

DEED OF NOVATION AND VARIATION

OF THE

SUPPLEMENTAL FUNDING AGREEMENT FOR THE PURSTON E-ACT

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) **THE RODILLIAN MULTI ACADEMY TRUST**, a charitable company incorporated in England and Wales with registered company number 07990619 whose registered address is at Longthorpe Land, Lofthouse, Wakefield, West Yorkshire, WF3 3PS (“**RMAT**”); and

(3) **E-ACT**, a charitable company incorporated in England and Wales with registered company number 06526376 whose registered address is at 2-6 Cannon Street, London, EC4M 6YH (the “**Company**”),

together referred to as the “Parties”.

INTRODUCTION

- A. The Purston E-ACT Academy is an academy within the meaning of the Academies Act 2010 (the “academy”) and is currently operated by the Company (a multi academy trust).
- B. The Secretary of State and the Company entered into a Supplemental Funding Agreement in 2012 (the “**Agreement**”) for the maintenance and funding of the academy (attached as Schedule 1).
- C. It is proposed that, with effect from midnight on 31 August 2014 (“Transfer Date”), RMAT 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 RMAT and the Secretary of State and RMAT 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 RMAAT with effect from the Transfer Date. With effect from the Transfer Date, RMAAT 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 RMAAT.

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

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

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

OBLIGATIONS AND LIABILITIES

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

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

8. Each of RMAAT 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 RMA T were the original party to the Agreement instead of the Company.

INDEMNITY

9. The Company agrees to indemnify RMA T against any losses, liabilities, claims, damages or costs that RMA T 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.

10. RMA T 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 RMA T's failure to perform or satisfy its obligations under the Agreement on or after the Transfer Date.

VARIATION

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

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

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

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

COUNTERPARTS

15. 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:-)



.....*A. Gully*.....
Duly authorised by the **SECRETARY OF STATE FOR EDUCATION**
Date...*29/8/14*.....

EXECUTED as a deed by **THE**
RODILLIAN MULTI
ACADEMY TRUST acting by
one director in the presence of a
witness:

Director*A. Gully*.....
Print name.....*A. Gully*.....
Date*29/8/14*.....

Witness*L. Bradley*.....
Print name.....*L. BRADLEY*.....
Address.....*RODILLIAN ACADEMY*.....
Occupation.....*HEAD OF SCHOOL*.....

EXECUTED as a deed by **E-ACT**
acting by two directors or one
director and the company
secretary:

Director*[Signature]*.....
Print name.....*DAVID MORAN*.....
Date*19/08/2014*.....

Director/ Secretary
Print name.....

For and on behalf of BWB Secretarial Limited

Schedule 1

Supplemental Funding Agreement

Multi Academy Model
Mainstream

SUPPLEMENTAL AGREEMENT

THIS AGREEMENT made 2012

BETWEEN

(1) **THE SECRETARY OF STATE FOR EDUCATION**; and

(2) **E-ACT** whose registered office is at 2-6 Cannon Street, London EC1M 6YH ("the Company")

IS SUPPLEMENTAL TO THE MASTER FUNDING AGREEMENT made between the same parties and dated 29 July 2008 (the "Master Agreement").

1 DEFINITIONS AND INTERPRETATION

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

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

"the Academy" means the The Purston E-ACT Academy to be established at Pontefract Road, Featherstone WF7 5AJ.

"Academy Financial Year" means the year from 1st September to 31st August or such other period as the Secretary of State may from time to time specify by notice in writing to the Company.

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

"Control" in relation to a body corporate ('Entity') means either the legal or beneficial ownership of 30 per cent or more of the issued shares in the Entity ordinarily having voting rights or the power of a person ('A') otherwise to secure –

(a) either by means of the holding of shares in that Entity or having an interest conferring voting rights at general meetings of the membership of the Entity or of any other body corporate;

**Multi Academy Model
Mainstream**

(b) by virtue of any powers conferred by the articles of association or other document regulating that Entity or any other Entity or partnership including, without limitation, the power to appoint or remove a majority of the governing body thereof, or

(c) by virtue of any agreement, understanding or arrangement between any person or persons,

that the affairs of the first-mentioned Entity are conducted in accordance with the wishes of A and 'Controls' shall be construed accordingly;

"the Land" means the publicly funded land (including for the avoidance of doubt all buildings, structures landscaping and other erections) situated at and known as the Featherstone Technology College, Pontefract Road, Featherstone WF7 5AJ to be transferred to the Academy.

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

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

1.4 All references in the Master Agreement to DCFS shall mean a reference to DfE.

1.5 All references in the Master Agreement to the Department for Children, Families and School shall mean a reference to the Department for Education.

2 THE ACADEMY

2.1 The Company will establish and maintain, and carry on or provide for the carrying on of the Academy in accordance with the Master Agreement and this Agreement¹.

¹ If the Academy is to be a "selective school" then insert the following wording at the end of paragraph 2.1 – "...save that clause 12(c) of the Master Agreement does not apply as the Academy is a "selective school" within the meaning of Section 6(4) of the Academies Act 2010 and additionally clause 19 does not apply in so far as it provides for the Academy to be an all ability inclusive school".

**Multi Academy Model
Mainstream**

- 2.2 The curriculum provided by the Academy to pupils in the age 11-16 years shall be broad and balanced.
- 2.3 The requirements for the admission of pupils to the Academy are set out at Annex 1.

ACADEMY OPENING DATE

- 2.4 The Academy shall open as a school on 1 September 2012 replacing Featherstone Technology College 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.

CHARACTERISTICS OF THE ACADEMY

- 2.5 The characteristics of the Academy are as set down in section 1A(1) of the Academies Act 2010:
- (a) It is an independent school;
 - (b) It has a curriculum satisfying the requirements of section 78 of the Education Act 2002 (balanced and broadly based curriculum);
 - (c) It provides education to pupils of different abilities;
 - (d) It provides education for pupils who are wholly or mainly drawn from the area in which the Academy is situated; and
 - (e) It is not an alternative provision Academy.

- 2.6 The planned capacity of the Academy is 600 in the age range 11-16.

3 GRANTS TO BE PAID BY THE SECRETARY OF STATE

Capital Grant

- 3.1 In clause 62 of the Master Agreement, paragraphs (c) and (g) are replaced with the following:
- “(c) the installation of electrical, mechanical or other services other than necessary replacements, repairs and maintenance due to normal wear and tear;

**Multi Academy Model
Mainstream**

"(g) the provision and equipping of premises, including playing fields and other facilities for social activities and physical recreation other than necessary replacements, repairs and maintenance due to normal wear and tear,"

- 3.2 Pursuant to clause 64 of the Master Agreement, the Secretary of State may, in his absolute discretion provide Capital Expenditure funding in accordance with any arrangements he considers appropriate.
- 3.3 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 the Academy. To that end, the Secretary of State will consider providing funding in accordance with any arrangements as he considers appropriate.
- 3.4 Any payment of Capital Grant in respect of the Academy to the Company under this Agreement or the Master Agreement is
- (a) such grants are used solely to defray expenditure approved by the Secretary of State;
 - (b) the Company 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;
 - (c) any other conditions that the Secretary of State may specify.

Arrangements for payment of capital grant

- 3.5 Capital Grant will be paid by the Secretary of State to the Company 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. 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 Company so much of the claim as shall not be in dispute.

General Annual Grant

**Multi Academy Model
Mainstream**

- 3.6 GAG will be paid by the Secretary of State to the Company 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, provided that the Secretary of State shall not be obliged to pay GAG in relation to insurance to the extent that insurance and/or comparable arrangements are made available to the Company (whether at a cost to the Company or otherwise and whether made available by and/or on behalf of the Secretary of State or otherwise) save that, to the extent that such insurance and/or comparable arrangements as may be made available constitute a cost for the Company, the Secretary of State shall provide a contribution through GAG in relation to such cost;

**Multi Academy Model
Mainstream**

- 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.
- 3.7 Subject to clauses 3.15 and 3.16, GAG for each Academy Financial Year for the Academy will include;
- a) funding equivalent to that which would be received by a maintained school with similar characteristics, determined by the Secretary of State and notified in the Annual Letter of Funding or its equivalent, taking account of the number of pupils at the Academy;
 - b) funding in respect of functions which would be carried out by the LA if the Academy was a maintained school.
- 3.8 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 relevant Academy meets the requisite conditions and criteria necessary for a maintained school to receive these grants.

Multi Academy Model
Mainstream

- 3.9 Subject to clause 3.11, the basis of the pupil number count for the purposes of determining GAG for the Academy Financial Year in which the Academy opens shall be 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.
- 3.10 Subject to clause 3.11 the basis of the pupil number count for the purpose of determining GAG for the Academy for Academy Financial Years after the Academy Financial Year in which the Academy opens will be:
- a) for the pupil number count 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 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.
- 3.11 Where either of the following conditions applies in respect of an Academy Financial Year, the basis of the pupil count shall be determined by the Secretary of State, taking account of any diseconomies of scale that the Academy will be under as a result of such condition(s) applying. The conditions are:
- a) not all planned Year-groups will be present at the Academy (that is, not all the pupil cohorts relevant to the age-range of the Academy will have some pupils present); or
 - b) the total number of pupils as measured in the Schools Census which is used to fund maintained schools for the financial year overlapping with the Academy Financial Year in question is less than 90% or more of the planned final size of the Academy, which is 600 and has not at any previous time been greater than 90% of that number.

**Multi Academy Model
Mainstream**

- 3.12 For any Academy Financial Year in which GAG for the Academy has been calculated in accordance with clause 3.9, no adjustment shall be made to the following Academy Financial Year's formula funding element of GAG for the Academy to recognise variation from the pupil count basis used.
- 3.13 For any Academy Financial Year in which GAG for the Academy is calculated in accordance with clause 3.10, no adjustment will be made to the formula funding element in the following Academy Financial Year's formula funding element of GAG unless the Company 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
- 3.14 The Secretary of State recognises that:
- a) where the Academy opens with intakes 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 3.7 – 3.13, in order to enable the Academy to operate effectively²;
 - 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 Company will make a bid for this addition to GAG based upon need and providing appropriate supporting evidence.

² Note that a larger GAG for the Start-Up Period is only applicable to Academies with approved Expressions of Interest.

**Multi Academy Model
Mainstream**

- 3.15 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 3.7 – 3.13 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.

- 3.16 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 3.7 – 3.13, in order to enable the Academy to operate effectively.
- 3.17 The Secretary of State also recognises that if this Agreement is terminated for any 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.
- 3.18 Subject to clause 9.1 GAG paid by the Secretary of State in respect of the Academy shall only be spent by the Company towards the normal running costs of the Academy.

Earmarked Annual Grant

- 3.19 Earmarked Annual Grant ("EAG") shall be paid by the Secretary of State to the Company in respect of either recurrent or Capital Expenditure for such

**Multi Academy Model
Mainstream**

specific purposes as may from time to time be agreed between the Secretary of State and the Company and as described in the relevant funding letter. The Company shall only spend EAG in accordance with the scope, terms and conditions of the grant set out in the relevant funding letter.

- 3.20 Where the Company 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

- 3.21 The Secretary of State shall notify the Company 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.
- 3.22 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 Company.
- 3.23 If GAG or EAG is calculated incorrectly because the Company 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 Company.

**Multi Academy Model
Mainstream**

- 3.24 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 Company in a funding letter at a date preceding that year. For subsequent years the amount of GAG will be notified to the Company in a funding letter preceding that Academy Financial Year (the "Annual Letter of Funding"). The Annual Letter of Funding will not include the amount that the Company 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 Company wherever possible in the Annual Letter of Funding or as soon as practicable thereafter.
- 3.25 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

- 3.26 The Company may apply to the Secretary of State for financial assistance in relation to proposed redundancies that it may make in respect of the Academy. On an application to the Secretary of State, he may (at his absolute discretion) agree to meet a proportion of the Company's costs arising from the inclusion of Academies in the Schedules to the Redundancy Payments (Continuity of Employment in Local Government) (Modification) Order 1999 as amended from time to time. In response to an application for financial assistance, the Secretary of State may agree to meet the costs of the employees' prior eligible service, being service prior to opening of the Academy, but the Company will be required to meet the costs of service after the opening of the Academy.
- 3.27 The Secretary of State may meet costs incurred by the Company in connection with the transfer of employees from the 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

Multi Academy Model
Mainstream

on a case by case basis and the Company 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.

- 3 28 The Company may also receive funding from an LA in respect of the provision detailed in statements of SEN for pupils attending the Academy in accordance with the provisions of Section 483A of the Education Act 1996 and regulations made under that section. The Company shall ensure that all provision detailed in statements of SEN is provided for such pupils.

4 **TERMINATION**

- 4.1 Either party may give not less than seven Academy Financial Years' written notice to terminate this Agreement, such notice to expire on 31 August 2019 or any subsequent anniversary of that date.
- 4.2 If the Secretary of State is of the opinion that the Academy no longer has the characteristics set out in clause 2.5 of this Agreement or that the conditions and requirements set out in clauses 13, 16, 18, 22(b), 23 -26, 34, 38-42, 52 and 56 of the Master Agreement or clauses 8.1-8.16 of this agreement are not being met, or that the Company is otherwise in material breach of the provisions of this Agreement or the Master Agreement, the Secretary of State may give notice of his provisional intention to terminate this Agreement.
- 4.3 Any such notice shall be in writing and shall.
- 4.3.1. state the grounds on which the Secretary of State considers the Academy no longer has the characteristics set out in clause 2.5 of this Agreement or that the conditions and requirements set out in clauses 13, 16, 18, 22(b), 23 -26, 34, 38-42, 52 and 56 of the Master Agreement or clauses 8.1-8.16 of this agreement or the Company is otherwise in material breach of the provisions of this Agreement or the Master Agreement;
- 4.3.2. specify the measures needed to remedy the situation or breach;
- 4.3.3. specify a reasonable date by which these measures are to be implemented; and

Multi Academy Model
Mainstream

- 4.3.4. state the form in which the Company is to provide its response and a reasonable date by which it must be provided.
- 4.4 If no response is received by the date specified in accordance with clause 4.3.4, the Secretary of State may give the Company 12 months, or such lesser period as he considers appropriate in the circumstances, written notice to terminate this Agreement.
- 4.5 If a response is received by the date specified in accordance with clause 4.3.4, the Secretary of State shall consider it, and any representations made by the Company, and shall, within three months of its receipt, indicate that:
- 4.5.1. he is content with the response and/or that the measures which he specified are being implemented; or
- 4.5.2. 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
- 4.5.3. he is not satisfied, that he does not believe that he can be reasonably satisfied, and that he will proceed to terminate the Agreement.
- 4.6 In the circumstances of clause 4.5.3 the Secretary of State shall notify the Company why he believes that he cannot be reasonably satisfied and, if so requested by the Company within thirty days from such notification, he shall meet a deputation including representatives from directors of the Company and the Local Governing Body of the Academy 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 2.5 of this Agreement or that the conditions and requirements set out in clauses 13, 16, 18, 22(b), 23 -26, 34, 38-42, 52 and 56 of the Master Agreement or clauses 8.1-8.16 of this agreement or the Company is in material breach of the provisions of this Agreement or the Master Agreement and such breach will not be remedied to his reasonable satisfaction, he shall give the Company twelve months written notice to terminate this Agreement.

Multi Academy Model
Mainstream

- 4.7 If the Secretary of State has cause to serve a notice on the Company under section 165 of the Education Act 2002 and a determination (from which all rights of appeal have been exhausted) has been made that the Academy shall be struck off the Register of Independent Schools, the period of twelve months notice referred to in clause 4.6 may be shortened to a period deemed appropriate by the Secretary of State.
- 4.8 The Secretary of State shall, at a date preceding the start of each Academy Financial Year, provide to the Company an indication of the level of funding to be provided by the Secretary of State to the Company by way of GAG and EAG in the next following Academy Financial Year (the "**Indicative Funding**"). If the Company is of the opinion that, after receipt of the Indicative Funding for the next following Academy Financial Year (the "**Critical Year**") and of the taking into account all other resources available and likely to be available to the Academy, including such funds as are set out in clause 73 of the Master Agreement and such other funds as are and likely to be available to the Academy from other academies operated by the Company ("**All Other Resources**"), it is likely that the cost of running the Academy during the Critical Year would cause the Company, on the basis of the Indicative Funding, to become insolvent (and for this reason only) then the Company may give notice of its intention to terminate this Agreement at the end of the then current Academy Financial Year.
- 4.9 Any notice given by the Company under clause 4.8 shall be in writing and shall be served on the Secretary of State not later than 28 February preceding the Critical Year or, if the Secretary of State shall not have given notice of the Indicative Funding to the Company on or before the date specified in clause 4.8 above, within six weeks after the Secretary of State shall have done so. The notice must specify:
- 4.9.1. the grounds upon which the Company's opinion is based and include the evidence of those grounds and any professional accounting advice the Company has received and including a detailed statement of steps which the Company proposes to take with a view to ensuring that as soon as reasonably practicable the costs of running the Academy are reduced sufficiently to ensure that such costs are less than the

Multi Academy Model
Mainstream

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

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

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

- 4.10 Both parties undertake to use their best endeavours to agree whether or not the cost of running the Academy during the Critical Year would cause the Company, on the basis of the Indicative Funding and All Other Resources, to become insolvent. Both parties recognise that they will need to engage in a constructive dialogue at the time about how best to provide education for the pupils at the Academy and undertake to use their best endeavours to agree a practical solution to the problem.
- 4.11 If no agreement is reached by 30 April (or such other date as may be agreed between the parties) as to whether the cost of running the Academy during the Critical Year on the basis of the Indicative Funding and All Other Resources would cause the Company to become insolvent, then that question shall be referred to an independent expert (the "**Expert**") for resolution. The Expert's determination shall be final and binding on both parties. The Expert shall be requested to specify in his determination the amount of the shortfall in funding (the "**Shortfall**"). The Expert shall be an insolvency practitioner with significant professional experience of educational institutions or academies. If the parties fail to agree upon the appointment of the Expert then the Expert shall be appointed by the President for the time being of the Institute of Chartered Accountants in England and Wales. The Expert's fees shall be borne equally between the parties.
- 4.12 The Expert shall be required in reaching his determination to take account of advice from an educational specialist who is professionally familiar with the issues arising from the budget management of large schools. If the parties fail to agree upon the appointment of the educational specialist then the educational specialist shall be appointed by the Chairman for the time being

Multi Academy Model
Mainstream

of the Specialist Schools and Academies Trust. The educational specialist's fees shall be borne equally between the parties.

- 4.13 If the Expert determines that the cost of running the Academy during the Critical Year would cause the Company, on the basis of the Indicative Funding and All Other Resources, to become insolvent, and the Secretary of State shall not have agreed to provide sufficient additional funding to cover the Shortfall, then the Company shall be entitled to terminate this Agreement, by notice expiring on 31 August prior to the Critical Year. Any such notice shall be given within 21 days after (a) the Expert's determination shall have been given to the parties or (b), if later, the Secretary of State shall have given written notice of his refusal to provide sufficient additional funding for the Academy to cover the Shortfall.
- 4.14 If the Company shall have given notice to terminate the Agreement under 4.13 the Secretary of State may by notice in writing to the Company require the Company to appoint up to two persons as directors of the Company in accordance with the Articles.
- 4.15 The Secretary of State may at any time by notice in writing terminate this Agreement forthwith if the Academy has ceased (except where such cessation occurs temporarily by reason of an event beyond the reasonable control of the Company) to operate as an Academy within the meaning of Section 1 of the Academies Act 2010.
- 4.16 A "Special Measures Termination Event Occurs" when:
- 4.16.1 the Chief Inspector gives a notice to the Company 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
- 4.16.2 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

Multi Academy Model
Mainstream

- 4.16.3. the Secretary of State shall have requested the Company to deliver within 10 Business Days a written statement (a "Further Action Statement") of the action the Company 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
- 4.16.4. the Secretary of State, having considered the Further Action Statement, is not satisfied that any action proposed to be taken by the Company 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.
- 4.17 If a Special Measures Termination Event occurs, the Secretary of State may:
- 4.17.1. by notice in writing to the Company terminate this Agreement forthwith; or
- 4.17.2. subject to clause 127 of the Master Agreement, appoint such Further Directors to the Company as he thinks fit in accordance with the Articles and/or may provide up to 12 months' notice in writing to terminate this Agreement.
- 4.18 In the event that the Secretary of State appoints Further Directors in accordance with clause 4.17.2, the Company must, upon the request of the Secretary of State, procure the resignation of the Directors appointed in accordance with Article 50 of the Articles of Association.
- 4.19 If, following the exercise of the Secretary of State's powers to appoint Additional Directors or Further Directors, pursuant to the Articles of Association, the Members pass an ordinary or special resolution to remove one or more of those Additional or Further Directors appointed by the Secretary of State, the Secretary of State may give the Company 12 months, or such lesser period as he considers appropriate in the circumstances, written notice to terminate this Agreement.
- 4.20 The Secretary of State's right to terminate this Agreement under clause 4.19 shall cease if he removes any of the Additional Directors or Further Directors which he has appointed pursuant to the Articles of Association.

**Multi Academy Model
Mainstream**

Change of Control of the Company

4.21 The Secretary of State may at any time by notice in writing, subject to clause 4.23 below, terminate this Agreement forthwith (or on such other date as he may in his absolute discretion determine) in the event that there is a change:

- a) in the Control of the Company,
- b) in the Control of a legal entity that Controls the Company.

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

4.22 The Company shall, as soon as it is reasonably practicable to do so after it has become aware of any change or proposed change of Control within the meaning of clause 4.21, give written notice to the Secretary of State of such change or proposed change of Control.

4.23 When notifying the Secretary of State further to clause 4.22, the Company may seek the Secretary of State's agreement that, if he is satisfied that the person assuming Control is suitable, he will not in those circumstances exercise his right to terminate this Agreement further to clause 5.21..

Effect of termination

4.24 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.

4.25 Subject to clause 4.26, if the Secretary of State terminates this Agreement for reasons other than that a Special Measure Termination Event occurs, the Academy no longer has the characteristics set out in clause 2.5 of this Agreement, or is no longer meeting the conditions and requirements set out in clauses 13, 16, 18, 22(b), 23 -26, 34, 38-42, 52 and 56 of the Master Agreement or clauses 8.1- 8.16 of this agreement or that the Company is otherwise in material breach of the provisions of this Agreement or the Master Agreement, the Secretary of State shall indemnify the Company.

Multi Academy Model
Mainstream

- 4.26 The amount of any such indemnity shall be determined by the Secretary of State having regard to any representations made to him by the Company, and shall be paid at such times and in such manner as the Secretary of State may reasonably think fit.
- 4.27 The categories of expenditure incurred by the Company in consequence of the termination of the Agreement in respect of which the Secretary of State shall indemnify the Company include (but not by way of limitation), staff compensation and redundancy payments, compensation payments in respect of broken contracts, expenses of disposing of assets or adapting them for other purposes, legal and other professional fees, and dissolution expenses.
- 4.28 Subject to clause 4.29, on the termination of this Agreement however occurring, the Company shall in respect of any of its capital assets at the date of termination:
- a) promptly transfer a proportion of the assets to a person nominated by the Secretary of State, if the Secretary of State considers that all or some of those assets need to be used for 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 4.28(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.
- 4.29 The Secretary of State may waive in whole or in part the repayment due under clause 4.28(b) if:
- a) The Company obtains his permission to invest the proceeds of sale for its charitable objects; or

**Multi Academy Model
Mainstream**

- b) The Secretary of State directs all or part of the repayment to be paid to the L
A.

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

5 **Not Used**

6 **ANNEX**

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

LAND

Restrictions on Land transfer

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

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

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

- b) shall take any further steps required to ensure that the restriction referred to in clause 6A(a) is entered on the proprietorship register,
- c) shall provide the Secretary of State with confirmation of the entry of the restriction referred to in clause 6A(a) as soon as practicable after it receives notification from the Land Registry,

**Multi Academy Model
Mainstream**

- d) in the event that it has not registered the restriction referred to in clause 6A(a), hereby consents to the entering of the restriction referred to in 6A(a) in the register by the Secretary of State (under s. 43(1)(b) of the Land Registration Act 2002),
- e) shall not, without the consent of the Secretary of State, apply to dis-apply, modify or remove (by cancellation or otherwise) a restriction entered in accordance with clause 6A(a) or 6A(d) above, whether by itself, a holding company, a subsidiary company, or a receiver, administrator or liquidator acting in the name of the Company.

Repair and Upkeep

6B) The Company 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

6C) The Company shall:-

- a) keep the Land insured with a reputable insurance office against loss or damage by the Insured Risks in the sum the Company is advised represents the reinstatement value of the 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 Company 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

**Multi Academy Model
Mainstream**

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

6D) In recognition by the Company that they are or will be taking a transfer of publicly-funded land for nil consideration (which for the purposes of this transaction shall include leases granted at a peppercorn rent), the Company hereby grants and the Secretary of State hereby accepts an option, exercisable by the Secretary of State or his nominee, to transfer the said land pursuant to Schedule 1 to the Academies Act 2010. The option hereby granted shall be exercisable (by notice in writing by or on behalf of the Secretary of State) on the termination of this Funding Agreement for whatever cause. On the exercise of this option, the Law Society's Standard Conditions of Sale for Commercial Property in force at the date of such exercise shall apply to the transaction and completion shall take place 28 days after such exercise.

6E) In further recognition by the Company that they are or will be taking a transfer of publicly-funded land for nil consideration, (which for the purposes of this transaction shall include leases granted at a peppercorn rent), to protect the option granted under clause 6D, the Company:

- a) shall, within 14 days from the transfer to it of the Land, apply to the Land Registry in Form AN1 as prescribed by Rule 81 of the Land Registration Rules 2003 for a notice to be entered in the register (under section 34(3)(a) of the Land Registration Act 2002) to protect the option granted under clause 6D and including a copy of this Agreement as evidence of that option.
- b) shall take any further steps required to ensure that the notice referred to in clause 6E(a) is entered on the proprietorship register,

**Multi Academy Model
Mainstream**

- c) shall provide the Secretary of State with confirmation of the entry of the notice referred to in clause 6E(a) as soon as practicable after it receives notification from the Land Registry,
- d) in the event that it has not registered the notice referred to in clause 6E(a), hereby consents to the entering of the notice referred to in 6E(a) in the register by the Secretary of State (by application in Form UN1 under s. 34(3)(b) of the Land Registration Act 2002),
- e) shall not, without the consent of the Secretary of State, apply to dis-apply, modify or remove (by cancellation or otherwise) a notice entered in accordance with clause 6E(a) or 6E(d) above, whether by itself, a holding company, a subsidiary company, or a receiver, administrator or liquidator acting in the name of the Company.
- f) in the case of previously unregistered land, for the further protection of the option granted in Clause 6D the Company shall within 14 days of the signing of this Agreement make application to register a Class C (iv) land charge in the Land Charges Registry and a Caution against First Registration in the Land Registry and shall provide the Secretary of State with copies of the entries secured thereby within 7 days of completing each registration, respectively. If the Secretary of State is of the view that the Company has failed to perform the registration obligations in this sub-clause he shall be at liberty to make his own applications to secure these registrations.

7 THE MASTER AGREEMENT

- 7.1 Except as expressly provided in this Agreement the Master Agreement shall continue in full force and effect.
- 7.2 The following clauses of the Master Agreement do not apply in respect of the Academy:
 - a) the definition of 'SEN' in clause 5;
 - b) clause 12 (characteristics);

**Multi Academy Model
Mainstream**

- c) clauses 14 and 15 (governance);
- d) Clauses 17, 19, 20 and 21 (well-being, school development plan and targets);
- e) clause 22(a) and (c) (admissions);
- f) clauses 27 – 33;
- g) clauses 35 - 37 (curriculum);
- h) Clauses 43-51 (Assessment and crisis management plan)
- i) Clause 55 (school meals)
- j) Clauses 57-59B (provision of information to parents and others)
- k) clauses 63, 65 and 66 (capital grant and BSF)
- l) clauses 69 – 92 (GAG and other funding)
- m) clause 100, 101, 102, 104, and 107 (financial and accounting requirements)
- n) clauses 109 and 112 (disposal of assets)

8 CONDITIONS OF GRANT

Governance

- 8.1 The Academy will be governed by the Company. The Company 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.
- 8.2 The Company shall establish, for the Academy, an Advisory Body, whose role shall be to provide advice to the Company in relation to the functioning of the Academy. The role of the Advisory Body and the membership of it shall be for the Company to decide, but the Company will, as a minimum, ensure that:
 - a) a minimum of two parents of a pupil at the Academy (to be elected by the parents of registered pupils of the Academy) shall be a member of the Advisory Body;
 - b) any advice of the Advisory Body is brought to the attention of the Directors of

Multi Academy Model Mainstream

the Company;

- c) to the extent that the Company may, in accordance with the Articles, choose to establish a Local Governing Body, then the Company may additionally constitute the Advisory Body as the Academy's Local Governing Body.

Criminal Records Bureau checks

- 8.3 The Company, in respect of the Academy, shall comply with the requirements of paragraph 4 of the Schedule to the Education (Independent School Standards) (England) Regulations 2010 (or such regulations as may for some time being be applicable) 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 Directors and the Chair of the Local Governing Body.

Pupils

- 8.4 Pupil exclusions are set out in regulations made by virtue of section 51A of the Education Act 2002 (as may be amended or modified from time to time, and includes any successor provisions).

Admissions

- 8.5 The admission of pupils to an Academy is set out in the relevant annex to this Agreement.

Teachers and other staff

- 8.6 Clauses 23 and 24 of the Master Agreement relating to teachers and other staff shall apply except that there will be no requirement for teachers to be registered with the General Teaching Council for England.

Curriculum

- 8.7 The Company shall ensure that the broad and balanced curriculum provided by the Academy includes English, Mathematics and Science.
- 8.8 The Company shall publish information in relation to the current curriculum provision at the Academy. Such information shall include details relating to:

**Multi Academy Model
Mainstream**

- a) the content of the curriculum;
 - b) its approach to the curriculum;
 - c) the GCSE option (and other Key Stage 4 qualifications) offered by the Academy;
 - d) the names of any phonics or reading schemes in operation for Key Stage 1; and
 - e) how parents (including prospective parents) can obtain further information in relation to the curriculum at the Academy.
- 8.9 Subject to the requirements of the Master Agreement (as amended by this Agreement) and clauses 8.7 – 8.8 and 8.10 of this Agreement, the curriculum will be the responsibility of the Company.
- 8.10 Sections 42A (provision of careers guidance) and 45A (guidance as to discharge of duties) of the Education Act 1997 shall be deemed to apply to the Academy with the following modifications:
- a) the Academy shall be treated as falling within the meaning of "a school" under section 42A (2);
 - b) the Company shall be deemed to be the "responsible authorities" for the purposes of subsection 42A(3); and
 - c) references to registered pupils shall be treated as references to registered pupils at the Academy

Assessment

- 8.11 The Secretary of State will notify the appropriate body for assessment purposes about the Academy:
- a) The Company 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.

**Multi Academy Model
Mainstream**

- b) The Company shall report to any body on assessments under this clause 8.8 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 Company will submit the Academy to monitoring and moderation of its assessment arrangements as prescribed by the Secretary of State.
 - d) The Company 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.
- 8.12 The Company shall ensure that the following information is published on the website for each Mainstream Academy:
- a) The school's most recent key stage 2 results as published by the Secretary of State under the following column headings in the School Performance Tables published on the Department for Education's website:
 - (i) "% achieving Level 4 or above in English and Maths";
 - (ii) "% making expected progress";
 - (iii) in relation to English, "% achieving Level 5 or above"; and
 - (iv) in relation to Maths, "%achieving Level 5 or above".
 - b) The school's most recent key stage 4 results as published by the Secretary of State under the following column headings in the School Performance Tables published on the Department for Education's website:
 - (i) "% achieving 5 + A* - C GCSEs (or equivalent) including English or Maths GCSEs";
 - (ii) "% achieving the English Baccalaureate"; and
 - (iii) "% of pupils making expected progress".

Multi Academy Model Mainstream

- c) Information as to where and by what means parents (including prospective parents) may access the most recent report about the school published by her Majesty's Chief Inspector of Education, Children's Services and Skills.
- d) Information as to where and by what means parents (including prospective parents) may access the School Performance Tables published by the Secretary of State on the Department for Education's website.

International Education Surveys

- 8.13 The Secretary of State may, by notice in writing to the Company, require the Company to participate in an international education survey and the Company shall, upon receipt of such notice, participate in that survey and provide to the Secretary of State or to those carrying out the survey all such assistance and information as may reasonably be required for the purposes of the Academy's participation in that survey.

Pupil Premium

- 8.14 The Company shall, in respect of the Academy, publish in each Academy Financial Year information in relation to:
- a) the amount of Pupil Premium allocation that it will receive during the Academy Financial Year;
 - b) on what it intends to spend the Pupil Premium allocation;
 - c) on what it spent its Pupil Premium in the previous Academy Financial Year;
 - d) the impact in educational attainment, arising from expenditure of the previous Academy Financial Year's Pupil Premium.

School meals

- 8.15 The Company shall, if requested to do so by or on behalf of any pupils at the Academy, provide lunches for those pupils unless it would be unreasonable for it to do so. Subject to the provisions of clause 8.12 of this Agreement charges may be levied for lunches.
- 8.16 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

**Multi Academy Model
Mainstream**

provision governing the entitlement to free school lunches of pupils at maintained schools), the Company shall ensure that a school lunch is provided for such a pupil free of charge to be funded out of the Company's GAG.

Duration of the School Day and Year

- 8.17 In respect of the Academy, the duration of the school day and year will be the responsibility of the Company.³

9 FINANCIAL AND ACCOUNTING REQUIREMENTS

Clauses 100, 101, 102, 104, 107, 109 and 112 of the Master Agreement do not apply in respect of this Academy.

General

- 9.1 At the beginning of any Academy Financial Year the Company may hold unspent GAG for the Academy from previous Academy Financial Years amounting to such percentage (if any) as the Secretary of State may specify by notice in writing to the Company prior to the beginning of that Academy Financial Year 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. The Company shall use such carried forward amount for such purpose, or subject to such restriction on its use, as the Secretary of State may specify by notice in writing to the Company.
- 9.2 Notwithstanding clause 9.1 any additional grant provided over and above that set out in clauses 3.7 – 3.13 of this agreement and made in accordance with clauses 3.14 - 3.16 of this agreement may be carried forward without limitation or deduction until the Start-up Period or the circumstances set out in clause 3.16 of this Agreement come to an end.

³ In respect of Special Academies, regulations made under section 551 of the Education Act 1996 apply (currently the Education (School Day and School Year) (England) Regulations 1999).

Multi Academy Model
Mainstream

- 9.3 Any savings of GAG not allowed to be carried forward under clauses 9.1 -9.2 of this Agreement will be taken into account in the payment of subsequent grant.
- 9.4 The Company shall not, in relation to assets or property that relate to the Academy and are 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.
- 9.5 The Company shall provide 30 days notice to the Secretary of State, whether or not the circumstances require the Secretary of State's consent, of its intention to:
- e) give any guarantees, indemnities or letters of comfort that relate to the Academy;
 - f) write off any debts owed to it, or offer to make any ex gratia payments, that relate to the Academy;
 - g) make any sale or purchase of freehold property that relates to the Academy; or
 - h) grant or take up any leasehold or tenancy agreement that relates to the Academy for a term exceeding three years.

Borrowing powers

- 9.6 The Company shall not borrow against or so as to put at risk property or assets that relate to the Academy and are funded (whether in whole or in

Multi Academy Model
Mainstream

part) by the Secretary of State without specific approval of the Secretary of State, such approval may only be granted in limited circumstances. The Company shall not operate an overdraft that relates to the Academy except to cover irregularities in cash flow. Such an overdraft, and the maximum amount to be borrowed, shall require approval by the Company 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.

- 9.7 The Company shall provide 30 days notice to the Secretary of State of its intention to borrow in relation to the Academy, whether or not such borrowing requires the Secretary of State's approval under clause 9.6 above.

Disposal of assets

- 9.8 The sale or disposal by other means, or reinvestment of proceeds from the disposal, of a capital asset held for the purposes of the Academy by the Company 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 the value for the time being specified by the Secretary of State for the asset; or
 - b) the asset was transferred to the Company from an LA for no or nominal consideration
- 9.9 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 the value for the time being specified by the Secretary of State 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.
- 9.10 Except with the consent of the Secretary of State, the Company shall not dispose of assets that relate to the Academy and are 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.

Multi Academy Model
Mainstream

- 9.11 The Company shall provide 30 days notice to the Secretary of State of its intention to dispose of assets that relate to the academy 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 9.10 above.

10 COMPLAINTS

- 10.1 If a complaint is made about matters arising in whole or in part prior to the opening of the Academy, as referred to in clause 2.4, and all or part of that complaint was being or had been investigated by the Local Government Ombudsman under Part III or the Local Government Act 1974 ('Part III') or that complaint in whole or in part could have been investigated under Part III had the school the Academy replaced remained a maintained school, the Company:

- a) will abide by the provisions of Part III as though the Academy were a maintained school;
- b) agrees that the Secretary of State shall have the power to investigate the matter complained of as if it had taken place after conversion;
- c) agrees to act in accordance with any recommendation from the Secretary of State as though that recommendation had been made under Part III and the Academy were a maintained school.

- 10.2 If the Secretary of State could have given an order and/or a direction under section 496 and/or section 497 of the Education Act 1996 to the governing body of the school the Academy replaced (as referred to in clause 2.4) and that order and/or direction related to matters occurring within the 12 months immediately prior to conversion, the Company agrees:

- a) the Secretary of State may give orders and/or directions to the Company as though the Academy were a maintained school and sections 496 and 497 applied to the governing body of that maintained school;
- b) to act in accordance with any such order and/or direction from the Secretary of State.

Multi Academy Model
Mainstream

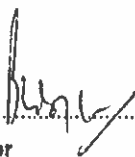
11 **ENGLISH LAW**

11.1 This Agreement shall be governed by and interpreted in accordance with English law.

This Agreement was executed as a Deed on

2012

Executed on behalf of E-ACT by:


.....
Director


.....
Director/Secretary

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

.....
Duly Authorised

E-ACT

THE PURSTON E-ACT ACADEMY ANNEX A - ADMISSIONS

REQUIREMENTS FOR THE ADMISSION OF PUPILS TO THE PURSTON E-ACT ACADEMY

General

1. This annex may be amended in writing at any time by agreement between the Secretary of State and the Company.
2. The Company will act in accordance with, and will ensure that an Independent Appeal Panel is trained to act in accordance with, all relevant provisions of the School Admissions Code and the School Admission Appeals Code published by the Department for Education ("the Codes") as they apply at any given time to maintained schools and with equalities law and the law on admissions as they apply to maintained schools. For this purpose, reference in the Codes or law to "admission authorities" shall be deemed to be references to the Directors of the Company.
3. Notwithstanding the generality of paragraph 2 of this Annex 1, the Company 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 Agreement, the Secretary of State may:
 - (a) direct the Company to admit a named pupil to The Purston E-ACT Academy on application from an LA. This will include complying with a School Attendance Order¹. Before doing so the Secretary of State will consult the Company.
 - (b) direct the Company to admit a named pupil to The Purston E-ACT Academy if the Company has failed to act in accordance with this Annex or has otherwise failed to comply with applicable admissions and equalities legislation or the provisions of the Codes.
 - (c) direct the Company to amend its admission arrangements where they fail to comply with the School Admission Code or the Admission Appeals Code.
5. The Company shall ensure that parents and 'relevant children'² will have the right of

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:

- 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

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

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 consider the Academy and its 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 group³. The Academy will consult on its admission arrangements and determine them in line with requirements within the School Admissions Code.

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, Year 7 and Year 12.

11. The Academy Trust should make it clear, when determining the Academy's admission arrangements, that objections should be submitted to the Office of the Schools Adjudicator (OSA).

12. A determination of an objection by the OSA will be binding upon the Academy.

Multi Academy Model

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

Duties in relation to pupils with SEN¹

1. The Directors of the Company must, in respect of each **Mainstream Academy**, comply with all of the duties imposed upon the governing bodies of maintained schools in;
 - Part 4 of the Education Act 1996 as amended from time to time²;
 - 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 time³.
2. Notwithstanding any provision in this Agreement, the Secretary of State may (whether following a complaint made to him or otherwise) direct the Company to comply with an obligation described in this Annex where the Company has failed to comply with any such obligation.
3. Where a child who has SEN is being educated in a **Mainstream Academy**, those concerned with making special educational provision for the child must secure that the child engages in the activities of the school together with children who do not have SEN, so far as is reasonably practicable and is compatible with:
 - (a) the child receiving the special educational provision which his learning difficulty calls for,
 - (b) the provision of efficient education for the children with whom he will be educated, and
 - (c) the efficient use of resources.
4. In addition to complying with the duties imposed upon the governing bodies of maintained schools set out in The Education (Special Educational Needs) (Information) Regulations 1999 (as amended from time to time) the Company must ensure that the website for each Academy includes details of the implementation of its policy for pupils with special educational needs; the arrangements for the admission of disabled pupils; the steps taken to prevent disabled pupils from being treated less favourably than other pupils; and the facilities provided to assist access to the Academy by disabled pupils (disabled pupils meaning pupils who are disabled for the purposes of the Equality Act

¹ Duties in relation to pupils with SEN at Special Academies are at clause 12A of the Master Funding Agreement.

² 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).

³ These Regulations are amended by The Education (Special Educational Needs Co-ordinators) (England) (Amendment) Regulations 2009 (SI 2009 No 1387).

Multi Academy Model

2010¹).

Admissions²

5. The Company must ensure that for each **Mainstream Academy** pupils with SEN are admitted on an equal basis with others in accordance with the Academy's admissions policy.
6. Where a local authority ("LA") proposes to name a **Mainstream Academy** in a statement of SEN made in accordance with section 324 of the Education Act 1996, it must give the Company written notice that it so proposes. Within 15 days of receipt of the LA's notice that it proposes to name the Academy in a statement, the Company must consent to being named, except where admitting the child would be incompatible with the provision of efficient education for other children; and where no reasonable steps may be made to secure compatibility. In deciding whether a child's inclusion would be incompatible with the efficient education of other children, the Company must have regard to the relevant guidance issued by the Secretary of State to maintained schools.
7. If the Company determines that admitting the child would be incompatible with the provision of efficient education, it must, within 15 days of receipt of the LA's notice, notify the LA in writing that it does not agree that the Academy should be named in the pupil's statement. Such notice must set out all the facts and matters the Company relies upon in support of its contention that: (a) admitting the child would be incompatible with efficiently educating other children; and (b) the Company cannot take reasonable steps to secure this compatibility.
8. After service by the Company on the LA of any notice (further to paragraph 7 above) stating that it does not agree with the LA's proposal that the Academy be named, the Company must seek to establish from the LA, as soon as is reasonably practicable, whether or not the LA agrees with the Company. If the LA notifies the Company that it does not agree with the Company's response, and names the Academy in the child's statement, then the Company must admit the child to the school on the date specified in the statement or on the date specified by the LA.
9. Where the Company consider that the Academy should not have been named in a child's statement, they may ask the Secretary of State to determine that the LA has acted unreasonably in naming the Academy and to make an order directing the LA to reconsider.
10. The Secretary of State's determination shall, subject only to any right of appeal which any parent or guardian of the child may have to the First-tier Tribunal (Special Educational Needs and Disability), be final.

¹ For the meaning of 'disabled', see section 6 of the Equality Act 2010.

² SEN Admissions requirements for special academies are set out in the Special Academy Supplemental Funding Agreement Annex 1.

25 May 2012 v6

Multi Academy Model

11. If a parent or guardian of a child in respect of whom a statement is maintained by the local authority appeals to the First-tier Tribunal (Special Educational Needs and Disability) either against the naming of an Academy in the child's SEN statement or asking the Tribunal to name an Academy, then the decision of the Tribunal on any such appeal shall be binding and shall, if different from that of the Secretary of State under paragraph 9 above, be substituted for the Secretary of State's decision.
12. Where the Company, the Secretary of State or the First-tier Tribunal (Special Educational Needs and Disability) have determined that it should be named, the Company shall admit the child to the Academy notwithstanding any provision of Annex 1 of the Supplemental Agreement of that Academy.

25 May 2012 v6

Annex C

Serious incidents of misbehaviour leading to fixed period or permanent exclusion

1. Subject to the exceptions in paragraph 5, the Company shall act and shall ensure that the Principal and Local Governing Body of each Academy act in accordance with the law on exclusions as if each 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 Local Governing Body of the relevant Academy.
2. Without limiting the generality of paragraph 1, the Company shall ensure that the Local Authority in which each 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 Company shall ensure that each Principal and the Local 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 each Academy were a maintained school¹.
4. The Company shall make arrangements for enabling appeals against, or review of any decision of the Local Governing Body to permanently exclude a pupil in accordance with the functions assigned to the Local Authority in relation to a maintained school. The Company shall ensure that appeal/review panels are impartial, and are constituted in accordance with the Secretary of State's guidance. The Company shall comply with any decision of an appeals panel, or direction of a review panel².
5. The exception to the duties imposed under paragraphs 1 and 3 is:
 - the Local Governing Body is not expected to seek the advice of a Local Authority officer when considering an exclusion, although a

¹References 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 each 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 maladministration. This is because the Commissioner's remit is limited to considering the conduct of appeal panels constituted by Local Authorities.

Annex C Multi

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

- in respect of mainstream Academies only; subject to the Company's obligations under clause 31 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.

03 August 2011 V.5

Schedule 2
Amended Supplemental Funding Agreement



Department
for Education

Mainstream academy and free school: supplemental funding agreement

July 2014

Contents

SUMMARY SHEET	4
Information about the Academy:	4
1. ESTABLISHING THE ACADEMY	8
Definitions and interpretation	8
The Academy	8
2. RUNNING OF THE ACADEMY	9
Teachers and staff	9
Pupils	9
SEN unit	9
Charging	9
Admissions	9
Curriculum	12
3. GRANT FUNDING	13
Calculation of GAG	13
Other relevant funding	14
4. LAND	15
<i>Version 2: existing leasehold site</i>	15
5. TERMINATION	19
Termination by either party	19
Termination Warning Notice	19
Termination by the Secretary of State after inspection	20
Termination by the Secretary of State	21
Funding and admission during notice period	21

Notice of intention to terminate by Academy Trust	22
Effect of termination	24
6. OTHER CONTRACTUAL ARRANGEMENTS	25
Annexes	25
The Master Agreement	25
General	26
7. PUPILS WITH SPECIAL EDUCATION NEEDS (SEN) AND DISABILITIES	28
8. ADMISSION OF PUPILS WITH SEN AND DISABILITIES	29

SUMMARY SHEET

Information about the Academy:

Name of Academy Trust	The Rodillian Multi Academy Trust
Company number	07990619
Date of Master Funding Agreement	TBC
Name of Academy	The Featherstone Academy
Opening date	1 st September 2014
Type of Academy (indicate whether academy or free school)	Sponsored
Religious designation	None
Wholly or partly selective	N/A
Name of predecessor school (where applicable)	The Purston E-Act Academy
Capacity number	450
Age range	11 - 16
Number of sixth form places	N/A
SEN unit / Resource provision	N/A
Land arrangements (Version 1-7 or other)	Version 2
Address and title number of Land	Purston Academy (formerly Featherstone Technology College) Pontefract Road, Featherstone, Pontefract and 182 Pontefract Road Featherstone WF7 5AJ

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.G	Clause relating to Start-up only applies in some cases (does not apply to academy converters)		X
3.I	Clause only applies to full sponsored and intermediate sponsored academies with approved Academy Action Plans	X	
3.J	Clause does not apply to free schools (unless there was a predecessor independent school), or new provision academies	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): N/A

1. ESTABLISHING THE ACADEMY

- 1.A This Agreement made between the Secretary of State for Education and The Rodillian Multi Academy Trust is supplemental to the master funding agreement made between the same parties and dated *29 August 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 Featherstone Academy.

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

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

- 1.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 Trust will open the Academy on 1st September 2014.

1.I Not used

2. RUNNING OF THE ACADEMY

Teachers and staff

2.A Subject to clause 2.4 of the Master Agreement and 7.A of this Agreement (if used), 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 ^{KS} ~~Note~~ *used*

Pupils

2.B The planned capacity of the Academy is 450 in the age range 11 – 16. 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 armed forces (of any nation), stationed in England, and 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 ***Not used***

- 3.H The Secretary of State recognises that if he serves a Termination Notice or a Termination Warning Notice, or otherwise terminates the Master Agreement, 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.I The Academy Trust may apply to the Secretary of State for financial assistance in relation to proposed redundancies at the Academy. In response to such an application, the Secretary of State may at his discretion agree to meet a proportion of the Academy Trust's costs arising from the inclusion of academies in the schedules to the Redundancy Payments (Continuity of Employment in Local Government) (Modification) Order 1999. The Secretary of State may agree to meet the costs of an employee's prior eligible service, being service before the Academy opened, but the Academy Trust must meet the costs of service after the Academy opened. The Secretary of State's financial assistance in this respect will only be available in the first two years after the Academy opens.

- 3.J 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.K Any additional grant made in accordance with clause 3.H, 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.H cease to apply or the Academy closes.

4. LAND

Version 2: existing leasehold site

"Land" means the land at Purston Academy (formerly Featherstone Technology College) Pontefract Road, Featherstone, Pontefract and 182 Pontefract Road Featherstone WF7 5AJ , being the land registered with title number YY9249 and demised by the Lease.

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

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

Restrictions on Land transfer

- 4.A The Academy Trust must:

- a) within 28 days after signing this Agreement, 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 comply with the Lease and promptly enforce its rights against the Landlord.
- 4.D The Academy Trust must not, without the Secretary of State’s consent:
 - a) terminate, vary, surrender, renew, dispose of or agree any revised rent under the Lease;

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

Option

- 4.E 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.F The Academy Trust:
- a) must, within 14 days after acquiring the Land or, if later, after signing this Agreement, apply to the Land Registry on Form AN1 (including a copy of this Agreement) for a notice of the Option (the "**Option Notice**") to be entered in the register, taking any further steps required to have the Option Notice registered and promptly confirming to the Secretary of State when this has been done;
 - b) if it has not registered the Option Notice, agrees that the Secretary of State may apply to register it using Form UN1;
 - c) must not, without the Secretary of State's consent, apply to disapply, modify or remove the Option Notice, whether by itself, a holding company, a subsidiary company, or a receiver, administrator or liquidator acting in the name of the Academy Trust, and

- d) must, in the case of previously unregistered land, within 14 days after acquiring the Land or, if later, after signing this Agreement, apply to register a Class C(iv) land charge in the Land Charges Registry, and send the Secretary of State a copy of the relevant entry within 7 days after the registration has been completed. If the Secretary of State considers that the Academy Trust has not complied with this clause, he may apply to secure the registration.

Property Notices

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

- a) send a copy of it to the Secretary of State within 14 days, stating how the Academy Trust intends to respond to it;
- b) promptly give the Secretary of State all the information he asks for about it;
- c) allow the Secretary of State to take all necessary action, with or instead of the Academy Trust, to comply with it, and
- d) use its best endeavours to help the Secretary of State in connection with it.

Breach of Lease

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

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

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

- b) allow the Secretary of State to take all necessary action, with or instead of the Academy Trust, to remedy or prevent the breach, and
- c) use its best endeavours to help the Secretary of State to remedy or prevent the breach.

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.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 borne equally between the parties.

- 5.Y If the Expert determines that the cost of running the Academy during the Critical Year would cause the Academy Trust to become insolvent, and the Secretary of State will not have agreed to provide sufficient additional funding to cover the Shortfall, then the Academy Trust will be entitled to terminate this Agreement, by notice expiring on 31 August before 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

2014

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

.....

Director

.....

Witness

Name:

Address:

The Corporate Seal of

THE SECRETARY OF STATE FOR EDUCATION

affixed to this deed is authenticated by:

.....

Duly Authorised

ANNEXES

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

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

7.A Clause 2.A does not apply to anyone whom the Academy Trust appoints as the Special Educational Needs Co-ordinator under section 317(3A) of the Education Act 1996, who must instead meet the requirements in Regulation 3 of the Education (Special Educational Needs Co-ordinators) (England) Regulations 2008 .

7.B The Academy Trust must comply with all the duties imposed on maintained schools, with regard to pupils with SEN and disabilities, in:

- a) Part 4 of the Education Act 1996;
- b) The Education (Special Educational Needs) (Information) Regulations 1999;
- c) The Education (Special Educational Needs Co-ordinators) (England) (Amendment) Regulations 2008.

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

- a) the child receiving the special educational provision which his learning difficulty calls for;
- b) the provision of efficient education for the children with whom he will be educated; and
- c) the efficient use of resources.

- 7.D The Academy Trust must ensure that its Academies' websites include details of the implementation of their policies for pupils with SEN; the arrangements for the admission of disabled pupils; the steps taken to prevent disabled pupils from being treated less favourably than other pupils; and the facilities provided to assist access to that Academy by disabled pupils (disability as being defined for the purposes of the Equality Act 2010).

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



Department
for Education

© Crown copyright 2014

You may re-use this document/publication (not including logos) free of charge in any format or medium, under the terms of the Open Government Licence v2.0. To view this licence, visit www.nationalarchives.gov.uk/doc/open-government-licence/version/2 or email: psi@nationalarchives.gsi.gov.uk.

Where we have identified any third party copyright information you will need to obtain permission from the copyright holders concerned.

We welcome feedback. If you would like to make any comments about this publication, please email AFSPD.feedback@education.gsi.gov.uk, quoting the title of this document. Specific project queries should be sent to the allocated project lead/lead contact. Any general enquiries regarding this publication should be sent to us at www.education.gov.uk/contactus.

This document is available to download at www.gov.uk/government/publications.

Follow us on Twitter: [@educationgovuk](https://twitter.com/educationgovuk)

Like us on Facebook: www.facebook.com/educationgovuk