



Department  
for Education

# **Somerset Road Education Trust : Master Funding Agreement**

**July 2014**

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## SUMMARY SHEET

### Information about the Academy Trust:

<b>Name of Academy Trust</b>	SOMERSET ROAD EDUCATION TRUST
<b>Address</b>	Somerset Road, Salisbury, Wiltshire SP1 3BL
<b>Company Number</b>	09343767
<b>Contact details for the Chair of Charity Trustees</b>	Somerset Road Education Trust Somerset Road, Salisbury, Wiltshire SP1 3BL

Please confirm whether additional clauses have been included (e.g. PFI clauses)

Descriptor	Clause No.	Applied	Not used



## 1. INTRODUCTION

### Introduction and definitions

- 1.1 This Agreement is between the Secretary of State for Education (the **"Secretary of State"**) and Somerset Road Education Trust (the **"Academy Trust"**), and is an academy agreement as defined by section 1 of the Academies Act 2010.
- 1.2 The Academy Trust is a company limited by guarantee incorporated in England and Wales with company number. The Academy Trust is a charity and its directors are the Charity Trustees of the Academy Trust.
- 1.3 In order for the Academy Trust to establish and run a number of Academies in England, according to the provisions of the Academies Act 2010, and in order for the Secretary of State to make payments to the Academy Trust, the Academy Trust must meet the requirements in this Agreement and in each **Supplemental Agreement** that has been entered into by the Academy Trust and the Secretary of State in respect of each Academy.
- 1.4 In this Agreement, and (except as expressly provided otherwise) in each Supplemental Agreement, the capitalised words and expressions listed below will have the following meanings:-

### Definitions of types of Academies:

An **"Academy"** is a school or educational institution established and run in accordance with the Academies Act 2010, and where this Agreement refers collectively to **"Academies"** run by the Academy Trust, this may include any of the following types of school or educational institution:

A **"Free School"** means an Academy which is a new educational institution within the meaning of section 9(1)(a) of the Academies Act 2010.

A **"Mainstream Academy"** means an Academy or a Free School which meets the requirements set out in section 1A(1) of the Academies Act 2010.

An **“Alternative Provision Academy”** means an Academy or a Free School which meets the requirements set out in section 1C(1) of the Academies Act 2010.

A **“Special Academy”** means an Academy or a Free School which meets the criteria set out in section 1A(2) of the Academies Act 2010.

A **“Sponsored Academy”** will be (unless otherwise stated) a Mainstream Academy which is established pursuant to an Academy Order under section 4 of the Academies Act 2010, which will be designated as a Sponsored Academy within the Supplemental Agreement applicable to that Academy, and as such certain conditions may apply to it.

**“Studio School”** means a type of Free School, principally for pupils and students aged between 14 and 19, which places an emphasis on such pupils and students obtaining employability skills through project-based learning.

**“University Technical College”** means a type of Free School, principally for pupils and students aged between 14 and 19, which provides technical education with the emphasis on a particular industry or scientific sector.

A **“16-19 Academy”** means an Academy or a Free School which meets the requirements set out in section 1B(1) of the Academies Act 2010.

**Other defined terms:**

**“16-19 Funding Guidance”** means the guidance published by the EFA and amended from time to time, on behalf of the Secretary of State.

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

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

**“Articles”** means the Academy Trust’s articles of association.

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

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

**"Commissioner"** means LAs and/or schools referring pupils to an Alternative Provision Academy for admission under the legal powers set out in the relevant Supplemental Agreement.

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

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

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

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

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

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

**"Local Governing Body"** means the committee (if any) established by the Academy Trust in relation to an Academy or Academies, within the Academy Trust, in accordance with the Articles.

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

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

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

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

**"Pupil Referral Unit"** means any school established in England and maintained by a LA which is specially organised to provide education for children falling within section 19(1) of the Education Act 1996.

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

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

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

**"Start-up Period"** has the meaning as defined in the relevant Supplemental Agreement.

**"Supplemental Agreement"** means an agreement supplemental to this Agreement for any Academy which the Academy Trust agrees to establish and maintain and the Secretary of State agrees to fund, which is substantially in the form of the supplemental funding agreement entered into by both parties at the time that this Agreement is signed.

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

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

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

1.6 A reference in this Agreement to any party or body includes its successors.

- 1.7 Any words following the terms 'include', 'including' or 'in particular' are by way of illustration, not limitation.
- 1.8 A reference in this Agreement to land includes any buildings or structures on the land.
- 1.9 A reference in this Agreement to pupils includes students at a 16-19 Academy.
- 1.10 Where any legislation, legal requirement or published guidance is referred to, unless otherwise stated, the following terms should be interpreted as follows:
- a) "school" refers to the relevant Mainstream Academy, Alternative Provision Academy, Special Academy or Studio School, and "educational institution" refers, where the context so admits, to a 16-19 Academy;
  - b) the "head teacher" may refer to the Academy's head teacher or principal;
  - c) references to the "governing body" or "responsible authorities" will be taken to refer to the Academy Trust; and
  - d) references to registered pupils will be treated as references to registered pupils at the Academy.
- 1.11 References in this Agreement or any Supplemental Agreement to any named legislation, legal requirement or published guidance should be taken to include any amendment to or replacement of it.
- 1.12 If any questions arise about how this Agreement should be interpreted, the answer will be decided by the Secretary of State, after discussion with the Academy Trust.

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

- 1.13 In order for the Academy Trust to establish and run independent schools and/or educational institutions in England, according to the terms of the



Academies Act 2010, and in order for the Secretary of State to make payments to the Academy Trust, the Academy Trust must meet the conditions and requirements set out in this Agreement, and in each Supplemental Agreement for an Academy for which payments are claimed. In particular, the Academy Trust must ensure the Academies it runs meet the applicable requirements as follows:

- a) for **Mainstream Academies**, those specified in Section 1A of the Academies Act 2010;
- b) for **Alternative Provision Academies**, those specified in Section 1C of the Academies Act 2010;
- c) for **16-19 Academies**, those specified in Section 1B of the Academies Act 2010;
- d) for **Special Academies**, those specified in section 1A(2) of the Academies Act 2010, and:
  - i. the Academy Trust must ensure special educational provision is made at each of the Special Academies for one or more categories of SEN. These categories may include, but are not limited to: Specific Learning Difficulties, Moderate Learning Difficulties, Severe Learning Difficulties, Profound and Multiple Learning Difficulties, Behaviour Emotional Social and Development Needs, Speech Language and Communication Needs, Autistic Spectrum Disorder, Visual Impairment, Hearing Impairment, Multi-Sensory Impairment, Physical Disability;
  - ii. the Academy Trust may not refuse to admit a child whose statement of SEN names one of the Special Academies on the sole basis that some, or all, of the child's SEN do not feature in the categories referred to in clause 1.13(d)(i) of this agreement.
  - iii. the Academy Trust must comply with all of the obligations imposed upon special academies by legislation, and with the

obligations imposed upon the governing bodies of maintained special schools in Chapter 1 of Part 4 of the Education Act 1996.

- iv. the Academy Trust must ensure that each Special Academy's website includes details of the arrangements for the admission of disabled pupils; the steps taken to prevent disabled pupils from being treated less favourably than other pupils; the facilities provided to assist access to the Academy by disabled pupils; and the plan prepared by the Academy Trust under paragraph 3 of Schedule 10 to the Equality Act 2010. Disabled pupils in this paragraph mean pupils who are disabled for the purposes of the Equality Act 2010.

1.14 To the extent that it is compatible with the Academy Trust fulfilling its charitable purpose of advancing education in the United Kingdom for the public benefit, the Academy Trust must ensure that each of its Academies is at the heart of its community, promoting community cohesion and sharing facilities with other schools and/or other educational institutions and the wider community.

1.15 The Academy Trust must conduct its Academies within the terms and requirements of:

- a) the Articles;
- b) any legislation or legal requirement that applies to academies, including the Independent School Standards and legislation about meeting the needs of pupils with SEN and disabilities;
- c) the Academies Financial Handbook, as stated in clauses 4.6 to 4.8; and
- d) this Agreement, and any and all Supplemental Agreements.

1.16 The Academy Trust must, as soon as is reasonable, establish an appropriate mechanism for the receipt and management of donations for the purpose of its aims as specified in the Articles.



- 1.17 The Academy Trust must obtain the Secretary of State's consent before applying to have an Academy designated as a school with religious character. The Secretary of State may at his discretion refuse or consent to the Academy Trust making such an application.
- 1.18 Unless the Academy Trust is designated as a school with a religious character under the Religious Character of Schools (Designation Procedure) (Independent Schools) (England) Regulations 2003, it agrees to be bound by the prohibition against discrimination in section 85 of the Equality Act 2010.
- 1.19 The Academy Trust is not required to publish information under this Agreement, or any Supplemental Agreement, if to do so would breach its obligations under the Data Protection Act 1998.
- 1.20 The Academy Trust must ensure that its Academies meet the needs of individual pupils, including pupils with SEN and disabilities.

## **Governance**

- 1.21 The Academy Trust will be governed by a board comprising the Charity Trustees of the Academy Trust (the "**Board of Charity Trustees**").
- 1.22 The Board of Charity Trustees must have regard to any Guidance on the governance of academy trusts.
- 1.23 The Academy Trust must ensure that it engages with the relevant Local Governing Body (if any) or representatives of each Academy, and that arrangements are in place for matters relating to the functioning of each Academy to be brought to the attention of the Charity Trustees of the Academy Trust.
- 1.24 The Academy Trust must provide to the Secretary of State the names of all new or replacement members of the Academy Trust, stating the date of their appointment and, where applicable, the name of the member they replaced as soon as is practicable and in any event within 14 days of their appointment.

- 1.25 The Academy Trust must not appoint any new or replacement members until it has first informed them, and they have agreed, that their names will be shared with the Secretary of State to enable him to assess their suitability.
- 1.26 If the Academy Trust establishes and maintains a Free School, it must, in addition to its obligations under clauses 1.24 and 1.25:
- a) provide to the Secretary of State the names of all new or replacement Charity Trustees of the Academy Trust, stating whether they have been appointed or elected, the date of their appointment or election and, where applicable, the name of the Charity Trustees they replaced as soon as is practicable and in any event within 14 days of their appointment or election; and
  - b) not appoint or elect any new or replacement Charity Trustees until it has first informed them, and they have agreed, that their names will be shared with the Secretary of State to enable him to assess their suitability.

## **2. RUNNING OF THE ACADEMIES**

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

- 2.1 The length of the school day and year will be the responsibility of the Academy Trust and for the purpose of this paragraph "school" also means a 16 to 19 Academy.

### **Teachers and staff**

- 2.2 In complying with the Independent School Standards, the Academy Trust must require enhanced Disclosure and Barring Service ("DBS") certificates as appropriate for members of staff, supply staff, members of the Academy Trust, individual Charity Trustees and the chair of the Board of Charity Trustees.
- 2.3 The Academy Trust must promptly submit to the Secretary of State, on request, the information contained in any enhanced DBS certificate that it receives.

- 2.4 The Academy Trust must, where applicable, in respect of each of its Academies designate a member of staff at each Academy responsible for promoting the educational achievement of pupils at the Academy who are being looked after by an LA, and in doing so must comply with the law, regulations and guidance that apply to maintained schools.
- 2.5 Teachers' pay and conditions of service at the Academies are the responsibility of the Academy Trust.
- 2.6 The Academy Trust must ensure that all teachers employed in each Academy have access to the Teachers' Pension Scheme and, in so doing, must comply with the requirements of the scheme and with Fair Deal for staff pensions guidance published by HM Treasury.
- 2.7 The Academy Trust must, in accordance with the Local Government Pension Scheme (Administration) Regulations 2008 and with Fair Deal for staff pensions guidance published by HM Treasury, ensure that all affected staff employed by the Academy Trust other than teachers have access to the Local Government Pension Scheme, unless an individual expressly chooses to opt out of the Scheme in accordance with the regulations.
- 2.8 Where a member of the Teaching Staff employed at an Academy applies for a teaching post at another academy, a maintained school or a further education institution, the Academy Trust must at the request of the board of governors or academy trust of that other educational institution:
- a) advise in writing whether or not, in the previous two years, there has been any formal capability considerations or proceedings for that teacher at the Academy or the Predecessor School;
  - b) give written details of the concerns which gave rise to any such consideration of that teacher's capability, the duration of the proceedings and their outcome.

## **School meals**

- 2.9 Subject to clause 2.12, the Academy Trust must provide school lunches and free school lunches in accordance with the provisions of sections 512(3) and 512ZB(1) of the Education Act 1996 as if references in sections 512 and 512ZB to a local authority were to the Academy Trust and as if references to a school maintained by a local authority were to any of its Academies.
- 2.10 The Academy Trust must comply with school food standards legislation as if its Academies were maintained schools.
- 2.11 Where the Academy Trust provides milk to pupils, it must be provided free of charge to pupils who would be eligible for free milk if they were pupils at a maintained school.
- 2.12 Clauses 2.9 to 2.11 do not apply to 16-19 Academies. For **16-19 Academies**, the Academy Trust must comply with any Guidance in relation to free meals in the further education sector, as far as it applies to those Academies.

## **Pupil Premium**

- 2.13 For all of its Academies eligible for Pupil Premium, and for each Financial Year, the Academy Trust must publish, on the Academy's website, , information about:
- a) the amount of Pupil Premium allocation that it will receive during the Academy Financial Year;
  - b) what it intends to spend the Pupil Premium allocation on;
  - c) what it spent its Pupil Premium allocation on in the previous Academy Financial Year;
  - d) the impact of the previous year's Pupil Premium allocation on educational attainment.
- 2.14 For all of its Academies eligible for Year 7 literacy and numeracy catch-up premium funding, and for each Academy Financial Year, the Academy Trust must publish, on the Academy's website, information about:

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

### **Charging**

- 2.15 For all its Academies except 16 to 19 Academies, the Academy Trust must comply with sections 402, 450-457 and 459-462 of the Education Act 1996 with regard to public examinations, charging, providing information, inviting voluntary contributions and recovering civil debts, as if its Academies were maintained schools.
- 2.16 There must be no charge for admission to or attendance at any of the Academies, and the Academies will only charge pupils where the law allows maintained schools to charge.
- 2.17 Clause 2.16 does not prevent the Academy Trust receiving funds from an LA or a charity in respect of the admission and attendance of a pupil with SEN to an Academy.
- 2.18 Notwithstanding clause 2.16, the Academy Trust may charge people who are not registered pupils at one of its Academies for education or use of facilities.
- 2.19 Where an Academy provides a pupil with board and lodging, the Academy Trust must not charge the parent of that pupil more than the cost to the Academy Trust of providing the board and lodging, except as required by the Fees, Charges and Levies guidance in HM Treasury's publication 'Managing Public Money'.



## Exclusions

2.20 In respect of **Mainstream Academies, and Special Academies which admit pupils without statements of SEN and Studio Schools**, the Academy Trust must, if asked to by an LA, enter into an agreement which has the effect that where:

- a) the Academy admits a pupil who has been permanently excluded from a maintained school, the Academy itself or another academy with whom the LA has a similar agreement; or
- b) the Academy Trust permanently excludes a pupil from the Academy, the arrangements for payment will be the same as if the Academy were a maintained school, under Regulations made under section 47 of the Schools Standards and Framework Act 1998.

## Curriculum

2.21 The curriculum is the responsibility of the Academy Trust.

2.22 The Academy Trust must ensure that the curriculum provided in each Academy to pupils up to the age of 16 is balanced and broadly based. In respect of **Mainstream and Special Academies**, the Academy Trust must ensure that the curriculum includes English, mathematics and science. In respect of **Alternative Provision Academies** the Academy Trust must ensure that the curriculum includes English and mathematics.

2.23 The Academy Trust must publish information in relation to the current curriculum provision at each Academy on that Academy's website, including:

- a. the content of the curriculum;
- b. its approach to the curriculum;
- c. if applicable, the GCSE options and other Key Stage 4 qualifications offered by each Academy and, if applicable, any other qualifications offered by each Academy;

- d. the names of any phonics or reading schemes in operation for Key Stage 1 if applicable; and
  - e. how parents (including parents of prospective pupils) and Commissioners (if applicable) can obtain further information about that Academy's curriculum.
- 2.24 The Academy Trust must not allow any view or theory to be taught as evidence-based if it is contrary to established scientific or historical evidence and explanations. This clause applies to all subjects taught at an Academy.
- 2.25 The Academy Trust must provide for the teaching of evolution as a comprehensive, coherent and extensively evidenced theory. In respect of any **Alternative Provision Academies** and **16-19 Academies**, the Academy Trust must do this where relevant to the curriculum.
- 2.26 The Academy Trust must ensure that principles are promoted which support fundamental British values, of: respect for the basis on which the law is made and applied in England; respect for democracy and support for participation in the democratic processes; support for equality of opportunity for all; support and respect for the liberties of all within the law; and respect for and tolerance of different faiths and religious and other beliefs.
- 2.27 The Academy Trust must ensure that careers guidance is provided at each of its Academies, in accordance with the requirements on maintained schools in the Education Act 1997.

## **Assessment**

- 2.28 The Academy Trust must:
- a) ensure that pupils and students at each of its Academies are entered for examinations, in line with the requirements on maintained schools in section 402 of the Education Act 1996;
  - b) comply with the relevant Guidance, as it applies to maintained schools, in respect of each **Mainstream Academy**, each **Special Academy** and each **Studio School** to ensure that pupils take part in



assessments, and in teacher assessments of pupils' performance; and must do so for each **Alternative Provision Academy** unless there are exceptional reasons to do otherwise;

- c) ensure that students at each **16 to 19 Academy** take part in assessments of students' performance appropriate to the qualifications offered;
- d) report on assessments as the Secretary of State requires, or provide any information on assessments, on the same basis that maintained schools are required to provide the information;
- e) for all Key Stages, allow monitoring and moderation of the Academy's assessment arrangements as required by the Secretary of State.

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

2.30 Unless informed by the Secretary of State that alternative information must be published, the Academy Trust must ensure that the following information is published on the relevant Academy's website for each **Mainstream Academy**, for each **Alternative Provision Academy**, and where relevant for each **Special Academy**, and in respect of sub-paragraph b) where relevant for each **Studio School**:

- a) if applicable, the Academy's most recent Key Stage 2 results as published by the Secretary of State in the School Performance Tables:
  - i. "% achieving Level 4 or above in reading, writing and maths";
  - ii. "% making expected progress in reading", "% making expected progress in writing", and "% making expected progress in maths";
  - iii. in relation to reading, "% achieving Level 5 or above"; and
  - iv. in relation to writing, "% achieving Level 5 or above"; and

- v. in relation to maths, “% achieving Level 5 or above”;
- b) if applicable, the Academy’s most recent Key Stage 4 results as published by the Secretary of State under the following column headings in the School Performance Tables:
  - i. “% achieving 5 + A\* - C GCSEs (or equivalent) including English and maths GCSEs”;
  - ii. “% achieving the English Baccalaureate”; and
  - iii. “% of pupils making expected progress”;
- c) information about where and how parents (including parents of prospective pupils) can access the most recent report about the Academy published by the Chief Inspector; and
- d) information as to where and how parents (including parents of prospective pupils) can access the School Performance Tables published by the Secretary of State.

2.31 The Academy Trust must ensure that, in relation to any **16-19 Academies**, any performance information requested by the Secretary of State is published on the Academy’s website.

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

### **3. GRANT FUNDING**

#### **Recurrent Expenditure Grants**

3.1 The Secretary of State will pay grants towards Recurrent Expenditure, and may pay grants towards Capital Expenditure, for each Academy.

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

### **Capital Grant**

- 3.5 The Secretary of State may pay a grant ("**Capital Grant**") to the Academy Trust for the purpose of spending on items of Capital Expenditure.
- 3.6 **"Capital Expenditure"** means expenditure on:
- a) acquiring land and buildings;
  - b) erecting, enlarging, improving or demolishing any building including fixed plant, installation, wall, fence or other structure, or any playground or hard standing;
  - c) installing electrical, mechanical or other services other than necessary repairs and maintenance due to normal wear and tear;
  - d) buying vehicles;
  - e) installing and equipping premises with furnishings and equipment, other than necessary repairs and maintenance due to normal wear and tear;
  - f) installing and equipping premises with computers, networking for computers, operating software and ICT equipment, other than necessary updates or repairs and maintenance due to normal wear and tear;

- g) providing and equipping premises, including playing fields and other facilities for social activities and physical recreation other than necessary repairs and maintenance due to normal wear and tear;
- h) works of a permanent character other than the purchase or replacement of minor day-to-day items;
- i) any major repairs or replacements which are specified as capital expenditure in any grant letter relating to them;
- j) such other items (whether like or unlike any of the foregoing) of a substantial or enduring nature which the Secretary of State agrees are capital expenditure for the purposes of this Agreement;
- k) professional fees properly and reasonably incurred in connection with the provision of any of the above;
- l) VAT and other taxes payable on any of the above.

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

3.8 The Academy Trust must spend Capital Grant only on items of Capital Expenditure approved by the Secretary of State and in accordance with conditions specified by the Secretary of State. Further, the Academy Trust must provide evidence that it has obtained all planning and other consents required for any proposed building and infrastructure development to be funded using Capital Grant.

3.9 In order to receive payments of Capital Grant, the Academy Trust must provide supporting invoices and certificates in the format specified by the Secretary of State.

3.10 The Academy Trust must provide an account of Capital Grant received and associated spending on Capital Expenditure using Capital Grant in the Academy Trust's financial statements and any financial reports or returns that the Secretary of State may require.

3.11 If in its use of Capital Grant the Academy Trust does not comply with this Agreement or any of the conditions specified by the Secretary of State, or the project does not accord with the original specification or has not been completed, the Secretary of State may at his discretion not make any further payments of Capital Grant and require the Academy Trust to repay all or part of the Capital Grant.

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

3.12 The Secretary of State will pay GAG to the Academy Trust towards the normal running costs or capital expenditure of each of its Academies, including:

- a) teachers' salaries and related costs (including pension contributions, full and part-time teaching staff and payments in respect of seconded teachers);
- b) non-teaching staff salaries and related costs (including pension contributions);
- c) employees' expenses;
- d) buying, maintaining, repairing and replacing teaching and learning materials and other educational equipment, including books and stationery;
- e) buying, maintaining, repairing and replacing other assets including ICT equipment and software, sports equipment and laboratory equipment and materials;
- f) examination fees;
- g) repairs, servicing and maintenance of buildings (including redecoration, heating, plumbing, lighting etc.); maintenance of grounds (including boundary fences and walls); insurance; cleaning materials and contract cleaning; water and sewerage; fuel and light (including electricity and gas); rents; rates; purchase, maintenance, repairs and replacement of furniture and fittings;



- h) medical equipment and supplies;
- i) staff development (including in-service training);
- j) curriculum development;
- k) the costs of providing school meals for pupils (including the cost of providing free school lunches to pupils who are eligible to receive them), and any discretionary grants to pupils to meet the cost of pupil support, including support for pupils with SEN or disabilities;
- l) administration; and
- m) establishment expenses and other institutional costs.

3.13 GAG for each Academy Financial Year for each **Mainstream Academy**, **Special Academy** and **Studio School** will include:

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

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

3.15 In particular (but without limitation) the Academy Trust must not use GAG for:

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

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

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

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

- 3.18 Before each Academy Financial Year, the Secretary of State will notify the Academy Trust of the GAG and EAG amounts in respect of each Academy which, subject to parliamentary approval, the Secretary of State plans for that Academy Financial Year and how these have been calculated.
- 3.19 The amounts of GAG for an Academy Financial Year will be determined annually by the Secretary of State, and notified to the Academy Trust in a funding letter sent before the relevant Academy Financial Year begins (the "**Annual Letter of Funding**").
- 3.20 Amounts of EAG will be notified to the Academy Trust wherever possible in the Annual Letter of Funding or as soon as is practicable afterwards.



- 3.21 The Annual Letter of Funding will, as well as stating the grant amounts, set out how these have been calculated. It will not include grants which cannot be calculated in time because there is not enough information, or for other administrative reasons. Any such grants will be notified as soon as practicable.
- 3.22 The Secretary of State will pay GAG in monthly instalments on or before the twenty-fifth day of each month, to fund the salaries and other payroll costs for the relevant month of all monthly paid employees and all other costs payable during the following month. The detailed arrangements for payment will be set out in the Annual Letter of Funding, or an equivalent.
- 3.23 If GAG or EAG is miscalculated:
- a) because of a mistake by the Secretary of State, which leads to an underpayment to the Academy Trust, the Secretary of State will correct the underpayment in the same or subsequent Academy Financial Years;
  - b) because the Academy Trust provided incorrect information, which leads to an underpayment to the Academy Trust, the Secretary of State may correct the underpayment in the same or subsequent Academy Financial Years;
  - c) for any reason which results in an overpayment to the Academy Trust, the Secretary of State may recover any overpaid grant in the same or subsequent Academy Financial Years, having considered all the relevant circumstances and taking into account any representations from the Academy Trust.

#### **Other relevant funding**

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

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

### **General**

- 4.1 In order for the Secretary of State to provide grant funding to the Academy Trust, the Academy Trust must be fulfilling the financial and reporting requirements in this Agreement, and any Supplemental Agreements.
- 4.2 In its conduct and operation, the Academy Trust must apply financial and other controls which meet the requirements of regularity, propriety and value for money.
- 4.3 The Academy Trust must appoint an accounting officer and must notify the Secretary of State of that appointment. The Academy Trust must assign to the accounting officer the responsibilities of the role set out in the Academies Financial Handbook and HM Treasury's publication 'Managing Public Money'.
- 4.4 The Academy Trust must abide by the requirements of, and have regard to the guidance for, charities and charity trustees issued by the Charity Commission and, in particular, the Charity Commission's guidance on 'Protecting Charities from Harm'. Any references in this document which require charity trustees to report to the Charity Commission should instead be interpreted as reporting to the body or person appointed as the principal regulator under the Charities Act 2011.
- 4.5 The Academy Trust must abide by the requirements of the current 16 to 19 Funding Guidance published by the Secretary of State, in respect of any provision for students who are above compulsory school age until the academic year in which they reach the age of 19.
- 4.5A If the Secretary of State pays any grant to or on behalf of the Academy Trust, in respect of any Free Schools that the Academy Trust establishes and maintains, which includes an amount to cover VAT, the Academy Trust shall, having paid the VAT, promptly submit a VAT reclaim application to Her Majesty's Revenue and Customs (HMRC). Any failure by the Academy Trust to submit a VAT reclaim application to HMRC, or to pursue the application diligently, or to repay

any reclaimed amount to the Secretary of State as soon as reasonably practicable following receipt will be taken into account by the Secretary of State in:

- a) calculating and paying any subsequent grant to the Academy Trust; or
- b) adjusting GAG payable to the Academy Trust in subsequent Academy Financial Years.

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

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

### **Budgeting for funds**

- 4.9 The Academy Trust must balance its budget from each Academy Financial Year to the next. For the avoidance of doubt, this does not prevent the Academy Trust from:
  - a) subject to clause 4.14, carrying a surplus from one Academy Financial Year to the next; or
  - b) carrying forward from previous Academy Financial Years sufficient cumulative surpluses on grants from the Secretary of State to meet an in-year deficit on such grants in a subsequent financial year, in accordance with clauses 4.14-4.16 and 3.K of the relevant Supplemental Agreement; or
  - c) incurring an in-year deficit on funds from sources other than grants from the Secretary of State in any Academy Financial Year, provided it

does not affect the Academy Trust's responsibility to ensure that its Academies balance their respective overall budgets from each Academy Financial Year to the next.

- 4.10 The Academy Trust may spend or accumulate funds from private sources or public sources other than grants from the Secretary of State for the benefit of the Academy Trust as it sees fit. Any surplus from private or public sources other than grants from the Secretary of State must be separately identified in the Academy Trust's accounts.
- 4.11 For clarity, and in accordance with the intent of parity of funding with LA maintained schools, in circumstances where a Predecessor School had a deficit balance and the DfE has settled this with the relevant LA, that amount will be recovered from the Academy Trust's GAG over a period not normally exceeding 3 years (unless the Secretary of State's in his discretion decides otherwise) after the Academy opened.
- 4.12 The Academy Trust's budget must be approved for each Academy Financial Year by the Board of Charity Trustees.
- 4.13 The approved budget must be submitted to the Secretary of State in a form, and by a date, to be notified by the Secretary of State.

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

- 4.14 At the end of any Academy Financial Year the Academy Trust may carry forward unspent GAG from previous Academy Financial Years without limit (unless a limit is specified in the Academies Financial Handbook, or otherwise as specified in writing by the Secretary of State, in which case that limit will apply).
- 4.15 The Academy Trust must use any GAG carried forward only for purposes of GAG as set out in this agreement, or otherwise as specified in the Academies Financial Handbook or in writing by the Secretary of State.
- 4.16 Any additional grant provided for an Academy's Start-Up Period may be carried forward, without limitation or deduction, until the Start-Up Period ends.



- 4.17 Any unspent grant not allowed to be carried forward under clauses 4.14-4.16 and 3.K of the relevant Supplemental Agreement may be taken into account in the payment of subsequent grant.

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

- 4.18 The Academy Trust must prepare and file with Companies House the annual reports and accounts required by the Companies Act 2006.
- 4.19 In addition, the Academy Trust must prepare its annual reports and accounts for each Academy Financial Year:
- a) in accordance with the Charity Commission's 'Accounting and Reporting by Charities: Statement of Recommended Practice', as if the Academy Trust was a registered charity; and
  - b) otherwise as the Secretary of State directs.
- 4.20 The Academy Trust's accounts must be audited annually by independent auditors appointed in line with the Academies Financial Handbook.
- 4.21 The accounts must carry an audit report stating whether, in the opinion of the auditors, the accounts show a true and fair view of the Academy Trust's affairs. The accounts must also be supported by such other audit reports, relating to the use of grants and other matters, as the Secretary of State directs.
- 4.22 The Academy Trust's annual report must include the names of all members of the Academy Trust who served during the year.
- 4.23 The Academy Trust's annual reports and accounts, and the auditor's reports, must be submitted to the Secretary of State by 31 December each Academy Financial Year, or as otherwise specified by the Secretary of State. The Academy Trust must publish on its website its annual reports and accounts, current memorandum of association, Articles and Funding Agreement and the names of its Charity Trustees and members. The Secretary of State may also publish the Academy Trust's annual reports and accounts, and the audit report, as he sees fit.

## **Keeping financial records**

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

## **Access to financial records**

- 4.25 The books of accounts and all relevant records, files and reports of the Academy Trust, including those relating to financial controls, must be open at all reasonable times to officials of the DfE and the National Audit Office, and to their agents and contractors, for inspection or carrying out value for money studies. The Academy Trust must give those officials and contractors reasonable assistance with their enquiries. For the purposes of this clause 'relevant' means in any way relevant to the provision and use of grants provided by the Secretary of State under this Agreement.
- 4.26 The Secretary of State may, at his expense, instruct auditors to report to him on the adequacy and effectiveness of the Academy Trust's accounting systems and internal controls to standards determined by the Secretary of State, and to make recommendations for improving the Academy Trust's financial management.

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

- 4.27 In relation to Publicly Funded Assets, the Academy Trust must not, without the Secretary of State's consent:
- a) acquire or dispose of freehold land;
  - b) take up or grant a leasehold of land;
- dispose of any other class of capital assets except as permitted in the Academies Financial Handbook, and subject to Part 3 of Schedule 1 to the Academies Act 2010.

- 4.28 The Academy Trust must give 30 days' notice to the Secretary of State, whether or not the circumstances require his approval, of its intention to take any of the actions in clause 4.27.

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

- 4.29 Except as permitted in the Academies Financial Handbook, if the Academy Trust sells capital assets which were acquired or enhanced wholly or partly using payments made by or on behalf of HM Government the Academy Trust must pay to the Secretary of State, at his request, an amount of the sale proceeds equivalent to the proportion of the original cost of the acquisition or enhancement which was met by or on behalf of HM Government.
- 4.30 If the Academy Trust sells a capital asset which was transferred to it for no or nominal consideration from an LA, a Predecessor School or a Predecessor School's foundation, the Academy Trust must, if required by the Secretary of State, pay all or part of the sale proceeds to the LA or to the Secretary of State, taking into account the amount of the proceeds to be reinvested by the Academy Trust.

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

- 4.31 In relation to Publicly Funded Assets, the Academy Trust must not, without the Secretary of State's consent:
- a) give any guarantees, indemnities or letters of comfort, except such as are given in normal contractual relations;
  - b) write off any debts or liabilities owed to it; or
  - c) offer to make any special payments as defined in HM Treasury's publication 'Managing Public Money' (including ex gratia payments, staff severance payments and compensation payments)

above any values specified in the Academies Financial Handbook.



4.32 The Academy Trust must give the Secretary of State 30 days' notice, whether or not the circumstances require his consent, of its intention to do any of the actions in clause 4.31.

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

### **Borrowing**

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

## **5. COMPLAINTS**

5.1 With regards to a **Mainstream Academy**, a **Special Academy** an **Alternative Provision Academy** or a **16-19 Academy**, if a complaint is made about matters arising wholly or partly before the Academy opened, and all or part of that complaint was investigated by the Local Government Ombudsman under Part III of the Local Government Act 1974 ("**Part III**"), or could have been investigated under Part III if the Predecessor School/Pupil Referral Unit had remained a maintained school/Pupil Referral Unit, the Academy Trust:

- a) must abide by the provisions of Part III as if the Academy were a maintained school/Pupil Referral Unit;
- b) agrees that the Secretary of State will have the power to investigate the subject of the complaint as if it had taken place after the Academy opened; and
- c) must act in accordance with any recommendation from the Secretary of State as if that recommendation had been made under Part III and the Academy were a maintained school/Pupil Referral Unit.

- 5.2 With regards to a **Mainstream Academy**, a **Special Academy** or a **16-19 Academy**, if the Secretary of State could have given an order or a direction under section 496 or 497 of the Education Act 1996 to the governing body of the Predecessor School and that order or direction related to matters occurring within the 12 months immediately before the Academy opened, the Academy Trust:
- a) agrees that the Secretary of State may give orders or directions to the Academy Trust as though the Academy were a maintained school and sections 496 and 497 applied to the governing body of that maintained school; and
  - b) must act in accordance with any such order or direction from the Secretary of State.
- 5.3 If at the time of the opening of any **Mainstream Academy**, **Special Academy**, **Alternative Provision Academy** or **16-19 Academy** the investigation of a complaint made to the governing body of the Predecessor School/Pupil Referral Unit has not yet been completed, the Academy Trust must continue to investigate that complaint in accordance with the complaints procedures established by that governing body.
- 5.4 If a complaint is made to the Academy Trust about matters arising in whole or in part during the 12 months prior to the opening of any **Mainstream Academy**, any **Special Academy** any **Alternative Provision Academy** or any **16-19 Academy** the Academy Trust agrees to investigate that complaint as if the matter complained of had taken place after the Academy opened.

## 6. TERMINATION

- 6.1 This Agreement will commence on the date of delivery and continue until terminated in accordance with clauses 6.2-6.7, or until all Supplemental Agreements have terminated.

## **Termination by either party**

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

- a) the Academy Trust calls a formal or informal meeting of its creditors or enters into any formal or informal composition or arrangement with its creditors; or
- b) the Academy Trust proposes a voluntary arrangement within Section 1 of the Insolvency Act 1986 (as amended); or
- c) the Academy Trust is unable to pay its debts within the meaning of Section 123 of the Insolvency Act 1986 provided that, for the purposes of this clause, Section 123 (1)(a) of the Insolvency Act 1986 will have effect as if £10,000 was substituted for £750. The Academy Trust will not be deemed unable to pay its debts for the purposes of this clause if any such demand as is mentioned in the said Section is being contested in good faith by the Academy Trust; or
- d) the Academy Trust has a receiver and manager (except those appointed by the Charity Commission under the Charities Act 2011), administrator or administrative receiver appointed over all or part of its undertakings, assets or income; or
- e) any distraint, execution or other process is levied or enforced on any of the Academy Trust's property and is not paid out, withdrawn or discharged within 15 business days; or
- f) the Academy Trust has passed a resolution for its winding up; or
- g) an order is made for the winding up or administration of the Academy Trust.

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

6.4 If

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

the Secretary of State may:

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

6.5 For the purposes of clause 6.4 a Charity Trustee or member of the Academy Trust will be "unsuitable" if that Charity Trustee or member:

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

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

6.6 For the purposes of clause 6.5:

- a) a Charity Trustee or member of the Academy Trust will be subject to a "relevant finding" in respect of an offence if:

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

### **Change of Control of the Academy Trust**

- 6.7 The Secretary of State may at any time, subject to clause 6.8, serve a Termination Notice if there is a change:
- a) in the Control of the Academy Trust; or
  - b) in the Control of a legal entity that Controls the Academy Trust.
- 6.8 Where a person ('P') is a member or director of a body corporate (as a corporation sole or otherwise) by virtue of an office, no change of Control arises merely by P's successor becoming a member or director in P's place.



- 6.9 The Academy Trust must promptly notify the Secretary of State if there is a proposed or actual change of Control of the Academy Trust, or of a legal entity that Controls the Academy Trust.
- 6.10 When notifying the Secretary of State further to clause 6.9, the Academy Trust must seek his agreement that, if he is satisfied with the change of Control, he will not exercise his right to terminate this Agreement further to clause 6.7.

## **7. OTHER CONTRACTUAL ARRANGEMENTS**

### **Information**

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

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

- 7.3 The Academy Trust must allow DfE officials to enter any of its Academies at any reasonable time. All records, files and reports relating to the running of each Academy must be available to them at any reasonable time. Two DfE officials may attend and speak at any meetings of each Academy's Local Governing Body, of the Academy Trust's Board of Charity Trustees or any other meetings of the Charity Trustees of the Academy Trust, but will withdraw from any discussion of an Academy's or the Academy Trust's relationship with the Secretary of State or any discussion of bids for funding to the Secretary of State.
- 7.4 The following documents must be provided to any interested party or the Secretary of State on request:

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

7.5 The Academy Trust may exclude from items provided under clause 7.4 any content relating to:

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

## **Notices**

7.6 A notice or communication given to a party in connection with this Agreement or any Supplemental Agreement:

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

- ii. if posted, at 9.00am on the second working day after posting; and
- d) must be sent to the party for the attention of the contact and at the address listed as follows (or to a different contact or address previously notified to the sending party, the change taking effect five working days after deemed receipt of the notice):

<b>Name of party</b>	<b>Position of contact</b>	<b>Address</b>
Secretary of State	Head of Academies Division	Department for Education, Sanctuary Buildings, Great Smith Street, London, SW1P 3BT
Somerset Road Education Trust	Chairman of Trustees	Somerset Road, Salisbury, Wiltshire SP1 3BL

### **Contractual**

- 7.7 This Academy Trust cannot assign this Agreement.
- 7.8 Failure to exercise, or 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.
- 7.9 Termination of this Agreement will not affect the accrued rights, remedies, obligations or liabilities of the parties to this Agreement existing at termination.
- 7.10 This Agreement may be executed in any number of counterparts, each of which when executed and delivered will constitute a duplicate original, but all of which will together constitute the same agreement.

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

This Agreement was executed as a Deed on  
Executed on behalf of the **Academy Trust** by:

19 December 2014



**Director**

and



**Director**

or

.....

**Company Secretary**

or

.....

**Witness**

Name:

Address:

The Corporate Seal of  
**THE SECRETARY OF STATE FOR EDUCATION**  
affixed to this deed is authenticated by:



**Duly Authorised**







Department  
for Education

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Department  
for Education

# **Church supplemental agreement: multi model**

**June 2014**

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## INTRODUCTION

- 1) This Agreement is being entered into in acknowledgement of the consent hereby given by the Board of Education<sup>1</sup> to the conversion of St Mark's C of E VC Junior School to an academy and the completion of a Supplemental Funding Agreement (the "Supplemental Funding Agreement") which, with its Master Funding Agreement (the "Master Funding Agreement") dated 19 December 2014 (together (the "Funding Agreement") are made under section 1 of the Academies Act 2010 each between the Secretary of State for Education ("the Secretary of State") and Somerset Road Education Trust a company limited by guarantee registered at Companies House with company number \_\_\_\_\_ ("the Company").
- 2) This Agreement is made between the Secretary of State and The Salisbury Diocesan Board of Education of Diocesan Education Centre, The Avenue, Wilton, Salisbury SP2 0FG a company limited by guarantee registered at Companies House with company number 464306 ("the Board")
- 3) The Board is the appropriate diocesan authority for the Academy for the purposes of the Education Acts (which shall include the Academies Act 2010)
- 4) The Company is also a party to this Agreement and acknowledges the commitments made by both the Secretary of State and the Board as well as itself making certain commitments.<sup>2</sup>

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<sup>1</sup> It is intended that the party inserted here be the owner of the school site which could be the DBE (if a corporate body), or the DBF or it could be local site trustees. However if there are local site trustees, but the DBE is a corporate body then one might refer in this clause to both the DBE and the local trustees. Under the 2010 Act the consent of both may be required for the school to convert to an academy. The clause does not aim to state exhaustively the consents which a school might require to convert to an academy, but it does state for those who are a party to this agreement whether their consent is needed.

<sup>2</sup> The Company should be a party to this Agreement. In circumstances where there is no lease or formal licence to occupy the school site between the Trustees and the Company, the Company will be



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

“Articles of Association” means the Memorandum and Articles of Association of the Company for the time being in force;

“Capital Grant” has the meaning given to it in clause 37 of the Master Funding Agreement;

“DfE” means Department for Education and any successor;

“Directors” means the directors of the Company appointed pursuant to the Articles of Association;

“Insured Risks” means fire, lightning, explosion, earthquake, storm, tempest, flood, subsidence, landslip, heave, impact, terrorism, bursting or overflowing of water tanks and pipes, damage by aircraft and other aerial devices or articles dropped there from, riot and civil commotion, labour disturbance and malicious damage and such other risks as the Company<sup>3</sup> insures against from time to time subject in all cases to any exclusions or limitations as may from time to time be imposed by the insurers or underwriters;<sup>4</sup>

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relying on the commitment made by the Trustees to the Secretary of State in this Agreement (as well as any express right in any trust deed relating to the land) to continue to make the land available to the Academy in the same way that the Trustees did whilst the school was a maintained school. It may also be undertaking certain obligations in clause 14 which is when the words in square at the end of this clause would be left in.

<sup>3</sup> See clause 14 to decide which party should be referred to here.

<sup>4</sup> The Trustees need to check firstly that there is buildings insurance in place for the school site and that such insurance covers the risks noted here. As the cost of insurance is expected to be met from the Academy's budget, the Trustees should expect the Academy to reimburse the cost of insurance. The DfE may require evidence of insurance before conversion.

"Land" means the land (including for the avoidance of doubt all buildings, structures landscaping and other erections) owned by the Board situated at and known as St Mark's CofE Junior School, Somerset Road, Salisbury SP1 3BL and registered at the Land registry under title number WT289083 from which the Academy operates but excluding any land and/or buildings occupied by the St Mark's Pre School .

- 6) The Interpretation Act 1978 shall apply for the interpretation of this Agreement as it applies for the interpretation of an Act of Parliament, and references to:

"party" means any party to this Agreement;

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

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

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

## **LEGAL AGREEMENT FOR USE OF LAND**

- 8) In consideration of:

- a) the Company undertaking to the Secretary of State to establish and maintain, and to carry on or provide for the carrying on of, an independent school in England to be known as St Mark's C of E Junior School ("the Academy") and having such characteristics as are referred to in clause 12 of the Master Funding Agreement and in the Articles of Association; and
- b) the Secretary of State:
  - i. agreeing to make payments to the Company in accordance with the conditions and requirements set out in the Funding Agreement, and
  - ii. undertaking to the Board as set out in this Agreement;

the Board undertakes to the Secretary of State to make the Land available for use by the Company in a manner consistent with any restrictions imposed on the Board at law and pursuant to any trust deed governing the Board's ownership of the Land and with the terms of this Agreement.

9) This Agreement shall commence on the date hereof and shall subject to clause 10 (and except in respect of clause 16) continue in force until the earlier of:

- a) the termination of the Supplemental Funding Agreement; and
- b) the date upon which any termination of this Agreement arises pursuant to clause 24.

10) The termination of this Agreement howsoever arising is without prejudice to the rights, duties and liabilities of any party hereto accrued prior to termination.

11) Clause 16 of this Agreement shall continue to apply for as long as the Secretary of State has power to exercise any discretion in relation to the Land pursuant to Schedule 1 of the Academies Act 2010.

## **PARTNERSHIP IN THE PROVISION OF EDUCATION**

12) This Agreement recognises the desire of the parties to foster the development and provision of high quality education in particular at the Academy and in the area which it serves and the parties acknowledge the commitment being made by each to this aim. Recognising the Board's strategic role in the provision of education through its family of Church of England schools both in relation to the Academy and more generally (which role has been acknowledged in but is not derived from the Education Acts (as defined pursuant to the Education Act 1996)), the Secretary of State acknowledges the value of :

- a) maintaining a good working relationship between the parties at all levels, and
- b) the support (financial and otherwise) provided to the Company by the Board ;  
and

agrees:

(A) to consider the use of his intervention powers as set out in the Funding Agreement if requested to do so in writing by the Board in consequence of (i) unacceptable standards as measured by the relevant statutory denominational inspection using criteria equivalent to those triggering the right to serve a Termination Warning Notice under the Funding Agreement or (ii) a serious breakdown in the way the Academy is managed or governed such that the ethos requirements of designation or as reflected in the Funding Agreement are no longer being complied with; and

(B) to maintain an open and frank dialogue with the Board so that any matters that in the reasonable opinion of the parties may have a significant effect on the running of the Academy as a Church of England school shall be discussed in an appropriate manner recognising each party's viewpoint.

13) Provided that, whilst recognising the desire of the parties to work together in good faith and with mutual respect, nothing in this Agreement shall:

- a) interfere with the right of each party to arrange its affairs in whatever manner it considers fit in order to perform its obligations under this Agreement in the manner in which it considers to be the most effective and efficient;
- b) oblige any party to incur any additional cost or expense or suffer any undue loss in the proper performance of its obligations under this Agreement;
- c) fetter the discretion of either party to meet or fulfil its legal obligations including any statutory obligations.

## **PROTECTION OF PUBLIC INVESTMENT IN LAND**

14: Whilst the Academy operates from the Land otherwise than pursuant to a lease between the Board

and the Company and in recognition of the funding provided by the Secretary of

State to the Company for the running costs of the Academy, including, but not limited to, grant advanced for the purposes of enabling repairs, servicing, maintenance and arranging for appropriate insurance of any buildings on the Land and its grounds, provided that the Company meets the cost of such repairs, servicing, maintenance and insurance,  
the Board will:

- a) facilitate any maintenance, upkeep or replacement of any buildings or facilities on the Land by the Company so that the Company may keep the Land clean and tidy and may make good any damage it causes to the Land and / or any deterioration to the condition of the Land consequent upon its use of the same that may arise from the date of this Agreement;
- b) facilitate the following:
  - i) at the Company's expense the maintaining of insurance of the land by the Company in the joint names of the Company and the [Board] [Trustees] 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;
  - ii) the payment of the premiums for insurance by the Company promptly as they become due and maintaining in force by the Company of the policies of insurance on the Land;
  - iii) following the incidence of damage to or destruction of the Land and subject to receipt of all necessary consents licences permissions and the like the application of the proceeds of the policy of the insurance received for those purposes in the rebuilding and reinstating of the Land by the Company (provided that this clause should be satisfied if the Company and/or the [Board] [Trustees] 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;



iv) the production by the Company to the Secretary of State of a copy of the insurance policy whenever reasonably requested and the receipt for the last or other evidence of renewal and up to date details of the amount of cover (but no more often than once in any period of 12 months in both cases);

v) the Company insuring against liability in respect of property owners' and third party risks including occupiers liability;

c) together with the Company not knowingly do anything whereby any policy of insurance relating to the Land may become void or voidable; and

the Company will:

d) keep the Land insured in the joint names of the Company and the Board 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;

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

f) 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;

g) produce to the Secretary of State a copy of the insurance policy whenever reasonably requested and the receipt for the last or other evidence of renewal and up to date details of the amount of cover (but no more often than once in any period of 12 months in both cases);

- h) not knowingly do anything whereby any policy of insurance relating to the Land may become void or voidable;
  - i) insure against liability in respect of property owners' and third party risks including occupiers liability.
- 15) While the Academy operates from the Land or part of it pursuant to a lease between the Board and the Company in so far as clause 14 regulates occupation the terms of the lease shall prevail.
- 16) In the exercise of any discretion that the Secretary of State shall have either in relation to the Land as a consequence of this agreement or pursuant to Schedule 1 of the Academies Act 2010, the Secretary of State agrees to comply with any guidance issued by him in relation to the disposal of publicly funded land that is no longer to be used for the Academy.
- 17) In relation to any land owned or leased by the Company (excluding any land leased to the Company by the Board, the Secretary of State agrees not to give consent to any disposal or grant of security in respect of such land to the Company as envisaged in the Supplemental Funding Agreement without first consulting the Board and having due regard to any concerns expressed by the Board.

## **CAPITAL GRANTS**

- 18) The Board acknowledges the Secretary of State's power to pay Capital Grant to the Company and in recognition of the Board's interest in any Capital Grant paid in relation to expenditure on Land, the Secretary of State commits to the following:
- a) to acknowledging the Board's right to consent to the carrying out of any works to Land which are to be paid for from any Capital Grant;
  - b) to recognise the Board's interest in ensuring that any works to Land are carried out properly and that the Board Diocesan Authority may be procuring

or providing support to the Company in the procurement of such works.

- 19) To the extent that the Secretary of State considers it necessary, in order to protect the value of any future public investment in the Land and in recognition of the Board allowing the Land to be used for the purposes of the Academy, then the Secretary of State may require the Company and the Board to enter into a further agreement in relation to such further public investment and Capital Grant. If the Secretary of State determines such further agreement is required, then the parties agree to negotiate in good faith with a view to reaching agreement to enable such Capital Grant, and future public investment, to be paid.

## **INTERVENTION AND SUPPORT**

- 20) The Board acknowledge the Secretary of State's right to terminate either the Supplemental Funding Agreement or the Master Funding Agreement in the circumstances envisaged in the Funding Agreement. The Secretary of State agrees with the Board before taking any such action and in particular serving any Termination Warning Notice to notify the Board and the Board that he intends to take action giving his reasons for such action and to allow the Board a reasonable opportunity to make representations regarding such action, including any actions that the Board intend to take to remedy any failing of the Academy, which the Secretary of State will have due regard to before finally taking any action.

20A) Without prejudice to the generality of clause 20 above, to the extent the Secretary of State has concerns as to the suitability of [any person appointed to the Board] [a Trustee] or a member of the Academy Trust (the Relevant Appointee), the Secretary of State will notify the Board of his concerns before exercising any available remedies in respect of the Relevant Appointee under the Funding Agreement.

20B) As soon as possible following the Secretary of State providing notification under clause 20A, the Secretary of State and the Board will meet to discuss the Secretary of State's concerns. The Board agrees to provide any further information on the Relevant Appointee which is reasonably requested by the Secretary of State and:

(a) the Board acknowledges that the Secretary of State may, in his absolute discretion, carry out any additional due diligence on the Relevant Appointee and agrees to act reasonably in co-operating with any requests for assistance by the Secretary of State; and

(b) the Secretary of State agrees to share any information of concern with the Board and to consult with the Board as to what remedial action should be taken in respect of the Relevant Appointee.

20C) To the extent the Board agrees that the Secretary of State's concerns regarding a Relevant Appointee have merit, the Secretary of State acknowledges that the Board may, in the first instance, determine what remedial action to take in respect of that Relevant Appointee before the Secretary of State exercises any available remedies under the Funding Agreement.

20D) If the Board does not agree with the Secretary of State's concerns regarding a Relevant Appointee, or the Board (in the Secretary of State's opinion) unreasonably delays taking remedial action or does not otherwise (in the Secretary of State's opinion) take appropriate remedial action, the Secretary of State shall issue a notice under the Funding Agreement requesting that the Board reconsiders its approach, together with any further supporting information of concern.

20E) To the extent the Board does not reconsider its approach, or otherwise does not take remedial action to the Secretary of State's satisfaction, the Secretary of State reserves the right to exercise any available remedies available to him under the Funding Agreement.

20F) Notwithstanding clauses 20D and 20E, the Secretary of State acknowledges and agrees that the decision to remove a Relevant Appointee is the sole responsibility of the Board.

21)Not used.

22)In the spirit of partnership, where the Board puts forward a school improvement plan, whether or not in the circumstances envisaged in clause 20, the Secretary



of State will consider any proposals within it and in good faith will consider any resource or funding implications, without, for the avoidance of doubt, being under any obligation pursuant to this Agreement to agree to fund such proposals.

- 23)The Secretary of State agrees to meet the costs of any relevant statutory denominational inspection proposed by the Board provided these do not occur any more often than once every three years.

23A) – 23H NOT USED

## **TERMINATION**

- 24)The Board may give not less than two years written notice to the Company and the Secretary of State to terminate this Agreement.
- 25)In the event of any termination of either the Supplemental Funding Agreement or the Master Funding Agreement in circumstances where the Academy would not otherwise be closing, the Secretary of State will have due regard to any wishes of the Board with regard to the future of the school as a “voluntary” maintained school for the purposes of the School Standards & Framework Act 1998.
- 26)Notwithstanding any termination or expiry of this Agreement the provisions of clause 25 shall continue to apply.

## **MISCELLANEOUS**

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



- 28) No term of this Agreement is intended to give any entitlement as against any party to any person who is not a party to this Agreement and no term of this Agreement may be enforced by any person other than a party under the Contracts (Rights of Third Parties) Act 1999.
- 29) The obligations of the parties are several and for the avoidance of doubt none of the Company Board shall be deemed to be liable in respect of the acts or omissions of the other as between these parties and the Secretary of State.
- 30) For the avoidance of doubt nothing in this Agreement is intended to vary or amend any provision of the Funding Agreement or any obligation arising under it.

This Agreement was executed as a Deed on

Done  
at 2014  
19/12/2014

Executed on behalf of the

Somerset Road Education Trust by:

[Redacted Signature]

Director

In the presence of:

Witness

[Redacted Signature]

Address.....

[Redacted Address]

Occupation....

[Redacted Occupation]

Executed on behalf of the Salisbury  
Diocesan Board of Education by  
affixing its Common Seal in the presence of:<sup>5</sup>

[Redacted Signature]

Director

[Redacted Signature]

Director/Secretary



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

[Redacted Signature]

<sup>5</sup> This attestation clause is needed where the site trustees are either the corporate DBF, or individual trustees. In this case if the DBE is a corporate body it can execute by two directors or by one director and company secretary. It can affix its Common Seal also, but this is not necessary. If the DBE is an individual corporate body then the DBF would execute on behalf of the DBE



### **Duly Authorised**

Execution by the Company as one of the parties to this deed can be either by a single director in the presence of a witness, or by two directors, or a director and company secretary



Department  
for Education

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Department  
for Education

**St Mark's CofE Junior School**

**supplemental funding agreement**

**July 2014**

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## **SUMMARY SHEET**

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

<b>Name of Academy Trust</b>	SOMERSET ROAD EDUCATION TRUST
<b>Company number</b>	09343767
<b>Date of Master Funding Agreement</b>	19 December 2014
<b>Name of Academy</b>	St Mark's CofE Junior School
<b>Opening date</b>	1 <sup>st</sup> January 2015
<b>Type of Academy (indicate whether academy or free school)</b>	Mainstream academy
<b>Religious designation</b>	Church of England
<b>Wholly or partly selective</b>	n/a
<b>Name of predecessor school (where applicable)</b>	St Mark's CofE Junior School
<b>Capacity number</b>	360
<b>Age range</b>	7 – 11
<b>Number of sixth form places</b>	n/a
<b>SEN unit / Resource provision</b>	n/a
<b>Land arrangements (Version 1-7 or other)</b>	Version 2
<b>Address and title number of Land</b>	St. Marks C Of E Junior School, Somerset Road, Salisbury SP1 3BL registered at HM Land Registry under Title Number WT289083

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

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



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

## 1. **ESTABLISHING THE ACADEMY**

- 1.A This Agreement made between the Secretary of State for Education and Somerset Road Education Trust is supplemental to the master funding agreement made between the same parties and dated (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 St. Marks C Of E Junior School.

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

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

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

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

### **The Academy**

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

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

- 1.H The Academy Trust will open the Academy on 1<sup>st</sup> January 2015.

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 The Academy Trust shall in relation to:

- a) any person who may apply for a position as an employee or to be otherwise engaged by the Academy Trust, and
- b) any employee with whom the Academy Trust enters into a contract of employment or a contract for services,

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

### **Pupils**

2.B The planned capacity of the Academy is 360 in the age range 7-11,. 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 The Academy is an academy designated with a Church of England religious character. The relevant religious authority (i.e. the diocese, or foundation faith body) is Salisbury Diocese.
- 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.Y.
- 2.W Not used.
- 2.X Not used
- 2.Y Subject to clause 2.V, the requirements for religious education and collective worship are as follows:
- a) Subject to paragraph 3 of Schedule 19 to the School Standards and Framework Act 1998, which will apply as if the Academy were a foundation school or voluntary controlled school with a religious character, provision must be made for religious education to be given to all pupils at the Academy in accordance with the requirements for agreed syllabuses in section 375(3) of the Education Act 1996;
  - b) The Academy Trust must comply with section 70(1) of, and Schedule 20 to, the School Standards and Framework Act 1998 as if the Academy were a foundation school or voluntary controlled school with a religious character, and as if references to "the required collective worship" were references to collective worship in accordance with the tenets and practices of the Academy's specified religion or religious denomination;
  - c) The Academy Trust must ensure that the quality of the Academy's collective worship, given in accordance with the tenets and practices of its specific religion or religious denomination, is inspected. The inspection must be conducted by a person chosen by the Academy Trust and the Academy Trust must secure that the inspection complies with statutory provisions and regulations which would apply if the

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

- 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.

2AA 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

### **Governance**

- 2 AB) The Company shall establish for the Academy a Local Governing Body to which it may delegate any of its powers and functions in relation to the operation of the Academy. The role of the Local Governing Body and the membership of it shall be for the Company to decide, but the Company will ensure that the Academy operates in a way which honours the characteristics that the Academy has by virtue of clauses 2M and 2W of this Agreement and will, as a minimum, ensure that:

a) that a minimum of 2 but no more than one quarter of the members of the Local Governing Body shall be appointed for the purpose of securing that the Academy is conducted in accordance with the principles, practices and tenets of the Church of England; and

b) 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 Local Governing Body

### **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 Not used.

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 3: existing site held under church supplemental agreement or lease from private site trustees***

The parties' rights and obligations in respect of the Land are set out in the Church Supplemental Agreement dated 2014 and made between (1) the Secretary of State; (2) the Academy Trust; and (3) Salisbury Diocesan Board of Education . For the purposes of this clause, Land has the meaning given in the Church Supplemental Agreement..

#### **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 Not used.

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

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

5.K Not used.

5.L 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 The Secretary of State agrees that this Agreement shall be interpreted in a way which is compatible with the provisions of clauses 20A-F (if used) and



23A-H of the Church Supplemental Agreement dated 2014 and made between (1) the Secretary of State; (2) the Academy Trust; and (3) the Salisbury Diocesan Board of Education

This Agreement was executed as a Deed on 19 December 2014.

Executed on behalf of the Academy Trust by:



Director

and



Director

or

.....

Company Secretary

or

.....

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.







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**Wyndham Park Infants School: supplemental funding agreement**

**July 2014**

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## **SUMMARY SHEET**

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

<b>Name of Academy Trust</b>	Somerset Road Education Trust
<b>Company number</b>	09343767
<b>Date of Master Funding Agreement</b>	19 December 2014
<b>Name of Academy</b>	Wyndham Park Infants School
<b>Opening date</b>	1 <sup>st</sup> January 2015
<b>Type of Academy (indicate whether academy or free school)</b>	Mainstream academy
<b>Religious designation</b>	N/a
<b>Wholly or partly selective</b>	N/a
<b>Name of predecessor school (where applicable)</b>	Wyndham Park Infants School
<b>Capacity number</b>	270
<b>Age range</b>	5-7
<b>Number of sixth form places</b>	N/a
<b>SEN unit / Resource provision</b>	N/a
<b>Land arrangements (Version 1-7 or other)</b>	Version 2
<b>Address and title number of Land</b>	Wyndham Park Infants School, Somerset Road, Salisbury SP1 3BL being part of the land registered under Title Number WT269156.

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		Not used
2.A.1	Clause applies where an academy was previously a VC or foundation school designated with a religious character		Not used
2.C, 2.D	Only applies where the academy has an SEN unit		Not used
2.E	Only applies where there was a predecessor independent school		Not used
2.G	Clause does not apply to free schools (unless there was a predecessor independent school), or new provision academies	Applied	
2.M	Clause applies only to academies and free schools designated with a religious character		Not used
2.N	Clause applies only to academies that were formerly wholly selective grammar schools		Not used
2.O	Clause applies only to academies that were formerly partially selective grammar schools		Not used
2.T	Clause applies to free schools and new provision academies designated with a religious character		Not used
2.W	Clause only applies where the academy is designated with a religious character		Not used
2.X	Clause only applies where the academy has not been designated with a religious character	Applied	
2.Y	Clause applies where an academy was previously a VC school or foundation school designated with a religious character		Not used
2.Yc)	Sub-clause applies if the academy is designated with a denominational religious character – CE etc. rather than 'Christian'		Not used



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

## 1. ESTABLISHING THE ACADEMY

- 1.A This Agreement made between the Secretary of State for Education and Somerset Road Education Trust is supplemental to the master funding agreement made between the same parties and dated 19 December 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 Wyndham Park Infants' School.

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

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

- 1.D The Interpretation Act 1978 applies to this Agreement as it applies to an Act of Parliament.
- 1.E Reference in this Agreement to clauses and annexes will, unless otherwise stated, be to clauses and annexes to this Agreement.

### The Academy

- 1.F The Academy is a Mainstream Academy as defined in clause 1.4 of the Master Agreement.
- 1.G The Academy Trust will establish and maintain the Academy in accordance with the Master Agreement and this Agreement.
- 1.H The Academy Trust will open the Academy on 1st January 2015.

1.1 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 Not used.

### **Pupils**

2.B The planned capacity of the Academy is 270 in the age range 5 - 7. 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 Not used.

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 Wyndham Park Infants' School Somerset Road Salisbury being part of the land registered with title number Title Number WT269156 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 Not used:

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

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

5.K Not used:

5.L 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 19 December 2014

Executed on behalf of the Academy Trust by:



Director

and



Director

or

.....

Company Secretary

or

.....

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

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**SCHEDULE 1**

**MODEL SUPPLEMENTAL FUNDING AGREEMENT**

**THIS AGREEMENT** made 19 December 2014

**BETWEEN**

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

(2) **SOMERSET ROAD EDUCATION TRUST**

**IS SUPPLEMENTAL TO THE MASTER FUNDING AGREEMENT** made between the same parties and dated 19 December 20<sup>14</sup> (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 Exeter House Special School established at Somerset Road, Salisbury, Wiltshire SP1 3BL.

“Chief Inspector” means Her Majesty’s Chief Inspector of Education, Children’s Services and Skills or his successor;

“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 Exeter House and part of the land at Somerset Road Salisbury SP1 3BL that is to be transferred to the Academy and registered under Title Number WT269156.

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

## **2 THE ACADEMY**

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

2.2 The Company must ensure special educational provision is made at the Academy for one or more categories of SEN. These categories may include, but are not limited to SLD (Severe Learning Difficulties) and ASD (Autistic Spectrum Disorder)

2.3 The Company may not refuse to admit a child to the school whose statement names the Academy on the sole the basis that some, or all, of the child's SEN do not feature in the categories referred to in clause 2.2 of this agreement.

2.4 The requirements for the admission of pupils to the Academy are set out at Annex 1.

## **3 ACADEMY OPENING DATE**

3.1 The Academy shall open as a school on 1<sup>st</sup> January 2015 replacing Exeter House Special School (a maintained special school) which shall cease to be maintained by the Local Authority on that date, which date shall be the conversion date within the meaning of the Academies Act 2010.

## **4 PUPILS**

4.1 The planned number of places at the Special Academy is 105 in the age range 2-19, including a sixth form of 22 places and a nursery unit of 0 places. The number of funded places and the age ranges are not determinative of GAG. GAG for each Academy Funding Year will be determined by the Secretary of State in accordance with clauses 54C and 54D of the Master Agreement.

4.2 Where the Company considers that there is a need to increase the planned number of places stated in clause 4.1, the Company must seek the approval of the Secretary of State and the requirements of this Agreement

may be amended accordingly by agreement between the Secretary of State and the Company.

**4A COMPLAINTS**

4A.1 Not used

4A.2 Not used.

4A.3 Not used

4A.4 Not used.

**5 CAPITAL GRANT**

5.1 Pursuant to clause 38 of the Master Funding Agreement, the Secretary of State may, in his absolute discretion provide Capital Expenditure funding in accordance with any arrangements he considers appropriate.

**6 GAG AND EAG**

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

**7 TERMINATION**

7.1 Either party may give not less than seven Academy Financial Years' written notice to terminate this Agreement, such notice to expire on 31 August 2022 or any subsequent anniversary of that date.

**Termination Warning Notice**

7.2 The Secretary of State shall be entitled to issue to the Company a written notice of his intention to terminate this Agreement ("Termination Warning Notice") where he considers that:

- a) the Academy is no longer meeting the requirements referred to in clause 12A of the Master Agreement;
- b) the conditions and requirements set out in clauses 2.2 and 2.3 of this Agreement and clauses 13-34B of the Master Agreement are no longer

being met;

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

7.3 A Termination Warning Notice issued by the Secretary of State in accordance with clause 7.2 shall specify:

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

7.4 The Secretary of State shall consider any response and representations from the Company which are received by the date specified in accordance with clause 7.3(c) and shall confirm whether he considers that:

- a) in the light of the Company's representations in response to the Termination Warning Notice, some or all of the Specified Remedial Measures are not required to be implemented (and if so which) and/or the Specified Remedial Measures are being or will be implemented within the specified timeframe; or
- b) subject to any further measures he reasonably requires ("Further



Remedial Measures”) being implemented by a specified date or any evidence he requires being provided, the implementation of such measures has been or will be successfully completed within the specified timeframes; or

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

**7.5** The Secretary of State may by notice in writing terminate this Agreement with effect from a specified date in the event that:

a) the Company has not, by the date specified in clause 7.3(c), responded to the Termination Warning Notice either confirming that it accepts and agrees to undertake the Specified Remedial Measures or providing its representations with regard to the Specified Remedial Measures; or

b) the Company has not carried out the Specified Remedial Measures and/or Further Remedial Measures within the specified timeframes;

provided that having considered any representations made by the Company pursuant to clause 7.3(c), the Secretary of State remains satisfied that it is appropriate to terminate the Agreement.

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

**7.6** The Secretary of State may at any time give written notice of his intention to terminate this Agreement where the Chief Inspector gives notice to the Company in accordance with section 13(3) of the Education Act 2005 stating that in the Chief Inspector’s opinion –

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

(b) the Academy requires significant improvement.

7.7 Any notice issued by the Secretary of State in accordance with clause 7.6 shall invite the Company to respond with any representations within a specified timeframe.

7.8 Where the Secretary of State has given notice of his intention to terminate this Agreement in accordance with clauses 7.6 and 7.7 and –

(a) he has not received any representations from the Company within the timeframe specified in clause 7.7; or

(b) having considered the representations made by the Company pursuant to clause 7.7, the Secretary of State remains satisfied that it is appropriate to terminate this Agreement

he may by notice in writing terminate this Agreement with effect from a specified date.

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

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

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

7.10 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.

7.11 Any notice given by the Company under clause 7.10 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 7.10 above, within six weeks after the Secretary of State shall have done so. The notice must specify:

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

7.11.2.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

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

7.12 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.

7.13 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.

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

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.

## **8 EFFECT OF TERMINATION**

8.1 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.

8.2 Subject to clauses 8.3 and 8.4, if the Secretary of State terminates this Agreement pursuant to clause 7.1 of this Agreement, the Secretary of State shall indemnify the Company. If the Secretary of State terminates this Agreement otherwise than pursuant to clause 7.1 of this Agreement, the Secretary of State may in his absolute discretion indemnify or (to such extent if any as he may in his absolute discretion consider appropriate) compensate the Company.

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

8.4 The categories of expenditure incurred by the Company in consequence of the termination of the Agreement in respect of which the Secretary of State shall (where the Secretary of State terminates this Agreement pursuant to clause 7.1) indemnify the Company and may (where the Secretary of State terminates this Agreement otherwise than pursuant to clause 7.1) in his absolute discretion indemnify or compensate the Company include (but not by way of limitation), staff compensation and redundancy payments, compensation payments in respect of broken contracts, expenses of disposing of assets or adapting them for other purposes, legal and other professional fees, and dissolution expenses.

8.5 Subject to clause 8.6, on the termination of this Agreement however occurring, the Company shall in respect of any of its capital assets at the date of termination:

(a) promptly transfer a proportion of the assets to a person nominated by the Secretary of State, if the Secretary of State considers that all or some of those assets need to be used for any educational 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 at a later date; or

(b) if the Secretary of State confirms that a transfer under clause 8.5(a) is not required, promptly repay to the Secretary of State a sum equivalent to the percentage of the value of the assets at the date of termination, or, by agreement with the Secretary of State, at the date of subsequent disposal of those assets. Such percentage to be the same as the percentage of the capital contribution made by the Secretary of State to the original value of those assets, whether that contribution was made on the establishment of the Academy or later.

8.6 The Secretary of State may waive in whole or in part the repayment due under clause 8.5(b) if:

a) the Company obtains his permission to invest the proceeds of sale for its charitable objects; or

b) the Secretary of State directs all or part of the repayment to be paid to the LA.

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



## LAND

### Restrictions on Land transfer

8A 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 8A(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 8A(a) as soon as practicable after it receives notification from the Land Registry,

d) in the event that it has not registered the restriction referred to in clause 8A(a), hereby consents to the entering of the restriction referred to in 8A(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 8A(a) or 8A(d) above, whether by itself, a holding

company, a subsidiary company, or a receiver, administrator or liquidator acting in the name of the Company.

9 **ANNEX**

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

10 **THE MASTER AGREEMENT**

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

11 **ENGLISH LAW**

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

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

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

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

11.5 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.

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

This Agreement was executed as a Deed on 19 Dec 2014

Executed on behalf of by:

[Redacted Signature]

Director

[Redacted Signature]

Director

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

[Redacted Signature]

Duly Authorised



**ANNEX TO THIS SUPPLEMENTAL AGREEMENT**

Requirements for the Admission for pupils at the  
Academy     Annex 1

# **Annex 1**

## **REQUIREMENTS FOR THE ADMISSION OF PUPILS TO EXETER HOUSE SPECIAL SCHOOL**

### **GENERAL**

1. This annex may be amended in writing at any time by agreement between the Secretary of State and the Company.
2. Except where paragraph 3 applies, the Company may not admit a child to the school unless a statement of SEN is maintained for that child and the Exeter House Special School (or the predecessor school Exeter House Special School (a community special school)) is named in the child's statement
3. The Company may admit a child without a statement to Exeter House Special School if:
  - (i) he is admitted for the purposes of an assessment of his educational needs under section 323 of the Education Act 1996 and his admission to the Academy is with the agreement of the local authority, the Company, the child's parent and any person whose advice is to be sought in accordance with regulation 7 of the Education (Special Educational Needs) (England) (Consolidation) Regulations 2001;
  - (ii) he remains admitted following an assessment under section 323 of the Education Act 1996; or
  - (iii) he is admitted following a change in his circumstances, with the agreement of the local authority, the Company and the child's parents.
4. If a child without a statement has been admitted to Exeter House Special School for the purpose of an assessment, in accordance with paragraph 3(i), the Company may allow the child to remain at that Academy:
  - (i) until the expiry of ten school days after the local authority serve a notice under section 325 of the Education Act 1996 that they do not propose to make a statement, or
  - (ii) until a statement is made.
5. Where the local authority intend to name Exeter House Special School in a statement, and have served a copy of the proposed statement (or amended statement) on the Company, the Company must respond to the local authority's proposal within 15 days.
6. 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 local authority's notice, notify the local authority in writing that it does not agree that the Academy should be named in the pupil's statement. Such notice must set out all the facts and matters the Academy relies upon in support of its contention that: (a) admitting the child would be incompatible with efficiently educating other children; and (b) the Company cannot take reasonable steps to secure this compatibility.
8. Where a local authority maintains a statement for a child under section 324 of the Education Act 1996 and the name of Exeter House Special School (or the predecessor school. Exeter House Special School (a community special school) is specified in that statement, the Company must admit that child to the Academy even if they consider that the Academy should not have been named in the child's statement.
9. Where the Company considers that the Academy should not have been named in a child's statement, they may ask the Secretary of State to determine that the local authority has acted unreasonably in naming the Academy and to make an order directing the authority to amend the child's statement by removing the name of the Academy. Where the Secretary of State makes an order to this effect, the Company will cease to be under an obligation to admit the child from the date of the Secretary of State's Order, or from such date as the Secretary of State specifies. In specifying a date, the Secretary of State must take into account both the welfare of the child in question and the degree of difficulty caused to the Academy by the child's continued admission.
10. Where the Secretary of State determines that a local authority has acted reasonably in naming Exeter House Special School in a child's statement, the Company must continue to admit the child until the Academy ceases to be named in the statement.

#### **THE FIRST-TIER TRIBUNAL (SPECIAL EDUCATIONAL NEEDS AND DISABILITY)**

11. If a parent or guardian of a child in respect of whom a statement is maintained by a local authority appeals to the First-tier Tribunal (Special Educational Needs and Disability) either against the naming of the Academy in the child's statement or asking the Tribunal to name the Academy, the Company agrees to be bound by the decision of the Tribunal on any such appeal even if the decision is different to that of the Secretary of State under paragraph 9 or 10 above.



12. Where the Academy, the Secretary of State or the First-tier Tribunal (Special Educational Needs and Disability) have determined that it should be named in a child's statement, the Company must admit the child to the Academy notwithstanding any provision of this Annex.