

THE BASILDON ACADEMIES

DEED OF VARIATION OF FUNDING AGREEMENT

25 November 2021

The Parties to this Deed are:

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

- and -

(2) **The Basildon Academies**, a charitable company incorporated in England and Wales with registered company number 06308595 whose registered address is at Wickford Avenue, Pitsea, Basildon, Essex SS13 3HL (the "**Company**").

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

INTRODUCTION

- A. The Parties have entered into a master funding agreement on 3 June 2008, a copy of which is contained in Schedule 1, (the "**Existing MFA**").
- B. The Parties have entered into a supplementary funding agreement in respect of The Basildon Lower Academy on 3 June 2008, a copy of which is contained in Schedule 2 (the "**Existing The Basildon Lower Academy SFA**");
- C. The Parties have entered into a supplementary funding agreement in respect of The Basildon Upper Academy on 3 June 2008, a copy of which is contained in Schedule 3 (the "**Existing The Basildon Upper Academy SFA**"); and
- D. The Parties have agreed to amend and re-state the terms of the Existing MFA, the Existing The Basildon Lower Academy SFA and the Existing The Basildon Upper Academy SFA, on the terms set out in this Deed.

LEGAL AGREEMENT

- 1. Words, expressions and interpretations used in this Deed shall, unless the context expressly requires otherwise, have the meaning given to them in, and shall be interpreted in accordance with, the Amended Master Funding Agreement (as defined in clause 2 below).
- 2. The Secretary of State and the Company agree that with effect from the date of this Deed, the Existing MFA shall be amended and re-stated in the form of the Master Funding Agreement set out in Schedule 4 (the "**Amended Master Funding Agreement**"). For the avoidance of doubt, the Amended Master Funding Agreement does not terminate or suspend the Existing MFA but amends and re-states it.
- 3. The Secretary of State and the Company agree that with effect from the date of this Deed, the **Existing The Basildon Lower Academy SFA** shall be amended and re-stated in the form of the Amended The Basildon Lower Academy SFA set out in Schedule 5 (the "**Amended The Lower Basildon Academy SFA**"). For the avoidance of doubt, the Amended The Basildon Lower Academy SFA does not terminate or suspend the Existing The Basildon Lower Academy SFA but amends and re-states it.

4. The Secretary of State and the Company agree that with effect from the date of this Deed, the Existing The Basildon Upper Academy SFA shall be amended and re-stated in the form of the Amended The Basildon Upper Academy SFA set out in Schedule 6 (the "**Amended The Basildon Upper Academy SFA**"). For the avoidance of doubt, the Amended The Basildon Upper Academy SFA does not terminate or suspend the Existing The Basildon Upper Academy SFA but amends and re-states it.

GOVERNING LAW AND JURISDICTION

5. This Deed, and any dispute or claim arising out of or in connection with it, its subject matter or formation (including non-contractual disputes or claims) shall be governed by and interpreted in accordance with the law of England and Wales.
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 deed or its subject matter or formation (including non-contractual disputes or claims).

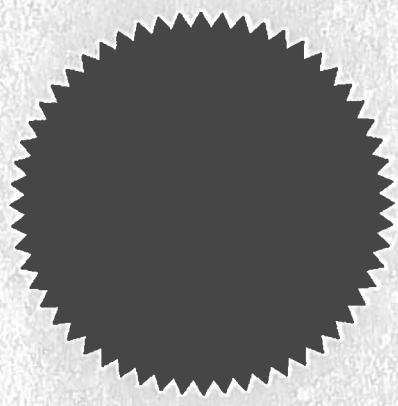
COUNTERPARTS

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

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

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

Duly authorised by the Secretary of State for Education
Date 25/11/21



EXECUTED as a deed by **The Basildon Academies** acting by:

[Redacted]
Director

Print name.. [Redacted]

Date.....

Witnessed by .. [Redacted]

Full name.. [Redacted]

Address.. [Redacted]

Occupation..... [Redacted]

Schedule 1

Existing MFA



**ACADEMIES SPONSORED BY
THE BASILDON ACADEMIES**

MASTER FUNDING AGREEMENT

03 / 06 / 2008

Lewis Silkin LLP
5 Chancery Lane
Clifford's Inn
London EC4A 1BL

GRD/OXB/97815.1

**ACADEMIES SPONSORED BY
THE BASILDON ACADEMIES
MASTER FUNDING AGREEMENT**

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INTRODUCTION

1. This Master Funding Agreement is made under section 482 of the Education Act 1996, as substituted by the Education Act 2002, between **The Secretary of State for Children, Schools and Families** (the "Secretary of State") and **The Basildon Academies** (the "Company").
2. The Company is a company incorporated in England and Wales, limited by guarantee with registered company number 06308595, and is registered as a charity (charity number 1123727).
3. The Company and the Principal Sponsor intend to sponsor a number of Academies.
4. This Agreement and the Supplemental Agreements will apply in respect of all Academies from such time as a Supplemental Agreement relating to that Academy shall have been entered into between the Secretary of State and the Company.
5. The following expressions used in this Agreement have the respective meanings assigned to them by the numbered clauses of this Agreement referred to immediately after the reference to the expressions -
 - (a) "Accounting Officer" – clause 76;
 - (b) "annual letter of funding" - clause 65;
 - (c) "GAG" – clause 43;
 - (d) "Capital Expenditure" - clause 44;
 - (e) "Capital Grant" – clause 44;
 - (f) "EAG" - clause 43;
 - (g) "Financial Handbook" - clause 77;
 - (h) "financial year" - clause 71;
 - (i) "Implementation Grant" – clause 49;
 - (j) "Academy Governing Body" – clause 14;
 - (k) "recurrent expenditure" – clause 43;
 - (l) "Academy Development Plan" – clause 18;
 - (m) "Start-up Period" – clause 72;

6. In this Agreement the following words and expressions shall have the following meanings:-

"1996 Act" means the Education Act 1996;

"Academy" means an Academy in respect of which a Supplemental Agreement shall have been entered into between the Secretary of State and the Company and the expression "Academies" shall refer to all or any of such Academies;

"Admissions Policy Document" means a specific policy in relation to admissions in respect of each Academy agreed between the Company and the Secretary of State and appended to the relevant Supplemental Funding Agreement;

"this Agreement" means this agreement and its annexes and a reference in the Agreement to a numbered clause or annex is a reference to the clause or annex of this Agreement bearing that number or letter as the same may be amended or supplemented from time to time;

"Approved Qualification" means an external qualification at entry level, level 1 or level 2 (as set out in the Qualifications and Curriculum Authority's National Qualifications Framework and determined by the Qualifications and Curriculum Authority) or at GCE AS level, which is approved under section 98 of the Learning and Skills Act 2000 and which is appropriate for pupils of compulsory school age;

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

"Company's Contribution" means the amount of the Company's Contribution shown in the relevant Supplemental Agreement;

"DCSF" means Department for Children, Schools and Families;

"LA" means local authority;

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

"parents" means parents or guardians;

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

"Principal" means the Principal of an Academy;

"Principal Sponsor" means the trustees for the time being of the Stanton Lane Charitable Trust;

"project" means the establishment of an Academy;

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

"SEN" means Special Educational Needs;

"Supplemental Agreement" means an agreement substantially in the form set out in the Schedule to this Agreement in relation to an Academy to be entered into between the Secretary of State and the Company supplemental to this Agreement pursuant to which the Company agrees to sponsor and the Secretary of State agrees to fund, upon the terms and subject to the conditions set out in this Agreement and the relevant Supplemental Agreement, an Academy.

7. Expressions defined in this Agreement shall have the same meaning where used in any Annex to this Agreement or Supplemental Agreement.
8. The Interpretation Act 1978 shall apply for the interpretation of this Agreement as it applies for the interpretation of an Act of Parliament.
9. Questions arising on the interpretation of the arrangements in this Agreement shall be resolved by the Secretary of State after consultation with the Company. In resolving any such questions the Secretary of State must act reasonably. For the avoidance of doubt this clause does not prevent the court from reviewing the Secretary of State's decision in line with the principles of administrative law.
10. Section 482 (1) of the 1996 Act as substituted by the Education Act 2002 states that -
 - "(1) The Secretary of State may enter into an agreement with any person under which-
 - (a) that person undertakes to establish and maintain, and to carry on or provide for the carrying on of, an independent school in England with the characteristics mentioned in subsection (2), and such other characteristics as are specified in the agreement, and
 - (b) the Secretary of State agrees to make payments to that person in consideration of those undertakings."

LEGAL AGREEMENT

11. If it is agreed between the Secretary of State and the Company that the Company will sponsor an Academy the parties will enter into a Supplemental Agreement in relation to that Academy.

CHARACTERISTICS OF AN ACADEMY

12. The characteristics of an Academy set down in section 482(2) of the 1996 Act, as substituted by the Education Act 2002, are that the school:
- (a) has a broad curriculum with an emphasis on a particular subject area, or particular subject areas, specified in the Agreement; and
 - (b) provides education for pupils of different abilities and who are wholly or mainly drawn from the area in which the school is situated.

CONDITIONS OF GRANT

General

13. Section 482(4) of the 1996 Act provides for an agreement to specify other conditions and requirements. Unless specified otherwise in a Supplemental Agreement, these conditions in respect of an Academy are that:
- (a) the school will be at the heart of its community, sharing facilities with other schools and the wider community;
 - (b) there will be assessment in the core subjects of the national curriculum at Key Stage 3, and the opportunity to study for external qualifications as defined by section 96 of the Learning and Skills Act 2000;
 - (c) the admissions policy and arrangements for the school will be consistent with admissions law, and the DCSF Codes of Practice, for maintained schools;
 - (d) levels of pay and conditions of service for all employees will be the responsibility of the Company;
 - (e) there will be an emphasis on the needs of the individual pupils including pupils with special educational needs ("SEN") both those with and without statements of SEN;
 - (f) there will be no charge in respect of admission to the school and the school will only charge pupils where the law allows maintained schools to charge.

Governance

14. Each Academy will be governed by the Company delegating functions as appropriate to a committee of the directors of the Company (the "Academy Governing Body") which is appointed by the directors of the Company as a committee in accordance with the Articles. The directors of the Company shall exercise their powers and functions with a view to fulfilling a largely strategic role in the running of the Academy and shall consider any advice given by the Principal and any chief executive officer of the Company. The Company may exercise its powers and fulfil its functions through its servants or agents.
15. Subject to the Memorandum and Articles, this Agreement and each Supplemental Agreement, the Company may regulate its own procedure and that of any of its committees.

Conduct

16. Each Academy shall be conducted in accordance with:
 - (a) the Memorandum and Articles, which shall not be amended by the Company without the written consent of the Secretary of State, such consent not to be unreasonably withheld or delayed;
 - (b) all provisions by or under statute which confer rights or impose obligations on Academies including, without limitation, the independent schools standards prescribed under section 157 of the Education Act 2002 to the extent they apply to the Academy;
 - (c) the terms of this Agreement and the relevant Supplemental Agreement.
17. In conducting the Academy and in providing community facilities the Company shall, so far as is reasonably practicable:
 - (a) promote the well-being of pupils at each Academy;
 - (b) promote community cohesion; and
 - (c) have regard to any plan published by the relevant LA under section 17 of the Children Act 2004 or (where the LA is not required to publish such a plan) any plan published by the LA setting out their strategy in relation to children and relevant young people.

Designated Teacher for Children in Care

- 17A The Company will in respect of each Academy act in accordance with, and be bound by, all relevant statutory and regulatory provisions and with any guidance and codes of practice issued pursuant to such provisions, as they apply at any time to a maintained school, relating to the designation of a person to manage the teaching and learning programme for children who are looked after by a LA and are registered

pupils at such Academy. For the purpose of this clause, any reference to the governing body of a maintained school in such statutory and regulatory provisions, or in any guidance and code of practice issued pursuant to such provisions, shall be deemed to be references to the Directors of the Company.

Academy Development Plan and target setting

18. The Company shall draw up an Academy Development Plan for each Academy each year in accordance with a format and timetable to be advised by the Secretary of State. The Academy Development Plan shall, in particular:
 - (a) set out plans for ensuring that all pupils are supported to reach the highest standards of which they are capable;
 - (b) describe the Company's proposals for the relevant Academy to work with other schools and with the wider community.
19. The Company shall set such targets in areas to be specified by the Secretary of State each year. The target areas for the initial year shall, if applicable, be:
 - (a) percentage of pupils achieving five or more GCSEs at grades A* - C;
 - (b) percentage of pupils achieving level 5 or above at Key Stage 3 in English, maths science and ICT;
 - (c) percentage of pupils achieving level 4 or above at Key Stage 2 in English and Maths where any Academy has pupils in Years 1 to 6; and
 - (d) the average point scores at Key Stage 4 for Approved Qualifications.
20. The Company shall consult the Secretary of State and the LA in whose area the relevant Academy is situated each year before setting the targets referred to above and shall take into account (but not be bound by) any comments received from the Secretary of State and/or the LA. The Company shall set its targets for each Academy in accordance with the timetable for target setting which applies to maintained schools.

Pupils

21. Each Academy will be an all ability and inclusive school. The arrangements for:
 - (a) the admission of pupils to an Academy together with the arrangements for making changes to such arrangements, including the requirement to secure the consent of the Secretary of State to such changes, such consent not to be unreasonably withheld or delayed are set out in Annex D to this Agreement and in the Admissions Policy Document for that Academy;

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

Teachers and other staff

22. The Company shall not engage anyone under a contract of employment or for services to carry out planning and preparing lessons and courses for pupils, delivering lessons to pupils, assessing the development, progress and attainment of pupils, and reporting on the development, progress and attainment of pupils ("specified work") who is not either:-
- (a) a qualified teacher within the meaning of regulations made under section 132 of the Education Act 2002 and registered with full registration with the General Teaching Council for England; or
 - (b) otherwise eligible to do specified work in a maintained school under the Education (Specified Work and Registration) (England) Regulations 2003 (SI 2003/1663).
23. The Company shall ensure that all teachers employed at each Academy have access to the Teachers Pension Scheme and, in so doing, will comply with the statutory provisions underlying the scheme.
24. The Company shall ensure that all employees at each Academy other than teachers have access to the Local Government Pension Scheme.
25. Reasonable notice shall be given to the Secretary of State of any meeting of the Directors of the Company or Governing Body of each Academy or any committee or sub-committee thereof (including any interview or appointments panel), at which the appointment of a Principal of any Academy is being considered and a representative of the Secretary of State shall be entitled to attend and speak (but not vote) at any such meeting whether or not they are also entitled to attend such meeting by virtue of clause 98.
26. It shall be the responsibility of the Company to agree levels of pay and conditions of service with its employees, and to determine and employ such numbers of staff as may be appropriate. The Company shall approve policies for:
- (a) staffing structure, and staff remuneration
 - (b) staff discipline and performance management.

14-19 entitlement

- 26A) (1) The Company shall make arrangements to ensure that, so far as reasonably practicable, a pupil at any Academy in the fourth key stage has the same curriculum entitlements as are conferred on such a pupil at a maintained school by section 85A(1) of the Education Act 2002.
- (2) The Company shall make arrangements to ensure that, so far as reasonably practicable, a course of study in the core subjects and a course of study in one of the entitlement areas is made available (whether at each Academy or otherwise) to any pupil at any Academy who is above compulsory school age.
- (3) Nothing in this clause-
- (a) requires the Company to incur disproportionate expenditure in making these arrangements;
 - (b) confers any greater entitlements on a pupil than are conferred by section 85A(1) of the Education Act 2002 and section 3A of the Learning and Skills Act 2000.
- (4) In making arrangements under this clause the Company shall have regard to any guidance issued from time to time by the Secretary of State or the Qualifications and Curriculum Authority.
- (5) In this clause "course of study", "core subjects" and "entitlement areas" have the same meaning as in sections 3A, 3B and 3C respectively of the Learning and Skills Act 2000.

Curriculum, curriculum development and delivery and RE and collective worship

27. The curriculum provided by each Academy to pupils up to the age of 16 shall be broad and balanced. The Company shall ensure that:
- (a) English, Mathematics, Science and ICT are taught to all pupils in Years 7 to 11;
 - (b) The National Curriculum programmes of study for English, Mathematics, Science and ICT for the time being prescribed by the Secretary of State under Section 87 of the Education Act 2002 are covered in full by the end of the final year of each key stage.
28. No academy is required to teach an individual pupil or group of pupils in one of more subjects where, in the opinion of the Principal of that Academy, it is inappropriate to do so by reason of the pupil's or group's ability or attainment.

29. The Company shall make provision for the teaching of religious education and for a daily act of collective worship at each Academy.
30. Subject to clause 32 or unless specified otherwise in a Supplemental Agreement provision shall be made for religious education to be given to all pupils at each 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, and having regard to the requirements of the Qualifications and Curriculum Authority's national framework for religious education in schools.
31. Subject to clause 32, or unless specified otherwise in a Supplemental Agreement, each Academy shall comply with the requirements of section 70(1) of, and Schedule 20 to, the School Standards and Framework Act 1998 as if it were a community, foundation or voluntary school which does not have a religious character, except that the provisions of paragraph 4 of that Schedule do not apply. The Company may in relation to any Academy apply to the Secretary of State for consent to be relieved of the requirement imposed by paragraph 3(2) of that Schedule, the Secretary of State's consent to such an application not to be unreasonably withheld or delayed.
32. Section 71(1) – (4) of the School Standards and Framework Act 1998 shall apply as if each Academy were a community, foundation or voluntary school, and as if references to "Religious Education" and to "Religious Worship" in that section were references to the religious education and religious worship provided by each Academy in accordance with clauses 30 and 31 respectively.
33. The Company shall have regard to any guidance issued by the Secretary of State on sex and relationship education to ensure that children at each Academy are protected from inappropriate teaching materials and they learn the nature of marriage and its importance for family life and for bringing up children.

Assessment

34. Each Academy will be notified to the National Assessment Agency ("NAA") by the Secretary of State and Each Academy shall provide the NAA with such information as the NAA shall require for the purposes of enabling all pupils at each Academy to take part in and report to the NAA and its agencies Key Stage 3, and where any Academy has pupils in Years 1 to 6 assessment Key Stage 1 and 2, assessments in English, Maths and Science (and from 2008, ICT at appropriate stages) and for teacher assessments of pupil's performance in those subjects. In respect of all Key Stages, each Academy will submit to monitoring and moderation of its assessment arrangements and may choose to be monitored either:-
 - (a) a) by the LA in whose area the Academy exists, with the consent of that Authority; or

(b) b) by an Agency accredited by the NAA,

but in either event shall notify the Secretary of State of the basis upon which it has chosen to be monitored, or any change to that choice. The NAA will conduct an annual audit of the monitoring arrangements.

35. The results of any test or assessment conducted in accordance with this clause shall also be reported to the Secretary of State and/ or the LA as required and as set out in the Assessment and Reporting arrangements, in a format approved by the Secretary of State. The Academy may not offer courses which lead to external qualifications, as defined in section 96 of the Learning and Skills Act 2000, unless they are either approved under section 98 of that Act, or, in respect of individual pupils, groups of pupils or all pupils in Key Stage 4, the Secretary of State gives specific consent for such courses to be offered.

Crisis Management Plan

36. Before each Academy opens to pupils it shall have in place a Crisis Management Plan setting out steps to be taken in the event of an emergency situation at the Academy.

School meals

37. The Company shall, if requested to do so by or on behalf of any pupils at an Academy, provide school lunches for those pupils unless it would be unreasonable for it to do so. Subject to the provisions of clause 38 charges may be levied for lunches. All food and drink provided by or on behalf of the Company in an Academy shall comply with legislation governing the provision of food and drink in maintained schools as applicable from time to time. In particular, the Company shall ensure that school meals (breakfasts, lunches or other meals) and food and drink available on an Academy's premises through other outlets such as tuck-shops and vending machines comply with the relevant standards set out in such regulations.
38. In relation to a pupil who is himself or whose parents are in receipt of benefits mentioned in section 512ZB of the 1996 Act (or equivalent provision governing the entitlement to free school lunches of pupils at maintained schools), the Company shall ensure that a school lunch is provided for such a pupil free of charge.

Charging

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

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

Provision of Information to parents and others

40. The Company shall publish a prospectus for each Academy annually, shall send it on request (free of charge) to parents of pupils at the Academy and to the Secretary of State; and shall make it available for inspection by other persons at the relevant Academy. The prospectus shall, except in so far as such information is published in a document known as a School Profile (which would accompany or be incorporated in the prospectus), include:
- (a) details of admission arrangements;
 - (b) details of the curriculum offered, of assessment arrangements and of the results of attainment tests and public examinations at school level, but this shall not include details of individual pupils' attainment and examination results;
 - (c) details of any religious affiliation of the school; policy on providing for children with SEN; arrangements for pupils with disabilities (as specified in an annex to the relevant Supplemental Agreement); pupil absence rates; and destination of school leavers; and
 - (d) any further information as set out in Schedule 3 of the Education (School Information) (England) Regulations 2002 (SI 2002/2897) as applies to maintained schools.
 - (e) such other information as the Company may determine.
41. The prospectus referred to above shall be published in the school year immediately preceding the school year to which it relates and shall be published at least six weeks before the closing date for applying for a place.

GRANTS TO BE PAID BY THE SECRETARY OF STATE

General

42. The Secretary of State shall pay grants towards capital and recurrent expenditure of each Academy. Except with the Secretary of State's prior agreement, the Company shall not budget for its expenditure in any year in excess of expected income. No decision by the Company shall commit the Secretary of State to paying any particular amount of grant.
43. "Recurrent expenditure" means any expenditure on the establishment, conduct, administration and maintenance of the Academy which does not fall within the categories of capital expenditure set out at clause 44. The Secretary of State shall pay two separate and distinct grants in respect of recurrent expenditure: General Annual Grant ("GAG") and Earmarked Annual Grant ("EAG").

CAPITAL GRANT

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

- (j) such other items (whether of a like or dissimilar nature to any of the foregoing) of a substantial or enduring nature as the Secretary of State may agree shall constitute capital expenditure for the purposes of the Agreement;
- (k) all professional fees properly and reasonably incurred in connection with the provision of any of the above;
- (l) VAT and other taxes payable on any of the above.

"Capital Grant" means grant paid in respect of Capital Expenditure.

45. [OMITTED DELIBERATELY]

Other Capital Expenditure

46. Any Capital Expenditure incurred in respect of an Academy for which grant payments are sought from the Secretary of State during the currency of the relevant Supplemental Agreement will require the specific agreement of the Secretary of State, which agreement shall not be unreasonably withheld or delayed. Unless the Company undertakes to meet such Capital Expenditure entirely itself such agreed Capital Expenditure as is incurred will be shared in a proportion to be agreed between the Secretary of State and the Company in relation to, and having regard to the nature of such Capital Expenditure. Any Capital Expenditure required in order to meet the requirements of legislation enacted or made after the date of the relevant Supplemental Agreements shall be funded in full by the Secretary of State.

Conditions on Capital Grant

47. Payment of Capital Grant is subject to the fulfilment of the following conditions:
- (a) such grants are used solely to defray Capital Expenditure approved by the Secretary of State;
 - (b) the Company certifying and providing evidence that all planning and other consents necessary for the development and all related infrastructure of the relevant Academy have been obtained.

Arrangements for Payment of Capital Grant

48. Capital Grant will be paid by the Secretary of State to the Company on the basis of claims for grant submitted. The Company must submit a claim for Capital Grant to the Secretary of State in the notified format with supporting invoices and certificates as requested by the Secretary of State from time to time. Capital Grant will be paid within 21 days from the day on which a claim is received if the claim is in the proper format, supported by the appropriate documentation and the conditions on its payment set out at clause 47 are complied with. If a dispute arises as to whether a

claim is or is not acceptable both parties undertake to attempt to resolve it in good faith. In the event of such a dispute, the Secretary of State shall pay to the Company so much of the claim as shall not be in dispute.

Implementation Grant

49. The Secretary of State shall pay grant (known as "Implementation Grant") towards the establishment of each Academy. Implementation Grant covers the recurrent expenditure that the parties agree is necessary to establish and open the relevant Academy.
50. The Company shall prepare and submit to the Secretary of State for approval an Implementation Budget showing recurrent costs to be incurred before the Academy opens and for which grant is sought. The approved Implementation Budget cashflow will be attached as Annex 1 to the relevant Supplemental Agreement and will show the limits of the recurrent expenditure and the projected cashflow which the parties have agreed the Company is permitted to incur in order to establish the Academy.
51. Both parties recognise that as a project develops it may be necessary to revise individual costs in the Implementation Budget and to move costs between budget headings in order to ensure that the project remains within its approved budget. Where the Company wishes to make such an adjustment of over £15,000, the reason for the change and a revised Implementation Budget must be submitted to the Secretary of State for approval.

Arrangement for Payment of Implementation Grant

52. The Secretary of State will pay Implementation Grant to the Company on the basis of claims for grant submitted to the Secretary of State in accordance with the approved Implementation Budget and in the notified format with supporting invoices, receipts and documents as required by the Secretary of State. If the grant claim accords with the approved budget or is otherwise acceptable to the Secretary of State then the Secretary of State undertakes to pay the amount due within 21 days from the day on which it was received. If a dispute arises over whether a grant claim or part of it is acceptable, both parties undertake to attempt to resolve the dispute in good faith. If the Secretary of State is of the opinion that the claim in question is not within the approved budget and that the claim is unacceptable, he shall notify the Company in writing of the reasons for his opinion. If the dispute has not been resolved by the due date of the claim in question, the Secretary of State shall pay so much of the claim as shall not be in dispute.
53. Any amount of approved Implementation Grant in respect of which the expenditure has not been incurred by the Company by the date on which an Academy opens will lapse. Any amount of grant which has been paid but remains unexpended on relevant expenditure by the date on which an Academy opens will, without prejudice to any other mode of recovery, be taken into account in determining the total amount

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

General Annual Grant

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

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

- (l) the costs of providing school meals for pupils (including the cost of providing free school meals to pupils who are eligible to receive them), and discretionary grants to pupils to meet the cost of pupil support including support for pupils with special educational needs or disabilities (taking account of the fact that separate additional money will be available for pupils with statements of special educational needs),
 - (m) administration;
 - (n) establishment expenses and other institutional costs.
55. Subject to clause 81 GAG paid in respect of each Academy shall only be used for the purposes of the Academy.
56. Subject to clauses 58-61, GAG for each financial year of an Academy will be funded at a level comparable to and as close to equal as possible to the expected level of funding which would be provided through the relevant LA's funding formula for a comparable LA maintained school in the area which the Academy is located and which has the Academy's relevant characteristics, including pupil numbers; plus:
- (a) LA Central Spend Equivalent: funding representing a proportion of the LA Education Budget money which the LA would be able to retain, from the non-delegated elements of the Schools Block and the relevant items in the LA Block, if the relevant Academy were a maintained school. The proportion which this funding will represent will be based on the elements of the LA's Section 52 Budget Return which are relevant to the relevant Academy; plus
 - (b) Specialist Schools Allowance: a further sum representing funding which an LA maintained school with the relevant Academy's characteristics would receive in respect of their participation in the specialist schools programme; plus
 - (c) VAT: a sum in respect of the estimated Value Added Tax payable by the Company for each financial year in relation to the normal running costs of the relevant Academy which is not recoverable; the estimate shall be made using the method determined by the Secretary of State after consultation with finance directors of academies; plus
 - (d) Insurance: The Secretary of State will pay grant in respect of insurance costs sufficient to enable the Company to arrange insurance for each Academy of the kind which appears reasonable and necessary, having regard to any reasonable requirements of the Secretary of State as to the level and type of cover.

57. The GAG for each Academy will also include, payable on a basis equivalent to that applied to maintained schools:
- (a) funding for costs which the Secretary of State agrees (acting reasonably) it is necessary for the Academy to incur where such costs are additional to or in excess of costs which would be incurred by a comparable maintained school;
 - (b) payments in respect of further specific grants made available to maintained schools, where the Academy meets the requisite conditions and criteria necessary for a maintained school to receive these grants.
58. Subject to clause 59 below, the basis of the pupil number count for the purposes of determining GAG will be the estimate of the Company each November for numbers on roll in the following September.
59. For the financial year after the conditions set out in (a) and (b) below have been satisfied for the academic year for which funding is being calculated, the basis of the pupil number count for that year and for subsequent years will be the Schools Census for the January preceding the academic year in question or the September Pupil count or autumn term Schools Census for pupils in Year 12 and above:
- (a) all planned year-groups are present (that is, all the pupil cohorts relevant to the age-range of the relevant academy will have some pupils present); and
 - (b) the total number of pupils as measured in the Schools Census for the preceding January is 90% or more of the planned final size of each Academy, as listed in the relevant Supplemental Agreement.
60. For any academic year in which GAG has been based on the Company's estimate of pupil numbers pursuant to clause 58 above, an adjustment will be made to the following year's formula funding element of GAG to recognise any variation from that estimate greater than 2.5%, the additional or clawed-back grant being only that amount relevant to the number of pupils beyond the 2.5% variation.
61. For any academic year in which GAG is based on the Schools Census (or the September Pupil Count for sixth form pupils) pursuant to clause 59 above, no adjustment will be made to the formula funding element for actual pupil numbers which are below those used to calculate GAG. If the formula funding element for actual pupil numbers is higher than those used an adjustment may be made by the Secretary of State if the Company demonstrates that there has been a significant impact on costs (eg an extra class had been added). For any other element of GAG the Secretary of State may make adjustments to recognise a variation in pupil numbers from that used to calculate the element of grant in question; the basis of these adjustments will be set out in the annual letter of funding.

62. The Secretary of State recognises that:
- (a) in relation to Academies which open with intakes representing only a proportion of the final planned size of the Academy, payments based simply upon the number of pupils present are unlikely to be sufficient to meet the Academy's needs in the years before all age groups are present at their planned size (the "Start-up Period") because of a lack of economies of scale. The Secretary of State undertakes to pay an appropriately larger GAG in the Start-up Period than would be justified solely on the basis of the methods set out in clauses 56 and 57, in order to enable the Academy to operate effectively. The Company will make a bid to the Secretary of State for this addition to GAG based upon need and providing appropriate supporting evidence;
 - (b) in relation to Academies which open with pupils transferred from one or more LA-maintained schools which have closed, additional GAG resources will be required to take account of transitional costs including any costs associated with supporting the integration of pupils from the closed schools and, where necessary, to offer a dual curriculum.
63. During the Start-up Period or during the period when year groups are present who have transferred from a predecessor school or schools, the Secretary of State will pay a further element of GAG additional to that calculated in accordance with the methods set out in clauses 56 and 57 to allow the relevant Academy to:
- (a) purchase a basic stock of teaching and learning materials (including library books, text books, software, stationery, science equipment and equipment for physical education) and other consumable materials.
 - (b) meet the costs associated with the recruitment and induction of additional teaching and other staff.
- After the Start-up Period these costs will be met through the ordinary GAG.
64. The Secretary of State recognises that if he serves notice of intention to terminate a Supplemental Agreement under that agreement the intake of new pupils during the seven year notice period is likely to decline and that in such circumstances payments based simply upon the number of pupils attending the relevant Academy are unlikely to be sufficient to meet the Academy's needs during the notice period. The Secretary of State undertakes to pay a reasonable and appropriately larger GAG in the notice period than would be justified solely on the basis of the methods set out in clauses 56 and 57, in order to enable the Academy to operate effectively.
65. The Secretary of State also recognises that if this Agreement or a Supplemental Agreement is terminated for any reason by either party the number of pupils at the relevant Academy or Academies is likely to decline. In these circumstances both

parties undertake to attempt to resolve issues arising from such termination in good faith and with the aim of protecting the interests and the education of the pupils at the Academy.

Earmarked Annual Grant

66. Earmarked Annual Grant ("EAG") shall be paid by the Secretary of State to the Company in respect of either recurrent or Capital Expenditure for such specific purposes as may from time to time be agreed between the Secretary of State and the Company and as described in the relevant funding letter. The Company is free to determine how best to use each of its EAGs within the scope of the grant set out in the relevant funding letter.
67. Where the Company is seeking a specific EAG in relation to any financial year, it shall submit a letter outlining its proposals and the reasons for its request to Academies Division, Sanctuary Buildings, Great Smith Street, London SW1P 3BT by 15 February of the year preceding the financial year in question.

Arrangements for Payment of GAG and EAG

68. The Secretary of State shall notify the Company in December preceding the start of each financial year of the GAG and EAG figures in respect of each Academy which, subject to Parliamentary approval, the Secretary of State plans for that year and of the assumptions and figures on which these are based.
69. If an error in the calculation of GAG or EAG occurs for any year because of erroneous data supplied to the Secretary of State, the Secretary of State reserves the right to correct the calculation and, if appropriate, amend the baseline calculations for GAG in subsequent years. If an underpayment or overpayment has occurred as a consequence of the error or as a consequence of an error in the calculation of GAG or EAG, the Secretary of State will consider paying additional grant, and reserves the right to recover overpaid grant, as appropriate having considered all the relevant circumstances and agreed with the Company an appropriate and reasonable programme of repayment.
70. The amount of GAG for an Academy financial year will be determined annually by the Secretary of State. The amount of GAG will be notified to the Company in a funding letter not later than 1 April preceding that financial year ("the annual letter of funding"). The annual letter for funding will not include the amount that the Company will receive in respect of grants for which information to enable timely calculation is not available or is incomplete, such grants will be notified as soon as practicable later in the year on a date to be agreed between the parties. Amounts of EAG will be notified to the Company wherever possible in the annual letter of funding or as soon as practicable thereafter.

71. For the purposes of this Agreement, the Academy's financial year shall be deemed to run from September to August, in order to align it to the school academic year. The Secretary of State undertakes to pay GAG in equal monthly instalments on or before the twenty fifth day of each month, each such instalment to fund the salaries and other payroll costs for the relevant month of all monthly paid employees and all other costs payable during the next following month. The detailed arrangements for payment will be set out in the annual letter of funding.

Other relevant funding

72. Subject to the Company first obtaining the Secretary of State's consent to make the relevant redundancies, which consent shall not be unreasonably withheld or delayed, the Secretary of State shall meet a proportion of the costs arising from the inclusion of Academies in the Schedules to the Redundancy Payments (Continuity of Employment in Local Government) (Modification) Order 1999. The Secretary of State shall meet the costs of the employee's prior eligible service, being service prior to the opening of the Academy, and the Company will meet the costs of service after the opening of the Academy.
73. The Secretary of State may meet costs incurred by the Company in connection with the transfer of employees from a predecessor school under the Transfer of Undertakings (Protection of Employment) Regulations 2006. Payment of grant in respect of such costs is to be agreed between the parties on a case by case basis and the Company shall not budget on the basis that it will receive any grant in respect of such costs unless it is specifically notified that such grant will be paid.
74. The Company may also receive funding from LAs in respect of the provision detailed in statements of SEN for pupils attending an Academy in accordance with the provisions of Section 483A of the Education Act 1996 and regulations made under that section. The Company shall ensure that all provision detailed in statements of SEN is provided for such pupils.
75. The Company should also receive funding from the LA in whose area it is located, from the Standards Fund. The scheme under which the Standards Fund money is to be distributed by the Secretary of State to LAs and schools will permit LAs to receive grants on behalf of Academies in the same way as they can do for maintained schools. The relevant Academy must use any grants received under the Standards Fund in accordance with any conditions specified in relation to that grant. Grants paid to the Company from the Standards Fund are not paid under this Agreement.

Financial and Accounting Requirements

76. The Finance Director of the Company shall be each Academy's Accounting Officer. The Accounting Officer will be personally responsible to the Company for ensuring regularity and propriety, and for the economic, efficient and effective use of resources (i.e. ensuring value for money), and administration of the financial affairs of the

Academy. The Accounting Officer may delegate or appoint others, to assist in carrying out these responsibilities.

77. The Company shall in relation to each Academy abide by the provisions within the Financial Handbook published by the DCSF as amended from time to time and as modified to take account of the fact that the Company manages more than one Academy, which sets out in detail provisions for the financial management of each Academy including guidance on financial systems and controls and accounting and reporting requirements.
78. The formal budget should take in to account items in the Academy Development Plan requiring expenditure and must be approved each year by the Directors of the Company.
79. Any payment of grant by the Secretary of State in respect of each Academy is subject to his being satisfied as to the fulfilment by the Company of the following conditions, namely, that:
 - (a) in its conduct and operation of the relevant Academy it shall apply financial and other controls which conform to the requirements both of propriety and of good financial management;
 - (b) arrangements have been made to maintain proper accounting records and that statements of income and expenditure and balance sheets may be produced in such form and frequency as the Secretary of State may from time to time reasonably direct;
 - (c) such financial statements are published at the end of each financial year in such form and manner as the Secretary of State may reasonably direct and a copy sent to him by 31 December each year. These statements should carry an audit report stating that, in the opinion of the auditors, the statements show a true and fair view of each Academy's affairs and that the grants were used for the purposes intended;
 - (d) the Company prepares and files with the Companies Registry such annual accounts as are required by the Companies Act 1985;
 - (e) a statement of the accounting policies used is sent to the Secretary of State with the financial statements;
 - (f) the Company insures or procures insurance by another person of its assets in accordance with normal commercial practice or under the terms of any subsisting leases in respect of the leasehold interest of the site upon which the Academy is situated;

- (g) the Company prepares and files with the Charity Commission annual accounts prepared in accordance with the Statement of Recommended Practice;
 - (h) the Company shall comply with their obligation under the Charities Act 1993 (or any statutory re-enactment or modification of that Act) with regard to the preparation of an annual report and its transmission to the Charity Commissioners;
 - (i) the Company shall ensure that each Academy's accounts are audited annually by independent auditors whose appointment is approved by the Secretary of State.
80. In addition, and at his expense, the Secretary of State may instruct any suitably qualified person to report to him on the adequacy and effectiveness of the accounting systems and internal controls maintained by the Company in relation to each Academy and to make recommendations for improving the financial management of each Academy.
81. The books of accounts and all relevant records, files and reports of the Company relating to each Academy including those relating to financial controls, shall be open at all reasonable times to officials of the DCSF and the National Audit Office and to contractors retained by the DCSF or the National Audit Office for inspection or the carrying out of value for money studies and the Company shall secure that those officials and contractors are given reasonable assistance with their enquiries. For the purposes of this clause 'relevant' means in any way relevant to the provision and use of grants provided by the Secretary of State under this Agreement.
82. The Company shall submit indicative budgets relating to each Academy to the Secretary of State not later than by 15 February before the start of each financial year. Such budgets shall set out clearly the prospective income and expenditure of the relevant Academy and shall differentiate, and give adequate details of:
- (a) a statement of expected income for that year including cash donations and gifts in kind from sources other than GAG, EAG and grants from the Secretary of State towards Capital Expenditure, distinguishing between income from public funds including the national lottery and income from other sources. Income from private or public sources (other than GAG, EAG) and grants from the Secretary of State towards Capital Expenditure will not be taken into account by the Secretary of State in the calculation of GAG;
 - (b) a statement of proposed recurrent expenditure for that financial year;
 - (c) a statement of proposed Capital Expenditure for that financial year.

83. At the beginning of any year the Company may hold unspent GAG from previous years amounting to 12% of the total GAG payable in the year just ended or such higher amount as may from time to time be agreed. This carried forward amount may be used as follows:

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

Notwithstanding the foregoing provisions of this clause 81 any additional grant provided over and above that set out in clauses 56 and 57 and made in accordance with clauses 60 and 61 may be carried forward without limitation or deduction until the start up period or the circumstances set out in clauses 60 and 61 come to an end.

84. Any savings of GAG not allowed to be carried forward under clause 81 will be taken into account in the payment of subsequent grant.

85. The Company may also accumulate funds from private sources or public sources other than grants from the Secretary of State for application to the benefit of the Academy as it sees fit. Any surplus arising from private or public sources other than grants from the Secretary of State shall be separately identified in the Company's balance sheet.

86. The Company shall not, without the prior written consent of the Secretary of State which shall not be unreasonably withheld or delayed:

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

87. Each discovered loss of an amount exceeding the amount set out in the annual letter of funding, and arising from suspected theft or fraud, shall be reported by the Company to the Secretary of State at the earliest practical opportunity.
88. It is the responsibility of the Company to ensure that each Academy balances its budget from year to year.

Borrowing Powers

89. The Company shall not borrow without specific approval of the Secretary of State, and such approval may only be granted in limited circumstances. The Company shall not operate an overdraft except to cover irregularities in cash flow. Such an overdraft, and the maximum amount to be borrowed, shall require approval by the Company and in writing by the Secretary of State, and shall be subject to any conditions which the Secretary of State may reasonably impose.

Disposal of Assets

90. Where the Company acquires assets for a nil consideration or at an under value it shall be treated for the purpose of this Agreement as having incurred expenditure equal to the market value of those assets at the time that they were acquired. This provision shall not apply to assets transferred to the Company at nil or nominal consideration and which were previously used for the purposes of a state funded school or where transferred from an LA, the value of which assets shall be disregarded.
91. The sale or disposal by other means of a capital asset by the Company shall require the consent of the Secretary of State, such consent not to be unreasonably withheld or delayed, where:
 - (a) the Secretary of State paid capital grant in excess of £20,000 for the asset; or
 - (b) the asset was transferred to the Company from a LA for no or nominal consideration.

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

92. This clause applies in the event that, during the currency of the relevant Supplemental Agreements, an asset for which Capital Grant of any amount was paid

by the Secretary of State and which was acquired by the Company, is disposed of. In this event, the Company shall repay to the Secretary of State the same proportion of the proceeds of the disposal as equates with the proportion of the original cost funded by the Secretary of State, unless the Secretary of State agrees to some or all of the proceeds being retained by the Company for its charitable purposes.

93. This clause applies in the event that, during the currency of the relevant Supplemental Agreements, the Secretary of State consents to the disposal of an asset which was transferred to the Company from a LA for no or nominal consideration. In this event the Secretary of State may give consent on the basis that all or part of the proceeds of the disposal should be made over to the LA from which the asset was transferred, taking into account the amount of the proceeds to be reinvested by the Company. The Secretary of State will have regard to any representations from the Company and the LA from which the asset was transferred before giving consent under this clause.
94. Except with the consent of the Secretary of State, the Company shall not dispose of assets for a consideration less than the best price that can reasonably be obtained, such consent not to be unreasonably withheld or delayed.

TERMINATION

95. This Agreement shall commence on the date hereof and continue until terminated in accordance with clause 96 or until all Supplemental Agreements entered into between the Secretary of State and the Company shall have terminated.
96. The Secretary of State may at any time by notice in writing terminate this Agreement and each of the Supplemental Agreements forthwith on the occurrence of any of the following events:-
- (a) the Company calls a meeting of its creditors (whether formal or informal) or enters into any composition or arrangement (whether formal or informal) with its creditors; or
 - (b) the Company proposes a voluntary arrangement within Section 1 of the Insolvency Act 1986; or
 - (c) the Company is unable to pay its debts within the meaning of Section 123 of the Insolvency Act 1986 provided that, for the purposes of this Clause Section 123 (1)(a) of the Insolvency Act 1986 shall have effect as if the amount of £10,000 was substituted for £750. The Company shall not be deemed unable to pay its debts for the purposes of this clause if any such demand as is mentioned in the said Section is being contested in good faith by the Company; or

- (d) the Company has had a receiver (and manager with the exception of Receivers and Managers appointed by the Charity Commission under the Charity Act 1993 or any subsequent re-enactment of that Act), administrator or administrative receiver appointed over all or any part of its undertakings, assets or income; or
- (e) any restraint, execution or other process is levied or enforced on any material part of the Company's property and is not paid out, withdrawn or discharged within fifteen Business Days; or
- (f) the Company has passed a resolution for its winding up; or
- (g) an order is made for the winding up or administration of the Company.

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

Effect of Termination

97. In the event of the termination of this Agreement however occurring the Secretary of State shall procure that his nominee shall resign as a member of the Company and shall co-operate in making any associated amendments to the Company's Articles of Association.

GENERAL

Information

98. Without prejudice to any other provision of this Agreement, the Secretary of State acting reasonably may from time to time call for information on, inter alia, any Academy's:
- (a) curriculum;
 - (b) arrangements for the assessment of pupils;
 - (c) targets, including those set in accordance with the provisions of clause 31;
 - (d) teaching staff including numbers, qualifications, experience, salaries, and teaching loads;
 - (e) class sizes;
 - (f) outreach work with other schools and the local community;

- (g) operation of the admission criteria and over subscription arrangements for the Academy including numbers of applications for places and the number and characteristics of pupils accepted for admission;
- (h) numbers of pupils excluded (including permanent and fixed term exclusions);
- (i) levels of authorised and unauthorised attendance;
- (j) charging and remissions policies and the operation of those policies;
- (k) organisation, operation and building management;
- (l) financial controls; and
- (m) membership and proceedings of the Company and the Academy Governing Body.

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

100. Any information of a secret or confidential nature obtained by the Secretary of State or by any officials or advisers or contractors to such person, shall be kept confidential by such persons, as the Secretary of State shall procure, and shall not (except as required by law) be disclosed to any third party (including without limitation any LA) without the prior written approval of the Company, such approval not to be unreasonably withheld or delayed.

Access by the Secretary of State's Officers

101. The Company shall allow access to the premises of any Academy at any reasonable time to DCSF officials. All records, files and reports relating to the running of each Academy shall be available to them at any reasonable time. The Company shall provide the DCSF in advance with papers relating to each Academy prepared for meetings of the Academy Governing Body, of the Company's directors and of the members of the Company. The Company need not provide to the DCSF any part of these papers which relate to any issues of contention with the Secretary of State or any discussion of bids for funding to the Secretary of State. Two DCSF officials shall be entitled to attend and to speak at all such meetings, but shall withdraw from any discussion of an Academy's or the Company's relationship with the Secretary of State or any discussion of bids for funding to the Secretary of State.

102. The Company shall ensure that to the extent only that such documents relate to an Academy:

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

which are to be made available for inspection at the relevant Academy by virtue of article 100 of the Articles of Association are, as soon as is reasonably practicable, sent to the DCSF.

103. There may be excluded from any item required to be sent to the DCSF by virtue of clause 95, any material relating to:
- (a) a named teacher or other person employed, or proposed to be employed, at any Academy;
 - (b) a named pupil at, or candidate for admission to, any Academy; and
 - (c) any matter which, by reason of its nature, the Company is satisfied should remain confidential.

Notices

104. Any notice or other communication concerning this Agreement or a Supplemental Agreement shall be sent, in the case of a notice or communication from the Secretary of State to the Company at its registered office or such other addressee/address as may be notified in writing from time to time by the Company and, in the case of a notice or communication from the Company to the Secretary of State to Head of Academies Division, Department Children, Schools and Families, 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 two Business Days after the same shall have been posted.
105. This Agreement may be amended in writing at any time by agreement between the Secretary of State and the Company.
106. The service by the Secretary of State of a notice of termination of a Supplemental Agreement shall not prejudice the ability of the Company (if it wishes to do so) during the notice period to admit pupils to the relevant Academy in accordance with the provisions of this Agreement and the relevant Supplemental Agreement and to receive GAG and EAG in respect of them.

Appointment of Additional Governors by the Secretary of State

107. If the Secretary of State becomes entitled in accordance with the Articles to appoint Additional Directors (as defined in the Articles) by reference to the particular circumstances of an Academy rather than circumstances pertaining to all or substantially all Academies or the affairs of the Company generally, the Company will:
- (a) replace such members of the Academy Governing Body of the relevant Academy as shall have been appointed by the Directors in accordance with article 78(f) of the Articles and/or appoint additional members of the Academy Governing Body as, in either case, the Secretary of State may by notice in writing specifying the persons so to be appointed to the Company require, provided that at least one of the members of the Academy Governing Body is also a Director (as defined in the Articles); and
 - (b) upon the replacement or appointment, as the case may be, of the members of the relevant Academy Governing Body, delegate to the relevant Academy Governing Body all such powers as may be necessary to ensure that the relevant Academy Governing Body is capable of properly conducting the affairs of the Academy on the Company's behalf.
108. Notwithstanding the delegation referred to in clause 105 the relevant Academy Governing Body will report to the Directors of the Company upon all decisions taken by the Academy Governing Body at such intervals as the Company may reasonably require, following reasonable notice from the Company of its reporting requirements.
109. The Company may at any time revoke the delegation of powers referred to in clause 105 by notice in writing to the members of the relevant Academy Governing Body. A copy of any such notice will also be sent to the Secretary of State.
110. The Secretary of State undertakes to the Company not to exercise the powers under the Articles to appoint Additional Directors unless:-
- (a) the Company fails to comply with its obligations under clause 100; or
 - (b) if, such powers having been delegated to the Academy Governing Body in accordance with clause 105, such delegation is subsequently revoked or, without the prior written consent of the Secretary of State, varied in any material respect; or
 - (c) in the Secretary of State's opinion the circumstances pertain to all or substantially all the Academies or the affairs of the Company generally.

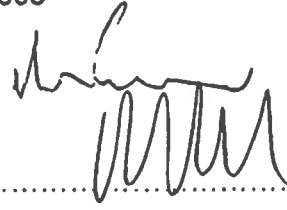
General

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

This Agreement was signed on

03/06/2008

SIGNED on behalf of The Basildon Academies by :



.....

Duly Authorised

SIGNED on behalf of The Secretary of State by :



.....

Duly Authorised

Annex B

SEN policy

THE BASILDON ACADEMIES

FA ANNEX B – SPECIAL EDUCATIONAL NEEDS (SEN)

Arrangements for pupils with SEN and disabilities at The Basildon Academies.

Duty to have regard to the Code of Practice and other guidance

1. The Academies shall have regard to the Special Educational Needs Code of Practice (2001) and any guidance issued by the Secretary of State relating to sections 316 and 316A of the Education Act 1996. Any changes to be made to the provisions set out in this document must be approved in advance by the Secretary of State.

Duties in relation to pupils with SEN

2. The governors of the Basildon Academies' Federation shall designate a person, who may be the headteacher, the chair of governors or another governor as appropriate, who shall be the responsible person for the purposes of the following duties in relation to pupils with SEN.

3. The governors of the Basildon Academies' shall:

- a. use their best endeavours, in exercising their functions in relation to the school, to secure that, if any registered pupil has special educational needs, the special educational provision which the pupil's learning difficulty calls for is made;
- b. secure that, where the responsible person has been informed by the local education authority that a registered pupil has special educational needs, those needs are made known to all who are likely to teach the pupil;
- c. secure that the teachers in the school are aware of the importance of identifying, and providing for, those registered pupils who have special educational needs; and
- d. consult the local education authority and the governing bodies of other schools in the area, to the extent that this is necessary for co-ordinating provision for pupils with SEN.

4. Where a child, who has special educational needs, is being educated in either Academy, those concerned with making special educational provision for the child shall secure, so far as is reasonably practicable and is compatible with:

- a. the child receiving the special educational provision which his learning difficulty calls for,
- b. the provision of efficient education for the children with whom he will be educated,
- c. the efficient use of resources and
- d. that the child engages in the activities of the school together with children who do not have SEN.

THE BASILDON ACADEMIES

FA ANNEX B – SPECIAL EDUCATIONAL NEEDS (SEN)

5. The Academies, in their prospectus, shall include details of the governing body's policy for pupils with SEN and in particular shall include the information specified in Schedule 1 to the Education (Special Educational Needs) (Information) Regulations 1999 as amended or re-enacted from time to time. It shall also include details of the arrangements for the admission of disabled pupils; the steps taken to prevent disabled pupils from being treated less favourably than other pupils; and the facilities provided to assist access to the Academy by disabled pupils (disabled pupils meaning pupils who are disabled for the purposes of the Disability Discrimination Act 1995).

6. The Academies shall ensure that pupils with SEN are admitted on an equal basis with others in accordance with their admissions' policy.

7. Where a local education authority proposes to name either Academy in a statement of SEN, made in accordance with section 324 of the Education Act 1996, the Academy shall consent to being named, except where admitting the child would be incompatible with the provision of efficient education for other children; and where no reasonable steps may be made to secure compatibility. In deciding whether a child's inclusion would be incompatible with the efficient education of other children, the Academy shall have regard to the relevant guidance issued by the Secretary of State to maintained schools.

8. In the event of any disagreement between the Basildon Academies and the local education authority over the proposed naming of either Academy in a statement, the Academy may ask the Secretary of State to determine whether the Academy should be named. The Secretary of State's determination shall, subject only to any right of appeal which any parent or guardian of the child may have to the Special Educational Needs and Disability Tribunal (SENDIST), be final.

9. If a parent or guardian of a child in respect of whom a statement is maintained by the local education authority appeals to SENDIST either against the naming of the Academy in the child's SEN statement or asking the Tribunal to name the Academy, then the decision of the Tribunal on any such appeal shall be binding and shall, if different from that of the Secretary of State under paragraph 7 above, be substituted for the Secretary of State's decision.

10. Where either Academy has consented to be named in a child's statement of SEN, or the Secretary of State or SENDIST have determined that it should be named, the Academy shall admit the child notwithstanding any provision of Annex D of this agreement.

Annex C

Learning Behaviour policy

THE BASILDON ACADEMIES

FA ANNEX C – BEHAVIOUR & EXCLUSIONS

The Basildon Academies

Serious incidents of misbehaviour leading to fixed period or permanent exclusion

1. In discharging its duty the Academies' Trust will have regard and will ensure that the Independent Appeal Panel has regard to the Secretary of State's guidance on exclusions for maintained schools in accordance with any written directions from the Secretary of State on the interpretation of such guidance for the purpose of this annex.

2. At the date of this agreement, the Secretary of State's guidance on exclusions is called "Improving Behaviour and Attendance: Guidance on Exclusion from Schools and Pupil Referral Units", which is published on the DfES website at:

<http://www.teachernet.gov.uk/wholeschool/behaviour/exclusion/guidance/>.

The title, contents and publication site of this guidance may be subject to change and the Academies' Trust will have regard to the guidance as it stands at any given time.

Constitution and conduct of independent appeal panels

3. In addition to the obligations under paragraphs 1 and 2, the Academies' Trust will be responsible for carrying out the functions of the Local Authority, as specified in the guidance, for the management of the appeal procedure. The Appeal panel must be impartial and constituted in accordance with the provisions of the guidance detailing the composition of the Appeal Panel. The Academies' Trust will arrange suitable training for appeal panel members and clerks.

4. The appeal panel's decision is final and binding on the Academies' Trust. Decisions of appeal panels are in principle amendable to judicial review on the application of a parent. A parent may not, however, appeal to the Commissioner for Local Administration (the Local Government Ombudsman) about maladministration because the Commissioner's remit is limited to considering the conduct of appeal panels constituted by Local Authorities.

Notification of permanent exclusions

5. Where a pupil is excluded permanently, the Academies' Trust must ensure that the pupil's home Local Authority is notified at the earliest possible opportunity.

Annex D
Admissions Policy

THE BASILDON ACADEMIES

ANNEX D – ADMISSIONS

THE ADMISSION OF PUPILS TO ACADEMIES

1. The Company will act in accordance with, and will ensure that the Independent Appeal Panel is trained to act in accordance with, all relevant provisions of the statutory codes (the School Admissions Code and the School Admission Appeals Code) as they apply at any given time to maintained schools and with the law on admissions as it applies to maintained schools. Reference in the codes to admission authorities shall be deemed to be references to the Company. In particular, each Academy will take part in the Admissions Forum set up by the relevant local authority and have regard to its advice; and will participate in the co-ordinated admission arrangements operated by the relevant local authority.
2. Pupils will be admitted to each Academy in accordance with the detailed admission arrangements described in that Academy's Admissions Policy Documents. Changes to an Academy's Admissions Policy Document will require the approval of the Secretary of State.

Arrangements for appeals panels

3. Parents will have the right of appeal to an Independent Appeal Panel if they are dissatisfied with an admission decision of the Company in respect of an Academy. The Appeal Panel will be independent of the Academies and the Company. The arrangements for appeals will be in line with the School Admission Appeals Code published by the Department of Children, Schools and Families as it applies to Foundation and Voluntary Aided schools. The determination of the appeal panel is binding on all parties. The Company will prepare guidance for parents about how the appeals process will work and provide parents with a named contact who can answer any enquiries parents may have about the process. The Company may, if it chooses, enter into an agreement with the local authority for it to recruit, train and appoint appeal panel members, and to arrange for the process to be independently administered and clerked.

II: ANNUAL PROCEDURES FOR DETERMINING ADMISSION ARRANGEMENTS

Consultation

4. For each Academy the Company shall consult by 1 March each year on its proposed admission arrangements:
 - a) The relevant LA;
 - b) The admission forum for the relevant LA;

THE BASILDON ACADEMIES

ANNEX D – ADMISSIONS

- c) Any other admission authorities for primary and secondary schools located within the relevant area for consultation set by the LA;
- d) Any other governing body for primary and secondary schools (as far as not falling within paragraph c)) located within the relevant area for consultation;
- e) Affected admission authorities in neighbouring LA areas.

Determination and publication of admission arrangements

5. Following consultation, the Company will consider comments made by those consulted. The Company will then determine each Academy's admission arrangements by 15 April of the relevant year and notify those consulted what has been determined.

Publication of admission arrangements

6. For each Academy, the Company will publish its admission arrangements each year once these have been determined in accordance with the arrangements described in that Academy's Admissions Policy Document.

Representations about admission arrangements

7. Where any of those bodies that were consulted, or that should have been consulted, make representations to the Company about an Academy's admission arrangements, the Company will consider such representations before determining the admission arrangements for that Academy. Where the Company has determined an Academy's admission arrangements and notified all those bodies whom it has consulted and any of those bodies object to the admission arrangements for that Academy, they can make representations to the Secretary of State. The Secretary of State will consider the representation and in so doing will consult the Company. Where he judges it appropriate, the Secretary of State may direct the Company to amend its admission arrangements for that Academy.

8. Those consulted on an Academy have the right to ask that the Company increases that Academy's proposed Published Admissions Number for any year. Where such a request is made, but agreement cannot be reached locally, they may ask the Secretary of State to direct the Company to increase that Academy's proposed Published Admissions Number. The Secretary of State will consult the Company and will then determine the Published Admissions Number.

9. In addition to his powers in paragraphs 7 and 8 above, the Secretary of State may direct changes to an Academy's proposed admission arrangements and to the proposed Published Admissions Number.

THE BASILDON ACADEMIES

ANNEX D – ADMISSIONS

Proposed changes to admission arrangements by the East Basildon Academies after arrangements have been published

10. Once the admission arrangements have been determined for an Academy for a particular year and published, the Company will propose changes only if there is a major change of circumstances. In such cases, the Company must notify those consulted under paragraph 4 above of the proposed variation and must then apply to the Secretary of State setting out:

- a) the proposed changes;
- b) reasons for wishing to make such changes;
- c) any comments or objections from those entitled to object.

Need to secure Secretary of State's approval for changes to admission arrangements

11. The Secretary of State will consider applications from the Company to change an Academy's admission arrangements only when the Company has notified and consulted on the proposed changes as outlined in paragraph 4 above.

12. Where the Company has consulted on proposed changes the Company must secure the agreement of the Secretary of State before any such changes can be implemented. The Company must seek the Secretary of State's approval in writing, setting out the reasons for the proposed changes and passing to him any comments or objections from other admission authorities/other persons.

13. The Secretary of State can approve, modify or reject proposals from the Company to change an Academy's admission arrangements.

14. Records of applications and admissions shall be kept by the Company for a minimum period of ten years and shall be open for inspection by the Secretary of State.

Schedule 2

Existing The Basildon Lower Academy SFA

**ACADEMIES SPONSORED BY
THE BASILDON ACADEMIES**

**SUPPLEMENTAL AGREEMENT
THE BASILDON LOWER ACADEMY**

03/06 / 2008

Lewis Silkin LLP
5 Chancery Lane
Clifford's Inn
London EC4A 1BL

GRD/OXB/97815.1

THIS AGREEMENT made

03 / 06 / 2008

BETWEEN

(1) **THE SECRETARY OF STATE FOR CHILDREN, SCHOOLS AND FAMILIES**; and

(2) **THE BASILDON ACADEMIES**;

IS SUPPLEMENTAL TO THE MASTER FUNDING AGREEMENT made between the Secretary of State and the Company and dated 2008 (the "Master Agreement").

1 DEFINITIONS AND INTERPRETATION

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

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

the "Academy" means the Academy at Timberlog Close, Basildon;

the "Academies" means the Academy and Chalvedon Academy;

"Admission Policy Document" means the policy document relating to admissions to the Academy agreed between the Company and the Secretary of State as amended from time to time, the current version of which is appended to this Agreement;

"Chalvedon Academy" means the The Basildon Upper Academy at Wickford Avenue, Pitsea, Basildon which is the subject of a separate Supplemental Funding Agreement between the Secretary of State and the Company;

"Capital Expenditure" shall include Capital Expenditure (as defined in the Master Agreement) incurred after as well as before the date on which the Academy opens;

"Chief Inspector" means H.M. Chief Inspector of Schools in England or his successor from time to time;

"EA 2005" means the Education Act 2005;

"Essex" means Essex County Council;

"Minimum Period" means a period determined according to the following table:

If at the time the Special Measures Notice is given the Academy shall have been opened for:	The Minimum Period will be
Less than 12 months	36 months
Less than 24 months but 12 months or more	24 months
24 months or more	12 months

"Sites" means the site of existing schools at Wickford Avenue, Pitsea, Basildon and Timberlog Close, Basildon;

"Total Authorised Expenditure" means the total amount of the Capital Expenditure which the Secretary of State has authorised Essex to incur and which the Secretary of State has agreed to fund in accordance with the formulae within the BSF National Construction Contractors' Framework for Academies and Educational Facilities.

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 sponsor the Academy.

- 2.2 The specialism of the Academy will be Enterprise with Maths.
- 2.3 The arrangements for admission of pupils to the Academy are set out at Annex D to the Master Agreement and in the Academy's Admissions Policy Document.
- 2.4 The Academy is intended to open on 1 September 2009.
- 2.5 The planned total pupil count of the Academy is 1350.
- 2.6 Notwithstanding clause 14 of the Master Agreement, the committee of the Directors of the Company formed to carry out the functions of an Academy Governing Body shall also carry out those functions for the Chalvedon Academy so that the Academy and the Chalvedon Academy are run together under one Academy Governing Body.

3 CAPITAL EXPENDITURE

- 3.1 The Total Authorised Expenditure for the Academy will be £18,019,276.20 plus an agreed amount for ICT hardware.
- 3.2 The Secretary of State will provide funding to Essex up to the Total Authorised Expenditure in accordance with the arrangements made under the BSF National Construction Contractors' Framework for Academies and Educational Facilities.
- 3.3 The Secretary of State will use his reasonable endeavours to enforce the terms and conditions of any grants made by the Secretary of State to Essex for the development of the site for the Academy in accordance with the terms thereof to enable the new building and/or refurbishment of the buildings intended to house the Academy and the related furnishings, equipment and fittings and fixtures to be available for use by the Company by not later than 1 January 2010.
- 3.4 If Capital Expenditure beyond that funded by the Secretary of State in accordance with clause 3.2 is required to meet the requirements of any legislation enacted or made after the date of this Agreement the Secretary of

State will also fund such Capital Expenditure as the parties agree is required to meet such requirements.

4 IMPLEMENTATION GRANT

The Secretary of State agrees to pay Implementation Grant to the Company in accordance with a budget to be agreed between the parties.

5 GAG AND EAG

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

5.2 Notwithstanding clauses 54 and 82 of the Master Agreement GAG paid in respect of the Academy shall not be restricted to use for that individual Academy and may also be used for the purposes of both or either of the Academies.

6 TERMINATION OF THIS AGREEMENT

6.1 Either party may give not less than seven years' written notice to terminate this Agreement, such notice to expire on 31 August 2015 or any subsequent anniversary of that date.

6.2 If the Academy no longer has the characteristics set out in clause 12 of the Master Agreement or the conditions and requirements set out in clauses 12 and 13 of the Master Agreement are not being met in any material respect, or the Company is otherwise in material breach of the provisions of this Agreement or the Master Agreement, the Secretary of State may give notice of his provisional intention to terminate this Agreement.

6.3 Any such notice shall be in writing and shall:

6.3.1 state the grounds on which the Secretary of State considers the Academy no longer has the characteristics set out in clause 12 of the Master Agreement or is not meeting the conditions and requirements of clauses 12 and 13 of the Master Agreement or the Company is otherwise in material breach of the provisions of this Agreement or the Master Agreement;

- 6.3.2 specify the measures needed to remedy the situation or breach;
 - 6.3.3 specify a reasonable date by which these measures are to be implemented; and
 - 6.3.4 state the form in which the Company is to provide its response and a reasonable date by which it must be provided.
- 6.4 If no response is received by the date specified in accordance with clause 6.3, the Secretary of State may give the Company 12 months, or such lesser period as he considers appropriate in the circumstances, written notice to terminate this Agreement.
- 6.5 If a response is received by the date specified in accordance with clause 6.3, the Secretary of State shall consider it, and any representations made by the Company, and shall, within three months of its receipt, indicate that:
- 6.5.1 he is content with the response and/or that the measures which he specified are being implemented; or
 - 6.5.2 he is content, subject to any further measures he reasonably specifies being implemented by a specified date or any evidence he requires that implementation of such measures have been successfully completed; or
 - 6.5.3 he is not satisfied, that he does not believe that he can be reasonably satisfied, and that he will proceed to terminate the Agreement.
- 6.6 In the circumstances of clause 6.5 the Secretary of State shall notify the Company why he believes that he cannot be reasonably satisfied and, if so requested by the Company within thirty days from such notification, he shall meet a deputation including representatives from directors of the Company and the Academy Governing Body to discuss his concerns. If following such meeting he has good reasons for remaining satisfied that the Academy does not and will not have the characteristics set out in clause 12 of the Master Agreement or does not and will not meet the conditions and requirements set out in clauses 12 and 13 of the Master Agreement or the Company is in

material breach of the provisions of this Agreement or the Master Agreement and such breach will not be remedied to his reasonable satisfaction, he shall give the Company twelve months written notice to terminate this Agreement.

6.7 If the Secretary of State has cause to serve a notice on the Company under section 165 of the Education Act 2002 and a determination (from which all rights of appeal have been exhausted) has been made that the Academy shall be struck off the Register of Independent Schools, the period of twelve months notice referred to in clause 6.6 may be shortened to a period deemed appropriate by the Secretary of State.

6.8 The Secretary of State will, by not later than the end of December each 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 financial year (the "Indicative Funding"). If the Company is of the opinion that, after receipt of the Indicative Funding for the next following 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 86 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 financial year.

6.9 Any notice given by the Company under clause 6.8 shall be in writing and shall be served on the Secretary of State not later than 28 February preceding the Critical Year or, if the Secretary of State shall not have given notice of the Indicative Funding to the Company on or before the date specified in clause 6.8 above, within six weeks after the Secretary of State shall have done so. The notice must specify:

6.9.1 the grounds upon which the Company's opinion is based and include the evidence of those grounds and any professional accounting advice

the Company has received and including a detailed statement of steps which the Company proposes to take with a view to ensuring that as soon as reasonably practicable the costs of running the Academy are reduced sufficiently to ensure that such costs are less than the Indicative Funding and All Other Resources and the period of time within which such steps will be taken; and

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

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

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

6.11 If no agreement is reached by 30 April (or such other date as may be agreed between the parties) as to whether the cost of running the Academy during the Critical Year on the basis of the Indicative Funding and All Other Resources would cause the Company to become insolvent, then that question shall be referred to an independent expert (the "Expert") for resolution. The Expert's determination shall be final and binding on both parties. The Expert shall be requested to specify in his determination the amount of the shortfall in funding (the "Shortfall"). The Expert shall be an insolvency practitioner with significant professional experience of educational institutions or academies. If the parties fail to agree upon the appointment of the Expert then the Expert shall be appointed by the President for the time being of the Institute of Chartered Accountants in England and Wales. The Expert's fees shall be borne equally between the parties.

- 6.12 The Expert shall be required in reaching his determination to take account of advice from an educational specialist who is professionally familiar with the issues arising from the budget management of large schools. If the parties fail to agree upon the appointment of the educational specialist then the educational specialist shall be appointed by the Chairman for the time being of the Specialist Schools and Academies Trust. The educational specialist's fees shall be borne equally between the parties.
- 6.13 If the Expert determines that the cost of running the Academy during the Critical Year would cause the Company, on the basis of the Indicative Funding and All Other Resources, to become insolvent, and the Secretary of State shall not have agreed to provide sufficient additional funding to cover the Shortfall, then the Company shall be entitled to terminate this Agreement, by notice expiring on 31 August prior to the Critical Year. Any such notice shall be given within 21 days after (a) the Expert's determination shall have been given to the parties or (b), if later, the Secretary of State shall have given written notice of his refusal to provide sufficient additional funding for the Academy to cover the Shortfall.
- 6.14 If the Company shall have given notice to terminate the Agreement under 6.13, the Secretary of State may by notice in writing to the Company appoint up to two persons as directors of the Company. The right to appoint additional directors shall be without prejudice to the right of the Secretary of State to appoint Additional Directors under Article 41 of the Articles if the provisions of Article 39 of the Articles are, or become, satisfied.
- 6.15 The Secretary of State may at any time by notice in writing terminate this Agreement forthwith if the Academy has ceased (except where such cessation occurs temporarily by reason of an event beyond the reasonable control of the Company) to operate as an Academy within the meaning of Section 482 of the Education Act 1996.
- 6.16 If:
- 6.16.1 the Chief Inspector shall have given a notice to the Company in accordance with s13(3) Education Act 2005 (the "Special Measures

Notice") stating that in his opinion special measures are required to be taken in relation to the Academy; and

6.16.2 not less than the Minimum Period after the Special Measures Notice, the Chief Inspector shall have carried out a subsequent inspection of the Academy in accordance with the EA 2005 and shall have made a report in accordance with the EA 2005 stating that the Academy has made inadequate progress since the date of the Special Measures Notice; and

6.16.3 the Secretary of State shall have requested the Company to deliver within 10 Business Days a written statement (a "Further Action Statement") of the action the Company proposes to take, and the period within which it proposes to take such action, or, if it does not propose to take any action, the reasons for not doing so; and

6.16.4 the Secretary of State, having considered the Further Action Statement, is not satisfied that any action proposed to be taken by the Company is sufficient in all the circumstances, or, if no Further Action Statement shall have been given to the Secretary of State within the requested timeframe or otherwise,

the Secretary of State may by notice in writing to the Company terminate this Agreement forthwith in which case, for the avoidance of doubt, the provisions of clauses 7.2 and 7.3 shall apply.

6.17 This Agreement shall terminate forthwith in the event that the Supplemental Funding Agreement relating to the Chalvedon Academy is terminated in accordance with clause 7 of that agreement.

7 EFFECT OF TERMINATION OF THIS AGREEMENT

7.1 In the event of termination of this Agreement however occurring the school shall cease to be an Academy within the meaning of Section 482 of the Education Act 1996.

7.2 If the Secretary of State terminates this Agreement for reasons other than that the Academy no longer has the characteristics set out in clause 12 of the Master Agreement, or is no longer meeting the conditions and requirements set out in clauses 12 and 13 of the Master Agreement that the Company is otherwise in material breach of the provisions of this Agreement or the Master Agreement, the Secretary of State shall indemnify the Company.

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

7.4 The amounts and categories of expenditure incurred by the Company in consequence of the termination of the Agreement in respect of which the Secretary of State shall indemnify the Company include (but not by way of limitation), staff compensation and redundancy payments, compensation payments in respect of broken contracts, expenses of disposing of assets or adapting them for other purposes, legal and other professional fees, and dissolution expenses.

8 THE MASTER AGREEMENT

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

9 ENGLISH LAW

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

SIGNED BY *Michelle Turner*
Martin Finze

[Signature]

On behalf of THE BASILDON ACADEMIES

Duly authorised

SIGNED BY Herl F. Hill

)



.....

On behalf of THE SECRETARY OF STATE

Duly authorized

Schedule 3

Existing The Basildon Upper Academy SFA

**ACADEMIES SPONSORED BY
THE BASILDON ACADEMIES**

**SUPPLEMENTAL AGREEMENT
THE BASILDON UPPER ACADEMY**

03/06/2008

Lewis Silkin LLP
5 Chancery Lane
Clifford's Inn
London EC4A 1BL

GRD/OXB/97815.1

THIS AGREEMENT made

03/06 / 2008

BETWEEN

(1) **THE SECRETARY OF STATE FOR CHILDREN, SCHOOLS AND FAMILIES**; and

(2) **THE BASILDON ACADEMIES**;

IS SUPPLEMENTAL TO THE MASTER FUNDING AGREEMENT made between the Secretary of State and the Company and dated 2008 (the "Master Agreement").

1 DEFINITIONS AND INTERPRETATION

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

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

the "Academy" means the The Basildon Upper Academy at Wickford Avenue, Pitsea, Basildon;

the "Academies" means the Academy and Barstable Academy;

"Admission Policy Document" means the policy document relating to admissions to the Academy agreed between the Company and the Secretary of State as amended from time to time, the current version of which is appended to this Agreement;

"Barstable Academy" means the The Basildon Lower Academy at Timberlog Close, Basildon which is the subject of a separate Supplemental Funding Agreement between the Secretary of State and the Company;

"Capital Expenditure" shall include Capital Expenditure (as defined in the Master Agreement) incurred after as well as before the date on which the Academy opens;

"Chief Inspector" means H.M. Chief Inspector of Schools in England or his successor from time to time;

"EA 2005" means the Education Act 2005;

"Endowment Arrangements" means the arrangements to be entered into for the establishment of an endowment trust fund into which Martin Finegold will make available £500,000 and undertake best endeavours to make available a further £3.5m over a period of 5 years for the purposes of supporting the Academies;

"Essex" means Essex County Council;

"Minimum Period" means a period determined according to the following table:

If at the time the Special Measures Notice is given the Academy shall have been opened for:	The Minimum Period will be
Less than 12 months	36 months
Less than 24 months but 12 months or more	24 months
24 months or more	12 months

"Sites" means the site of existing schools at Wickford Avenue, Pitsea, Basildon and Timberlog Close, Basildon;

"Total Authorised Expenditure" means the total amount of the Capital Expenditure which the Secretary of State has authorised Essex to incur and which the Secretary of State has agreed to fund in accordance with the formulae within the BSF National Construction Contractors' Framework for Academies and Educational Facilities.

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 sponsor the Academy.

2.2 The specialism of the Academy will be Enterprise with Maths.

2.3 The arrangements for admission of pupils to the Academy are set out at Annex D to the Master Agreement and in the Academy's Admissions Policy Document.

2.4 The Academy is intended to open on 1 September 2009.

2.5 The planned total pupil count of the Academy is 1400.

2.6 Notwithstanding clause 14 of the Master Agreement, the committee of the Directors of the Company formed to carry out the functions of an Academy Governing Body shall also carry out those functions for the Barstable Academy so that the Academy and the Barstable Academy are run together under one Academy Governing Body.

3 CAPITAL EXPENDITURE

3.1 The Total Authorised Expenditure for the Academy will be £22,156,836 plus an agreed amount for ICT hardware.

3.2 The Secretary of State will provide funding to Essex up to the Total Authorised Expenditure in accordance with the arrangements made under the BSF National Construction Contractors' Framework for Academies and Educational Facilities.

3.3 The Secretary of State will use his reasonable endeavours to enforce the terms and conditions of any grants made by the Secretary of State to Essex for the development of the site for the Academy in accordance with the terms thereof to enable the new building and/or refurbishment of the buildings intended to house the Academy and the related furnishings, equipment and

fittings and fixtures to be available for use by the Company by not later than 1 September 2010.

- 3.4 If Capital Expenditure beyond that funded by the Secretary of State in accordance with clause 3.2 is required to meet the requirements of any legislation enacted or made after the date of this Agreement the Secretary of State will also fund such Capital Expenditure as the parties agree is required to meet such requirements.

4 IMPLEMENTATION GRANT

The Secretary of State agrees to pay Implementation Grant to the Company in accordance with a budget to be agreed between the parties.

5 GAG AND EAG

- 5.1 The Secretary of State agrees to pay GAG and EAG to the Company in relation to the Academy in accordance with the Master Agreement.
- 5.2 Notwithstanding clauses 54 and 82 of the Master Agreement GAG paid in respect of the Academy shall not be restricted to use for that individual Academy and may also be used for the purposes of both or either of the Academies.

6 ENDOWMENT ARRANGEMENTS

- 6.1 The Company will within 1 month of the date of this Agreement enter into the Endowment Arrangements.

7 TERMINATION OF THIS AGREEMENT

- 7.1 Either party may give not less than seven years' written notice to terminate this Agreement, such notice to expire on 31 August 2015 or any subsequent anniversary of that date.
- 7.2 If the Academy no longer has the characteristics set out in clause 12 of the Master Agreement or the conditions and requirements set out in clauses 12 and 13 of the Master Agreement are not being met in any material respect, or the Company is otherwise in material breach of the provisions of this

Agreement or the Master Agreement, the Secretary of State may give notice of his provisional intention to terminate this Agreement.

7.3 Any such notice shall be in writing and shall:

7.3.1 state the grounds on which the Secretary of State considers the Academy no longer has the characteristics set out in clause 12 of the Master Agreement or is not meeting the conditions and requirements of clauses 12 and 13 of the Master Agreement or the Company is otherwise in material breach of the provisions of this Agreement or the Master Agreement;

7.3.2 specify the measures needed to remedy the situation or breach;

7.3.3 specify a reasonable date by which these measures are to be implemented; and

7.3.4 state the form in which the Company is to provide its response and a reasonable date by which it must be provided.

7.4 If no response is received by the date specified in accordance with clause 6.3, the Secretary of State may give the Company 12 months, or such lesser period as he considers appropriate in the circumstances, written notice to terminate this Agreement.

7.5 If a response is received by the date specified in accordance with clause 6.3, the Secretary of State shall consider it, and any representations made by the Company, and shall, within three months of its receipt, indicate that:

7.5.1 he is content with the response and/or that the measures which he specified are being implemented; or

7.5.2 he is content, subject to any further measures he reasonably specifies being implemented by a specified date or any evidence he requires that implementation of such measures have been successfully completed; or

- 7.5.3 he is not satisfied, that he does not believe that he can be reasonably satisfied, and that he will proceed to terminate the Agreement.
- 7.6 In the circumstances of clause 6.5 the Secretary of State shall notify the Company why he believes that he cannot be reasonably satisfied and, if so requested by the Company within thirty days from such notification, he shall meet a deputation including representatives from directors of the Company and the Academy Governing Body to discuss his concerns. If following such meeting he has good reasons for remaining satisfied that the Academy does not and will not have the characteristics set out in clause 12 of the Master Agreement or does not and will not meet the conditions and requirements set out in clauses 12 and 13 of the Master Agreement or the Company is in material breach of the provisions of this Agreement or the Master Agreement and such breach will not be remedied to his reasonable satisfaction, he shall give the Company twelve months written notice to terminate this Agreement.
- 7.7 If the Secretary of State has cause to serve a notice on the Company under section 165 of the Education Act 2002 and a determination (from which all rights of appeal have been exhausted) has been made that the Academy shall be struck off the Register of Independent Schools, the period of twelve months notice referred to in clause 6.6 may be shortened to a period deemed appropriate by the Secretary of State.
- 7.8 The Secretary of State will, by not later than the end of December each 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 financial year (the "Indicative Funding"). If the Company is of the opinion that, after receipt of the Indicative Funding for the next following 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 86 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 financial year.

- 7.9 Any notice given by the Company under clause 6.8 shall be in writing and shall be served on the Secretary of State not later than 28 February preceding the Critical Year or, if the Secretary of State shall not have given notice of the Indicative Funding to the Company on or before the date specified in clause 6.8 above, within six weeks after the Secretary of State shall have done so. The notice must specify:
- 7.9.1 the grounds upon which the Company's opinion is based and include the evidence of those grounds and any professional accounting advice the Company has received and including a detailed statement of steps which the Company proposes to take with a view to ensuring that as soon as reasonably practicable the costs of running the Academy are reduced sufficiently to ensure that such costs are less than the Indicative Funding and All Other Resources and the period of time within which such steps will be taken; and
 - 7.9.2 the shortfall in the Critical Year between the Indicative Funding and All Other Resources expected to be available to the Company to run the Academy and the projected expenditure on the Academy; and
 - 7.9.3 a detailed budget of income and expenditure for the Academy during the Critical Year (the "Projected Budget").
- 7.10 Both parties undertake to use their best endeavours to agree whether or not the cost of running the Academy during the Critical Year would cause the Company, on the basis of the Indicative Funding and All Other Resources, to become insolvent. Both parties recognise that they will need to engage in a constructive dialogue at the time about how best to provide education for the pupils at the Academy and undertake to use their best endeavours to agree a practical solution to the problem.
- 7.11 If no agreement is reached by 30 April (or such other date as may be agreed between the parties) as to whether the cost of running the Academy during

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

7.12 The Expert shall be required in reaching his determination to take account of advice from an educational specialist who is professionally familiar with the issues arising from the budget management of large schools. If the parties fail to agree upon the appointment of the educational specialist then the educational specialist shall be appointed by the Chairman for the time being of the Specialist Schools and Academies Trust. The educational specialist's fees shall be borne equally between the parties.

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

7.14 If the Company shall have given notice to terminate the Agreement under 6.13, the Secretary of State may by notice in writing to the Company appoint up to two persons as directors of the Company. The right to appoint additional directors shall be without prejudice to the right of the Secretary of

State to appoint Additional Directors under Article 41 of the Articles if the provisions of Article 39 of the Articles are, or become, satisfied.

7.15 The Secretary of State may at any time by notice in writing terminate this Agreement forthwith if the Academy has ceased (except where such cessation occurs temporarily by reason of an event beyond the reasonable control of the Company) to operate as an Academy within the meaning of Section 482 of the Education Act 1996.

7.16 If:

7.16.1 the Chief Inspector shall have given a notice to the Company in accordance with s13(3) Education Act 2005 (the "Special Measures Notice") stating that in his opinion special measures are required to be taken in relation to the Academy; and

7.16.2 not less than the Minimum Period after the Special Measures Notice, the Chief Inspector shall have carried out a subsequent inspection of the Academy in accordance with the EA 2005 and shall have made a report in accordance with the EA 2005 stating that the Academy has made inadequate progress since the date of the Special Measures Notice; and

7.16.3 the Secretary of State shall have requested the Company to deliver within 10 Business Days a written statement (a "Further Action Statement") of the action the Company proposes to take, and the period within which it proposes to take such action, or, if it does not propose to take any action, the reasons for not doing so; and

7.16.4 the Secretary of State, having considered the Further Action Statement, is not satisfied that any action proposed to be taken by the Company is sufficient in all the circumstances, or, if no Further Action Statement shall have been given to the Secretary of State within the requested timeframe or otherwise,

the Secretary of State may by notice in writing to the Company terminate this Agreement forthwith in which case, for the avoidance of doubt, the provisions of clauses 8.2 and 8.3 shall apply.

- 7.17 This Agreement shall terminate forthwith in the event that the Supplemental Funding Agreement relating to the Barstable Academy is terminated in accordance with clause 6 of that agreement.

8 EFFECT OF TERMINATION OF THIS AGREEMENT

- 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 482 of the Education Act 1996.
- 8.2 If the Secretary of State terminates this Agreement for reasons other than that the Academy no longer has the characteristics set out in clause 12 of the Master Agreement, or is no longer meeting the conditions and requirements set out in clauses 12 and 13 of the Master Agreement that the Company is otherwise in material breach of the provisions of this Agreement or the Master Agreement, the Secretary of State shall indemnify the Company.
- 8.3 The amount of any such indemnity shall be determined by the Secretary of State having regard to any representations made to him by the Company, and shall be paid at such times and in such manner as the Secretary of State may reasonably think fit.
- 8.4 The amounts and categories of expenditure incurred by the Company in consequence of the termination of the Agreement in respect of which the Secretary of State shall indemnify the Company include (but not by way of limitation), staff compensation and redundancy payments, compensation payments in respect of broken contracts, expenses of disposing of assets or adapting them for other purposes, legal and other professional fees, and dissolution expenses.

9 THE MASTER AGREEMENT

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

10 ENGLISH LAW

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

Microna Turwiz
SIGNED BY*Martin Fingold*.....)

On behalf of THE BASILDON ACADEMIES

[Signature]
.....

Duly authorised

SIGNED BY*Neil Fink*.....)

On behalf of THE SECRETARY OF STATE

[Signature]
.....

Duly authorised

Schedule 4

Amended Master Funding Agreement



Department
for Education

Academy and free school: master funding agreement

December 2020 v5

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SUMMARY SHEET

Information about the Academy Trust:

Name of Academy Trust	The Basildon Academies
Address	Wickford Avenue Pitsea Basildon Essex SS13 3HL
Company Number	06308595
Contact details for the Chair of Charity Trustees	Chair of Trustees The Basildon Academies Wickford Avenue Pitsea Basildon Essex SS13 3HL

Please confirm whether additional clauses have been included (e.g., PFI clauses which will be supplied by your project lead if needed)

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 The Basildon Academies (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 06308595. 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 Mainstream Academy, 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 ESFA 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 ESFA 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.

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

"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 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.

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

"ESFA" means the Education and Skills 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 parents¹ 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 ESFA 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 sections 20(1) and 21(2) of the Children and Families Act 2014.

“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.

¹ Parent has the meaning set out in section 576 of the Education Act 1996

“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, or Special Academy, 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, Social, Emotional and Mental Health 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 or young person whose EHC Plan names one of the Special Academies on the sole basis that some, or all, of the child's or young person'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.

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 an Academy operated by 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 data protection legislation.
- 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.
- 1.27 The Academy Trust must not amend or remove the provisions in its Articles relating to the appointment or election or the resignation or removal of Charity Trustees or members (“the Governance Articles”) without the Secretary of State’s consent.
- 1.28 Before any change to the Governance Articles is proposed the Academy Trust must give notice to the Secretary of State of:
- a) the proposed amendment or removal; and;
 - b) the reason for it.
- 1.29 If the Secretary of State consents to the proposed changes, the Academy Trust shall approve any changes to the Articles as soon as reasonably practicable and provide the Secretary of State with a copy of the amended Articles and the resolution(s) approving them.

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 **16-19 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 designate a staff member at each Academy as responsible for promoting the educational achievement of registered pupils at the Academy who are being looked after by a LA, or are no longer looked after by a LA because of an adoption, special guardianship or child arrangements order, or because they have been adopted from ‘state care’ outside England and Wales, and in doing so must comply with the law, regulations and guidance that apply to maintained schools. The Academy Trust must ensure the designated person undertakes appropriate training and has regard to any guidance issued by the Secretary of State.
- 2.5 Teachers’ pay and conditions of service at the Academies are the responsibility of the Academy Trust.
- 2.6 The Academy Trust has a statutory duty to ensure that all Teaching Staff employed at each Academy have access to the Teachers’ Pension Scheme (TPS) and, in so doing, must comply with the TPS Regulations. That includes ensuring that only staff who predominantly carry out teaching work are

enrolled in the TPS – teaching work is planning and preparing lessons and courses for pupils; delivering lessons to pupils; assessing the development, progress and attainment of pupils; and reporting on the development, progress and attainment of pupils. The Board of Charity Trustees will need to give careful consideration as to whether or not executive leaders meet the TPS eligibility requirements. Details of the full range of employer duties are on the TP Employer Hub.

- 2.6.1 Access to the TPS must also be in accordance with HM Treasury's published [Fair Deal guidance](#) which sets out how pensions' issues are to be dealt with when staff are compulsorily transferred from the public sector to independent providers. The Academy Trust has a crucial role in the successful administration of the TPS and must comply with the requirements of the scheme administrator to provide accurate and timely information and also to provide pension contributions.
- 2.7 The Academy Trust must ensure that all affected staff employed by the Academy Trust other than Teaching Staff have access to the Local Government Pension Scheme and, in doing so, the Academy Trust must comply with the requirements of the scheme and with Fair Deal for staff pensions guidance published by HM Treasury. These requirements do not apply if an individual chooses to opt out in line with the relevant legal provisions.
- 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 LA were to the Academy Trust and as if references to a school maintained by a LA 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 16-19 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 a 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 EHC Plans, under clause 2.D of the Special School: supplemental funding agreement**, the Academy Trust must, if asked to by a 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;

then 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, Special Academies, UTCs and Studio Schools**, the Academy Trust must ensure that the curriculum includes English, mathematics, science and (subject to the provisions in clause 2.V of the Mainstream academy and free school: supplemental funding agreement), (subject to the provisions in clause 2.V of the UTC and Studio School supplemental funding agreement) and (subject to the provisions in clause 2.HH-JJ of the Special School: supplemental funding agreement) religious education. In respect of **Alternative Provision Academies** the Academy Trust must ensure that the curriculum includes English, mathematics and science.

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 the Academy actively promotes the fundamental British values of democracy, the rule of law, individual liberty, and mutual respect and tolerance of those with different faiths and beliefs.

2.26A The Academy Trust must ensure the Academy promotes principles that support equality of opportunity for all.

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. The Academy Trust must;

- a) Provide independent careers guidance in accordance with Department for Education statutory guidance that has been developed in line with the eight Gatsby benchmarks of Good Career Guidance.

- b) Ensure that there is an opportunity for a range of education and training providers to access registered pupils in years 8-13 for the purpose of informing them about approved technical education qualifications or apprenticeships.
- c) Publish information about their careers programme and details of their named careers leader in accordance with The School Information (England) Regulations 2008 and the accompanying Department for Education guidance, "What academies, Free schools and colleges should publish online"

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**, and each **Special Academy** 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 **16-19 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 General Annual Grant (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 performance measures as published by the Secretary of State in the School and College Performance Tables, broken down as follows:
 - i. progress score in reading
 - ii. progress score in writing
 - iii. progress score in mathematics
 - iv. percentage of pupils who achieved the expected standard in reading, writing and mathematics
 - v. percentage of pupils who achieved at a higher standard in reading, writing and mathematics
 - vi. average 'scaled score' in reading
 - vii. average 'scaled score' in mathematics
- b) if applicable, the Academy's most recent Key Stage 4 performance measures as published by the Secretary of State in the School and College Performance Tables, broken down as follows:
 - i. Progress 8 score
 - ii. percentage of pupils entering the English Baccalaureate (EBacc)
 - iii. English Baccalaureate (EBacc) Average Point Score

- iv. Attainment 8 score
 - v. percentage of pupils achieving grade 5 or above in GCSE English and mathematics
 - vi. percentage of pupils staying in education or going into employment after Key Stage 4 (pupil destinations)
- c) where applicable, the Academy's most recent 16-18 performance measures, as published by the Secretary of State in the School and College Performance Tables, broken down as follows:
- i. progress
 - ii. attainment
 - iii. English and mathematics progress
 - iv. retention
 - v. destinations
- d) 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
- e) information as to where and how Parents (including Parents of prospective pupils) can access the School and College 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 and disabilities;
- l) administration; and
- m) establishment expenses and other institutional costs.

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

- a) funding equivalent to that which would be received by a maintained school with similar characteristics, determined by the Secretary of State and 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 Academies 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 Academies, other than staff professional development and governance training and 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 Department for Education.

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 first day of each month ("the relevant month"), to fund the salaries and other payroll costs of all monthly paid employees and all other costs payable during the relevant 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 receive additional funding from a LA under an agreement with that LA for the provision of support for pupils with SEN who require high levels of such support. The Academy Trust must ensure that all support 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 16-19 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 for Education'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.L 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 Department for Education 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 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.L 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, this Agreement, any Supplemental Agreements 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 Department for Education 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; or
- b) take up or grant a leasehold of land; or
- c) dispose of any other class of capital assets.

except as expressly 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 the Secretary of State 30 days' notice of its intention to take any of the actions in clause 4.27 (a) – (c) regardless of whether the Secretary of State's consent is required.

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 a 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)

if the value of those transactions would be above any threshold specified in the Academies Financial Handbook.

4.32 The Academy Trust must give the Secretary of State 30 days' notice (or such shorter period as the Secretary of State may agree) of its intention to take any of the actions in clause 4.31 (a) – (c) regardless of whether the Secretary of State's consent is required.

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 the Secretary of State

- 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 Department for Education 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 Department for Education 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 the Secretary of State or any person nominated by 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.

Information Sharing with Local Authorities – Statutory Responsibilities

7.5A The Academy Trust must provide:

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

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

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

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 Business 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 Business 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 Business Days after deemed receipt of the notice):

Name of party	Position of contact	Address
Secretary of State	Head of Academies Division	Department for Education, Sanctuary Buildings, Great Smith Street, London, SW1P 3BT
The Basildon Academies	The Chair of Trustees	The Basildon Academies Wickford Avenue Pitsea Basildon Essex SS13 3HL

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.



Department
for Education

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Schedule 5

Amended The Basildon Lower Academy SFA



Department
for Education

Mainstream academy and free school: supplemental funding agreement

December 2020 v7

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SUMMARY SHEET

Information about the Academy:

Name of Academy Trust	The Basildon Academies
Company number	06308595
Date of Master Funding Agreement	3 June 2008 which has been varied and restated by the Deed of Variation dated
Name of Academy	The Basildon Lower Academy
Opening date	1 September 2009
Type of academy (indicate whether academy or free school)	Mainstream Academy
Religious designation	N/A
Wholly or partly selective	N/A
Name of predecessor school (where applicable)	Barstable Academy
Capacity number (of statutory school age places)	1350
Age range (including nursery provision where the nursery is part of the school)	11 - 14
Number of sixth form places	N/A
Number of boarding places	N/A
SEN unit / Resource provision	N/A
Land arrangements (Version 1-8 or other)	Version 2
Academy and title number of Land	Permanent Site: Timberlog Close, Timberlog Lane, Basildon Essex SS14 1UX registered at Land Registry with title number EX939783 and demised by the Lease

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

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

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

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

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

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

Descriptor	Clause No.	Applied	Not used
The Academy is already open	1.H		

1. ESTABLISHING THE ACADEMY

- 1.A This Agreement made between the Secretary of State for Education and The Basildon Academies is supplemental to the master funding agreement made between the same parties and dated 3 June 2008 which has been varied and restated by the Deed of Variation dated (the “**Master Agreement**”).

Definitions and interpretation

- 1.B Except as expressly provided in this Agreement words and expressions defined in the Master Agreement will have those same meanings in this Agreement.
- 1.C The following capitalised words and expressions will have the following meanings:

“**The Academy**” means The Basildon Lower Academy.

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

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

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

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

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

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

Parliament.

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

The Academy

- 1.F The Academy is a Mainstream Academy as defined in clause 1.4 of the Master Agreement.
- 1.G The Academy Trust will establish and maintain the Academy in accordance with the Master Agreement and this Agreement.
- 1.H The Academy Trust opened the Academy on 1 September 2009.
- 1.I Not used.

2. RUNNING OF THE ACADEMY

Teachers and staff

- 2.A Subject to clause 2.A.2 and Annex A of this Agreement and section 67 of the Children and Families Act 2014, the Academy Trust may, in accordance with any relevant Guidance, employ anyone it believes is suitably qualified or is otherwise eligible to plan and prepare lessons and courses for pupils, teach pupils, and assess and report on pupils' development, progress and attainment.
- 2.A.1 Not used.
- 2.A.2 The Academy Trust must designate a staff member at the Academy as responsible for promoting the educational achievement of registered pupils at the Academy who are being looked after by a la, or are no longer looked after by a la because of an adoption, special guardianship or child arrangements order, or because they have been adopted from 'state care' outside England and Wales, and in doing so must comply with the law, regulations and Guidance that apply to maintained schools. The Academy Trust must ensure the designated person undertakes appropriate training and has regard to any

Guidance.

Pupils

- 2.B The planned capacity of the Academy is 1350 and the age range is 11 - 14. For the avoidance of doubt, notwithstanding that an individual applicant's age might be outside the specified age range of the Academy, the Academy is not prevented from considering an application made by the child's Parent(s) in order to comply with the relevant paragraph of the Schools Admissions Code ('Admission of children outside their normal age group'), to request that the child be admitted to the school outside of the child's normal age group. Where such a request is agreed, the child should be educated in an existing year group. The Academy will be an all ability inclusive single/mixed sex school.

SEN Unit or Resourced Provision

2.C Not used.

2.D Not used.

Charging

2.E Not Used.

2.E.1 Not used.

Admissions

- 2.F Subject to clauses 2.L and 2.M the Academy Trust will act in accordance with, and will ensure that its Independent Appeal Panel is trained to act in accordance with, the School Admissions Code and School Admission Appeals Code published by the Department for Education (the "Codes") and all relevant admissions law as they apply to foundation and voluntary aided schools, and with equalities law. Reference in the Codes or legislation to "admission authorities" will be deemed to be references to the Academy Trust.
- 2.G Pupils on roll in a Predecessor School which was a maintained or independent school will transfer automatically to the Academy on opening. All

children already offered a place at that Predecessor School must be admitted to the Academy.

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

2.I Not used.

2.J Not used.

2.K Not used.

2.L The Secretary of State may:

- a) direct the Academy Trust to admit a named pupil to the Academy:
 - i. following an application from a LA including complying with a school attendance order as defined in section 437 of the Education Act 1996. Before doing so the Secretary of State will consult the Academy Trust; or
 - ii. where in relation to a specific child or children the Academy Trust has failed to act in accordance with the Codes or this Agreement or has otherwise acted unlawfully; or
- b) direct the Academy Trust to amend its admission arrangements where they do not comply with the Codes or this Agreement, or are otherwise unlawful.

2.M Not used.

2.N Not used.

2.O Not used.

2.P The Academy Trust must make arrangements to ensure an independent

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

- 2.P.1 The Academy Trust will treat any decision of an Independent Appeal Panel constituted further to arrangements made by the admission authority of a Predecessor School under section 94 of the School Standards and Framework Act 1998 as binding on the Academy Trust, as though the Academy Trust had made the decision subject to the appeal.
- 2.Q Subject to clause 2.R, the meaning of "relevant area" for the purposes of consultation requirements in relation to admission arrangements is that determined by the relevant LA for maintained schools in the area in accordance with the Education (Relevant Areas for Consultation on Admission Arrangements) Regulations 1999.
- 2.R If the Academy does not consider the relevant area determined by the LA for the maintained schools in the area to be appropriate, it must apply to the Secretary of State by 1 August before the academic year in question for a determination of the appropriate relevant area for the Academy, setting out the reasons for this view. The Secretary of State will consult the Academy Trust and the LA in whose area the Academy is situated in reaching a decision.
- 2.S The Office of the Schools Adjudicator ("OSA") will consider objections to the Academy's admission arrangements (except objections against any agreed derogations from the provisions of the Codes specified in this Agreement, over which it has no jurisdiction). The Academy Trust must therefore make it clear, when determining the Academy's admission arrangements, that objections should be submitted to the OSA. The OSA's determination of an

objection is binding on the Academy and the Academy Trust must make appropriate changes to its admission arrangements to give effect to the Adjudicator's decision within two months of the decision (or by 28 February following the decision, whichever is sooner), unless an alternative timescale is specified by the Adjudicator.

2.T Not used.

Curriculum

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

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

2.W Not used.

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

- a) provision must be made for religious education to be given to all pupils at the Academy in accordance with the requirements for agreed syllabuses in section 375(3) of the Education Act 1996 and paragraph 2(5) of Schedule 19 to the School Standards and Framework Act 1998;
- b) the Academy must comply with section 70(1) of, and Schedule 20 to, the School Standards and Framework Act 1998 as if it were a community school or foundation school without a religious character, except that paragraph 4 of that Schedule does not apply. The Academy may apply to the Secretary of State for consent to be relieved

of the requirement imposed by paragraph 3(2) of that Schedule.

2.Y Not used.

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

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

3. GRANT FUNDING

Calculation of GAG

3A-3C Not used.

3.D For any Academy Financial Year in which GAG for the Academy has been calculated in accordance with clauses 3.E and 3.E1, an adjustment may be made to the following Academy Financial Year's formula funding element of GAG for the Academy to recognise any variation from that estimate. The Secretary of State may for this purpose use the Census for the relevant month (determined at the Secretary of State's discretion) for the Academy Financial Year in question as a means of determining pupil numbers. The additional or clawed-back grant will be only the amount relevant to the number of pupils above or below that estimate.

3.E Subject to clause 3.F the basis of the pupil number count for the purposes of determining GAG for an Academy Financial Year will be the Academy Trust's most recent estimate provided in accordance with clause 3.E1

3.E1 The Secretary of State will, in advance of each Academy Financial Year for the Academy, request that the Academy Trust provides an estimate of the number of pupils on roll in the following September for the purposes of

determining GAG for an Academy Financial Year. The Academy Trust must provide the requested estimate to the Secretary of State as soon as reasonably practicable.

3.E2 In the Academy Financial Year 2022/23, the basis of the pupil number count for the purpose of determining GAG will no longer be the estimate provided in accordance with clause 3.E1, but in that and all following Academy Financial Years will be determined in accordance with clause 3.F.

3.F For Academy Financial Years after that referred to in clause 3.E2, the basis of the pupil count for determining GAG will be:

- a) for pupils in Year 11 and below, the Schools Census which is used to fund maintained schools for the financial year overlapping with the Academy Financial Year in question; and
- b) for pupils in Year 12 and above, the formula which is in use at the time for maintained schools.

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

3.H Not used.

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

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

3.I.1. Not used.

Other relevant funding

3.J Not used.

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

Carrying forward of funds

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

4. LAND

"Land" means the land at Timberlog Close, Timberlog Lane, Basildon Essex SS14 1UX, being the land registered with title number EX939783 and demised by the Lease.

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

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

Restrictions on Land transfer

4.A The Academy Trust must:

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

No disposition of the registered estate by the proprietor of the registered estate, or by the proprietor of any registered charge, not being a charge registered before the entry of this restriction, is to be registered without a written consent signed by the Secretary of State for Education, of Sanctuary Buildings, Great Smith Street, London SW1P 3BT;

- b) take any further steps reasonably required to ensure that the Restriction is entered on the proprietorship register;
- c) promptly confirm to the Secretary of State when the Restriction has been registered;
- d) if it has not registered the Restriction, permit the Secretary of State to do so in its place; and
- e) not, without the Secretary of State's consent, apply to disapply, modify, cancel or remove the Restriction, whether by itself, a holding company, a subsidiary company, or a receiver, administrator or liquidator acting in the name of the Academy Trust.

Obligations of the Academy Trust

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

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

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

- a) terminate, vary, surrender, renew, dispose of or agree any revised rent under the Lease;
- b) grant any consent or licence; or
- c) create or allow any encumbrance; or
- d) part with or share possession or occupation; or
- e) enter into any onerous or restrictive obligations,

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

Option

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

- a) if this Agreement is terminated for any reason;
- b) at any time on or after the issue of a Termination Notice; or
- c) if, under clause 4.K, the Academy Trust and the Secretary of State agree that part of the Land should be demised or subleased to another academy trust;
- d) if, under clause 4.M, the Academy Trust cannot use all or part of the Land as the permanent site of the Academy.

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

- a) 28 days after the exercise date where a Termination Notice has not been issued; or
- b) where a Termination Notice has been issued, the date specified in the Termination Notice as to when this Agreement shall terminate

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

Option notice

4.F The Academy Trust:

- a) must, within 14 days after acquiring the Land or, if later, after signing this Agreement, apply to the Land Registry on Form AN1 (including a copy of this Agreement) for a notice of the Option (the “**Option Notice**”) to be entered in the register, taking any further steps required to have the Option Notice registered and promptly confirming to the Secretary of State when this has been done;
- b) if it has not registered the Option Notice, agrees that the Secretary of State may apply to register it using Form UN1;
- c) must not, without the Secretary of State’s consent, apply to disapply, modify or remove the Option Notice, whether by itself, a holding company, a subsidiary company, or a receiver, administrator or liquidator acting in the name of the Academy Trust, and
- d) must, in the case of previously unregistered land, within 14 days after acquiring the Land or, if later, after signing this Agreement, apply to register a Class C(iv) land charge in the Land Charges Registry, and send the Secretary of State a copy of the relevant entry within 7 days after the registration has been completed. If the Secretary of State considers that the Academy Trust has not complied with this clause, he may apply to secure the registration.

Property notices

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

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

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

Breach of Lease

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

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

- a) promptly give the Secretary of State all the information he asks for about the breach;
- b) allow the Secretary of State to take all necessary action, with or instead of the Academy Trust, to remedy or prevent the breach, and
- c) use its best endeavours to help the Secretary of State to remedy or prevent the breach.

Sharing the Land

4.J Where:

- a) the Secretary of State identifies basic or parental need for additional places in the area in which the Academy is situated; and
- b) the Secretary of State then considers that not all the Land is needed for the operation of the Academy at planned capacity,

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

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

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

- a) a **basic need** will arise when the forecast demand for pupil places in the area where the Academy is situated is greater than the existing capacity to provide them;
- b) a **parental need** will arise when the Department for Education is actually aware of an additional demand for pupil places in the area where the Academy is situated, following representations from parents in that area; and
- c) **planned capacity** has the meaning given in clause 2.B.

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

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

5. TERMINATION

Termination by either party

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

Termination Warning Notice

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

- a) the Academy Trust has breached the provisions of this Agreement or the Master Agreement; or
- b) the standards of performance of pupils at the Academy are unacceptably low; or
- c) there has been a serious breakdown in the way the Academy is managed or governed; or
- d) the safety of pupils or staff is threatened, including due to breakdown of discipline; or
- e) the Academy is Coasting provided he has notified the Academy Trust that it is Coasting.

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

- a) the action the Academy Trust must take;
- b) the date by which the action must be completed; and
- c) the date by which the Academy Trust must make any representations, or confirm that it agrees to undertake the specified action.

5.D The Secretary of State will consider any representations from the Academy Trust which he receives by the date specified in the Termination Warning

Notice. The Secretary of State may amend the Termination Warning Notice to specify further action which the Academy Trust must take, and the date by which it must be completed.

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

Termination by the Secretary of State after inspection

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

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

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

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

5.G.1 Not used.

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

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

he may serve a Termination Notice.

5.I Not used.

Termination by the Secretary of State

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

5.K Not used.

5.L 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 on 31 August before the Critical Year.

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

- a) the grounds upon which the Academy Trust's opinion is based, including:
 - i. evidence of those grounds;
 - ii. any professional accounting advice the Academy Trust has received;
 - iii. a detailed statement of steps which the Academy Trust proposes to take to ensure that the running costs of the Academy are reduced such that costs are less than the Funding Allocation and All Other Resources, and the period of time within which such steps will be taken; and
- b) the shortfall in the Critical Year between the Funding Allocation and All Other Resources expected to be available to the Academy Trust to run the Academy and the projected expenditure on the Academy; and
- c) a detailed budget of income and expenditure for the Academy during the Critical Year (the "**Projected Budget**").

- 5.U Both parties will use their best endeavours to agree whether or not the cost of running the Academy during the Critical Year would cause the Academy Trust to become insolvent. Both parties recognise that they will need to engage in a constructive dialogue at the time about how best to provide education for the pupils at the Academy and use their best endeavours to agree a practical solution to the problem.
- 5.V If no agreement is reached by 30 April (or another date if agreed between the parties) as to whether the cost of running the Academy during the Critical Year would cause the Academy Trust to become insolvent, then that question will be referred to an independent expert (the “Expert”) for resolution. The Expert’s determination will be final and binding on both parties. The Expert will be requested to specify in his determination the amount of the shortfall in funding (the “Shortfall”).
- 5.W The Expert will be an insolvency practitioner with significant professional experience of educational institutions or academies. If the parties fail to agree upon the appointment of the Expert then the Expert will be appointed by the President of the Institute of Chartered Accountants in England and Wales. The Expert’s fees will be borne equally between the parties.
- 5.X The Expert will be required in reaching his determination to take account of advice from an educational specialist who is professionally familiar with the issues arising from the budget management of schools. If the parties fail to agree upon the appointment of the educational specialist then the educational specialist will be appointed by the Chairman of the Specialist Schools and Academies Trust (or any successor or equivalent body). The educational specialist’s fees will be borne equally between the parties.
- 5.Y If the Expert determines that the cost of running the Academy during the Critical Year would cause the Academy Trust to become insolvent, and the Secretary of State will not have agreed to provide sufficient additional funding to cover the Shortfall, then the Academy Trust will be entitled to terminate this Agreement, by notice expiring on 31 August before the Critical Year. Any such notice will be given within 21 days after (a) the Expert’s determination

will have been given to the parties or (b), if later, the Secretary of State will have given written notice of his refusal to provide sufficient additional funding for the Academy to cover the Shortfall.

Effect of termination

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

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

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

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

- a) staff compensation and redundancy payments;
- b) compensation payments in respect of broken contracts;
- c) expenses of disposing of assets or adapting them for other purposes;
- d) legal and other professional fees; and
- e) dissolution expenses.

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

- a) transfer a proportion of those capital assets, equal to the proportion of the original financial contribution made by HM Government, to a

nominee of the Secretary of State to use for educational purposes; or

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

5.EE The Secretary of State may:

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

6. OTHER CONTRACTUAL ARRANGEMENTS

Annexes

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

The Master Agreement

6.B Except as expressly provided in this Agreement, all provisions of the Master Agreement have full force and effect.

General

6.C The Academy Trust cannot assign this Agreement.

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

- 6.E Termination of this Agreement will not affect the accrued rights, remedies, obligations or liabilities of the parties existing at termination.
- 6.F This Agreement may be executed in any number of counterparts, each of which when executed and delivered shall constitute a duplicate original, but all of which will together constitute the same agreement.
- 6.G This Agreement and any dispute or claim arising out of or in connection with it or its subject matter or formation (including non-contractual disputes or claims) shall be governed by and construed in accordance with the law of England and Wales, and submitted to the exclusive jurisdiction of the courts of England and Wales.
- 6.H Not used.

Information Sharing with Local Authorities – Statutory Responsibilities

- 6.I The Academy Trust must provide:
- a) the name, address and date of birth of the pupil or student;
 - b) the name and address of a parent of the pupil or student;
 - c) information in the institution's possession about the pupil or student (except if the pupil or student concerned (in the case of a pupil or student who has attained the age of 16) or a parent of the pupil or student concerned (in the case of a pupil or student who has not attained the age of 16) has instructed the Academy Trust not to provide information of that kind);
- upon request under section 14 of the Education and Skills Act 2008 from a local authority (for the purpose of enabling or assisting it to exercise its functions under Part 1 of that Act); or
- upon request under section 72 of that Act from a body providing services under sections 68 or 70(1)(b) of the Act (for the purposes of providing such services).

ANNEXES

Annex A

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

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

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



Department
for Education

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Schedule 6

Amended The Basildon Upper Academy SFA



Department
for Education

Mainstream academy and free school: supplemental funding agreement

December 2020 v7

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SUMMARY SHEET

Information about the Academy:

Name of Academy Trust	The Basildon Academies
Company number	06308595
Date of Master Funding Agreement	3 June 2008 which has been varied and restated by the Deed of Variation dated
Name of Academy	The Basildon Upper Academy
Opening date	1 September 2009
Type of academy (indicate whether academy or free school)	Mainstream Academy
Religious designation	N/A
Wholly or partly selective	N/A
Name of predecessor school (where applicable)	Chalvedon Academy
Capacity number (of statutory school age places)	1400
Age range (including nursery provision where the nursery is part of the school)	14 - 19
Number of sixth form places	500
Number of boarding places	N/A
SEN unit / Resource provision	N/A
Land arrangements (Version 1-8 or other)	Version 2
Academy and title number of Land	Permanent Site: Wickford Avenue, Pitsea, Basildon, Essex, SS13 3HL registered at Land Registry with title number EX939782 and demised by the Lease

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

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

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

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

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

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

Descriptor	Clause No.	Applied	Not used
The Academy is already open	1.H		

1. **ESTABLISHING THE ACADEMY**

1.A This Agreement made between the Secretary of State for Education and The Basildon Academies is supplemental to the master funding agreement made between the same parties and dated 3 June 2008 which has been varied and restated by the Deed of Variation dated (the "**Master Agreement**").

Definitions and interpretation

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

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

"**The Academy**" means The Basildon Upper Academy.

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

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

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

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

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

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

Parliament.

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

The Academy

- 1.F The Academy is a Mainstream Academy as defined in clause 1.4 of the Master Agreement.
- 1.G The Academy Trust will establish and maintain the Academy in accordance with the Master Agreement and this Agreement.
- 1.H The Academy Trust opened the Academy on 1 September 2009.
- 1.I Not used.

2. RUNNING OF THE ACADEMY

Teachers and staff

- 2.A Subject to clause 2.A.2 and Annex A of this Agreement and section 67 of the Children and Families Act 2014, the Academy Trust may, in accordance with any relevant Guidance, employ anyone it believes is suitably qualified or is otherwise eligible to plan and prepare lessons and courses for pupils, teach pupils, and assess and report on pupils' development, progress and attainment.
- 2.A.1 Not used.
- 2.A.2 The Academy Trust must designate a staff member at the Academy as responsible for promoting the educational achievement of registered pupils at the Academy who are being looked after by a la, or are no longer looked after by a la because of an adoption, special guardianship or child arrangements order, or because they have been adopted from 'state care' outside England and Wales, and in doing so must comply with the law, regulations and Guidance that apply to maintained schools. The Academy Trust must ensure the designated person undertakes appropriate training and has regard to any

Guidance.

Pupils

2.B The planned capacity of the Academy is 1400 and the age range is 14 – 19 including a sixth form of 500 places. For the avoidance of doubt, notwithstanding that an individual applicant's age might be outside the specified age range of the Academy, the Academy is not prevented from considering an application made by the child's Parent(s) in order to comply with the relevant paragraph of the Schools Admissions Code ('Admission of children outside their normal age group'), to request that the child be admitted to the school outside of the child's normal age group. Where such a request is agreed, the child should be educated in an existing year group. The Academy will be an all ability inclusive single/mixed sex school.

SEN Unit or Resourced Provision

2.C Not used.

2.D Not used.

Charging

2.E Not Used.

2.E.1 Not used.

Admissions

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

2.G Pupils on roll in a Predecessor School which was a maintained or

independent school will transfer automatically to the Academy on opening. All children already offered a place at that Predecessor School must be admitted to the Academy.

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

2.I Not used.

2.J Not used.

2.K Not used.

2.L The Secretary of State may:

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

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

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

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

2.M Not used.

2.N Not used.

2.O Not used.

- 2.P** The Academy Trust must make arrangements to ensure an independent appeals panel is established for the Academy and its clerk and members are trained to act in accordance with the Codes. The Academy Trust must ensure that parents and 'relevant children' (as described in the Codes) are informed of their right to appeal to an Independent Appeal Panel if they are dissatisfied with an admission decision of the Academy Trust. The arrangements for appeals must comply with the Codes as they apply to foundation and voluntary aided schools. The determination of the Independent Appeal Panel is binding on all parties.
- 2.P.1** The Academy Trust will treat any decision of an Independent Appeal Panel constituted further to arrangements made by the admission authority of a Predecessor School under section 94 of the School Standards and Framework Act 1998 as binding on the Academy Trust, as though the Academy Trust had made the decision subject to the appeal.
- 2.Q** Subject to clause 2.R, the meaning of "**relevant area**" for the purposes of consultation requirements in relation to admission arrangements is that determined by the relevant LA for maintained schools in the area in accordance with the Education (Relevant Areas for Consultation on Admission Arrangements) Regulations 1999.
- 2.R** If the Academy does not consider the relevant area determined by the LA for the maintained schools in the area to be appropriate, it must apply to the Secretary of State by 1 August before the academic year in question for a determination of the appropriate relevant area for the Academy, setting out the reasons for this view. The Secretary of State will consult the Academy Trust and the LA in whose area the Academy is situated in reaching a decision.
- 2.S** The Office of the Schools Adjudicator ("OSA") will consider objections to the Academy's admission arrangements (except objections against any agreed derogations from the provisions of the Codes specified in this Agreement, over which it has no jurisdiction). The Academy Trust must therefore make it clear, when determining the Academy's admission arrangements, that

objections should be submitted to the OSA. The OSA's determination of an objection is binding on the Academy and the Academy Trust must make appropriate changes to its admission arrangements to give effect to the Adjudicator's decision within two months of the decision (or by 28 February following the decision, whichever is sooner), unless an alternative timescale is specified by the Adjudicator.

2.T Not used.

Curriculum

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

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

2.W Not used.

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

- a) provision must be made for religious education to be given to all pupils at the Academy in accordance with the requirements for agreed syllabuses in section 375(3) of the Education Act 1996 and paragraph 2(5) of Schedule 19 to the School Standards and Framework Act 1998;
- b) the Academy must comply with section 70(1) of, and Schedule 20 to, the School Standards and Framework Act 1998 as if it were a community school or foundation school without a religious character, except that paragraph 4 of that Schedule does not apply. The

Academy may apply to the Secretary of State for consent to be relieved of the requirement imposed by paragraph 3(2) of that Schedule.

2.Y Not used.

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

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

3. GRANT FUNDING

Calculation of GAG

3A-3C Not used.

3D For any Academy Financial Year in which GAG for the Academy has been calculated in accordance with clauses 3.E and 3.E1, an adjustment may be made to the following Academy Financial Year's formula funding element of GAG for the Academy to recognise any variation from that estimate. The Secretary of State may for this purpose use the Census for the relevant month (determined at the Secretary of State's discretion) for the Academy Financial Year in question as a means of determining pupil numbers. The additional or clawed-back grant will be only the amount relevant to the number of pupils above or below that estimate.

3.E Subject to clause 3.F the basis of the pupil number count for the purposes of determining GAG for an Academy Financial Year will be the Academy Trust's most recent estimate provided in accordance with clause 3.E1

3.E1 The Secretary of State will, in advance of each Academy Financial Year for the Academy, request that the Academy Trust provides an estimate of the

number of pupils on roll in the following September for the purposes of determining GAG for an Academy Financial Year. The Academy Trust must provide the requested estimate to the Secretary of State as soon as reasonably practicable.

- 3.E2 In the Academy Financial Year 2022/23, the basis of the pupil number count for the purpose of determining GAG will no longer be the estimate provided in accordance with clause 3.E1, but in that and all following Academy Financial Years will be determined in accordance with clause 3.F.
- 3.F For Academy Financial Years after that referred to in clause 3.E.2, the basis of the pupil count for determining GAG will be:
- a) for pupils in Year 11 and below, the Schools Census which is used to fund maintained schools for the financial year overlapping with the Academy Financial Year in question; and
 - b) for pupils in Year 12 and above, the formula which is in use at the time for maintained schools.
- 3.G The Secretary of State may, at his discretion, adjust the basis of the pupil count to take account of any diseconomies of scale which may affect the Academy if it is operating below the planned capacity in clause 2.B. If such an adjustment is made in any Academy Financial Year, this will not change the basis of the pupil count for calculating the following Academy Financial Year's GAG. If the Secretary of State has indicated that additional grant may be payable in such circumstances, the Academy Trust will bid for this additional grant based on need and providing appropriate supporting evidence. The Secretary of State may accept or refuse the bid at his discretion.
- 3.H Not used.
- 3.I The Secretary of State recognises that if a Termination Notice or a Termination Warning Notice is served, or the Master Agreement is otherwise terminated, the intake of new pupils during the notice period may decline and therefore payments based on the number of pupils attending the Academy

may be insufficient to meet the Academy's needs. In these circumstances the Secretary of State may pay a larger GAG in the notice period, to enable the Academy to operate effectively.

3.I.1. Not used.

Other relevant funding

3.J Not used.

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

Carrying forward of funds

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

4. LAND

"Land" means the land at Wickford Avenue, Pitsea, Basildon, Essex SS13 3HL, being the land registered with title number EX939782 and demised by the Lease.

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

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

Restrictions on Land transfer

4.A The Academy Trust must:

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

No disposition of the registered estate by the proprietor of the registered estate, or by the proprietor of any registered charge, not being a charge registered before the entry of this restriction, is to be registered without a written consent signed by the Secretary of State for Education, of Sanctuary Buildings, Great Smith Street, London SW1P 3BT;

- b) take any further steps reasonably required to ensure that the Restriction is entered on the proprietorship register;
- c) promptly confirm to the Secretary of State when the Restriction has been registered;
- d) if it has not registered the Restriction, permit the Secretary of State to do so in its place; and
- e) not, without the Secretary of State’s consent, apply to disapply, modify, cancel or remove the Restriction, whether by itself, a holding company, a subsidiary company, or a receiver, administrator or liquidator acting in the name of the Academy Trust.

Obligations of the Academy Trust

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

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

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

- a) terminate, vary, surrender, renew, dispose of or agree any revised rent under the Lease;
- b) grant any consent or licence; or
- c) create or allow any encumbrance; or
- d) part with or share possession or occupation; or
- e) enter into any onerous or restrictive obligations,

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

Option

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

- a) if this Agreement is terminated for any reason;
- b) at any time on or after the issue of a Termination Notice; or
- c) if, under clause 4.K, the Academy Trust and the Secretary of State agree that part of the Land should be demised or subleased to another academy trust;
- d) if, under clause 4.M, the Academy Trust cannot use all or part of the Land as the permanent site of the Academy.

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

- a) 28 days after the exercise date where a Termination Notice has not been issued; or
- b) where a Termination Notice has been issued, the date specified in the Termination Notice as to when this Agreement shall terminate

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

Option notice

4.F The Academy Trust:

- a) must, within 14 days after acquiring the Land or, if later, after signing this Agreement, apply to the Land Registry on Form AN1 (including a copy of this Agreement) for a notice of the Option (the “**Option Notice**”) to be entered in the register, taking any further steps required to have the Option Notice registered and promptly confirming to the Secretary of State when this has been done;
- b) if it has not registered the Option Notice, agrees that the Secretary of State may apply to register it using Form UN1;
- c) must not, without the Secretary of State’s consent, apply to disapply, modify or remove the Option Notice, whether by itself, a holding company, a subsidiary company, or a receiver, administrator or liquidator acting in the name of the Academy Trust, and
- d) must, in the case of previously unregistered land, within 14 days after acquiring the Land or, if later, after signing this Agreement, apply to register a Class C(iv) land charge in the Land Charges Registry, and send the Secretary of State a copy of the relevant entry within 7 days after the registration has been completed. If the Secretary of State considers that the Academy Trust has not complied with this clause, he may apply to secure the registration.

Property notices

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

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

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

Breach of Lease

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

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

- a) promptly give the Secretary of State all the information he asks for about the breach;
- b) allow the Secretary of State to take all necessary action, with or instead of the Academy Trust, to remedy or prevent the breach, and
- c) use its best endeavours to help the Secretary of State to remedy or prevent the breach.

Sharing the Land

4.J Where:

- a) the Secretary of State identifies basic or parental need for additional places in the area in which the Academy is situated; and
- b) the Secretary of State then considers that not all the Land is needed for the operation of the Academy at planned capacity,

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

- 4.G To the extent the Academy Trust and the Secretary of State agree to part of the Land being demised or sublet in accordance with clause 4.J, the Academy Trust must use its best endeavours to procure either the approval of the Landlord or any necessary amendments to the Lease in order to enable it to share occupation of the Land with the incoming academy trust and to provide the incoming academy trust with security of occupancy over the Land occupied by it, and shall enter into any legal arrangements which the Secretary of State requires for this purpose. The Secretary of State shall meet the necessary and reasonable legal costs incurred by the Academy Trust in connection with entering into any such arrangements under this clause.
- 4.H For the purposes of clause 4.J:
- a) a **basic need** will arise when the forecast demand for pupil places in the area where the Academy is situated is greater than the existing capacity to provide them;
 - b) a **parental need** will arise when the Department for Education is actually aware of an additional demand for pupil places in the area where the Academy is situated, following representations from parents in that area; and
 - c) **planned capacity** has the meaning given in clause 2.B.
- 4.I If the Academy Trust cannot use all or part of the Land as the permanent site of the Academy but the Secretary of State agrees not to terminate this Agreement on that basis, the Secretary of State may notify the Academy Trust that he intends to exercise the Option to transfer the Land for nil consideration to himself or his nominee.
- 4.J On or following the issue of a Termination Notice, the Secretary of State may give notice that he intends to exercise his rights under clause 4.E. Any such notice is without prejudice to his right to exercise any other rights available to him.

5. TERMINATION

Termination by either party

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

Termination Warning Notice

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

- a) the Academy Trust has breached the provisions of this Agreement or the Master Agreement; or
- b) the standards of performance of pupils at the Academy are unacceptably low; or
- c) there has been a serious breakdown in the way the Academy is managed or governed; or
- d) the safety of pupils or staff is threatened, including due to breakdown of discipline; or
- e) the Academy is Coasting provided he has notified the Academy Trust that it is Coasting.

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

- a) the action the Academy Trust must take;
- b) the date by which the action must be completed; and
- c) the date by which the Academy Trust must make any representations, or confirm that it agrees to undertake the specified action.

5.D The Secretary of State will consider any representations from the Academy Trust which he receives by the date specified in the Termination Warning

Notice. The Secretary of State may amend the Termination Warning Notice to specify further action which the Academy Trust must take, and the date by which it must be completed.

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

Termination by the Secretary of State after inspection

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

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

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

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

5.G.1 Not used.

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

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

he may serve a Termination Notice.

5.I Not used.

Termination by the Secretary of State

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

5.K Not used.

5.L 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 on 31 August before the Critical Year.

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

- a) the grounds upon which the Academy Trust's opinion is based, including:
 - i. evidence of those grounds;
 - ii. any professional accounting advice the Academy Trust has received;
 - iii. a detailed statement of steps which the Academy Trust proposes to take to ensure that the running costs of the Academy are reduced such that costs are less than the Funding Allocation and All Other Resources, and the period of time within which such steps will be taken; and
- b) the shortfall in the Critical Year between the Funding Allocation and All Other Resources expected to be available to the Academy Trust to run the Academy and the projected expenditure on the Academy; and
- c) a detailed budget of income and expenditure for the Academy during the Critical Year (the "**Projected Budget**").

- 5.U Both parties will use their best endeavours to agree whether or not the cost of running the Academy during the Critical Year would cause the Academy Trust to become insolvent. Both parties recognise that they will need to engage in a constructive dialogue at the time about how best to provide education for the pupils at the Academy and use their best endeavours to agree a practical solution to the problem.
- 5.V If no agreement is reached by 30 April (or another date if agreed between the parties) as to whether the cost of running the Academy during the Critical Year would cause the Academy Trust to become insolvent, then that question will be referred to an independent expert (the “**Expert**”) for resolution. The Expert’s determination will be final and binding on both parties. The Expert will be requested to specify in his determination the amount of the shortfall in funding (the “**Shortfall**”).
- 5.W The Expert will be an insolvency practitioner with significant professional experience of educational institutions or academies. If the parties fail to agree upon the appointment of the Expert then the Expert will be appointed by the President of the Institute of Chartered Accountants in England and Wales. The Expert’s fees will be borne equally between the parties.
- 5.X The Expert will be required in reaching his determination to take account of advice from an educational specialist who is professionally familiar with the issues arising from the budget management of schools. If the parties fail to agree upon the appointment of the educational specialist then the educational specialist will be appointed by the Chairman of the Specialist Schools and Academies Trust (or any successor or equivalent body). The educational specialist’s fees will be borne equally between the parties.
- 5.Y If the Expert determines that the cost of running the Academy during the Critical Year would cause the Academy Trust to become insolvent, and the Secretary of State will not have agreed to provide sufficient additional funding to cover the Shortfall, then the Academy Trust will be entitled to terminate this Agreement, by notice expiring on 31 August before the Critical Year. Any such notice will be given within 21 days after (a) the Expert’s determination

will have been given to the parties or (b), if later, the Secretary of State will have given written notice of his refusal to provide sufficient additional funding for the Academy to cover the Shortfall.

Effect of termination

- 5.Z If this Agreement is terminated, the Academy will cease to be an Academy within the meaning of sections 1 and 1A of the Academies Act 2010.
- 5.AA Subject to clauses 5.BB and 5.CC, if the Secretary of State terminates this Agreement under clause 5.A, he will indemnify the Academy Trust. If the Secretary of State terminates this Agreement otherwise than under clause 5.A, he may at his discretion indemnify or compensate the Academy Trust.
- 5.BB The amount of any such indemnity or compensation will be determined by the Secretary of State, having regard to representations made to him by the Academy Trust, and will be paid as and when the Secretary of State considers appropriate.
- 5.CC The categories of expenditure incurred by the Academy Trust in consequence of termination, for which the Secretary of State may indemnify the Academy Trust under clauses 5.AA, may include:
- a) staff compensation and redundancy payments;
 - b) compensation payments in respect of broken contracts;
 - c) expenses of disposing of assets or adapting them for other purposes;
 - d) legal and other professional fees; and
 - e) dissolution expenses.
- 5.DD If this Agreement is terminated, and the Academy Trust owns capital assets which have been partly or wholly funded by HM Government, the Academy Trust must, as soon as possible after the termination date:
- a) transfer a proportion of those capital assets, equal to the proportion of the original financial contribution made by HM Government, to a

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

5.EE The Secretary of State may:

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

6. OTHER CONTRACTUAL ARRANGEMENTS

Annexes

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

The Master Agreement

6.B Except as expressly provided in this Agreement, all provisions of the Master Agreement have full force and effect.

General

6.C The Academy Trust cannot assign this Agreement.

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

- 6.E Termination of this Agreement will not affect the accrued rights, remedies, obligations or liabilities of the parties existing at termination.
- 6.F This Agreement may be executed in any number of counterparts, each of which when executed and delivered shall constitute a duplicate original, but all of which will together constitute the same agreement.
- 6.G This Agreement and any dispute or claim arising out of or in connection with it or its subject matter or formation (including non-contractual disputes or claims) shall be governed by and construed in accordance with the law of England and Wales, and submitted to the exclusive jurisdiction of the courts of England and Wales.
- 6.H Not used.

Information Sharing with Local Authorities – Statutory Responsibilities

- 6.I The Academy Trust must provide:
- a) the name, address and date of birth of the pupil or student;
 - b) the name and address of a parent of the pupil or student;
 - c) information in the institution's possession about the pupil or student (except if the pupil or student concerned (in the case of a pupil or student who has attained the age of 16) or a parent of the pupil or student concerned (in the case of a pupil or student who has not attained the age of 16) has instructed the Academy Trust not to provide information of that kind);

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

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

ANNEXES

Annex A

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

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

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



Department
for Education

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