academy balances its overall budget from Academy Financial Year to Academy Financial Year.

Borrowing Powers

86) The Academy Trust shall not borrow against or so as to put at risk property or assets funded (whether in whole or in part) by the Secretary of State without specific approval of the Secretary of State, such approval may only be granted in limited circumstances. The Academy Trust shall not operate an overdraft except to cover irregularities in cash flow. Such an overdraft, and the maximum amount to be borrowed, shall require approval by the Academy Trust in General Meeting and in writing by the Secretary of State, and shall be subject to any conditions which the Secretary of State may reasonably impose.

87) The Academy Trust shall provide 30 days notice to the Secretary of State of its intention to borrow, whether or not such borrowing requires the Secretary of State's approval under clause 86 above.

Disposal of Assets

88) Where the Academy Trust acquires assets for a nil consideration or at an under value it shall be treated for the purpose of this Agreement as having incurred expenditure equal to the market value of those assets at the time that they were acquired. This provision shall not apply to assets transferred to the Academy Trust at nil or nominal consideration and which were previously used for the purposes of an Academy and/or were transferred from an LA, the value of which assets shall be disregarded.

89) The sale or disposal by other means, or reinvestment of proceeds from the disposal, of a capital asset by the Academy Trust shall require the consent of the Secretary of State, such consent not to be unreasonably withheld or delayed, where:

a) the Secretary of State paid capital grant in excess of £20,000 for the asset; or
b) the asset was transferred to the Academy Trust from an LA for no or nominal consideration.

90) Furthermore, reinvestment of a percentage of the proceeds of disposal of a capital asset paid for with a capital grant from the Secretary of State shall require the Secretary of State's consent in the circumstances set out above and reinvestment exceeding £1,000,000 or with other special features will be subject to Parliamentary approval. The percentage of the proceeds for which consent is needed is the percentage of the initial

price of the asset which was paid by capital grant from the Secretary of State.

91) This clause applies in the event, during the lifetime of this Agreement, of the disposal of a capital asset for which capital grant of any amount was paid by the Secretary of State, where the asset was acquired by the Academy Trust. In this event, the Academy Trust shall repay to the Secretary of State the same proportion of the proceeds of the disposal as equates with the proportion of the original cost met by the Secretary of State, unless the Secretary of State agrees to some or all of the proceeds being retained by the Academy Trust for its charitable purposes.

92) This clause applies in the event, during the lifetime of this Agreement, that the Secretary of State consents to the disposal of an asset which was transferred to the Academy Trust from an LA for no or nominal consideration. In this event the Secretary of State may give consent on the basis that all or part of the proceeds of the disposal should be made over to the LA from which the asset was transferred, taking into account the amount of the proceeds to be reinvested by the Academy Trust. The Secretary of State will have regard to any representations from the Academy Trust and the LA from which the asset was transferred before giving consent under this clause.

93) Except with the consent of the Secretary of State, the Academy Trust shall not dispose of assets funded (whether in whole or in part) by the Secretary of State for a consideration less than the best price that can reasonably be obtained, such consent not to be unreasonably withheld or delayed.

94) The Academy Trust shall provide 30 days notice to the Secretary of State of its intention to dispose of assets for a consideration less than the best price that can reasonably be obtained, whether or not such disposal requires the Secretary of State's consent under clause 93 above.

TERMINATION

95) Either party may give not less than seven Academy Financial Years' written notice to terminate this Agreement, such notice to expire on 31 August 2018 or any subsequent anniversary of that date.

96) If the Secretary of State is of the opinion that the Academy no longer has the characteristics set out in clause 10 of this Agreement or that the conditions and requirements set out in clauses 12-33 of this Agreement are not being met, or that the Academy Trust is otherwise in material breach of the provisions of this Agreement, the

Secretary of State may give notice of his provisional intention to terminate this Agreement.

97) Any such notice shall be in writing and shall:

a) state the grounds on which the Secretary of State considers the Academy no longer has the characteristics set out in clause 10 of this Agreement or is not meeting the conditions and requirements of clauses 12-33 of this Agreement or the Academy Trust is otherwise in material breach of the provisions of this Agreement;
b) specify the measures needed to remedy the situation or breach;
c) specify a reasonable date by which these measures are to be implemented; and
d) state the form in which the Academy Trust is to provide its response and a reasonable date by which it must be provided.

98) If no response is received by the date specified in accordance with clause 97(d), the Secretary of State may give the Academy Trust 12 months, or such lesser period as he considers appropriate in the circumstances, written notice to terminate this Agreement.

99) If a response is received by the date specified in accordance with clause 97(d) the Secretary of State shall consider it, and any representations made by the Academy Trust, and shall, within three months of its receipt, indicate that:

a) he is content with the response and/or that the measures which he specified are being implemented; or
b) he is content, subject to any further measures he reasonably specifies being implemented by a specified date or any evidence he requires that implementation of such measures have been successfully completed; or
c) he is not satisfied, that he does not believe that he can be reasonably satisfied, and that he will proceed to terminate this Agreement.

100) In the circumstances of clause 99(c) the Secretary of State shall notify the Academy Trust why he believes that he cannot be reasonably satisfied and, if so requested by the Academy Trust within thirty days from such notification, he shall meet a deputation including representatives from Governing Body to discuss his concerns. If following such meeting he has good reasons for remaining satisfied that the Academy does not and will not have the characteristics set out in clause 10 of this Agreement or does not and will not meet the conditions and requirements set out in clauses 12-33 of this Agreement or the Academy Trust is in material breach of the provisions of this Agreement and such breach will not be remedied to his reasonable satisfaction, he shall give the Academy

Trust twelve months written notice to terminate this Agreement.

101) If the Secretary of State has cause to serve a notice on the Academy Trust 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, the period of twelve months notice referred to in clause 100 may be shortened to a period deemed appropriate by the Secretary of State.

102) A "Special Measures Termination Event Occurs" when:

a) the Chief Inspector gives a notice to the Academy Trust in accordance with section 13(3) of the Education Act 2005 (the "Special Measures Notice") stating that in his opinion special measures are required to be taken in relation to the Academy; and
b) the Chief Inspector carries out a subsequent inspection of the Academy in accordance with the Education Act 2005 and makes a report in accordance with the Education Act 2005 stating that the Academy has made inadequate progress since the date of the Special Measures Notice; and
c) the Secretary of State shall have requested the Academy Trust to deliver within 10 Business Days a written statement (a "Further Action Statement") of the action the Academy Trust proposes to take, and the period within which it proposes to take such action, or, if it does not propose to take any action, the reasons for not doing so; and
d) the Secretary of State, having considered the Further Action Statement, is not satisfied that any action proposed to be taken by the Academy Trust is sufficient in all the circumstances, or, if no Further Action Statement shall have been given to the Secretary of State within the requested timeframe or otherwise.

103) If a Special Measures Termination Event occurs, the Secretary of State may:

a) by notice in writing to the Academy Trust terminate this Agreement forthwith; or
b) appoint such Further Governors to the Academy Trust as he thinks fit in accordance with the Articles and/or may provide up to 12 months' notice in writing to terminate this Agreement.

104) In the event that the Secretary of State appoints Further Governors in accordance with clause 103(b), the Academy Trust must, upon the request of the Secretary of State, procure the resignation of the Governors appointed in accordance with the Article 50 of the Articles of Association.

105) The Secretary of State may at any time by notice in writing terminate this Agreement forthwith on the occurrence of any of the following events:-

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

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

c) the Academy Trust is unable to pay its debts within the meaning of Section 123 of the Insolvency Act 1986 provided that, for the purposes of this clause, Section 123 (1)(a) of the Insolvency Act 1986 shall have effect as if the amount of £10,000 was substituted for £750. The Academy Trust shall not be deemed unable to pay its debts for the purposes of this clause if any such demand as is mentioned in the said Section is being contested in good faith by the Academy Trust; or

d) the Academy Trust has a receiver and manager (with the exception of Receivers and Managers or Interim Managers appointed by the Charity Commission under the Charities Act 1993 or any subsequent re-enactment of that Act), administrator or administrative receiver appointed over all or any part of its undertakings, assets or income; or

e) any distraint, execution or other process is levied or enforced on any of the Academy Trust's property and is not paid out, withdrawn or discharged within fifteen Business Days; or

f) the Academy Trust has passed a resolution for its winding up; or

g) an order is made for the winding up or administration of the Academy Trust.

106) The Academy Trust shall notify the Secretary of State as soon as possible after receiving any petition which may result in an order for the winding up or administration of the Academy Trust and shall provide an explanation to the Secretary of State of the circumstances giving rise to the service of such a petition.

107) If, following the exercise of the Secretary of State's powers to appoint Additional Governors or Further Governors, pursuant to the Articles of Association the Members pass an ordinary or special resolution to remove one or more of those Additional or Further Governors appointed by the Secretary of State, the Secretary of State may give the Academy Trust 12 months, or such lesser period as he considers appropriate in the circumstances, written notice to terminate this Agreement.

108) The Secretary of State's right to terminate this Agreement under clause 107 shall

cease if he removes any of the Additional Governors or Further Governors which he has appointed pursuant to the Articles of Association.

Effect of Termination

109) In the event of the termination of this Agreement however occurring the Secretary of State shall procure that his nominee (if any) shall resign as a member of the Academy Trust and shall co-operate in making any associated amendments to the Articles.

110) In the event of termination of this Agreement however occurring, the school shall cease to be an Academy within the meaning of Section 1 of the Academies Act 2010.

111) Subject to clause 112, if the Secretary of State terminates this Agreement for reasons other than that a Special Measures Termination Event occurs, that the Academy no longer has the characteristics set out in clause 10 of this Agreement, or is no longer meeting the conditions and requirements set out in clauses 12-33 of this Agreement or that the Academy Trust is otherwise in material breach of the provisions of this Agreement, the Secretary of State shall indemnify the Academy Trust.

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

113) The categories of expenditure incurred by the Academy Trust in consequence of the termination of this Agreement in respect of which the Secretary of State shall indemnify the Academy Trust 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.

114) Subject to clause 115, on the termination of this Agreement however occurring, the Academy Trust 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 educational purposes by that nominee. The proportion of the assets to be transferred shall be the same as the proportion of the capital contribution made by the Secretary of State to the original value of those assets, whether that contribution was

made on the establishment of the Academy or later; or

b) if the Secretary of State confirms that a transfer under clause 114(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.

115) The Secretary of State may waive in whole or in part the repayment due under clause 114(b) if:

a) The Academy Trust 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.

116) If any land or premises of the Academy were acquired by the Academy Trust from an LA by a scheme under Paragraph 1 of Schedule 1 of the Academies Act 2010 or otherwise at less than the market value of the land at the date of acquisition, and the Secretary of State does not make a scheme as provided for in Paragraph 6 of Schedule 1 of the Academies Act 2010, the Academy Trust may dispose of its interest in that land or premises but only with the consent of the Secretary of State, who shall have regard to any representations from the Academy Trust and the LA from which the land was transferred before giving or withholding that consent.

GENERAL

Information

117) Without prejudice to any other provision of this Agreement, the Secretary of State acting reasonably may from time to time call for information on, inter alia, the Academy's:

a) curriculum;
b) arrangements for the assessment of pupils;
c) teaching staff including numbers, qualifications, experience, salaries, and teaching loads;
d) class sizes;

e) outreach work with other schools and the local community;
f) operation of the admission criteria and over subscription arrangements for the Academy including numbers of applications for places and the number and characteristics of pupils accepted for admission;
g) numbers of pupils excluded (including permanent and fixed term exclusions);
h) levels of authorised and unauthorised absence;
i) charging and remissions policies and the operation of those policies;
j) organisation, operation and building management;
k) financial controls; and
l) membership and proceedings of the Governing Body.

118) The Academy Trust shall make such information available to the Secretary of State, in such form and manner and at such times as may reasonably be required. The Secretary of State shall provide the Academy Trust with such information as it may reasonably require of him for the running of the Academy.

Access by the Secretary of State's Officers

119) The Academy Trust shall allow access to the premises of the Academy at any reasonable time to DfE officials. All records, files and reports relating to the running of the Academy shall be available to them at any reasonable time. The Academy Trust shall provide the Secretary of State in advance with papers relating to the Academy prepared for meetings of the Governing Body and of the members of the Academy Trust. Two DfE officials shall be entitled to attend and to speak at all such meetings, but shall withdraw from any discussion of the Academy's or the Academy Trust's relationship with the Secretary of State or any discussion of bids for funding to the Secretary of State. The Academy Trust shall take any steps which are required to secure its compliance with the obligations imposed by this clause of this Agreement.

120) The Academy Trust shall ensure that:

a) the agenda for every meeting of the Governing Body;
b) the draft minutes of every such meeting, if they have been approved by the person acting as chairman of that meeting;
c) the signed minutes of every such meeting; and
d) any report, document or other paper considered at any such meeting,

are made available for inspection by any interested party at the Academy and, as soon as is reasonably practicable, sent to the Secretary of State.

121) There may be excluded from any item required to be made available for inspection by any interested party and to be sent to the Secretary of State by virtue of clause 120, any material relating to:

a) a named teacher or other person employed, or proposed to be employed, at the Academy;
b) a named pupil at, or candidate for admission to, the Academy; and
c) any matter which, by reason of its nature, the Academy Trust is satisfied should remain confidential.

LAND

Restrictions on Land transfer

121A) The Academy Trust:

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

No disposition of the registered estate by the proprietor of the registered estate, 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) shall take any further steps required to ensure that the restriction referred to in clause 121A(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 121A(a) as soon as practicable after it receives notification from the Land Registry,

d) in the event that it has not registered the restriction referred to in clause 121A(a), hereby consents to the entering of the restriction referred to in 121A(a) in the register by the Secretary of State (under s. 43(1)(b) of the Land Registration Act

2002),

e) shall not, without the consent of the Secretary of State, apply to dis-apply, modify or remove (by cancellation or otherwise) a restriction entered in accordance with clause 121A(a) or 121A(d) above.

Repair and Upkeep

121B) The Academy Trust shall keep the Land clean and tidy and make good any damage it causes to the Land and / or any deterioration to the condition of the Land that may arise from the date of this Agreement.

Insurance

121C) The Academy Trust shall:-

a) keep the Land insured with a reputable insurance office against loss or damage by the Insured Risks in the sum the Academy Trust is advised represents the reinstatement value of the Land from time to time;

b) pay the premiums for insurance promptly as they become due and maintain in force the policies of insurance on the Land;

c) following the incidence of damage to or destruction of the Land 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 Land (provided that this clause should be satisfied if the Academy Trust provides premises not necessarily identical to the Land as the same existing prior to such damage or destruction occurring) 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 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 Land may become void or voidable.

f) insure against liability in respect of property owners' and third party risks including occupiers liability.

Transfer of Land on Termination of Agreement

121D) On termination of this Agreement the Academy Trust shall, if the Secretary of State so requires by notice in writing to the Academy Trust, immediately transfer its interest in the Land to the Secretary of State or such other person as the Secretary of State may nominate.

Notices

122) Any notice or other communication concerning this Agreement shall be sent, in the case of a notice or communication from the Secretary of State to the Academy Trust at its registered office or such other addressee/address as may be notified in writing from time to time by the Academy Trust and, in the case of a notice or communication from the Academy Trust to the Secretary of State to Head of Academies Division, Department for Education, Sanctuary Buildings, Great Smith Street, London SW1P 3BT; or such other address as may be notified from time to time by the Secretary of State and where any such notice or communication is sent by post, unless the contrary is proved, it shall be deemed, subject to satisfactory proof of posting, to be effected at the time at which the letter would be received in the ordinary course of post.

123) The service by the Secretary of State of a notice of termination of this Agreement shall not prejudice the ability of the Academy Trust (if it wishes to do so) during the notice period to admit pupils to the Academy in accordance with the provisions of this Agreement and to receive GAG and EAG in respect of them.

General

124) The Secretary of State and the Academy Trust recognise the difficulties in catering in this Agreement for all the circumstances which may arise in relation to the Academy and undertake in good faith to conduct such consultations as may from time to time be desirable in order to promote the interests of the Academy throughout the currency of this Agreement.

This Agreement was executed as a Deed on 1/8/2011

Executed on behalf of by: **HLHS Academy Trust Ltd**

[Either

HOLLY M. BOTTOMLEY Holly M Bottomley
Director

In the presence of:

Witness..... Michael Hallocks

Address.. [redacted]

Occupation..SCHOOL MANAGER

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

.....

Duly Authorised

Annex B

REQUIREMENTS FOR THE ADMISSION OF PUPILS TO THE HLHS ACADEMY

GENERAL

1. This annex may be amended in writing at any time by agreement between the Secretary of State and the Academy Trust.

2. The Academy Trust 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 governing body of the Academy Trust.

3. Notwithstanding the generality of paragraph 2 of this Annex, the Academy Trust will take part in any mandatory Admissions Forum set up by the local authority ("LA") in which they are situated and have regard to its advice; and will participate in the co-ordinated admission arrangements operated by the LA and the local Fair Access Protocol.

4. Notwithstanding any provision in this Annex, the Secretary of State may:

(a) direct the Academy Trust to admit a named pupil to the HLHS Academy on application from an LA. This will include complying with a School Attendance Order[1]. Before doing so the Secretary of State will consult the Academy Trust.

(b) direct the Academy Trust to admit a named pupil to the HLHS Academy if the Academy Trust 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 Academy Trust to amend its admission arrangements where they fail to comply with the School Admissions Code or the Admission Appeals Code.

5. The Academy Trust shall ensure that parents and 'relevant children[2]'

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[1] 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.

[2] relevant children' means:

will have the right of appeal to an Independent Appeal Panel if they are dissatisfied with an admission decision of the Academy Trust. The Independent Appeal Panel will be independent of the Academy Trust. 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 Academy 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 Academy 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 Academy 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. adopt admission oversubscription criteria that give highest priority to looked after children, in accordance with the relevant provisions of the School Admissions Code.

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

10. The Academy admission arrangements will include oversubscription criteria, and an admission number for each relevant age group[3]. The

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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.

[3] 'Relevant age group' means 'normal point of admission to the school:, for example, year R, Year7 and Year 12.

Academy will consult on its admission arrangements and determine them in line with the requirements within the School Admissions Code.

11. The Young People's Learning Agency (YPLA) may consider objections on the Secretary of State's behalf. The Academy Trust should therefore make it clear, when determining the Academy's admission arrangements, that objections should be submitted to the YPLA.

12. A determination of an objection by the YPLA on behalf of the Secretary of State, or by the Secretary of State will be binding upon the Academy.

Single Academy Model

Arrangements for pupils with Special Educational Needs ('SEN') and disabilities at HLHS Academy

Duties in relation to pupils with SEN

1. The Governing Body of the Academy Trust must comply with all of the duties imposed upon the governing bodies of maintained schools in:

- Part 4 of the Education Act 1996 as amended from time to time[1];
- The Education (Special Educational Needs) (Information) Regulations 1999 as amended from time to time;
- The Education (Special Educational Needs Co-ordinators) (England) (Amendment) Regulations 2008 as amended from time to time[2].

2. Notwithstanding any provision in this Agreement, the Secretary of State may (whether following a complaint made to him or otherwise) direct the Academy Trust to comply with an obligation described in this Annex where the Academy Trust has failed to comply with any such obligation.

3. Where a child who has SEN is being educated in the Academy, those concerned with making special educational provision for the child must secure that the child engages in the activities of the school together with children who do not have SEN, so far as is reasonably practicable and is compatible with:

(a) the child receiving the special educational provision which his learning difficulty calls for,

(b) the provision of efficient education for the children with whom he will be educated, and

(c) the efficient use of resources.

4. In addition to complying with the duties imposed upon the governing bodies of maintained schools set out in The Education (Special Educational Needs) (Information) Regulations 1999 (as amended from time to time), the Academy Trust must ensure that the Academy's website includes details of the arrangements for the admission of disabled pupils; the steps taken to prevent disabled pupils from being treated less favourably than other pupils; and the facilities provided to assist access to the Academy by disabled pupils (disabled pupils meaning pupils who are disabled for the purposes of the Equality Act 2010[3]).

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[1] Currently these duties are in sections 313 (Duty to have regard to the Special Educational Needs Code of Practice 2001), 317 (Duties in relation to pupils with special educational needs), 317A (Duty to advise parents that special educational provision is being made); and 324(5)(b) (Duty to admit the child where a school is named in the statement).

[2] These Regulations are amended by The Education (Special Educational Needs Co-ordinators) (England) (Amendment) Regulations 2009 (SI 2009 No 1387).

[3] For the meaning of 'disabled', see section 6 of the Equality Act 2010.

Admissions

5. The Academy Trust must ensure that pupils with SEN are admitted on an equal basis with others in accordance with its admissions policy.

6. Where a local authority ("LA") proposes to name the Academy in a statement of SEN made in accordance with section 324 of the Education Act 1996, it must give the Academy Trust written notice that it so proposes. Within 15 days of receipt of the LA's notice that it proposes to name the Academy in a statement, the Academy Trust must consent to being named, except where admitting the child would be incompatible with the provision of efficient education for other children; and where no reasonable steps may be made to secure compatibility. In deciding whether a child's inclusion would be incompatible with the efficient education of other children, the Academy Trust must have regard to the relevant guidance issued by the Secretary of State to maintained schools.

7. If the Academy Trust determines that admitting the child would be incompatible with the provision of efficient education, it must, within 15 days of receipt of the LA's notice, notify the LA in writing that it does not agree that the Academy should be named in the pupil's statement. Such notice must set out all the facts and matters the Academy relies upon in support of its contention that: (a) admitting the child would be incompatible with efficiently educating other children; and (b) the Academy Trust cannot take reasonable steps to secure this compatibility.

8. After service by the Academy Trust on the LA of any notice (further to paragraph 7 above) stating that it does not agree with the LA's proposal that the Academy be named, the Academy Trust must seek to establish from the LA, as soon as is reasonably practicable, whether or not the LA agrees with the Academy Trust. If the LA notifies the Academy that it does not agree with the Academy Trust's response, and names the Academy in the child's statement, the Academy Trust must admit the child to the school on the date specified in the statement or on the date specified by the LA.

9. Where the Academy Trust consider that the Academy should not have been named in a child's statement, they may ask the Secretary of State to determine that the LA has acted unreasonably in naming the Academy and to make an order directing the LA to reconsider.

10. The Secretary of State's determination shall, subject only to any right of appeal which any parent or guardian of the child may have to the First-tier Tribunal (Special Educational Needs and Disability), be final.

11. If a parent or guardian of a child in respect of whom a statement is maintained by the local authority appeals to the First-tier Tribunal (Special Educational Needs and Disability) either against the naming of the Academy in the child's SEN statement or asking the Tribunal to name the Academy, then the decision of the Tribunal on any such

appeal shall be binding and shall, if different from that of the Secretary of State under paragraph 9 above, be substituted for the Secretary of State's decision.

12. Where the Academy, the Secretary of State or the First-tier Tribunal (Special Educational Needs and Disability) have determined that it should be named, the Academy Trust shall admit the child to the Academy notwithstanding any provision of Annex B to this agreement.

Annex D

Serious incidents of misbehaviour leading to fixed period or permanent exclusion

1. Subject to the exceptions in paragraph 5, the Academy Trust shall act and shall ensure that the Principal and the governing body act in accordance with the law on exclusions as if the Academy were a maintained school. For this purpose, reference in the law on exclusions to the Head Teacher and Governing Body shall respectively be deemed to be the Principal and Governing Body of the Academy Trust.

2. Without limiting the generality of paragraph 1, the Academy Trust shall ensure that the Local Authority in which the Academy is located and, where the pupil concerned resides in the area of a different Local Authority, the Local Authority in which the pupil is ordinarily resident is informed of an exclusion decision in the same circumstances, and within the same timescale as a the head teacher of a maintained school is required to inform the Local Authority (or Local Authorities) of an exclusion.

3. Subject to the exception in paragraph 5, the Academy Trust shall ensure that the Principal and the Governing Body of the Academy have regard to the Secretary of State's guidance on exclusions when excluding, or reviewing the exclusion of a pupil and in relation to any appeals or review process as if the Academy were a maintained school[1].

4. The Academy Trust shall make arrangements for enabling appeals against, or review of any decision of the Governing Body to permanently exclude a pupil in accordance with the functions assigned to the Local Authority in relation to a maintained school. The Academy Trust shall ensure that appeal/review panels are impartial, and are constituted in accordance with the Secretary of State's guidance. The Academy Trust shall comply with any decision of an appeals panel, or direction of a review panel[2].

5. The exception to the duties imposed under paragraphs 1 and 3 is:

- the Governing Body of the Academy Trust is not expected to seek the advice of a Local Authority officer when considering an

[1]References in this annex to the Secretary of State's guidance are to "Improving Behaviour and Attendance: Guidance on Exclusion from Schools and Pupil Referral Units", which is published on the DfE website at: http://www.teachernet.gov.uk/wholeschool/behaviour/exclusion/2008guidance/. The guidance may be subject to amendment, and the Academy is required to have regard to the guidance as it stands at any given time.

[2] A parent may seek a judicial review of a decision of an appeal/review panel relating to their child. A parent of a child excluded from an Academy may not complain to the Commissioner for Local Administration (the Local Government Ombudsman) about maladmlnistration. This is because the Commissioner's remit is limited to considering the conduct of appeal panels constituted by Local Authorities.

exclusion, although a Local Authority officer may attend any meeting to consider an exclusion (including an appeal hearing or review) at the request of a parent; and

- subject to the Academy Trust's obligations under clause 30 of this Agreement relating to an agreement with the LA on the flow of funds following an exclusion, the arrangements for money to follow pupils who have been permanently excluded from school does not apply.

THE COMPANIES ACT 2006

& COMPANIES (REGISTRATION) REGULATIONS 2008 (SI 2008/3014)

A COMPANY LIMITED BY GUARANTEE

MEMORANDUM OF ASSOCIATION

OF

HLHS ACADEMY TRUST LIMITED

Schedule 2

New Supplemental Funding Agreement

Department
for Education

Mainstream academy and free school: supplemental funding agreement

December 2014

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SUMMARY SHEET

Information about the Academy:

Name of Academy Trust	Abbey Multi Academy Trust
Company number	07705552
Date of Master Funding Agreement	30 October 2014
Name of Academy	Lightcliffe Academy
Opening date	1 August 2011
Type of Academy (indicate whether academy or free school)	Sponsored Academy
Religious designation	None
Wholly or partly selective	N/A
Name of predecessor school (where applicable)	N/A
Capacity number	1650
Age range	11-18
Number of sixth form places	300
Number of boarding places	N/A
SEN unit / Resource provision	N/A
Land arrangements **(Version 1-7 or other)**	Version 1
Address and title number of Land	Stoney Lane, Lightcliffe, Halifax, West Yorkshire HX3 8TL. Title number: 585897

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

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

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

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

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

Descriptor	Clause No.	Applied	Not used

1. ESTABLISHING THE ACADEMY

1.A This Agreement made between the Secretary of State for Education and Abbey Multi Academy Trust is supplemental to the master funding agreement made between the same parties and dated 30 October 2014 (the "**Master Agreement**").

Definitions and interpretation

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

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

"The **Academy**" means the Lightcliffe Academy.

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

"**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 Sponsored 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 was opened on 1 August 2011.

1.I Not used.

2. RUNNING OF THE ACADEMY

Teachers and staff

2.A Subject to clause 2.4 of the Master Agreement, 7.A of this Agreement and section 67 of the Children and Families Act 2014, the Academy Trust may, in accordance with any relevant Guidance, employ anyone it believes is suitably qualified or is otherwise eligible to plan and prepare lessons and courses for pupils, teach pupils, and assess and report on pupils' development, progress and attainment.

2.A.1 Not used.

Pupils

2.B The planned capacity of the Academy is 1650 in the age range 11-18, including a sixth form of 300 places. The Academy will be an all ability inclusive school.

SEN unit

2.C Not used.

2.D Not used.

Charging

2.E Not used.

Admissions

2.F Subject to clauses 2.K– 2.L the Academy Trust will act in accordance with, and will ensure that its Independent Appeal Panel is trained to act in accordance with, the School Admissions Code and School Admission Appeals Code published by the DfE (the "Codes") and all relevant admissions law as they apply to foundation and voluntary aided schools, and with equalities law. Reference in the Codes or legislation to "admission authorities" will be deemed to be references to the Academy Trust.

2.G Pupils on roll in a Predecessor School which was a maintained or independent school will transfer automatically to the Academy on opening. All children already offered a place at that Predecessor School must be admitted to the Academy.

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

2.I The Academy Trust may determine admission arrangements (subject to consultation in line with the Codes) that give priority for admission to children attracting the Pupil Premium, including the service premium (the "pupil premium admission criterion"), but not above looked-after children and previously looked-after children.

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

2.K For the purposes of applying the pupil premium admission criterion only, sections 1.9(f) and 2.4(a) of the School Admissions Code do not apply insofar as they prevent admission authorities from giving priority to children according to the financial or occupational status of parents or using supplementary forms that ask for:

a) any personal details about their financial status; or

b) whether parents are serving in the UK armed forces or were serving in the UK armed forces, and are exercising parental care and responsibility for the child in question.

2.L The Secretary of State may:

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

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

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

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

2.M Not used.

2.N Not used.

2.O Not used

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

2.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 the agreed variations from the Codes specified at clause 2.K, over which it has no jurisdiction). The Academy Trust must therefore make it clear, when determining the Academy's admission arrangements, that objections should be submitted to the OSA. The OSA's determination of an objection is binding on the Academy and the Academy Trust must make appropriate changes to its admission arrangements as quickly as possible.

2.T Not used.

Curriculum

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

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

2.W Not used.

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

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

b) the Academy must comply with section 70(1) of, and Schedule 20 to, the School Standards and Framework Act 1998 as if it were a community, foundation or voluntary school which does not have a religious character, except that paragraph 4 of that Schedule does not apply. The Academy may apply to the Secretary of State for consent to be relieved of the requirement imposed by paragraph 3(2) of that Schedule.

2.Y Not used.

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

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

3. GRANT FUNDING

Calculation of GAG

3A-3D. Not used.

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

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

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

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

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

3.H Not used.

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

Secretary of State may pay a larger GAG in the notice period, to enable the Academy to operate effectively.

Other relevant funding

3.J Not used.

3.K The Secretary of State may pay the Academy Trust's costs in connection with the transfer of employees from a Predecessor School under the Transfer of Undertakings (Protection of Employment) Regulations 2006. Such payment will be agreed on a case-by-case basis. The Academy Trust must not budget for such a payment unless the Secretary of State confirms in writing that it will be paid.

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 freehold land at Stoney Lane, Lightcliffe, Halifax, West Yorkshire, HX3 8TL, being the land registered with title number WYK585897, which is to be the permanent site of the Academy.

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

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 is to be registered without a written consent signed by the Secretary of State for Education, of Sanctuary Buildings, Great Smith Street, London SW1P 3BT;

b) take any further steps reasonably required to ensure that the Restriction is entered on the proprietorship register;

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

d) if it has not registered the Restriction, permit the Secretary of State to do so in its place; and

e) not, without the Secretary of State's consent, apply to disapply, modify, cancel or remove the Restriction, whether by itself, a holding company, a subsidiary company, or a receiver, administrator or liquidator acting in the name of the Academy Trust.

Obligations of the Academy Trust

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

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

a) grant any consent or licence; or

b) create or allow any encumbrance; or

c) part with or share possession or occupation; or

d) enter into any onerous or restrictive obligations,

in respect of all or part of the Land.

Option

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

Option Notice

4.E The Academy Trust:

a) must, within 14 days after acquiring the Land or, if later, after signing this Agreement, apply to the Land Registry on Form AN1 (including a copy of this Agreement) for a notice of the Option (the "**Option Notice**") to be entered in the register, taking any further steps required to have the Option Notice registered and promptly confirming to the Secretary of State when this has been done;

b) if it has not registered the Option Notice, agrees that the Secretary of State may apply to register it using Form UN1;

c) must not, without the Secretary of State's consent, apply to disapply, modify or remove the Option Notice, whether by itself, a holding company, a subsidiary company, or a receiver, administrator or liquidator acting in the name of the Academy Trust, and

d) must, in the case of previously unregistered land, within 14 days after acquiring the Land or, if later, after signing this Agreement, apply to register a Class C(iv) land charge in the Land Charges Registry, and send the Secretary of State a copy of the relevant entry within 7 days after the registration has been completed. If the Secretary of State

considers that the Academy Trust has not complied with this clause, he may apply to secure the registration.

Property Notices

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

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

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

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

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

Sharing the Land

4.G Where:

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

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

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

4.H To the extent the Academy Trust and the Secretary of State agree to part of the Land being demised or leased in accordance with clause 4.G, the Academy Trust must use its best endeavours to procure all necessary consents in order to enable it to share occupation of the Land with the incoming academy trust [and to provide the incoming academy trust with

security of tenure over 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 costs incurred by the Academy Trust in connection with this clause.

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

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

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

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

5. TERMINATION

Termination by either party

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

Termination Warning Notice

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

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

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

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

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

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

a) the action the Academy Trust must take;

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

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

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

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

Termination by the Secretary of State after inspection

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

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

b) the Academy requires significant improvement

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

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

5.G.1 Not used.

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

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

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

he may serve a Termination Notice.

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

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

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

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

Termination by the Secretary of State

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

5.K Not used.

5.L Not used.

5.M Not used.

5.N Not used.

5.O Not used.

Funding and admission during notice period

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

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

Notice of intention to terminate by Academy Trust

5.R The 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 at the end of the then current Academy Financial 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 bome 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 to 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.

This Agreement was executed as a Deed on 2015

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

..... and .....

Director **Director**

The Corporate Seal of

THE SECRETARY OF STATE FOR EDUCATION

affixed to this deed is authenticated by:

.....

Duly Authorised

ANNEXES

7. PUPILS WITH SPECIAL EDUCATION NEEDS (SEN) AND DISABILITIES

"Statement of SEN" means a statement made under section 324 of the Education Act 1996.

"EHC plan" means an Education, Health and Care plan made under sections 37(2) of the Children and Families Act 2014.

7.A Except as set out in clause 10 below, the Children and Families Act 2014 imposes duties directly on Academies in respect of pupils with special educational needs, including the admission of pupils with EHC plans. If an Academy Trust considers that a LA should not have named the Academy in an EHC plan, it may ask the Secretary of State to determine whether the LA has acted unreasonably, and to make an order directing the LA to reconsider. The Secretary of State's determination will be final, subject to any right of appeal which a parent of the child may have to the First Tier Tribunal (Special Educational Needs and Disability) or the Upper Tribunal Administrative Appeals Chamber.

7.B Not used

7.C Not used

7.D Not used.

8. ADMISSION OF PUPILS WITH SEN AND DISABILITIES

8.A The Academy Trust must for each of its Academies, subject to its right of appeal to the Secretary of State, admit all pupils with a statement of SEN naming the Academy.

8.B Where an LA proposes to name one of the Academies in a statement of SEN, it must give the Academy Trust written notice of this, stating why it considers that Academy to be suitable for the pupil in question. Within 15 days of receipt of the LA's notice, the Academy Trust must consent to being named, except

where admitting the child would be incompatible with the provision of efficient education for other children, and no reasonable steps could secure compatibility. In deciding whether a child's inclusion would be incompatible with the efficient education of other children or the efficient use of resources, the Academy Trust must have regard to the relevant Guidance issued to maintained schools.

8.C If the Academy Trust decides that admitting the child would be incompatible with the provision of efficient education or the efficient use of resources, it must, within the 15 days, notify the LA in writing, giving its reasons for its decision.

8.D The Academy Trust must then seek to establish from the LA whether or not it agrees with this determination. If the LA does not agree with the Academy Trust's response, and names the Academy in the child's statement of SEN, the Academy Trust must admit the child to the school as specified in the statement or otherwise by the LA.

8.E If in such case, the Academy Trust considers that the LA should not have named the Academy in the statement, it may ask the Secretary of State to determine whether the LA has acted unreasonably, and to make an order directing the LA to reconsider. The Secretary of State's determination will be final, subject only to any right of appeal which a parent of the child may have to the First-tier Tribunal (Special Educational Needs and Disability) or the Upper Tribunal Administrative Appeals Chamber.

8.F If a parent of a child for whom the LA maintains a statement appeals to the First-tier Tribunal (Special Educational Needs and Disability), either for or against the naming of the Academy in the child's statement, then the Tribunal's decision will be binding, even if it is different from that of the Secretary of State.

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

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

Department for Education

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