

BIRMINGHAM ORMISTON ACADEMY

DEED OF VARIATION OF FUNDING AGREEMENT

14 May 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) **Birmingham Ormiston Academy**, a charitable company incorporated in England and Wales with registered company number 06832416, whose registered office is at 1 Grosvenor Street, Birmingham, B4 7QD (the **"Academy Trust "**)

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

INTRODUCTION

- A. The Parties entered into a Funding Agreement for the purposes of a single academy on 2 March 2010, a copy of which is contained in Schedule A (the **"Existing FA"**).
- B. The Academy Trust now intends to run more than one academy.
- C. The Parties therefore have agreed to amend and restate the terms of the Existing FA, in accordance with the terms of this Deed, to form a multi academy trust.

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 Master Funding Agreement (as defined in clause 2 below).
2. The Secretary of State and the Academy Trust agree that with effect from the date of this Deed, the Existing FA shall be amended and restated in the form of a new agreement which shall consist of the terms of the Master Funding Agreement contained in Schedule B (the **"Master Funding Agreement"**) and separating other provisions into a corresponding Supplemental Funding Agreement contained in Schedule C (the **"Supplemental Funding Agreement"**)..

GOVERNING LAW AND JURISDICTION

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

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

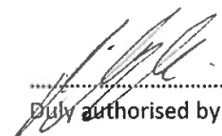
COUNTERPARTS

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

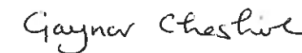
IN WITNESS whereof this Deed has been executed by the parties hereto and is intended to be and is hereby delivered on the last date listed below.

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



 MR. PETER JUDGE
Duly authorised by the Secretary of State for Education
Date 14th MAY 2021

EXECUTED as a deed by Birmingham
Ormiston Academy acting by:


Director

Print name GAYNOR CHESHIRE
Date


Director/Secretary

Print name PHILIP THICKETT
Date

SCHEDULE A
BIRMINGHAM ORMISTON ACADEMY
EXISTING FUNDING AGREEMENT

FREEDOM OF INFORMATION REDACTION SHEET

[BIRMINGHAM ORMISTON ACADEMY]

[BIRMINGHAM ORMISTON ACADEMY FUNDING AGREEMENT]

Exemptions in full

Partial exemptions

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

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

Factors for disclosure

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

Factors for Withholding

- To comply with obligations under the Data Protection Act

Reasons why public interest favours withholding information

Whilst releasing the majority of **BIRMINGHAM ORMISTON ACADEMY FUNDING AGREEMENT** will further the public understanding of Academies, the whole of the **FUNDING AGREEMENT** cannot be revealed. If the personal information redacted was to be revealed under the FOI Act, Personal Data and Commercial interests would be prejudiced.

BIRMINGHAM ORMISTON

ACADEMY

FUNDING AGREEMENT

2nd MARCH 2010

BIRMINGHAM ORMISTON

ACADEMY

FUNDING AGREEMENT

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INTRODUCTION

- 1) This 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 Birmingham Ormiston Academy (the "Academy")

Trust").

2) The Academy Trust is a Company incorporated in England and Wales, limited by guarantee with registered company number 6832416. The Academy Trust shall be registered as a charity by no later than 6 months after the date of this Agreement.

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

- a) "Academies Financial Handbook" - clause 94;
- b) "Academy Financial Year" - clause 88;
- c) "Accounting Officer" - clause 93;
- d) "annual letter of funding" - clause 87;
- e) "Chief Inspector" means Her Majesty's Chief Inspector of Education, Children's Services and Skills or his successor;
- f) "GAG"-clause 61;
- g) "Capital Expenditure" - clause 62;
- h) "Capital Grant" - clause 62;
- i) "EAG"-clause 61;
- j) "Minimum Period" means a period determined according to the following table:

If at the time the Special Measures The Minimum Period will be Notice is given the Academy shall have been opened for:

Less than 12 months	36 months
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- 5-

Less than 24 months but 12 months	24 months or more
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24 months or more	12 months
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- k) "recurrent expenditure" - clause 61; l) "School Development Plan" - clause 19;

m) "Start-up Period" - clause 77;

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

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

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

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

Agreement, occurs;

"Principal" means the head teacher of the Academy;

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

"Memorandum" and "Articles" means the Memorandum and Articles of Association of the Academy Trust for the time being in force, a copy of the current version of which

is annexed to this Agreement as Annex A;

"parents" means parents or guardians;

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

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

"SEN" means Special Educational Needs;

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

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

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

10) Section 482 (1) of the Education Act 1996 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) In consideration of the Academy Trust undertaking to establish and maintain, and to carry on or provide for the carrying on of, an independent school to be known as the Birmingham Ormiston Academy ("the Academy") and having such characteristics as are referred to in clause 12, the Secretary of State agrees to make payments to the Academy Trust in accordance with the conditions and requirements set out in this Agreement. For the avoidance of doubt, any obligations imposed upon or powers given to the Academy by this Agreement are also imposed upon the Academy Trust.

CHARACTERISTICS OF THE ACADEMY

12) The characteristics of the Academy set down in section 482 (2) of the Education Act 1996, 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.

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CONDITIONS OF GRANT

General

13) Section 482(4) of the Education Act 1996 provides for the agreement to specify other conditions and requirements. These conditions in respect of the 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 in accordance with admissions law, and the DCSF Codes of Practice, as they apply to maintained schools except that 100% of the Academy's pupils will be selected by aptitude for the prescribed subjects of visual and performing arts;
- d) teachers will be required to have qualified teacher status; levels of pay and conditions of service for all employees will be the responsibility of the Academy Trust;
- e) there will be an emphasis on the needs of the individual pupils including pupils with special education needs (SEN), both those with and without statements of SEN;
- f) there will be no charge in respect of admission to the school and the school will only charge pupils where the law allows maintained schools to charge.

Governance

- 14) The Academy will be governed by a governing body ("the Governing Body") who are the Directors of the company constituted under the Memorandum and Articles of the Academy Trust.
- 15) The Governing Body shall have regard to (but for the avoidance of doubt shall not be bound by) any guidance as to the governance of academies that the Secretary of State may publish.

Conduct

16) The Academy shall be conducted in accordance with:

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

Pupil well-being; Community Cohesion; and the Children & Young People Plan

17) In conducting the Academy and in providing community facilities the Academy Trust shall, so far as is

reasonably practicable -

- a) promote the well-being of pupils at the Academy;
- b) promote community cohesion; and
- c) have regard to any plan published by the 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 L_A setting out their strategy in relation to children and relevant young people.

Designated Teacher for Children in Care

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

School Development Plan and target setting

- 19) The Academy Trust shall provide to the Secretary of State a School Development Plan for the Academy each Academy Financial Year in accordance with a format and timetable to be advised by the Secretary of State. The School Development Plan shall, in particular:
- a) in accordance with a format and timetable to be advised by the Secretary of State, set out plans for ensuring that all pupils are supported to reach the highest standards of which they are capable; and
 - b) describe the Academy Trust's proposals for the Academy to work with other schools and with the wider community.
- 20) The Academy Trust shall in relation to the Academy set targets each Academy Financial Year in areas which are prescribed for maintained schools in regulations made by the Secretary of State under section 19 of the Education Act 1997 (or any statutory amendment or re-enactment of that section) or such variation of those targets as may be agreed between the Academy Trust and the Secretary of State. For the avoidance of doubt such targets shall solely be in the minimum areas required to enable the Secretary of State to monitor performance, and it shall remain open to the Academy Trust to set targets for the Academy in areas that are additional to those that are so prescribed.
- 21) The Academy Trust shall consult the Secretary of State before setting these targets in respect of the Academy and shall take into account (but not be bound by) any comments received from the Secretary of State. The Academy Trust shall set its targets for the Academy in accordance with the timetable for target setting which applies to maintained schools.

Pupils

- 22) The Academy will be an all ability and inclusive school. The arrangements for:
- a) the admission of pupils to the 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 B to this Agreement;
 - b) the admission to the Academy of and support for pupils with SEN and with disabilities (for pupils who have and who do not have statements of SEN) (including the appointment of a responsible person) together with the arrangements for making changes to such arrangements, including the requirement to secure the consent of

the Secretary of State, such consent not to be unreasonably withheld or delayed, are set out in Annex C to this Agreement;

- c) pupil exclusions are set out in Annex D to this Agreement.

Teachers and other staff

23) Subject to clause 24, the Academy Trust shall not employ anyone under a contract of employment or for services to carry out planning and preparing lessons and courses for pupils, delivering lessons to pupils, assessing the development, progress and attainment of pupils, and reporting on the development, progress and attainment of pupils ("specified work") who is not either: -

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

24) Clause 23 and the requirement in clause 13(d) for teachers to have qualified teacher status do not apply to anyone who:

- a) was transferred to the employment of the Academy Trust by virtue of the Transfer of Undertakings (Protection of Employment) Regulations 2006;
- b) immediately prior to the transfer, was employed to do specified work; and
- c) immediately prior to the transfer, was not:
 - i) a qualified teacher within the meaning of regulations made under section 132 of the Education Act 2002 and registered with full registration with the General Teaching Council for England, or
 - ii) eligible to do specified work under the Education (Specified Work and Registration) (England) Regulations 2003 (SI 2003/1663)

("transferred staff member"). The Academy Trust shall use its best endeavours to ensure that any transferred staff member who undertakes specified work and does not meet the

requirements of either clause 23(a) or clause 23(b) meets such requirements as soon as possible.

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

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

27) Reasonable notice shall be given to the Secretary of State of any meeting of the Governing Body or any committee or sub-committee thereof (including any interview or appointments panel), at which the appointment of a Principal is being considered and a representative of the Secretary of State shall be entitled to attend and speak at any such meeting whether or not they are also entitled to attend such meeting by virtue of clause 135 of this Agreement. Advice given by any such representative shall be taken into account by (but, for the avoidance of doubt, is not binding on) those persons considering the appointment of the Principal before a decision is made.

28) It shall be the responsibility of the Academy Trust 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 Academy Trust shall approve policies for:

- a) staffing structure, and staff remuneration
- b) staff discipline and performance management.

14-19 entitlement

29) The Academy Trust shall make arrangements to ensure that, so far as reasonably practicable, a pupil at the Academy in the fourth key stage has the same curriculum entitlements as are conferred on such a pupil at a maintained school by section 85(1) of the Education Act 2002.

30) The Academy Trust 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 the Academy or otherwise) to any pupil at the Academy who is above compulsory school age.

31) Nothing in clauses 29 and 30-

- (a) requires the Academy Trust 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.

32) In making arrangements under clauses 29-30 the Academy Trust shall have regard to any guidance issued from time to time by the Secretary of State or the Qualifications and Curriculum Development Agency (QCDA).

33) For the purpose of clauses 29-30, "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

34) The curriculum provided by the Academy to pupils up to the age of 16 shall be broad and balanced with an emphasis digital media and creative and performing arts.

35) The Academy Trust shall ensure that the National Curriculum programmes of study for English, Mathematics and Science for the time being prescribed by the Secretary of State under section 87 of the Education Act 2002 are taught so far as appropriate to any pupils admitted to the Academy in Years 1-11. In any event, the Academy Trust must ensure that such programmes of study have been covered in full at the Academy by the end of the final year of the Key Stage relevant for each Year group.

36) The Academy Trust shall ensure that if the Academy admits pupils in Years 1-6, the curriculum for these Years is sufficiently broad and has such depth as to enable such pupils to be adequately prepared for study at Key Stage 3 whether at the Academy or any other mainstream educational institution, including those institutions not sharing the Academy's specialism.

37) Despite clauses 35-36, the Academy Trust is not required to teach an individual pupil or group of pupils in one or more subjects where, in the opinion of the Principal, it is inappropriate to do so by reason of the pupil's or group's ability or attainment.

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

39) Where the Academy is designated with a religious character in accordance with section 124B of the School Standards and Framework Act 1998:

- a) subject to clause 41, the Academy Trust shall ensure that provision is made for Religious Education to be given to all pupils at the Academy in accordance with the tenets of the specified religion or religious denomination of the Academy;
- b) subject to clause 41, the Academy Trust shall comply with the requirements of section 70(1) of, and Schedule 20 to, the School Standards and Framework Act 1998 as if the Academy were a foundation school with a religious character or a voluntary school, and as if references to 'the required collective worship' were references to collective worship in accordance with the tenets and practices of the specified religion or religious denomination of the Academy;
- c) the Academy Trust shall ensure that the quality of Religious Education given to pupils at the Academy and the contents of the Academy's collective worship given in accordance with the tenets and practice of the specific religion or religious denomination are inspected. Such inspection shall be conducted by a person chosen by the Academy Trust and the Academy shall secure that such inspection shall comply with the requirements set out in any statutory provision and regulations as if the Academy were a foundation of voluntary school which has been designated under section 69(3) of the School Standards and Framework Act 1998 as having a religious character.

40) Where the Academy has not been designated with a religious character in accordance with section 124B of the School Standards and Framework Act 1998:

- a) subject to clause 41, the Academy Trust shall ensure that provision shall be made for religious education to be given to all pupils at the Academy in accordance with the requirements for agreed syllabuses in section 375(3) of the Education Act 1996 and paragraph 2(5) of Schedule 19 to the School Standards and Framework Act 1998, and having regard to the requirements of the QCDA's national framework for religious education in schools;
- b) subject to clause 41, the Academy Trust shall ensure that the Academy complies with the requirements of section 70(1) of, and Schedule 20 to, the School Standards and Framework Act 1998 as if it were a community, foundation or voluntary school which does not have a religious character, except that the provisions of paragraph 4 of that Schedule do not apply. The Academy may apply to the Secretary of State for consent to be relieved of the requirement imposed by paragraph 3(2) of that Schedule, the Secretary of State's consent to such an application not to be unreasonably withheld or delayed.

41) Section 71(1) - (4) of the School Standards and Framework Act 1998 shall apply as if the Academy were a community, foundation or voluntary school, and as if references to "Religious Education" and to

"Religious Worship" in that section were references to the religious education and religious worship provided by the Academy in accordance with clauses 39 or 40 as appropriate.

- 42) The Academy Trust shall have regard to any guidance issued by the Secretary of State on sex and relationship education to ensure that children at the Academy are protected from inappropriate teaching materials and they learn the nature of marriage and its importance for family life and for bringing up children.

Careers Education: Information and Advice

42A The Academy Trust shall ensure that in the provision of Careers Education to its pupils the Academy provides impartial advice in accordance with sections 43, 45 and 45A of the Education Act 1997 as amended by section 81 of the Education and Skills Act 2008. **Assessment**

- 43) The Secretary of State will notify the QCDA about the Academy.
- 44) The Academy Trust shall ensure that the pupils at the Academy take part at the end of Key Stage 3 in teacher assessments of pupil's performance in English, Maths and Science.
- 45) The Academy Trust shall report to the QCDA and its agencies on the assessments required under clause 44 and shall provide the QCDA with such information as the QCDA may require in order for the requirements of clause 44 to be met.
- 46) In respect of all Key Stages, the Academy Trust will submit the Academy to monitoring and moderation of its assessment arrangements. The Academy Trust shall choose for the Academy to be monitored either:-

a) by the LA, with the consent of that LA; or

b) by an Agency accredited by the QCDA.

47) The Academy Trust shall notify the Secretary of State about the basis upon which it has chosen to have the Academy monitored, or any change to that choice. The QCDA will conduct an annual audit of the monitoring arrangements.

48) The Academy Trust shall ensure that the Academy complies with the relevant provisions of the 'Assessment and Reporting Arrangements' as published from time to time by the QCDA, as they apply to maintained schools.

49) The results of any test or assessment conducted in accordance with clause 44 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.

50) The Academy Trust may not offer courses at the Academy which lead to external qualifications, as defined in section 96 of the Learning and Skills Act 2000, unless the Secretary of State gives approval for such courses under section 98 of that Act.

Crisis Management Plan

51) Before the 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.

Exclusions Agreement

52) From 1 April 2009, the Academy Trust shall, if invited to do so by an LA, enter into an agreement in respect of the Academy with that LA, which has the effect that where:

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

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

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

this Agreement, the applicable Regulation is Regulation 23 of the School Finance (England) Regulations 2008.

School Meals

- 53) The Academy Trust shall, if requested to do so by or on behalf of any pupils at the Academy, provide school lunches for those pupils unless it would be unreasonable for it to do so. Subject to the provisions of clauses 54 and 55 charges may be levied for lunches, but the Academy Trust shall otherwise fund the cost of such school lunches from its GAG.
- 54) In relation to a pupil who is himself or whose parents are in receipt of benefits mentioned in section 512ZB of the Education Act 1996 (or equivalent provision governing the entitlement to free school lunches of pupils at maintained schools), the Academy Trust shall ensure that a school lunch is provided for such a pupil free of charge to be funded out of the Academy Trust's GAG.
- 55) All food and drink provided by or on behalf of the Academy shall comply with legislation governing the provision of food and drink in maintained schools as this applies from time to time. In particular, the Academy Trust shall ensure that school meals (breakfasts, lunches, or other meals) and food and drink available on the Academy's premises through other outlets such as tuck shops and vending machines comply, as a minimum, with the relevant standards set out in regulations.

Charging

- 56) Sections 402 (Obligation to enter pupils for public examinations), 450 - 457 (charges), 459 (regulations about information about charges and school hours) and 460 (voluntary contributions), 461 (recovery of sums as civil debt) - 462 (Interpretation re charges) of the Education Act 1996 shall be deemed to apply to the Academy with the following modifications:
- a) references to any maintained school shall be treated as references to the Academy;
 - b) references to registered pupils shall be treated as references to registered pupils at the Academy;
 - c) references to the governing body or the local education authority shall, in each case, be treated as references to the Academy Trust;
 - d) the charging and remissions policies required to be determined under section 457, and any amendment thereto, shall require the approval of the Secretary of State; and

- e) the Academy Trust may charge persons who are not registered pupils at the Academy for education provided or for facilities used by them at the Academy.

Provision of Information to parents and others

57) The Academy Trust shall publish a prospectus for the Academy annually. The Academy Trust shall send the prospectus free of charge to parents of pupils at the Academy and the Secretary of State, upon request. The Academy Trust shall also make the prospectus available for inspection by other persons at the Academy.

58) The prospectus for the Academy shall include details of admissions arrangements and, except insofar as such information is published in a document known as a School Profile which must accompany the prospectus, include the following information:

- a) 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;
- b) the details of any religious affiliation of the school;
- c) the policy on providing for children with SEN;
- d) the arrangements for pupils with disabilities (as specified in Annex C to this Agreement);
- e) the pupil absence rates;
- f) the destination of school leavers;
- g) any further information as set out in Schedule 3 of The School Information (England) Regulations 2008 as it applies to maintained schools; and
- h) such other information as the Academy Trust may determine.

59) The prospectus referred to in clauses 57-58 shall be published in the Academy Financial Year immediately preceding the Academy Financial Year to which it relates and shall be published at least six weeks before the closing date for applying for a place at the Academy, provided always that, in the case of the first Academy Financial Year of the Academy, it is recognised that it might not be possible to publish the prospectus within this timeframe, in which case the prospectus shall be published before the opening of the Academy.

- 59A The Secretary of State may provide to the LA the information which the Academy Trust has provided to the Secretary of State:
- a) under Schedules 2-5 to the Education (School Performance Information) (England) Regulations 2007 ; and
 - b) under paragraphs 1-3 of Part 3 to Schedule 1 to the Education (Information about Individual Pupils) (England) Regulations 2006.
- 59B The Academy Trust shall ensure that all pupils at the Academy and their parents are informed via Fair Processing Notices that the pupils' personal data may be transferred in accordance with clause 59A.

GRANTS TO BE PAID BY THE SECRETARY OF STATE

General

- 60) The Secretary of State shall pay grants towards capital and recurrent expenditure for the Academy. Except with the Secretary of State's prior agreement, the Academy Trust shall not budget for its expenditure in any Academy Financial Year in excess of expected income. The Academy Trust shall not enter into commitments which are likely to have substantial implications for future levels of grant, or for the period for which grant may be required. No decision by the Academy Trust shall commit the Secretary of State to paying any particular amount of grant.
- 61) "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 62. 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

62) "Capital Expenditure" means expenditure on:

- a) the acquisition of land and buildings;
- b) the erection, enlargement, improvement or demolition of any building including fixed plant, installation, wall, fence or other structure, or any playground or hard standing;
- c) the installation of electrical, mechanical or other services;
- d) the purchase of vehicles and other self-propelled mechanical equipment;

- e) the installation and equipping of premises with furnishings and equipment, other than necessary replacements, repairs and maintenance due to normal wear and tear;
- f) the installation and equipping of premises with computers, networking for computers, operating software and information and communication technology equipment, other than necessary updates or necessary replacements, repairs and maintenance due to normal wear and tear;
- g) the provision and equipping of premises, including playing fields and other facilities for social activities and physical recreation;
- h) works of a permanent character other than the purchase or replacement of minor day-to day items;
- i) any major repairs or replacements which are specified as constituting capital expenditure in any grant letter relating to them;
- j) such other items (whether of a like or dissimilar nature to any of the foregoing) of a substantial or enduring nature as the Secretary of State may agree shall constitute capital expenditure for the purposes of this Agreement;
- k) all professional fees properly and reasonably incurred in connection with the provision of any of the above;
- l) VAT and other taxes payable on any of the above.

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

63) Where the Academy is to open in new premises, or where existing premises are to be substantially refurbished or remodelled to enable the Academy to open in such premises, the Secretary of State will be responsible for meeting the incurred Capital Expenditure for that Academy. To that end, he will provide funding to the LA in accordance with arrangements made under the Building Schools for the Future programme as the Secretary of State considers appropriate.

- 64) Any Capital Expenditure incurred in respect of the Academy on which Capital Grant payments are sought from the Secretary of State will require the specific prior written agreement of the Secretary of State, which agreement shall not be unreasonably withheld or delayed.
- 65) Any payment of Capital Grant to the Academy Trust under this Agreement is subject to the fulfilment of the following conditions:
- a. such grants are used solely to defray expenditure approved by the Secretary of State;
 - b. the Academy Trust certifying and providing evidence that all planning and other consents necessary for the development and all related infrastructure to be completed have been obtained or put in place.

Arrangements for Payment of Capital Grant

- 66) Capital Grant will be paid by the Secretary of State to the Academy Trust on the basis of claims for grant submitted to the Secretary of State in the notified format with supporting invoices and certificates as required by the Secretary of State. Capital Grant will be paid within 21 days from the day on which a claim for grant is received if the claim is in the proper format, supported by the appropriate documentation and the conditions on its payment set out at clause 65 are complied with. If a dispute arises as to whether a claim is or is not acceptable both parties undertake to attempt to resolve it in good faith. In the event of such a dispute, the Secretary of State shall pay to the Academy Trust so much of the claim as shall not be in dispute.

Implementation Grant

- 67) "Implementation Grant" means payments towards recurrent expenditure incurred for the establishment of the Academy prior to it opening.
- 68) The Secretary of State may enter into an agreement with a third party ("Project Management Company") for the provision of project management services to assist in the establishment of the Academy. Where such an agreement has been entered into, the Secretary of State shall pay Implementation Grant to the Project Management Company in accordance with that agreement.
- 68A) The Academy Trust shall prepare and submit to the Secretary of State a budget showing expected recurrent expenditure to be incurred by the Academy Trust before the Academy opens and for which

grant is sought. This budget must either be agreed to or modified by the Secretary of State as he considers appropriate ("Approved Implementation Budget").

68B) Both parties recognise that as the project develops it may be necessary to revise individual costs in the Approved Implementation Budget and to move costs between budget headings in order to ensure that the project remains within its approved budget. Where the Academy Trust wishes to make such an adjustment of over £10,000, the reason for the change and a revised budget must be submitted to the Secretary of State for approval.

68C) The Secretary of State will pay Implementation Grant to the Academy Trust on the basis of claims for grant submitted to the Secretary of State in accordance with the Approved Implementation Budget and in the notified format with supporting invoices, receipts and documents as required by the Secretary of State. If the grant claim is acceptable, the Secretary of State undertakes to pay the amount due within 21 days from the day on which it was received. If a dispute arises over whether a grant claim or part of it is acceptable, both parties undertake to attempt to resolve the dispute in good faith.

68D) Any amount in the Approved Implementation Budget in respect of which the expenditure has not been incurred by the Academy Trust by the date on which the Academy opens will lapse and no Implementation Grant will be payable in respect of that part of the Approved Implementation Budget. Any amount of Implementation Grant which has been paid but remains unexpended on relevant expenditure by the date on which the Academy opens will, without prejudice to any other mode of recovery, be taken into account in determining the total amount of grant to be paid to the Academy Trust after the Academy has opened. Any amount of Implementation Grant which is found to have been used on ineligible expenditure will, without prejudice to any other mode of recovery, be taken into account in determining the total amount of grant to be paid to the Academy Trust.

General Annual Grant

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

- a) teachers' salaries and related costs (including full and part time teaching staff and seconded teachers);

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

70) Subject to clauses to 78-79, GAG for each Academy Financial Year for the Academy will be the total of the following areas of funding;

- a) Formula Funding: Funding equivalent to the level of funding which would be provided through the funding formula of the LA to a maintained school which had all of that Academy's relevant characteristics, including its number of pupils;
- b) Local Authority Central Spend Equivalent: Funding representing a proportion of the LA Education Budget money which the LA would be able to retain, from the nondelegated elements of the Schools Budget and the relevant items in the LA Block, if the Academy were a maintained school. The proportion which this funding will represent will be based on the elements of the LA's Section 52 Budget Return which are relevant to that Academy.
- c) Specialist Schools Allowance: Funding equivalent to that which a maintained school with the Academy's characteristics would receive in respect of their participation in the specialist schools programme;

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

- a) funding for matters for which it is necessary for the Academy to incur extra costs, for as long as those costs are deemed necessary by the Secretary of State; and
- b) payments in respect of further, specific grants made available to maintained schools, where the Academy meets the requisite conditions and criteria necessary for a maintained school to receive these grants.

72) Subject to clause 73, the basis of the pupil number count for the purposes of determining GAG for an Academy Financial Year for the Academy will be the Academy Trust's estimate each November for numbers on roll in the following September for the Academy.

73) Once the conditions specified in clause 74 have been satisfied with respect to the Academy for the Academy Financial Year for which funding is being calculated, the basis of the pupil number count for the purpose of determining GAG for the Academy will be:

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

74) For the purpose of clause 73, the conditions are:

- a) all planned Year-groups will be present at the Academy (that is, all the pupil cohorts relevant to the age-range of the Academy will have some pupils present); and
- b) the total number of pupils as measured in the Schools Census for the preceding January is 90% or more of the planned final size of the Academy, which is 950.

75) For any Academy Financial Year in which GAG for the Academy has been calculated in accordance with clause 72, an adjustment will be made to the following Academy Financial Year's formula funding element of GAG for the Academy to recognise any variation from that estimate greater than or lower than 2.5%. The additional or clawedback grant will be only that amount relevant to the number of pupils beyond the 2.5% variation.

76) For any Academy Financial Year in which GAG for the Academy is calculated in accordance with clause 73, no adjustment will be made to the formula funding element in the following Academy Financial Year's formula funding element of GAG unless the Academy Trust demonstrates to the satisfaction of the Secretary of State that there has been a significant impact on costs, such as an extra class. For any other element of GAG the Secretary of State may make adjustments to recognise a variation in pupil numbers from that used to calculate the element of grant in question; the basis of these will be set out in the annual letter of funding.

77) The Secretary of State recognises that:

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

Financial Years before all age groups are present at their planned size (the "Start-up Period") because of a lack of economies of scale. The Secretary of State 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 70-76, in order to enable the Academy to operate effectively. The Academy Trust will make a bid to the Secretary of State for this addition to GAG based upon need and providing appropriate supporting evidence;

- b) Where the Academy opens with pupils transferred from one or more 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.

78) 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 70-76 to allow the Academy to:

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

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

79) The Secretary of State recognises that if he serves notice of intention to terminate this Agreement, the intake of new pupils during the notice period is likely to decline and that in such circumstances payments based simply upon the number of pupils attending the Academy are unlikely to be sufficient to meet the Academy's needs during the notice period. The Secretary of State undertakes to pay a reasonable and appropriately larger GAG with respect to the Academy in the notice period than would be justified solely on the basis of the methods set out in clauses 70-76, in order to enable the Academy to operate effectively.

80) The Secretary of State also recognises that if this Agreement is terminated for any reason by either party the number of pupils at the Academy is likely to decline. In these circumstances both parties undertake to attempt to resolve issues arising from such termination in good faith and with the aim of protecting the interests and the education of the pupils at the Academy.

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

Earmarked Annual Grant

82) Earmarked Annual Grant ("EAG") shall be paid by the Secretary of State to the Academy Trust in respect of either recurrent or Capital Expenditure for such specific purposes as may from time to time be agreed

between the Secretary of State and the Academy Trust and as described in the relevant funding letter. The Academy Trust shall only spend EAG in accordance with the scope, terms and conditions of the grant set out in the relevant funding letter.

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

Arrangements for Payment of GAG and EAG

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

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

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

- 86) If GAG or EAG is calculated incorrectly because the Academy Trust provides incorrect information to the Secretary of State then;

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

- 87) The amounts of GAG for an Academy Financial Year will be determined annually by the Secretary of State. The amount of GAG for the Academy will be notified to the Academy Trust in a funding letter not later than 1 April preceding that Academy Financial Year (the "annual letter of funding"). The annual letter of funding will not include the amount that the Academy Trust will receive in respect of grants for which information to enable timely calculation is not available or is

incomplete, such grants will be notified as soon as practicable later in the year. Amounts of EAG will be notified to the Academy Trust

wherever possible in the annual letter of funding or as soon as practicable thereafter.

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

Other relevant funding

- 89) The Secretary of State shall meet a proportion of the Academy Trust's costs arising from the inclusion of academies in the Schedules to the Redundancy Payments (Continuity of Employment in Local Government) (Modification) Order 1999. The Secretary of State shall meet the costs of the employees' prior eligible service, being service prior to the opening of the Academy, and the Academy Trust will meet the costs of service after the opening of the Academy. The Academy Trust shall seek the Secretary of State's consent for these redundancies, such consent not to be unreasonably withheld, before committing to the redundancies.
- 90) The Secretary of State may meet costs incurred by the Academy Trust in connection with the transfer of employees from any predecessor school under the Transfer of Undertakings (Protection of Employment) Regulations 2006. Payment of grant in respect of such costs is to be agreed between the parties on a case by case basis and the Academy Trust shall not budget on the basis that it will receive any grant in respect of such costs unless it is specifically notified that such grant will be paid.
- 91) The Academy Trust may also receive funding from an LA in respect of the provision detailed in statements of SEN for pupils attending an Academy in accordance with the

provisions of Section 483A of the Education Act 1996 and regulations made under that section. The Academy Trust shall ensure that all provision detailed in statements of SEN is provided for such pupils.

- 92) The Academy Trust may also receive funding for the Academy from the LA's Standards Fund. This is a scheme under which the Standards Fund money is to be distributed by the Secretary of State to LAs and schools and permits LAs to receive grants on behalf of academies in the same way as they can do for maintained schools. The Academy Trust must ensure that the Academy uses any grants received under the Standards Fund in accordance with any conditions specified in relation to that grant. Grants paid to the Academy Trust from the Standards Fund are not paid under this Agreement.

Financial and Accounting Requirements

- 93) The Academy Trust shall appoint an Accounting Officer and shall notify the Secretary of State of that appointment.
- 94) In relation to the use of grant paid to the Academy Trust by the Secretary of State, the Academy Trust shall abide by the requirements of and have regard to the guidance in the Academies Financial Handbook published by the DCSF and amended from time to time, which sets out in detail provisions for the financial management of the Academy including guidance on financial systems and controls and accounting and reporting requirements, in so far as these are not inconsistent with any accounting and reporting requirements and guidance that it may be subject to by virtue of its being a charity.
- 95) The formal budget plan should take into account items in the School Development Plan requiring expenditure and must be approved each Academy Financial Year by the Governing Body.
- 96) Any payment of grant by the Secretary of State in respect of the Academy is subject to his being satisfied as to the fulfilment by the Academy Trust of the following conditions:
- a) in its conduct and operation it shall apply financial and other controls which conform to the requirements both of propriety and of good financial management;
 - b) arrangements have been made to maintain proper accounting records and that statements of income and expenditure and balance sheets may be produced in such form and frequency as the Secretary of State may from time to time reasonably direct;
 - c) in addition to the obligation to fulfil the statutory requirements referred to in sub-clauses d) and g) below, financial statements are published at the end of each Academy 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 Academy Financial Year. These should carry an audit report stating that, in the opinion of the auditors, the statements show a true and fair view of the Academy Trust's affairs and that the grants were used for the purposes intended;

- d) the Academy Trust prepares and files with the Companies Registry such annual accounts as are required by the Companies Act 2006;
 - e) a statement of the accounting policies used is sent to the Secretary of State with the financial statements;
 - f) the Academy Trust insures or procures insurance by another person of its assets in accordance with normal commercial practice or under the terms of any subsisting leases in respect of the leasehold interest of the site upon which the Academy is situated;
 - g) the Academy Trust files the Directors' report and accounts together with a copy of the scrutiny report and its Annual Return with the Charity Commission as required by charity law and in accordance with the relevant Statement of Recommended Practice;
 - h) the Academy Trust shall comply with their obligation under the Charities Act 1993 and the Charities Act 2006 (or any statutory re-enactment or modification of those Acts) with regard to the preparation of an annual report and its transmission to the Charity Commission;
 - i) the Academy Trust shall ensure that its accounts are audited annually by independent auditors appointed under arrangements approved by the Secretary of State.
- 97) In addition, and at his expense, the Secretary of State may instruct auditors to report to him on the adequacy and effectiveness of the accounting systems and internal controls maintained by the Academy Trust to standards determined by the Secretary of State and to make recommendations for improving the financial management of the Academy Trust.
- 98) The books of accounts and all relevant records, files and reports of the Academy Trust including those relating to financial controls, shall be open at all reasonable times to officials of the 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 Academy Trust

shall secure that those officials and contractors are given reasonable assistance with their enquiries. For the purposes of this clause

'relevant' means in any way relevant to the provision and use of grants provided by the Secretary of State under this Agreement.

- 99) The Academy Trust shall submit indicative budgets relating to the Academy to the Secretary of State by not later than 15 February before the start of each Academy Financial Year. Such budgets shall set out clearly the prospective income and expenditure of the Academy and shall differentiate, and give adequate details of:
- a) a statement of expected income for that Academy Financial Year including cash donations and gifts in kind from sources other than GAG, EAG and grants from the Secretary of State towards capital and revenue expenditure, distinguishing between income from public funds including the national lottery and income from other sources. Income from cash donations and gifts in kind from sources other than GAG, EAG and grants from the Secretary of State towards capital expenditure will not be taken into account by the Secretary of State in the calculation of GAG;
 - b) a statement of proposed recurrent expenditure for that Academy Financial Year;
 - c) a statement of proposed capital expenditure for that Academy Financial Year.
- 100) At the beginning of any Academy Financial Year the Academy Trust may hold unspent GAG from previous Academy Financial Years amounting to 12% of the total GAG payable for the Academy in the Academy Financial Year just ended or such higher amount as may from time to time be agreed. This carried forward amount may be used as follows:
- a) equivalent to 2% of the total GAG payable in the Academy Financial Year just ended may be used by the Academy Trust for any of the purposes for which GAG is paid;
 - b) equivalent to 12% of the total GAG payable in the Academy Financial Year just ended, or such higher figure as may from time to time be agreed, minus any amount used under sub-clause (a) above, may be used on the upkeep and improvement of premises, including the costs of equipment and routine repairs and maintenance of the Academy, and on capital expenditure relating to the Academy.
- 101) Notwithstanding clause 100, any additional grant provided over and above that set out in clauses 70-76 and made in accordance with clauses 77-79 may be carried forward without

limitation or deduction until the Start-up Period or the circumstances set out in clause 79 come to an end.

- 102) Any savings of GAG not allowed to be carried forward under clauses 100-101 will be taken into account in the payment of subsequent grant.
- 103) The Academy Trust may also accumulate funds from private sources or public sources other than grants from the Secretary of State for application to the benefit of the Academy as it sees fit. Any surplus arising from private sources or public sources other than grants from the Secretary of State shall be separately identified in the Academy Trust's balance sheet.
- 104) The Academy Trust shall not, in relation to assets or property funded (whether in whole or in part) by the Secretary of State, without the prior written consent of the Secretary of State which shall not be unreasonably withheld or delayed:
 - a) except such as are given in normal contractual relations, give any guarantees, indemnities or letters of comfort;
 - b) write off any debts or liabilities owed to it above a value to be set out in the annual letter of funding, nor offer to make any ex gratia payments;
 - c) make any sale or purchase of freehold property; or
 - d) grant or take up any leasehold or tenancy agreement for a term exceeding three years.
- 104A) The Academy Trust shall provide 30 days notice to the Secretary of State, whether or not the circumstances require the Secretary of State's approval, of its intention to:
 - a) give any guarantees, indemnities or letters of comfort;
 - b) write off any debts owed to it or offer to make any ex gratia payments;
 - c) make any sale or purchase of freehold property; or
 - d) grant or take up any leasehold or tenancy agreement for a term exceeding three years.

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

106) Subject to clause 100, it is the responsibility of the Academy Trust to ensure that the Academy balances its budget from Academy Financial Year to Academy Financial Year.

For the avoidance of doubt, this does not prevent the Academy Trust from:

- a) carrying a surplus from one Academy Financial Year to the next; or
- b) carrying forward from a previous Academy Financial Year or Academy Financial Years a sufficient surplus or sufficient cumulative surpluses on grants from the Secretary of State to meet an in-year deficit on such grants in a subsequent financial year; or
- c) incurring an in-year deficit on funds from sources other than grants from the Secretary of State in any Academy Financial Year, provided it does not affect the Academy Trust's responsibility to ensure that the Academy balances its overall budget from Academy Financial Year to Academy Financial Year.

Borrowing Powers

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

107A) The Academy Trust shall provide 30 days notice to the Secretary of State of its intention to borrow, whether or not such borrowing requires the Secretary of State's approval under clause 107 above.

Disposal of Assets

108) Where the Academy Trust acquires assets for a nil consideration or at an under value it shall be treated for the purpose of this Agreement as having incurred expenditure equal to the market value of those assets at the time that they were acquired. This provision shall not apply to assets transferred to the Academy Trust at nil or nominal

consideration and which were previously used for the purposes of an Academy and/or were transferred from an LA, the value of which assets shall be disregarded.

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

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

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.

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

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

112) Except with the consent of the Secretary of State and such consents as the Charity Commission may require, the Academy Trust shall not dispose of assets funded

(whether in whole or in part) by the Secretary of State for a consideration less than the best price that can reasonably be obtained, such consent not to be unreasonably withheld or delayed.

112A) The Academy Trust shall provide 30 days notice to the Secretary of State of its intention to dispose of assets for a consideration less than the best price that can reasonably be obtained, whether or not such disposal requires the Secretary of State's consent under clause 112 above.

TERMINATION

- 113) Either party may give not less than seven Academy Financial Years' written notice to terminate this Agreement, such notice to expire on 31 August 2016 or any subsequent anniversary of that date.
- 114) If the Secretary of State is of the opinion that the Academy no longer has the characteristics set out in clause 12 of this Agreement or that the conditions and requirements set out in clauses 13-59B of this Agreement are not being met, or that the Academy Trust is otherwise in material breach of the provisions of this Agreement, the Secretary of State may give notice of his provisional intention to terminate this Agreement.
- 115) Any such notice shall be in writing and shall:
- a) state the grounds on which the Secretary of State considers the Academy no longer has the characteristics set out in clause 12 of this Agreement or is not meeting the conditions and requirements of clauses 13-59B of this Agreement or the Academy Trust is otherwise in material breach of the provisions of this Agreement;
 - b) specify the measures needed to remedy the situation or breach;
 - c) specify a reasonable date by which these measures are to be implemented; and
 - d) state the form in which the Academy Trust is to provide its response and a reasonable date by which it must be provided.
- 116) If no response is received by the date specified in accordance with clause 115(d), the Secretary of State may give the Academy Trust 12 months, or such lesser period as he considers appropriate in the circumstances, written notice to terminate this Agreement.

- 117) If a response is received by the date specified in accordance with clause 115(d) the Secretary of State shall consider it, and any representations made by the Academy Trust, and shall, within three months of its receipt, indicate that:
- a) he is content with the response and/or that the measures which he specified are being implemented; or
 - b) he is content, subject to any further measures he reasonably specifies being implemented by a specified date or any evidence he requires that implementation of such measures have been successfully completed; or
 - c) he is not satisfied, that he does not believe that he can be reasonably satisfied, and that he will proceed to terminate this Agreement.
- 118) In the circumstances of clause 117(c) the Secretary of State shall notify the Academy Trust why he believes that he cannot be reasonably satisfied and, if so requested by the Academy Trust within thirty days from such notification, he shall meet a deputation including representatives from Governing Body to discuss his concerns. If following such meeting he has good reasons for remaining satisfied that the Academy does not and will not have the characteristics set out in clause 12 of this Agreement or does not and will not meet the conditions and requirements set out in clauses 13-59B of this Agreement or the Academy Trust is in material breach of the provisions of this Agreement and such breach will not be remedied to his reasonable satisfaction, he shall give the Academy Trust twelve months written notice to terminate this Agreement.
- 119) If the Secretary of State has cause to serve a notice on the Academy Trust under section 165 of the Education Act 2002 and a determination (from which all rights of appeal have been exhausted) has been made that the Academy shall be struck off the Register of Independent Schools, the period of twelve months notice referred to in clause 118 may be shortened to a period deemed appropriate by the Secretary of State.
- 120) A "Special Measures Termination Event Occurs" when:
- a) the Chief Inspector gives a notice to the Academy Trust in accordance with section 13(3) of the Education Act 2005 (the "Special Measures Notice") stating that in his opinion special measures are required to be taken in relation to the Academy; and

- b) not less than the Minimum Period after the Special Measures Notice, the Chief Inspector carries out a subsequent inspection of the Academy in accordance with the
Education Act 2005 and makes a report in accordance with the Education Act 2005

stating that the Academy has made inadequate progress since the date of the Special Measures Notice; and

- c) the Secretary of State shall have requested the Academy Trust to deliver within 10 Business Days a written statement (a "Further Action Statement") of the action the Academy Trust proposes to take, and the period within which it proposes to take such action, or, if it does not propose to take any action, the reasons for not doing so; and
 - d) the Secretary of State, having considered the Further Action Statement, is not satisfied that any action proposed to be taken by the Academy Trust is sufficient in all the circumstances, or, if no Further Action Statement shall have been given to the Secretary of State within the requested timeframe or otherwise.
- 121) If a Special Measures Termination Event occurs, the Secretary of State may:
- a) by notice in writing to the Academy Trust terminate this Agreement forthwith; or
 - b) appoint such Further Governors to the Academy Trust as he thinks fit in accordance with the Articles and/or may provide up to 12 months' notice in writing to terminate this Agreement.
- 122) In the event that the Secretary of State appoints Further Governors in accordance with clause 121(b), the Academy Trust must, upon the request of the Secretary of State, procure the resignation of the Sponsor Governors (as defined in the Articles) in accordance with the Articles.
- 123) The Secretary of State may at any time by notice in writing terminate this Agreement forthwith on the occurrence of any of the following events:-
- a) the Academy Trust calls a meeting of its creditors (whether formal or informal) or enters into any composition or arrangement (whether formal or informal) with its creditors; or
 - b) the Academy Trust proposes a voluntary arrangement within Section 1 of the Insolvency Act 1986; or
 - c) the Academy Trust is unable to pay its debts within the meaning of Section 123 of the Insolvency Act 1986 provided that, for the purposes of this clause, Section 123 (1)(a) of the Insolvency Act 1986 shall have effect as if the amount of £10,000 was

substituted for £750. The Academy Trust shall not be deemed unable to pay its debts for the purposes of this clause if any such demand as is mentioned in the said Section is being contested in good faith by the Academy Trust; or

- d) the Academy Trust has a receiver and manager (with the exception of Receivers and Managers or Interim Managers appointed by the Charity Commission under the Charities Act 1993 or any subsequent re-enactment of that Act), administrator or administrative receiver appointed over all or any part of its undertakings, assets or income; or
 - e) any distraint, execution or other process is levied or enforced on any of the Academy Trust's property and is not paid out, withdrawn or discharged within fifteen Business Days; or
 - f) the Academy Trust has passed a resolution for its winding up; or
 - g) an order is made for the winding up or administration of the Academy Trust.
- 124) The Academy Trust shall notify the Secretary of State as soon as possible after receiving any petition which may result in an order for the winding up or administration of the Academy Trust and shall provide an explanation to the Secretary of State of the circumstances giving rise to the service of such a petition.

Effect of Termination

- 125) In the event of the termination of this Agreement however occurring the Secretary of State shall procure that his nominee (if any) shall resign as a member of the Academy Trust and shall co-operate in making any associated amendments to the Articles.
- 126) 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.
- 127) Subject to clause 128, if the Secretary of State terminates this Agreement for reasons other than that a Special Measures Termination Event occurs, that the Academy no longer has the characteristics set out in clause 12 of this Agreement, or is no longer meeting the conditions and requirements set out in clauses 13-59B of this Agreement or that the Academy Trust is otherwise in material breach of the provisions of this Agreement, the Secretary of State shall indemnify the Academy Trust.
- 128) The amount of any such indemnity shall be determined by the Secretary of State having regard to any representations made to him by the Academy Trust, and shall be paid at such times and in such manner as the Secretary of State may reasonably think fit.

- 129) The categories of expenditure incurred by the Academy Trust in consequence of the termination of this Agreement in respect of which the Secretary of State shall indemnify the Academy Trust include (but not by way of limitation), staff compensation and redundancy payments, compensation payments in respect of broken contracts, expenses of disposing of assets or adapting them for other purposes, legal and other professional fees, and dissolution expenses.
- 130) Subject to clause 131, on the termination of this Agreement however occurring, the Academy Trust shall in respect of any of its capital assets at the date of termination:
- (a) promptly transfer a proportion of the assets to a person nominated by the Secretary of State, if the Secretary of State considers that all or some of those assets need to be used for educational purposes by that nominee. The proportion of the assets to be transferred shall be the same as the proportion of the capital contribution made by the Secretary of State to the original value of those assets, whether that contribution was made on the establishment of the Academy or later; or
 - (b) if the Secretary of State confirms that a transfer under clause 130(a) is not required, promptly repay to the Secretary of State a sum equivalent to the percentage of the value of the assets at the date of termination, or, by agreement with the Secretary of State, at the date of subsequent disposal of those assets. Such percentage to be the same as the percentage of the capital contribution made by the Secretary of State to the original value of those assets, whether that contribution was made on the establishment of the Academy or later.
- 131) The Secretary of State may waive in whole or in part the repayment due under clause 130(b) if:
- (a) The Academy Trust obtains his permission to invest the proceeds of sale for its charitable objects; or
 - (b) The Secretary of State directs all or part of the repayment to be paid to the LA.
- 132) If any land or premises of the Academy were acquired by the Academy Trust from an LA by a scheme under Schedule 35A of the Education Act 1996 or otherwise at less than the market value of the land at the date of acquisition, and the Secretary of State does not make a scheme as provided for in Schedule 35A (Paragraph 8) of the Education Act 1996, the Academy Trust may dispose of its interest in that land or premises but only with the consent of the Secretary of State, who shall have regard to any representations from the Academy Trust and the LA from which the land was transferred before giving or withholding that consent.

GENERAL

Information

133) Without prejudice to any other provision of this Agreement, the Secretary of State acting reasonably

may from time to time call for information on, inter alia, the Academy's: a) curriculum;

b) arrangements for the assessment of pupils;

c) targets, including those set in accordance with the provisions of clause 20;

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 absence;

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 Governing Body.

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

Access by the Secretary of State's Officers

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

136) The Academy Trust shall ensure that:

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

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

137) There may be excluded from any item required to be made available for inspection by any interested party and to be sent to the Secretary of State by virtue of clause 136, any material relating to:

- a) a named teacher or other person employed, or proposed to be employed, at the Academy;

b) a named pupil at, or candidate for admission to, the Academy; and

c> any matter which, by reason of its nature, the Academy Trust is satisfied should remain confidential.

Notices

138) Any notice or other communication concerning this Agreement shall be sent, in the case of a notice or communication from the Secretary of State to the Academy Trust at its registered office or such other addressee/address as may be notified in writing from time to time by the Academy Trust and, in the case of a notice or communication from the Academy Trust to the Secretary of State to Head of Academies Division, Department for 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 at the time at which the letter would be received in the ordinary course of post.

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

General

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

This Agreement was executed as a Deed on 21 J V A H 2010 EXECUTED on behalf of Birmingham

Ormiston Academy

by:



Director

[either

A handwritten signature in black ink, appearing to be 'J. Q. All', written over a dotted line.

Director/Secretary^
[OrJ

Witness

Name

Address

Occupation

The Corporate Seal of the Secretary of State for Children, Schools and Families, hereunto affixed is authenticated by: 3.

Duly Authorised

THE COMPANIES ACTS 1985 and 2006

A COMPANY LIMITED BY GUARANTEE

AND NOT HAVING A SHARE CAPITAL

MEMORANDUM OF ASSOCIATION

OF

BIRMINGHAM ORMISTON ACADEMY THE COMPANIES
ACTS 1985 and 2006

A COMPANY LIMITED BY GUARANTEE AND NOT HAVING A SHARE CAPITAL



MEMORANDUM OF ASSOCIATION OF b s i u - l k BIRMINGHAM ORMISTON
ACADEMY

The company's name is Birmingham Ormiston Academy (and in this document it is called "the Academy Trust").

2. The Academy Trust's registered office is to be situated in England and Wales.
3. The Academy Trust's objects ("the Objects") are to advance for the public benefit education in the United Kingdom, in particular but without prejudice to the generality of the foregoing by establishing, maintaining, carrying on, managing and developing a school offering a broad curriculum with a strong emphasis on, but in no way limited to digital media and creative and performing arts ("the Academy").

In furtherance of the Objects but not further or otherwise the Academy Trust may exercise the following powers:-

- (a) to draw, make, accept, endorse, discount, execute and issue promissory notes, bills, cheques and other instruments, and to operate bank accounts in the name of the Academy Trust;
- (b) to raise funds and to invite and receive contributions provided that in raising funds the Academy Trust shall not undertake any substantial permanent trading activities and shall conform to any relevant statutory regulations;
- (c) to acquire, alter, improve and (subject to such consents as may be required by law) to charge or otherwise dispose of property;
- (d) subject to clause 5 below to employ such staff, as are necessary for the proper pursuit of the Objects and to make all reasonable and necessary provision for the payments of pensions and superannuation to staff and their dependants;
- (e) to establish or support, whether financially or otherwise, any charitable trusts, associations or institutions formed for all or any of the Objects
- (f) to co-operate with other charities, other independent and maintained schools, voluntary bodies and statutory authorities operating in furtherance of the Objects and to exchange Information and advice with them;
- (g) to pay out of funds of the Academy Trust the costs, charges and expenses of and incidental to the formation and registration of the Academy Trust;
- (h) to establish, maintain, carry on, manage and develop the Academy in Birmingham;
- (i) to offer scholarships, exhibitions, prizes and awards to pupils and former pupils, and otherwise to encourage and assist pupils and former pupils;
- (j) to provide educational facilities and services to students of all ages and the wider community for the public benefit;
- (k) to carry out research into the development and application of new techniques in education in particular in relation to the areas of curricular specialisation of the Academy and to its



approach to curriculum development and delivery and to publish the results of such research, and to develop means of benefiting from application of the experience of industry, commerce, other schools and the voluntary sector to the education of pupils in academies;

- (l) subject to such consents as may be required by law and/or by any contract entered into by or on behalf of the Academy Trust, to borrow and raise money for the furtherance of the Objects in such manner and on such security as the Academy Trust may think fit;
- (m) to deposit or invest any funds of the Academy Trust not immediately required for the furtherance of its objects (but to invest only after obtaining such advice from a financial expert as the Trustees consider necessary and having regard to the suitability of investments and the need for diversification),
- (n) to delegate the management of investments to a financial expert, but only on terms that:
 - (i) the investment policy is set down in writing for the financial expert by the Trustees;
 - (ii) every transaction is reported promptly to the Trustees; the performance of the investments is reviewed regularly with the Trustees;
 - (iii) the Trustees are entitled to cancel the delegation arrangement at any time;
 - (iv) the Investment policy and the delegation arrangement are reviewed at least once a year;
 - (v) all payments due to the financial expert are on a scale or at a level which is agreed in advance and are notified promptly to the Trustees on receipt; and
 - (vi) the financial expert must not do anything outside the powers of the Trustees;

(o) to arrange for investments or other property of the Academy Trust to be held in j the name of a nominee company acting under the control of the Trustees or of a financial expert acting under their instructions, and to pay any reasonable fee required;

(p) to provide indemnity insurance to cover the liability of Trustees which by virtue of any rule of law would otherwise attach to them in respect of any negligence, default, breach of trust or breach of duty of which they may be guilty In relation to

the Academy Trust: Provided that any such Insurance shall not extend to any claim arising from any act or omission which the Trustees knew to be a breach of trust or breach of duty or which was committed by the Trustees in reckless disregard of whether it was a breach of trust or breach of duty or not and provided also that any such insurance shall not extend to the costs of any unsuccessful defence to a criminal prosecution brought against the Trustees in their capacity as

Trustees;

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(q) to establish subsidiary companies to carry on any trade or business for the j purpose of raising funds for the Academy Trust; i

(r) to do all such other lawful things as are necessary for or are incidental to or conducive to the achievement of the Objects.

5.1 The income and property of the Academy Trust shall be applied solely towards the promotion of the Objects.

5.2 None of the income or property of the Company may be paid or transferred directly or indirectly by way of dividend bonus or otherwise by way of profit to any member of

the Company. Nonetheless a member of the Academy Trust who is not also a Trustee may:

- a) benefit as a beneficiary of the Academy Trust;
- b) be paid reasonable and proper remuneration for any goods or services supplied to the Academy Trust;
- c) be paid rent for premises let by the member of the Academy Trust if the amount of the rent and other terms of the letting are reasonable and proper; and
- d) be paid interest on money lent to the Academy Trust at a reasonable and proper rate, such rate not to exceed 2 per cent per annum below the base lending rate of a UK clearing bank selected by the Trustees.

5.3 Trustee may benefit from any indemnity insurance purchased at the Academy Trust's expense to cover the liability of the Trustees which by virtue of any rule of law would otherwise attach to them in respect of any negligence, default or breach of trust or breach of duty of which they may be guilty In relation to the Academy Trust: Provided that any such insurance shall not extend to any claim arising from any act or omission which Trustees knew to be a breach of trust or breach of duty or which was committed by the Trustees in reckless disregard to whether it was a breach of trust or breach of duty or not and provided also that any such insurance shall not extend to the costs of any unsuccessful defence to a criminal prosecution brought against Trustees in their capacity as directors of the Academy Trust.

5.4 A company, which has shares listed on a recognised stock exchange and of which any one Trustee holds no more than 1% of the issued capital of that company, may receive fees, remuneration or other benefit in money or money's worth from the Academy Trust.

5.5 A Trustee may at the discretion of the Trustees be reimbursed from the property of the Academy Trust for reasonable expenses properly incurred by him or her when acting on behalf of the Academy Trust, but excluding expenses in connection with foreign travel.

5.6 No Trustee may:

- (a) buy any goods or services from the Academy Trust;
 - (b) sell goods, services, or any interest in land to the Academy Trust;
 - (c) be employed by, or receive any remuneration from the Academy Trust;
 - (d) receive any other financial benefit from the Academy Trust;
- unless:
- (i) the payment is permitted by clause 5.7 and the Trustees follow the procedure and observe the conditions set out in clause 5.8; or
 - (ii) the Trustees obtain the prior written approval of the Charity Commission and fully comply with any procedures it prescribes.

5.7 Subject to clause 5.8, a Trustee may:

- a) Receive a benefit from the Academy Trust in the capacity of a beneficiary of the Academy Trust.
- b) Be employed by the Academy Trust or enter into a contract for the supply of goods or services to the Academy Trust, other than for acting as a Trustee.
- c) Receive Interest on money lent to the Academy Trust at a reasonable and proper rate not exceeding 2% per annum below the base rate of a clearing bank to be selected by the Trustees.
- (d) Receive rent for premises let by the Trustee to the Academy Trust if the amount of the rent and the other terms of the lease are reasonable and proper.

5.8 The Academy Trust and its Trustees may only rely upon the authority provided by clause 5.7 if each of the following conditions is satisfied:

- (a) The remuneration or other sums paid to the Trustee do not exceed an amount that is reasonable in all the circumstances.
- (b) The Trustee is absent from the part of any meeting at which there is discussion of:
 - i) his or her employment, remuneration, or any matter concerning the contract, payment or benefit; or
 - ii) his or her performance in the employment, or his or her performance of the contract; or

- iii) any proposal to enter into any other contract or arrangement with him or her or to confer any benefit upon him or her that would be permitted under clause 5.7; or
 - (iv) any other matter relating to a payment or the conferring of any benefit permitted by clause 5.7.
- (c) The Trustee does not vote on any such matter and is not to be counted when calculating whether a quorum of Trustees is present at the meeting.
- (d) The other Trustees are satisfied that it is in the interests of the Academy Trust to employ or to contract with that Trustee rather than with someone who is not a Trustee. In reaching that decision the Trustees must balance the advantage of employing a Trustee against the disadvantages of doing so (especially the loss of the Trustee's services as a result of dealing with the Trustee's conflict of interest).
- (e) The reason for their decision is recorded by the Trustees in the minute book.
- (f) A majority of the Trustees then in office have received no such payments or benefit.

5.9 In clauses 5.2-5.9:

- (a) "company" shall include any company in which the Academy Trust:
 - holds more than 50% of the shares; or
 - controls more than 50% of the voting rights attached to the shares; or
 - has the right to appoint one or more directors to the board of the company.
- (b) "Trustee" shall include any child, stepchild, parent, grandchild, grandparent, brother, sister or spouse of the Trustee or any person living with the Trustee as his or her partner
- (c) The employment or remuneration of a Trustee includes the engagement or remuneration of any firm or company in which the Trustee is:
 - (i) a partner;
 - (ii) an employee;

- (iii) a consultant;
- (iv) a director;
- (v) a member; or
- (v) a shareholder, unless the shares of the company are listed on a recognised stock exchange and the Trustee holds less than 1% of the issued capital.

6. The liability of the members of the Academy Trust is limited.
7. Every member of the Academy Trust undertakes to contribute such amount as may be required (not exceeding £10) to the Academy Trust's assets If it should be wound up while he or she is a member or within one year after he or she ceases to be a member, for payment of the Academy Trust's debts and liabilities before he or she ceases to be a member, and of the costs, charges and expenses of winding up, and for the adjustment of the rights of the contributories among themselves.
8. If the Academy Trust is wound up or dissolved and after all its debts and liabilities (including any under section 483 of the Education Act 1996) have been satisfied there remains any property it shall not be paid to or distributed among the members of the Academy Trust, but shall be given or transferred to some other charity or charities having objects similar to the Objects which prohibits the distribution of its or their income and property to an extent at least as great as is imposed or* the Academy Trust by clause 5 above, chosen by the members of the Academy Trust at or before the time of dissolution and if that cannot be done then to some other charitable object.
9. No alteration or addition shall be made to or in the provisions of the Memorandum or Articles of Association without the explicit consent of the Secretary of State.
10. No alteration or addition shall be made to or In the provisions of the Memorandum or Articles of Association which would have the effect (a) that the Academy Trust would cease to be a company to which section 30 of the Companies Act 1985 applies; or (b) that the Academy Trust would cease to be a charity.
11. Words or expressions contained in this Memorandum of Association shall, unless the context requires otherwise, bear the same meaning as in the Articles of Association of the Academy Trust.

WE, the persons whose names and addresses are written below wish to be formed into a company under this Memorandum of Association.

Names and Addresses of Subscribers

Signature



On behalf of The Ormiston Trust

Name *PETER MILLER MURRAY*

Address



Witness to the above signature: *Judith Sewards*

Name *Judith Sewards*

Address



Dated *12/2/04*

Signature



On behalf of Birmingham City University

Name PROFESSOR DAVID TIDMARSH

Address



Witness to the above signature: V.J. Bartlett

Name VERONICA BARTLETT

Address



Dated 21/01/09

THE COMPANIES ACTS 1985 AND 2006

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A COMPANY LIMITED BY GUARANTEE

AND NOT HAVING A SHARE CAPITAL

ARTICLES OF ASSOCIATION

OF

BIRMINGHAM ORMISTON ACADEMY THE COMPANIES ACTS
1985 AND 2006

A COMPANY LIMITED BY GUARANTEE AND NOT HAVING A SHARE

CAPITAL

ARTICLES OF ASSOCIATION

OF

BIRMINGHAM ORMISTON ACADEMY

INTERPRETATION

1. In these Articles:-
 - a. "the Academy" means the school referred to in clause 3 of the Memorandum and established by the Academy Trust;
 - b. "the Academy Trust" means the company intended to be regulated by these Articles;

- c. "Additional Trustees" means the Trustees appointed pursuant to Article 53;
- d. "the Articles" means these Articles of Association of the Academy Trust;
- e. "clear days" in relation to the period of a notice means the period excluding the day when the notice is given or deemed to be given and the day on which it is given or on which it is to take effect;
- f. "Co-Sponsor" means Birmingham City University of Perry Barr, Birmingham B42 2SU;
- g. "financial expert" means an individual, company or firm who is authorised to give investment advice under the Financial Services and Markets Act 2000;
- h. "Funding Agreement" means the agreement made under section 482 of the Education Act 1996 between the Academy Trust and the Secretary of State to establish the Academy;

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- i. "Further Trustees" means the Trustees appointed pursuant to Article 54;
- j. "the Trustees" means the directors of the Academy Trust (and "Trustee" means any one of those directors);
- k. "the LA" means the local authority covering the area in which the Academy is situated;
- l. "Local Authority Associated Persons" means any person associated with any local authority within the meaning given in section 69 of the Local Government and Housing Act 1989; m, "Member" means a member of the Academy Trust and someone who as such is bound by the undertaking contained in clause 7 of the

Memorandum;

- n. "the Memorandum" means the Memorandum of Association of the Academy Trust;
- o. "Office" means the registered office of the Academy Trust;
- p. "Principal Sponsor" means The Ormiston Trust of 10 Abercorn Place, London NW8 9XP, registered charity number 259334;
- q. "Principal" means the head teacher of the Academy;
- r. "the seal" means the common seal of the Academy Trust if it has one;
- s. "Secretary" means the secretary of the Academy Trust or any other person appointed to perform the duties of the secretary of the Academy Trust, including a joint, assistant or deputy secretary;
- t. "Secretary of State" means the Secretary of State for Children, Schools and Families or successor;
- u. "Sponsor Trustees" means the Trustees appointed in accordance with Articles 39 or 41 and "Sponsor Trustee" shall mean any one of these Trustees;
- v. "teacher" means a person employed under a contract of employment or a contract for services or otherwise engaged to provide his services as a teacher at the Academy;
- w. "the United Kingdom" means Great Britain and Northern Ireland;
- x. words importing the masculine gender only shall include the feminine gender. Words importing the singular number shall include the plural number, and vice versa;
- y. subject as aforesaid, words or expressions contained in these Articles shall, unless the context requires otherwise, bear the same meaning as in the Companies Act 1985 or the Companies Act 2006, as appropriate;
- z. any reference to a statute or statutory provision shall include any statute or statutory provision which replaces or supercedes such statute or statutory provision including any modification or amendment thereto.

OBJECTS

- 2, The Academy Trust is established for the Objects expressed in the Memorandum.

MEMBERS

3. The Members of the Academy Trust shall comprise:
 - a. The Principal Sponsor;
 - b. Birmingham City University;
 - c. the LA;
 - d. 1 person appointed by the Secretary of State, in the event that the Secretary of State appoints a person for this purpose;
 - e. the chairman of the Trustees; and
 - f. ^A any person appointed under Article 7;
4. Each of the persons entitled to appoint Members in Article 3 shall have the right from time to time by written notice delivered to the Office to remove any Member appointed by them and to appoint a replacement Member to fill a vacancy whether resulting from such removal or otherwise.
5. If any of the persons entitled to appoint Members in Article 3:
 - a) in the case of an individual, die or become legally incapacitated;
 - b) in the case of a corporate entity, cease to exist and are not replaced by a successor institution; or
 - c) becomes insolvent or makes any arrangement or composition with their creditors generally

their right to appoint Members under these Articles shall vest in the remaining Members.

6. Membership will terminate automatically if:
 - a) a Member (which is a corporate entity) ceases to exist and is not replaced by a successor institution;
 - b) a Member (which is an individual) dies or becomes incapable by reason of mental disorder, illness or injury of managing and administering his or her own affairs; or
 - c) a Member becomes insolvent or makes any arrangement or composition with that Member's creditors generally.
7. The Members may agree unanimously in writing to appoint such additional Members as they think fit and may unanimously in writing agree to remove any such additional Members.
8. Every person nominated to be a Member of the Academy Trust shall either sign a written consent to become a Member or sign the register of Members on becoming a Member.

9. The other Members may in their absolute discretion permit any Member to resign provided that after such resignation the number of Members is not less than three. A Member shall cease to be one immediately on the receipt by the Academy Trust of a notice in writing signed by the person or persons entitled to remove him under Articles 4 or 7 provided that no such notice shall take effect when the number of Members is less than three unless it contains or is accompanied by the appointment of a replacement Member.

GENERAL MEETINGS

10. The Academy Trust shall hold an Annual General Meeting each year in addition to any other meetings in that year, and shall specify the meeting as such in the notices calling it; and not more than fifteen months shall elapse between the date of one Annual General Meeting of the Academy Trust and that of the next. Provided that so long as the Academy Trust holds its first Annual General Meeting within eighteen months of its incorporation, it need not hold it in the year of its incorporation or in the following year. The Annual General Meeting shall be held at such time and place as the Trustees shall appoint. All general meetings other than Annual General Meetings shall be called Extraordinary General Meetings.
11. The Trustees may call general meetings and, on the requisition of Members pursuant to the provisions of the Companies Act 2006, shall forthwith proceed to convene a general meeting in accordance with that Act. If there are not within the United Kingdom sufficient Trustees to call a general meeting, any Trustee or any Member may call a general meeting.

NOTICE OF GENERAL MEETINGS

12. General meetings shall be called by at least fourteen clear days' notice but a general meeting may be called by shorter notice if it is so agreed by a majority

in number of Members having a right to attend and vote, being a majority together holding not less than 90 per cent of the total voting rights at the meetings of all the Members.

The notice shall specify the time and place of the meeting and the general nature of the business to be transacted and, in the case of an Annual General Meeting, shall specify the meeting as such. The notice shall also state that the Member is entitled to appoint a proxy.

The notice shall be given to all the Members, to the Trustees and auditors.

13. The accidental omission to give notice of a meeting to, or the nonreceipt of notice of a meeting by, any person entitled to receive notice shall not invalidate the proceedings at that meeting.

PROCEEDINGS AT GENERAL MEETINGS.

14. No business shall be transacted at any meeting unless a quorum is present. A Member counts towards the quorum by being present either in person or by proxy. Two persons entitled to vote upon the business to be transacted, each being a Member or a proxy of a Member or a duly authorised representative of a Member organisation shall constitute a quorum.
15. If a quorum is not present within half an hour from the time appointed for the meeting, or if during a meeting a quorum ceases to be present, the meeting shall stand adjourned to the same day in the next week at the same time and place or to such time and place as the Trustees may determine.
16. The chairman, if any, of the Trustees or in his absence some other Trustee nominated by the Trustees shall preside as chairman of the meeting, but if neither the chairman nor such other Trustee (if any) be present within fifteen minutes after the time appointed for holding the meeting and willing to act, the Trustees present shall elect one

of their number to be chairman and, if there is only one Trustee present and willing to act, he shall be the chairman.

17. If no Trustee is willing to act as chairman, or if no Trustee is present within fifteen minutes after the time appointed for holding the meeting, the Members present and entitled to vote shall choose one of their number to be chairman.
18. A Trustee shall, notwithstanding that he is not a Member, be entitled to attend and speak at any general meeting.
19. The chairman may, with the consent of a majority of the Members at a meeting at which a quorum is present (and shall if so directed by the meeting), adjourn the meeting from time to time and from place to place, but no business shall be transacted at any adjourned meeting other than the business which might properly have been transacted at the meeting had the adjournment not taken place. When a meeting is adjourned for fourteen days or more, at least seven clear days' notice shall be given specifying the time and place of the adjourned meeting and the general nature of the business to be transacted. Otherwise it shall not be necessary to give any such notice.
20. A resolution put to the vote of the meeting shall be decided on a show of hands unless before, or on the declaration of the result of the show of hands a poll is duly demanded. Subject to the provisions of the Companies Act 2006, a poll may be demanded:-
 - a) by the chairman; or
 - b) by at least two Members having the right to vote at the meeting.
 - c) by a Member or Members representing not less than one-tenth of the total voting rights of all the Members having the right to vote at the meeting.
21. Unless a poll is duly demanded a declaration by the chairman that a resolution has been carried or carried unanimously, or by a particular majority, or lost,

or not carried by a particular majority and an entry to that effect in the minutes of the meeting shall be conclusive evidence of the fact without proof of the number or proportion of the votes recorded in favour of or against such resolution.

22. The demand for a poll may be withdrawn, before the poll is taken, but only with the consent of the chairman. The withdrawal of a demand for a poll shall not invalidate the result of a show of hands declared before the demand for the poll was made.
23. A poll shall be taken as the chairman directs and he may appoint scrutineers (who need not be Members) and fix a time and place for declaring the results. The result of the poll shall be deemed to be
the resolution of the meeting at which the poll was demanded.
24. A poll demanded on the election of the chairman or on a question of adjournment shall be taken immediately. A poll demanded on any other question shall be taken either immediately or at such time and place as the chairman directs not being more than thirty days after the poll is demanded. The demand for a poll shall not prevent continuance of a meeting for the transaction of any business other than the question on which the poll is demanded. If a poll is demanded before the declaration of the result of a show of hands and the demand is duly withdrawn, the meeting shall continue as if the demand had not been made.
25. No notice need be given of a poll not taken immediately if the time and place at which it is to be taken are announced at the meeting at which it is demanded. In other cases at least seven clear days' notice shall be given specifying the time and place at which the poll is to be taken.
26. A resolution in writing agreed by such number of members as required if it had been proposed at a general meeting shall be as effectual as if it had been passed at a general meeting duly convened and held and may consist of several instruments in the like form each agreed by one or more Members.

VOTES OF MEMBERS

27. On the show of hands every Member present in person shall have one vote.
On a poll every Member present in person or by proxy shall have one vote.
28. Not used.
29. No Member shall be entitled to vote at any general meeting unless all moneys then payable by him to the Academy Trust have been paid.
30. No objections shall be raised to the qualification of any person to vote at any general meeting except at the meeting or adjourned meeting at which the vote objected to is tendered, and every vote not disallowed at the meeting shall be valid. Any objection made in due time shall be referred to the chairman whose decision shall be final and conclusive.
31. An instrument appointing a proxy shall be in writing, signed by or on behalf of the appointer and shall be in the following form (or in a form as near thereto as circumstances allow or in any other form which is usual or which the Trustees may approve)
- "I/We of being a Member/Members of the above named Academy Trust, hereby appoint of or in his absence of as my/our proxy to vote in my/our name[s] and on my/our behalf at the annual/extraordinary general meeting of the Academy Trust to be held on20[], and at any adjournment thereof.
- Signed on20[]"
32. Where it is desired to afford Members an opportunity of instructing the proxy how he shall act the instrument appointing a proxy shall be in the following form (or in a form as near thereto as circumstances allow or in any other form which is usual or which the Trustees may approve)-

"I/We_ofbeing a Member/Members of the abovenamed Academy Trust, hereby appoint ofor in his absence of as my/our proxy to vote in rny/our name[s] and on my/our behalf at the annual/extraordinary general meeting of the Academy Trust, to be held on 20[], and at any adjournment thereof.

This form is to be used in respect of the resolutions mentioned below as follows:

Resolution No. 1 *for * against

Resolution No. 2 *for * against.

- Strike out whichever is not desired.

Unless otherwise instructed, the proxy may vote as he thinks fit or abstain from voting.

Signed on20[]"

The instrument appointing a proxy and any authority under which it is signed or a copy of such authority certified by a notary or in some other way approved by the Trustees may -

- (a) be deposited at the office or at such other place within the United Kingdom as is specified in the notice convening the meeting or in any instrument of proxy sent out by the Academy Trust in relation to the meeting not less than 48 hours (excluding weekends and bank holidays) before the time for holding the meeting or adjourned meeting at which the person named in the instrument proposes to vote, or
- (b) in the case of a poll taken more than 48 hours after it is demanded, be deposited as aforesaid after the poll has been demanded and not less than 24 hours before the time appointed for the taking of the poll;

- (c) where the poll is not taken forthwith but is taken not more than 48 hours after it was demanded, be delivered at the meeting at which the poll was demanded to the chairman or to the Secretary or to any Trustee;

and an instrument of proxy which is not deposited or delivered in a manner so permitted shall be invalid.

- 34. A vote given or poll demanded by proxy or by the duly authorised representative of a corporation shall be valid notwithstanding the previous determination of the authority of the person voting or demanding a poll unless notice of the determination was received by the Academy Trust at the office or at such other place at which the instrument of proxy was duly deposited before the commencement of the meeting or adjourned meeting at which the vote given or the poll demanded or (or In the case of a poll taken otherwise than on the same day as the meeting or adjourned meeting) the time appointed for taking the poll,
- 35. Any organisation which is a Member of the Academy Trust may by resolution of its board of Trustees or other governing body authorise such person as it thinks fit to act as its representative at any meeting of the Academy Trust, and the person so authorised shall be entitled to exercise the same powers on behalf of the organisation which he represents as that organisation could exercise if it were an individual Member of the Academy Trust.

TRUSTEES

- 36. The number of Trustees shall be not less than three but (unless otherwise determined by ordinary resolution) shall not be subject to any maximum.
- 37. Subject to Articles 39-40 and 55, the Academy Trust shall have the following Trustees:

- a. up to 7 Sponsor Trustees appointed by the Principal Sponsor;
 - b. 1 Trustee appointed by the Co-Sponsor;
 - c. 2 LA Trustees if appointed under Article 42;
 - d. 2 Parent Trustees appointed under Articles 44-49;
 - e. 1 staff Trustee appointed under Articles 49A-49D;
 - f. the Principal;
 - g. any Additional Trustees, if appointed under Article 53; and
 - h. any Further Trustees, if appointed under Article 54.
38. The Academy Trust may also have any co-opted Trustee appointed under Article 50.
39. The first Trustees shall be those persons named in the statement delivered pursuant to section 10(2) of the Companies Act 1985, who shall be deemed to be Sponsor Trustees.
40. Future Trustees shall be appointed or elected, as the case may be, under these Articles. Where it is not possible for such a Trustee to be appointed or elected due to the fact that an Academy has not yet been established or the Principal has not been appointed, then the relevant Article or part thereof shall not apply.

APPOINTMENT OF TRUSTEES

41. The Principal Sponsor shall appoint the Sponsor Trustees and the Co-Sponsor shall appoint one Trustee in accordance with Article 37.

42. The LA may appoint the LA Trustee.
43. The Principal shall be treated for all purposes as being an ex officio Trustee.
44. Subject to Article 48, the Parent Trustees shall be elected by parents of registered pupils at the Academy. A Parent Trustee must be a parent of a pupil at the Academy at the time when he is elected.
45. The Trustees shall make all necessary arrangements for, and determine all other matters relating to, an election of the Parent Trustees, including any question of whether a person is a parent of a registered pupil at the Academy. Any election of Parent Trustees which is contested shall be held by secret ballot.
46. The arrangements made for the election of a Parent Trustees shall provide for every person who is entitled to vote in the election to have an opportunity to do so by post or, if he prefers, by having his ballot paper returned to the Academy Trust by a registered pupil at the Academy.
47. Where a vacancy for a Parent Trustee is required to be filled by election, the Trustees shall take such steps as are reasonably practical to secure that every person who is known to them to be a parent of a registered pupil at the Academy is informed of the vacancy and that it is required to be filled by election, informed that he is entitled to stand as a candidate, and vote at the election, and
given an opportunity to do so.
48. The number of Parent Trustees required shall be made up by Parent Trustees appointed by the Trustees if the number of parents standing for election is less than the number of vacancies.
49. In appointing a Parent Trustee the Trustees shall appoint a person who is the parent of a registered pupil at the Academy; or where it

49A. The Staff Trustee shall be elected by the staff members at the Academy.

49B. The Staff Trustee must be a member of staff at the time when he is elected. If a Staff Trustee ceases to be employed by the Academy Trust then he shall be deemed to have resigned and shall cease to be a Trustee. For this purpose, "member of staff" means a person employed under a contract of employment at the Academy.

49C. The Trustees shall make all necessary arrangements for, and determine all other matters relating to, an election of the Staff Trustee, including any question of whether a person is employed under a contract of employment or a contract for services or otherwise engaged to provide his services at the Academy.

49D. Any election of the Staff Trustee which is contested shall be held by secret ballot.

CO-OPTED TRUSTEES

50. The Trustees may appoint up to 3 co-opted Trustees. A 'co-opted Trustee' means a person who is appointed to be a Trustee by being co-opted by Trustees who have not themselves been so appointed.

APPOINTMENT OF ADDITIONAL TRUSTEES

51. The Secretary of State may give a warning notice to the Trustees where—

- (a) he is satisfied—
 - i) that the standards of performance of pupils at the Academy is unacceptably low and is likely to remain so unless the Secretary of State exercises his powers under Article 53, or
 - ii) that there has been a serious breakdown in the way the Academy is managed or governed which is prejudicing, or likely to prejudice, such standards of performance, or
 - iii) that the safety of pupils or staff of the Academy is threatened (whether by a breakdown of discipline or otherwise); and

- (b) the Secretary of State has previously informed the Trustees of the matters on which that conclusion is based; and
 - (c) those matters have not been remedied to the Secretary of State's satisfaction within a reasonable period.
52. For the purposes of Article 51 a 'warning notice' is a notice in writing by the Secretary of State to the Academy Trust delivered to the Office setting out—
- a) the matters referred to in Article 51 (a);
 - b) the action which he requires the Trustees to take in order to remedy those matters; and
 - c) the period within which that action is to be taken by the Trustees ('the compliance period').
53. The Secretary of State may appoint such Additional Trustees as he thinks fit if the Secretary of State has:
- a) given the Trustees a warning notice in accordance with Article 51; and
 - b) the Trustees have failed to comply, or secure compliance, with the notice to the Secretary of State's satisfaction within the compliance period; and
 - c) the Secretary of State has given reasonable notice in writing to the Trustees that he proposes to exercise his powers under this Article.
54. The Secretary of State may also appoint such Further Trustees as he thinks fit if a Special Measures Termination Event (as defined in the Funding Agreement) occurs in respect of the Academy.
55. Where the Secretary of State appoints any Further Trustees in accordance with Article 54, upon the request of the Secretary of State, any Sponsor Trustees holding office immediately preceding the appointment of such Trustees shall resign immediately, in which case the Principal Sponsor's power to appoint Trustees under Article 41 shall cease.

TERM OF OFFICE

56. The term of office for any Trustee shall be 4 years, save that this time limit shall not apply to the Principal. Subject to remaining eligible to be a particular type of Trustee, any Trustee may be reappointed or re-elected.

RESIGNATION AND REMOVAL

57. A Trustee shall cease to hold office if he resigns his office by notice to the Academy Trust (but only if at least three Trustees will remain in office when the notice of resignation is to take effect).
58. A Trustee shall cease to hold office if he is removed by the person or persons who appointed him. This Article does not apply in respect of a Parent Trustee.
59. Where a Trustee resigns his office or is removed from office, the Trustee or, where he is removed from office, those removing him, shall give written notice thereof to the Secretary.

DISQUALIFICATION OF TRUSTEES

60. No person shall be qualified to be a Trustee unless he is aged 18 or over at the date of his election or appointment. No current pupil of the Academy shall be a Trustee.
61. A Trustee shall cease to hold office If he becomes incapable by reason of mental disorder, illness or injury of managing or administering his own affairs.
62. A Trustee shall cease to hold office if he is absent without the permission of the Trustees from all their meetings held within a period of six months and the Trustees resolve that his office be vacated.
63. A person shall be disqualified from holding or continuing to hold office as a Trustee if—
- a) his estate has been sequestrated and the sequestration has not been discharged, annulled or reduced; or
 - b) he is the subject of a bankruptcy restrictions order or an interim order.

64. A person shall be disqualified from holding or continuing to hold office as a Trustee at any time when he is subject to a disqualification order or a disqualification undertaking under the Company Directors Disqualification Act 1986 or to an order made under section 429(2)(b) of the Insolvency Act 1986 (failure to pay under county court administration order).
65. A Trustee shall cease to hold office if he ceases to be a Trustee by virtue of any provision in the Companies Act 1985 or the Companies Act 2006 or is disqualified from acting as a trustee by virtue of section 72 of the Charities Act 1993 (or any statutory reenactment or modification of that provision).
66. A person shall be disqualified from holding or continuing to hold office as a Trustee if he has been removed from the office of charity trustee or trustee for a charity by an order made by the Charity Commission or the High Court on the grounds of any misconduct or mismanagement in the administration of the charity for which he was responsible or to which he was privy, or which he by his conduct contributed to or facilitated.
67. A person shall be disqualified from holding or from continuing to hold office as a Trustee at any time when he is:
- a) included in the list of teachers and workers with children or young persons whose employment is prohibited or restricted under section 1 of the Protection of Children Act 1999; or
 - b) disqualified from working with children under sections 28, 29, 29A and 29B of the Criminal Justice and Court Services Act 2000.
68. A person shall be disqualified from holding or continuing to hold office as a Trustee if he is a person in respect of whom a direction has been made under section 142 of the Education Act 2002.
69. , A person shall be disqualified from holding or continuing to hold office as a Trustee where he has, at any time, been convicted of any criminal offence, excluding any that have been spent under the Rehabilitation of Offenders Act 1974 as amended, and excluding any offence for which the maximum sentence is

a fine or a lesser sentence except where a person has been convicted of any offence

which falls under section 72 of the Charities Act 1993.

70. After the Academy has opened, a person shall be disqualified from holding or continuing to hold office as a Trustee if he has not provided to the chairman of the Trustees a criminal records certificate at an enhanced disclosure level under section 113B of the Police Act 1997. In the event that the certificate discloses any information which would in the opinion of either the chairman or the Principal confirm their unsuitability to work with children that person shall be disqualified. If a dispute arises as to whether a person shall be disqualified, a referral shall be made to the Secretary of State to

determine the matter. The determination of the Secretary of State shall be final.

71. Where, by virtue of these Articles a person becomes disqualified from holding, or continuing to hold office as a Trustee; and he is, or is proposed, to become such a Trustee, he shall upon becoming so disqualified give written notice of that fact to the Secretary.

72. Articles 60 to 71 and Articles 89-90 also apply to any member of any committee of the Trustees who is not a Trustee,

SECRETARY TO THE TRUSTEES

73. The Secretary shall be appointed by the Trustees for such term, at such remuneration and upon such conditions as they may think fit; and any Secretary so appointed may be removed by them. The Secretary shall not be a Trustee or a Principal. Notwithstanding this Article, the Trustees may, where the Secretary fails to attend a meeting of theirs, appoint any one of their number or any other person to act as Secretary for the purposes of that meeting.

CHAIRMAN AND VICE-CHAIRMAN OF THE TRUSTEES

74. The Trustees shall each school year, at their first meeting in that year, elect a chairman and a vice-chairman from among their number. A Trustee who is

employed by the Academy Trust shall not be eligible for election as chairman or vice-chairman.

75. Subject to Article 76, the chairman or vice-chairman shall hold office as such until his successor has been elected in accordance with Article 77.
76. The chairman or vice-chairman may at any time resign his office by giving notice in writing to the Secretary. The chairman or vicechairman shall cease to hold office if—
- a) he ceases to be a Trustee;
 - b) he is employed by the Academy Trust;
 - c) he is removed from office in accordance with these Articles; or
 - d) in the case of the vice-chairman, he is elected in accordance with these Articles to fill a vacancy in the office of chairman.
77. Where by reason of any of the matters referred to in Article 76, a vacancy arises in the office of chairman or vice-chairman, the Trustees shall at their next meeting elect one of their number to fill that vacancy.
78. Where the chairman is absent from any meeting or there is at the time a vacancy in the office of the chairman, the vice-chairman shall act as the chair for the purposes of the meeting.
79. Where in the circumstances referred to in Article 78 the vicechairman is also absent from the meeting or there is at the time a vacancy in the office of vice-chairman, the Trustees shall elect one of their number to act as a chairman for the purposes of that meeting, provided that the Trustee elected shall not be a person who is employed by the Academy Trust.
80. The Secretary shall act as chairman during that part of any meeting at which the chairman is elected.
81. Any election of the chairman or vice-chairman which is contested shall be held by secret ballot.
82. The Trustees may remove the chairman or vice-chairman from office in accordance with these Articles.

83. A resolution to remove the chairman or vice-chairman from office which is passed at a meeting of the Trustees shall not have effect unless—
- a) it is confirmed by a resolution passed at a second meeting of the Trustees held not less than fourteen days after the first meeting; and
 - b) the matter of the chairman's or vice-chairman's removal from office is specified as an item of business on the agenda for each of those meetings.
84. Before the Trustees resolve at the relevant meeting on whether to confirm the resolution to remove the chairman or vice-chairman from office, the Trustee or Trustees proposing his removal shall at that meeting state their reasons for doing so and the chairman or vice-chairman shall be given an opportunity to make a statement in response.

POWERS OF TRUSTEES

85. Subject to provisions of the Companies Act 1985 and the Companies Act 2006, the Memorandum and the Articles and to any directions given by special resolution, the business of the Academy Trust shall be managed by the Trustees who may exercise all the powers of the Academy Trust. No alteration of the Memorandum or the Articles and no such direction shall invalidate any prior act of the Trustees which would have been valid if that alteration had not been made or that direction had not been given. The powers given by this Article shall not be limited by any special power given to the Trustees by the Articles and a meeting of Trustees at which a quorum is present may exercise all the powers exercisable by the Trustees.
86. In addition to all powers hereby expressly conferred upon them and without detracting from the generality of their powers under the Articles the Trustees shall have the following powers, namely;
- a) to expend the funds of the Academy Trust in such manner as they shall consider most beneficial for the achievement of the Objects and to invest in the name of the Academy Trust such part of the funds as they may see fit and to direct the sale or transposition of any such investments and to expend the proceeds of any such sale in furtherance of the Objects;

b) to enter into contracts on behalf of the Academy Trust.

87. In the exercise of their powers and functions, the Trustees may consider any advice given by the Principal and any other executive officer.
88. Any bank account in which any money of the Academy Trust is deposited shall be operated by the Trustees in the name of the Academy Trust. All cheques and orders for the payment of money from such an account shall be signed by at least two signatories authorised by the Trustees.

CONFLICTS OF INTEREST

89. Any Trustee who has any duty or personal interest (including but not limited to any Personal Financial Interest) which conflicts or may conflict with his duties as a Trustee shall disclose that fact to the Trustees as soon as he becomes aware of it. A Trustee must absent himself from any discussions of the Trustees in which it is possible that a conflict will arise between his duty to act solely in the interests of the Academy Trust and any duty or personal interest (including but not limited to any Personal Financial Interest).
90. For the purpose of Article 89, a Trustee has a Personal Financial Interest in the employment or remuneration of, or the provision of any other benefit to, that Trustee as permitted by and as defined by clauses 5.5-5.9 of the Memorandum.

THE MINUTES

91. The minutes of the proceedings of a meeting of the Trustees shall be drawn up and entered into a book kept for the purpose by the person acting as Secretary for the purposes of the meeting; and shall be signed (subject to the approval of the Trustees) at the same or next subsequent meeting by the person acting as chairman thereof. The minutes shall include a record of:
- a) all appointments of officers made by the Trustees; and
 - b) all proceedings at meetings of the Academy Trust and of the Trustees and of committees of Trustees including the names of the Trustees present at each such meeting.

COMMITTEES

92. Subject to these Articles, the Trustees may establish any committee. Subject to these Articles, the constitution, membership and proceedings of any committee shall be determined by the Trustees. The establishment, terms of reference, constitution and membership of any committee of the Trustees shall be reviewed at least once in every twelve months. The membership of any committee of the Trustees may include persons who are not Trustees, provided that a majority of members of any such committee shall be Trustees. The Trustees may determine that some or all of the members of a committee who are not Trustees shall be entitled to vote in any proceedings of the committee. No vote on any matter shall be taken at a meeting of a committee of the Trustees unless the majority of members of the committee present are Trustees.

DELEGATION

93. The Trustees may delegate to any Trustee, committee, the Principal or any other holder of an executive office, such of their powers or functions as they consider desirable to be exercised by them. Any such delegation may be made subject to any conditions the Trustees may impose, and may be revoked or altered.
94. Where any power or function of the Trustees has been exercised by any committee, any Trustee, Principal or any other holder of an executive office, that person or committee shall report to the Trustees in respect of any action taken or decision made with respect to the exercise of that power or function at the meeting of the Trustees immediately following the taking of the action or the making of the decision.

PRINCIPAL

95. The Trustees shall appoint the Principal. The Trustees may delegate such powers and functions as they consider are required by the Principal for the internal organisation, management and control of the Academy (including the

implementation of all policies approved by the Trustees and for the direction of the teaching and curriculum at the Academy).

MEETINGS OF THE TRUSTEES

96. Subject to these Articles, the Trustees may regulate their proceedings as they think fit.

97. The Trustees shall hold at least three meetings in every school year. Meetings of the Trustees shall be convened by the Secretary. In exercising his functions under this Article the Secretary shall comply with any direction—

a) given by the Trustees; or

b) given by the chairman of the Trustees or, in his absence or where there is a vacancy in the office of chairman, the vicechairman of the Trustees, so far as such direction is not inconsistent with any direction given as mentioned in (a).

98. Any three Trustees may, by notice in writing given to the Secretary, requisition a meeting of the Trustees; and it shall be the duty of the Secretary to convene such a meeting as soon as is reasonably practicable,

99. Each Trustee shall be given at least fourteen clear days before the date of a meeting -

a) notice in writing thereof, signed by the Secretary, and sent to each Trustee at the address provided by each Trustee from time to time; and

b) a copy of the agenda for the meeting;

provided that where the chairman or, in his absence or where there is a vacancy in the office of chairman, the vice-chairman, so

determines on the ground that there are matters demanding urgent consideration, it shall be sufficient if the written notice of a meeting, and the copy of the agenda thereof are given within such shorter period as he directs.

100. The convening of a meeting and the proceedings conducted thereat shall not be invalidated by reason of any individual not having received written notice of the meeting or a copy of the agenda thereof.
101. A resolution to rescind or vary a resolution carried at a previous meeting of the Trustees shall not be proposed at a meeting of the Trustees unless the consideration of the rescission or variation of the previous resolution is a specific item of business on the agenda for that meeting.
102. A meeting of the Trustees shall be terminated forthwith if—
- (a) the Trustees so resolve; or
 - (b) the number of Trustees present ceases to constitute a quorum for a meeting of the Trustees in accordance with Article 105, subject to Article 107.
103. Where in accordance with Article 102 a meeting is not held or is terminated before all the matters specified as items of business on the agenda for the meeting have been disposed of, a further meeting shall be convened by the Secretary as soon as is reasonably practicable, but in any event within seven days of the date on which the meeting was originally to be held or was so terminated.
104. Where the Trustees resolve in accordance with Article 102 to adjourn a meeting before all the items of business on the agenda have been disposed of, the Trustees shall before doing so determine the time and date at which a further meeting is to be held for the purposes of completing the consideration of those items, and they shall direct the Secretary to convene a meeting accordingly,
105. Subject to Article 107 the quorum for a meeting of the Trustees, and any vote on any matter thereat, shall be any three Trustees, or, where greater, any one third (rounded up to a whole number) of the total number of Trustees holding office at the date of the meeting.

106. The Trustees may act notwithstanding any vacancies in their number, but, if the numbers of Trustees is less than the number fixed as the quorum, the continuing Trustees may act only for the purpose of filling vacancies or of calling a general meeting.
107. The quorum for the purposes of—
- a) appointing a parent Trustee under Article 48;
 - b) any vote on the removal of a Trustee in accordance with Article 58;
 - c) any vote on the removal of the chairman of the Trustees in accordance with Article 82;
- shall be any two-thirds (rounded up to a whole number) of the persons who are at the time Trustees entitled to vote on those respective matters.
108. Subject to these Articles, every question to be decided at a meeting of the Trustees shall be determined by a majority of the votes of the members present and voting on the question. Every Trustee shall have one vote.
109. Subject to Article 105-107, where there is an equal division of votes, the chairman of the meeting shall have a casting vote in addition to any other vote he may have.
110. The proceedings of the Trustees shall not be invalidated by
- a) any vacancy among their number; or
 - b) any defect in the election, appointment or nomination of any Trustee.
111. A resolution in writing, signed by all the Trustees entitled to receive notice of a meeting of Trustees or of a committee of Trustees, shall be valid and effective as if it had been passed at a meeting of Trustees or (as the case may be) a committee of Trustees duly convened and held. Such a resolution may consist of several documents in the same form, each signed by one or more of the Trustees.
112. Subject to Article 113, the Trustees shall ensure that a copy of:

- a) the agenda for every meeting of the Trustees;
 - b) the draft minutes of every such meeting, if they have been approved by the person acting as chairman of that meeting;
 - c) the signed minutes of every such meeting; and
 - d) any report, document or other paper considered at any such meeting,
- are, as soon as is reasonably practicable, made available at every Academy to persons wishing to inspect them.

113. There may be excluded from any item required to be made available in pursuance of Article 112, any material relating to—
- a) a named teacher or other person employed, or proposed to be employed, at the Academy;
 - b) a named pupil at, or candidate for admission to, the Academy; and
 - c) any matter which, by reason of its nature, the Trustees are satisfied should remain confidential.
114. Any Trustee shall be able to participate in meetings of the Trustees by telephone or video conference provided that:
- a) he has given notice of his intention to do so detailing the telephone number on which he can be reached and/or appropriate details of the video conference suite from which he shall be taking part at the time of the meeting at least 48 hours before the meeting;
 - b) the Trustees have access to the appropriate equipment if after all reasonable efforts it does not prove possible for the person to participate by telephone or video conference the meeting may still proceed with its business provided it is otherwise quorate.

PATRONS AND HONORARY OFFICERS

115. The Trustees may from time to time appoint any person whether or not a Member of the Academy Trust to be a patron of the Academy Trust or to hold

any honorary office and may determine for what period he is to hold such office.

THE SEAL

116. The seal, if any, shall only be used by the authority of the Trustees or of a committee of Trustees authorised by the Trustees. The Trustees may determine who shall sign any instrument to which the seal is affixed and unless otherwise so determined it shall be signed by a Trustee and by the Secretary or by a second Trustee.

ACCOUNTS

117. Accounts shall be prepared in accordance with the provisions of Part 15 of the Companies Act 2006.

ANNUAL REPORT

118. The Trustees shall comply with their obligations 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 Commission.

ANNUAL RETURN

119. The Trustees shall comply with their obligations under the Charities Act 1993 (or any statutory re-enactment or modification of that Act) with regard to the preparation of an annual return and its transmission to the Charity Commission.

NOTICES

120. Any notice to be given to or by any person pursuant to the Articles (other than a notice calling a meeting of the Trustees) shall be in writing or shall be given using electronic communications to an address for the time being notified for that purpose to the person giving the notice. In these Articles, "Address" in relation to electronic communications, includes any number of address used for the purposes of such communications.

121. A notice may be given by the Academy Trust to a Member either personally or by sending it by post in a prepaid envelope addressed to the Member at his registered address or by leaving it at that address or by giving it using electronic communications to an address for the time being notified to the Academy Trust by the member. A Member whose registered address is not within the United Kingdom and who gives to the Academy Trust an address within the United Kingdom at which notices may be given to him, or an address to which notices may be sent using electronic communications, shall be entitled to have notices given to him at that address, but otherwise no such Member shall be entitled to receive any notice from the Academy Trust.
122. A Member present, either in person or by proxy, at any meeting of the Academy Trust shall be deemed to have received notice of the meeting and, where necessary, of the purposes for which it was called.
123. Proof that an envelope containing a notice was properly addressed, prepaid and posted shall be conclusive evidence that the notice was given. Proof that a notice contained in an electronic communication was sent in accordance with guidance issued by the Institute of Chartered Secretaries and Administrators shall be conclusive evidence that the notice was given. A notice shall be deemed to be given at the expiration of 48 hours after the envelope containing it was posted or, in the case of a notice contained in an electronic communication, at the expiration of 48 hours after the time it was sent.

INDEMNITY

124. Subject to the provisions of the Companies Act 2006 every Trustee or other officer or auditor of the Academy Trust shall be indemnified out of the assets of the Academy Trust against any liability incurred by him in that capacity in defending any proceedings, whether civil or criminal, in which judgment is given in favour or in which he is acquitted or in connection with any application in which relief is granted to him by the court from liability for negligence, default, breach of duty or breach of trust in relation to the affairs of the Academy Trust.

RULES

125. The Trustees may from time to time make such rules or bye laws as they may deem necessary or expedient or convenient for the proper conduct and management of the Academy Trust and for purposes of prescribing classes of and conditions of membership, and in particular but without prejudice to the generality of the foregoing, they may by such rules or bye laws regulate;
- a) the admission and classification of Members of the Academy Trust (including the admission of organisations to membership) and the rights and privileges of such Members, and the conditions of membership and the terms on which Members may resign or have their membership terminated and the entrance fees, subscriptions and other fees or payments to be made by Members;
 - b) the conduct of Members of the Academy Trust in relation to one another, and to the Academy Trust's servants;
 - c) the setting aside of the whole or any part or parts of the Academy Trust's premises at any particular time or times or for any particular purpose or purposes;
 - d) the procedure at general meetings and meetings of the Trustees and committees of the Trustees and meetings of the Local Governing Bodies in so far as such procedure is not regulated by the Articles;
 - e) generally, all such matters as are commonly the subject matter of company rules.
126. The Academy Trust in general meeting shall have power to alter, add or to repeal the rules or bye laws and the Trustees shall adopt such means as they think sufficient to bring to the notice of Members of the Academy Trust all such rules or bye laws, which
- shall be binding on all Members of the Academy Trust. Provided that no rule or bye law shall be inconsistent with, or shall affect or repeal anything contained in, the Memorandum or the Articles.

AVOIDING INFLUENCED COMPANY STATUS

127. Notwithstanding the number of Members from time to time, the maximum aggregate number of votes exercisable by Local Authority Associated Persons

shall never exceed 19.9% of the total number of votes exercisable by Members in general meeting and the votes of the other Members having a right to vote at the meeting will be increased on a pro-rata basis.

128. No person who is a Local Authority Associated Person may be appointed as a Trustee if, once the appointment had taken effect, the number of Trustees who are Local Authority Associated Persons would represent 20% or more of the total number of Trustees. Upon any resolution put to the Trustees, the maximum aggregate number of votes exercisable by any Trustees who are Local Authority Associated Persons shall represent a maximum of 19.9% of the total number of votes cast by the Trustees on such a resolution and the votes of the other Trustees having a right to vote at the meeting will be increased on a pro-rata basis.
129. No person who is a Local Authority Associated Person is eligible to be appointed to the office of Trustee unless his appointment to such office is authorised by the local authority to which he is associated.
130. If at the time of either his becoming a Member of the Academy Trust or his first appointment to office as a Trustee any Member or Trustee was not a Local Authority Associated Person but later becomes so during his membership or tenure as a Trustee he shall be deemed to have immediately resigned his membership and/or resigned from his office as a Trustee as the case may be.
131. If at any time the number of Trustees or Members who are also Local Authority Associated Persons would (but for Articles 127 to 130 inclusive) represent 20% or more of the total number of Trustees or Members (as the case may be) then a sufficient number of the Trustees or Members (as the case may be) who are Local Authority Associated Persons shall be deemed to have resigned as Trustees or Members (as the case may be) immediately before the occurrence of such an event to ensure that at all times the number of such Trustees or Members (as the case may be) is never equal

to or greater than 20% of the total number of Trustees or Members (as the case may be). Trustees or Members (as the case may be) who are Local Authority Associated Persons shall be deemed to have resigned in order of their appointment date the most recently appointed resigning first.

132. The Members will each notify the Academy Trust and each other if at any time they believe that the Academy Trust or any of its subsidiaries has become subject to the influence of a local authority (as described in section 69 of the Local Government and Housing Act).

Names and Addresses of Subscribers

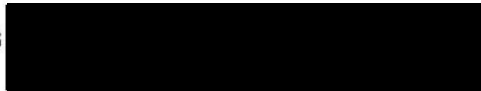
Signature

On behalf of The Ormiston Trust

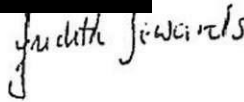


Name PETER GULLER MURRAY

Address



Witness to the above signature:



Name JUDITH SEWALDS

Address



Dated 16/1/09

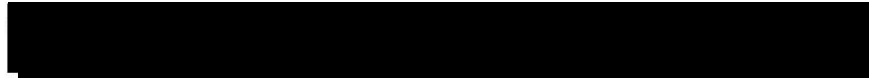
Signature



On behalf of Birmingham City University

Name PROFESSOR DAVID TIDMARSH

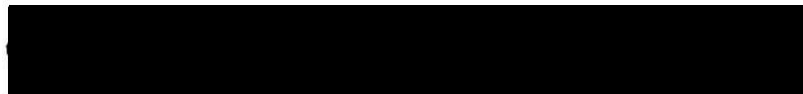
Address



Witness to the above signature: V.J. Bartlett

Name VERONICA BARTLETT

Address



Dated 21/01/09

ANNEX B

THE ADMISSION OF PUPILS TO THE BIRMINGHAM ORMISTON ACADEMY

Version 11D incorporating DCSF comments

GENERAL

1. This annex may be amended in writing at any time by agreement between the Secretary of State and the Academy Trust.
2. The Academy Trust will act in accordance with, and will ensure that the Independent Appeal Panel is trained to act in accordance with, all relevant provisions of the School Admissions Code and the School Admission Appeals Code published by the Department for Children, Schools and Families ("the Codes") as they apply at any given time to maintained schools and with equalities law and the law on admissions as they apply to maintained schools. For this purpose, reference in the Codes or law to "admission authorities" shall be deemed to be references to the governing body of the Academy Trust.
3. Notwithstanding the generality of paragraph 2 of this Annex B, the Academy Trust will take part in the Admissions Forum set up by the LA and have regard to its advice; and will participate in the co-ordinated admission arrangements operated by the LA and the local in-year fair access protocol.
4. Notwithstanding any provision in this Agreement, the Secretary of State may:
 - (a) direct the Academy Trust to admit a named pupil to the Birmingham Ormiston Academy on application from a local authority. Before doing so the Secretary of State will consult the Academy Trust.
 - (b) direct the Academy Trust to admit a named pupil to the Birmingham Ormiston Academy if the Academy Trust has failed to act in accordance with this Annex or has otherwise failed to comply with applicable admissions and equalities legislation or the provisions of the Codes.
5. The Academy Trust shall ensure that parents and 'relevant children' will have the right of appeal to an Independent Appeal Panel if they are dissatisfied with an admission decision of the Academy Trust. The Independent Appeal Panel will be independent of the Academy Trust. The arrangements for appeals will comply with the School Admission Appeals Code published by the Department for Children, Schools and Families as it applies to Foundation and Voluntary Aided schools. The determination of the appeal panel is binding on all parties.
6. The Academy Trust shall prepare guidance for parents and relevant children about how the appeals process will work and provide them with a

named contact who can answer any enquiries they may have about the process. The Academy Trust may, if it chooses, enter into an agreement with a LA or any other organisation for it to recruit, train and appoint appeal panel members, and to arrange for the process to be independently administered and clerked.

7 In paragraphs 5 and 6 above, 'relevant children' means:

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

Relevant Area

7B Subject to paragraph 7C, "relevant area for consultation" means the "Relevant Area" determined by the local authority for maintained schools in the area (in accordance with the meaning of "Relevant Area" within the School Admissions Code).

7C. If the Academy does not consider this meaning to be appropriate, it must apply to the Secretary of State by 1 August for a determination, setting out the reasons for this view.

7D. The Secretary of State will consider the Academy's application and will by 30 September either:

- a. determine the area for consultation; or
- b. determine that the meaning within paragraph 8 should apply.

7E. The Secretary of State may consult the local authority before making such a determination

7F. Within 14 days of the Secretary of State's determination, the Academy will notify the consultees listed in paragraph 8 of the determination.

7G. In the event of a paragraph 7Da determination, a map of the relevant area (or a list of post-codes) will be attached as an appendix to this annex B.

ANNUAL PROCEDURES FOR DETERMINING ADMISSION ARRANGEMENTS

Consultation

8. The Academy Trust shall consult the following parties on the Academy's proposed admission arrangements for a minimum of eight weeks between 1 November and 1 March in the 'Determination Year'^{1m}:

- a) Birmingham Local Authority
- b) The admission fora for Birmingham, Sandwell, Dudley, Walsall, Wolverhampton, Solihull and Coventry local authorities.
- c) Any other admission authorities for primary and secondary schools located within the relevant area for consultation.
- 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 local authority areas.
- f) Parents living in the relevant area for consultation whose children

have attained the age of two but are not above compulsory school age and who are or will be eligible to apply to be admitted to the Academy; g) Community groups which the Academy considers relevant;

h) Teaching unions if the consultation includes an increase in admission number.

Such consultation shall be in line with the requirements of the Codes and relevant admissions legislation, which at the date of this Agreement is section

89 of the School Standards and Framework Act 1998 as amended, and Regulations under that section.

9 From 2011-12, and for subsequent years, consultation in line with paragraph 8 is not required in any year where the following conditions are met:

- a) the admission arrangements were consulted upon in one or both of the previous two years; and
- b) there have been no changes, or proposed changes, since the last consultation.

10 As soon as any changes are made to arrangements, or proposed, the consultation cycle in paragraph 8 must be followed for the next determination year.

Academy Trust Determination of Admission Arrangements

11. The Academy Trust will consider comments made by those consulted in accordance with paragraph 8, including any requests to amend the proposed admission number, before determining the admission arrangements for the Academy.

12. The Academy Trust will determine the Academy's admission arrangements annually by 15 April of the Determination Year and notify consultees listed in paragraph 8 what has been determined within 14 days of that decision being made.

Representations about admission arrangements

13. Where the Academy Trust has determined the Academy's admission arrangements and notified all consultees listed in paragraph 8, if any of those persons or bodies objects to the Academy's admission arrangements, including the proposed admission number, they can make representations to the Secretary of State. Any representations must be made by 30 June in the Determination Year.

Secretary of State's Consent for Changes to Admission Arrangements

14. Where the admission arrangements determined in a Determination Year in accordance with paragraph 12 are different from the admission arrangements currently in existence for the Academy, the Academy Trust shall by 30 June in the Determination Year apply to the Secretary of State for
him to consent to such amended admission arrangements.

Secretary of State's Power to Accept Modify or Reject Admission Arrangements

15. Where the Secretary of State has received any representations made in accordance with paragraph 13, the Secretary of State must consult the Academy Trust on such representations. Following such consultation, by 31

July in the Determination Year the Secretary of State may direct that the Academy Trust amends the proposed admission arrangements for the Academy. The Academy Trust shall comply with any such direction.

16. Where the Secretary of State has received an application made in accordance with paragraph 14 seeking his consent to any amended admission arrangements, the Secretary of State must by 31 July in the Determination Year either approve the amended admission arrangements or direct that the amended admission arrangements are not implemented or must be modified. The Academy Trust must comply with any such direction.

Publication of Admission Arrangements

17. The Academy Trust shall each Determination Year publish the Birmingham Ormiston Academy's agreed admission arrangements by:

- a) copies being sent to the persons consulted in paragraph 8;
- b) copies being sent to primary and secondary schools in the LA's area;
- b) copies being sent to the offices of the LA;
- c) copies being made available without charge on request from the Academy;
- d) copies being sent to public libraries in the area of the LA for the purposes of being made available at such libraries for reference by parents and other persons.
- e) a copy being uploaded to the Academy's website (if it has one).

18. The published admission arrangements will set out:

- a) the name and address of the Birmingham Ormiston Academy and contact details;
- b) a summary of the admission policy, including full oversubscription criteria and any arrangements for post-16 admission;
- c) a statement of any religious affiliation if relevant;
- d) numbers of places and applications for those places in the previous year; and
- e) arrangements for hearing appeals.

Proposed Changes to Admission Arrangements by the Birmingham Ormiston Academy After Arrangements Have Been Published

19. Subject to paragraph 20, once the Academy's admission arrangements have been determined for a particular year and published, the Academy Trust will not make any change to such arrangements unless there is a major change of circumstances and the following procedures have been followed:

- a) the Academy Trust has consulted those who are required to be consulted under paragraph 8 above on the proposed variation;
- b) following such consultation, the Academy Trust has applied to the Secretary of State to approve the change setting out:
 - i) the proposed change; ii) reasons for wishing to make such a change; iii) any comments or objections to the proposal from those consulted; and
- c) following such application, the Secretary of State has provided his consent to the proposed variation.

20. The Academy Trust shall following the prior written agreement or direction of the Secretary of State vary the Academy's admission arrangements where such changes are necessary to ensure compliance with

the relevant provisions of admissions law or the Codes as they apply to maintained schools. Such changes may be made at any time.

21. Any changes to the Academy's admission arrangements brought about through the variation processes in paragraphs 19 or 20 above must be published within the Academy's prospectus and on its website (if it has one) and be communicated within 7 days to those persons who must be consulted under paragraph 8.

22. The Academy Trust must make arrangements for a parent of a child who has attained the age of two but is not above compulsory school age and who has been, is or will be eligible to apply to be admitted to the Academy to

make representations to the Secretary of State that any aspect of the Academy's admission arrangements does not comply with the relevant provisions of admissions law or the Codes as they apply to maintained schools.

23. Where a representation is made in accordance with paragraph 22, the Secretary of State may, after consulting the Academy Trust, direct that the Academy Trust modify its arrangements for the admission of pupils to the Academy so that they comply with the relevant provisions of admissions law and the Codes as they apply to maintained schools. The Academy Trust must comply with any such direction.

24. Records of applications and admissions to the Academy shall be kept by the Academy Trust for a minimum period of ten years and shall be open for inspection by the Secretary of State.

PROCEDURE FOR ADMITTING PUPILS TO THE ACADEMY

Admission Number(s)

25(a). The Academy Trust has the following agreed admissions numbers for the Academy for the year 2011/2012 and, subject to any changes approved or required by the Secretary of State, for subsequent years:

150 places for students in Year 10

25(b) The Birmingham Ormiston Academy operates a sixth form for a total of

650 students. 325 places overall will be available in year 12 (the year 12

'capacity')

The admission number for year 12 is 175.

This is the number of places which will be offered on an annual basis to eligible external applicants.

If fewer than 150 of the Academy's own year 11 pupils transfer into year 12, additional external pupils will be admitted until year 12 meets its capacity of 325.

26. In any specific year, the Academy Trust may set a higher admission number than the Birmingham Ormiston Academy's agreed admission number for an applicable year group. Before setting an admission number higher than

its agreed admission number, the Academy Trust will consult those listed at paragraph 8. Pupils will not be admitted in any year group above the published admission number for that year group unless exceptional circumstances apply and such circumstances shall be reported to the Secretary of State.

27. If the Academy admits a total of 26 pupils in excess of its admission number in any 3 year period it will determine a higher admission number, after consulting those bodies listed at paragraph 8.

Process of Application

28. Arrangements for applications for places at the Birmingham Ormiston Academy will be made in accordance with the LA's co-ordinated admission arrangements and will be made on the Common Application Form provided and administered by the relevant local authority and on the Birmingham Ormiston supplementary form .

29. The areas served by the Birmingham Ormiston Academy will be divided into inner and outer catchment areas. The inner catchment area will be Birmingham and its neighbouring metropolitan authorities (Coventry, Dudley, Sandwell, Solihull, Walsall, and Wolverhampton). The outer catchment area will be Worcestershire, Herefordshire, Shropshire, Staffordshire, Stoke on Trent, Telford and Wrekin and Warwickshire.

30. The Academy Trust will use the Birmingham Local Authority's timetable for applications to the Birmingham Ormiston Academy each year (exact dates within the months may vary from year to year). This will fit in with the indicative timetable below for the co-ordination of admission arrangements within Birmingham LA, to be agreed by the Birmingham Admission Forum, Birmingham LA, local schools and Academies.

- a) **By September** - The Academy Trust will publish in the Birmingham Ormiston Academy's prospectus information about the arrangements for admission, including oversubscription criteria, for the following September (e.g. in September 2010 for admission in September 2011). This will include details of open evenings and other opportunities for prospective pupils and their parents to visit the school. The Academy Trust will also provide information in relation to the Birmingham Ormiston Academy to Birmingham LA and other relevant LA's for inclusion in the composite prospectus, as required;
- b) **September/October** - The Academy Trust will provide opportunities for parents to visit the Academy;
- c) **October** - Common Application Form to be completed and returned to the pupil's home LA to administer. Supplementary Application Form (available from Academy website and Birmingham LA composite admissions prospectus) to be returned to the Academy.
- c) Birmingham LA sends Academy applications to the Academy Trust;
- d) **November-February** -The Birmingham Ormiston Academy conducts its selection procedure, and **sends list of pupils to be offered places at the Academy to Birmingham LA by the dates agreed in the locally coordinated scheme.**
- e) **1 March** - applicants' home LAs make offers to parents.

31. From 2011-12 there will be a national closing date for applications as follows:

- a) 31 October for secondary applications; and
- b) 15 January for Primary applications

The Academy will ensure its application processes enable parents to apply before these deadlines.

Consideration of Applications for Year 10

32. The Academy Trust will consider all applications for places at the Birmingham Ormiston Academy. All applicants will be required to take the aptitude assessments.

The Academy will admit: -

- all children with a statement of special education needs in which the Birmingham Ormiston Academy is named and it is agreed that the

Academy can meet the needs of the child; and

- all looked after children for whom the corporate parent expresses a preference.

When oversubscribed, the Academy will then give priority to students having an aptitude in the visual and performing arts, as demonstrated through its aptitude assessments. The Academy Trust will offer places at the Birmingham Ormiston Academy to all those who have applied and have demonstrated the relevant aptitude, in the following order of priority:

- a) Up to 90% of the remaining places will be offered to students living in the inner catchment area (see paragraph 29)
- b) Up to 10% of the remaining places will be allocated to students living in the outer catchment area (see paragraph 29).
- c) If there are insufficient applications in criterion a) the remaining places will be allocated to those in criterion b) and vice versa.

If the Academy is oversubscribed overall from within categories a-c above, the score in the aptitude assessment will be applied as a tie-breaker with those scoring the highest having priority for admission. If the Academy is oversubscribed overall from within categories a-c above and aptitude assessment scores are equal, distance will be applied as a tie-breaker with those living closest to the main door of the Academy having priority for admission.

Procedures for admission where the Birmingham Ormiston Academy is undersubscribed by those with an aptitude

33.a) Where the Academy is oversubscribed by applicants but undersubscribed by those with an aptitude in the specialisms, after all relevant statemented children and looked after children are admitted all those

demonstrating an aptitude will be admitted before those who have not demonstrated an aptitude. Criteria 32 a) to c) will be applied to those not

having demonstrated an aptitude.

33b) Where fewer applicants than the published admission number for the relevant year groups are received, the Academy Trust will offer places at the Academy to all those who have applied.

34. The Birmingham Ormiston Academy will determine each year its arrangements for assessing aptitude. These will be consulted upon annually

with those in paragraph 8 and published in each Local Authorities' composite

admissions prospectus alongside the admissions arrangements. The assessment must be clear, fair and objective, and must only assess the student's aptitude and not other factors. No student will be assessed for academic ability.

Post 16 admission criteria

35. The Birmingham Ormiston Academy has places for up to 650 students in the 16-19 age range and there is an automatic right of transfer to the post 16 section of the school from year 11 for those students.
36. After internal transfers, the admissions and oversubscription criteria in paragraphs 32 to 34 will be applied to external applicants in order. The admissions procedure to determine aptitude will be similar to the admission at year 10. If a course is full existing pupils at the Academy will be given priority for that course. External pupils who pass the aptitude test will be offered alternative course options according to course availability.
37. There will be a right of appeal to an Independent Appeals Panel for unsuccessful applicants.

Operation of waiting lists

38. Where in any year the Academy receives more successful applications for places than there are places available, a waiting list will operate until the end of the first term after the start of the school year. This will be maintained by the Academy Trust and it will be open to any parent to ask for his or her child's name to be placed on the waiting list.
39. Any child that is unsuccessful at their first assessment can request a second chance in the assessment process, within an agreed time limit.

A second chance will be granted in exceptional circumstances only, where an applicant may not have been able to demonstrate their aptitude, for example through illness.

40. Children's position on the waiting list will be determined solely in accordance with the oversubscription criteria set out above. Where places become vacant they will be allocated to children on the waiting list in accordance with the oversubscription criteria.

Arrangements for Admitting Pupils to Other Year Groups, Including To Replace any Pupils who have Left the Birmingham Ormiston Academy

41. From 2011-2012 local authorities will co-ordinate admissions for in-year applications and for applications for year groups other than the normal point(s) of entry. This will not affect Academies' right to determine which applicants have priority for admission.
42. Subject to any provisions in the LA's co-ordinated admission arrangements relating to applications submitted for years other than the normal year of entry, Academy Trust will consider all such applications and if the year group applied for has a place available, admit the child unless one of the permitted reliefs applies. If more applications are received than there are places available, the oversubscription criteria shall apply. Parents whose application is turned down shall be entitled to appeal.

Arrangements for Admission of pupils as the Birmingham Ormiston Academy Builds to its Full Capacity

43. The Birmingham Ormiston Academy will open on 1 September 2011 with a Published Admission Number relating solely to pupils in Year 10 and Year 12.
44. Admission to Year groups without a Published Admission Number will be based upon the size of teaching groups already existing in the Birmingham Ormiston Academy and the efficient use of resources.
44. There will be a right of appeal to an Independent Appeal Panel for unsuccessful applicants.

^m A 'determination year' is the Academy Financial Year beginning two years before the Academy Financial Year which the admissions arrangements will be for e.g. consultation to end in March 2009 and determination to be in April 2009 for admissions in September 2010

[Annex C](#)

Arrangements for pupils with SEN and disabilities at Birmingham Ormiston Academy

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

1. The Academy 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 Academy shall designate 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 Academy shall:
 - 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;
 - 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;
 - 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
 - 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 the 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 their learning difficulty calls for,
- (b) the provision of efficient education for the children with whom they will be educated,
- (c) the efficient use of resources and

Ormiston Eastside Academy - May 2008

- (d) that the child engages in the activities of the school together with children who do not have SEN.

5. The Academy 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).

Admissions

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

7. Where a local education authority proposes to name the 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 Academy and the local education authority over the proposed naming of the 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 the 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 2 of this agreement.

Ormiston Eastside Academy - May 2008

ANNEXD

Serious incidents of misbehaviour leading to fixed period or permanent exclusion

General Duties

1. Subject to the exceptions in paragraph 4, the Academy Trust shall act and shall ensure that the Principal shall act in accordance with the law on exclusions as if the Academy were a maintained school. For this purpose, reference in the law on exclusions to the Head Teacher and Governing Body shall respectively be deemed to be the Principal and Governing Body of the Academy Trust.
2. Without limiting the generality of paragraph 1, the Academy Trust shall ensure that the Local Authority is informed of an exclusion decision in the same circumstances as required by maintained schools under the law on exclusions.
3. Subject to the exceptions in paragraph 4, the Academy Trust shall ensure that in carrying out their functions the Principal, the Governing Body and the Independent Appeal Panel (established in accordance with paragraph 5) have regard to the Secretary of State's guidance on exclusions¹, as if the Academy were a maintained school.
4. The exceptions to the duties imposed under paragraphs 1 and 3 are:
 - the Academy Trust, and not the Local Authority, is responsible for making arrangements for Independent Appeal Panels to hear appeals against permanent exclusions where the governors do not direct reinstatement;
 - the Governing Body is not expected to seek the advice of a Local Authority officer when considering an exclusion, although a Local Authority officer may attend any meeting to consider an exclusion at the request of a parent; and
 - subject to the Academy Trust's obligations under clause 52 of this Agreement relating to an agreement with the LA on the flow of funds following an exclusion, the arrangements for money to follow pupils who have been permanently excluded from school does not apply.

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

SV2004.1 Annex 4 (August 2006)

Independent Appeal Panels

5. The Academy Trust shall, in relation to the Academy, carry out the functions assigned to the Local Authority to establish and manage the appeal procedure for exclusions under the law on exclusions, as if the Academy were a maintained school.
6. Independent Appeals Panels must be impartial and constituted in accordance with the detailed provisions of paragraphs 95-97 of the Secretary of State's guidance on exclusions. The Academy Trust shall arrange suitable training for appeal panel members and clerks.
7. The Independent Appeal Panel's decision is final and binding on the Academy Trust. A parent may seek a judicial review of an Independent

Appeal Panel's decision. 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.

SCHEDULE B
BIRMINGHAM ORMISTON ACADEMY
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	Birmingham Ormiston Academy
Address	1 Grosvenor Street, Birmingham, B4 7QD
Company Number	06832416
Contact details for the Chair of Charity Trustees	Chair of Trustees c/o Birmingham Ormiston Academy, 1 Grosvenor Street, Birmingham, B4 7QD

1. INTRODUCTION

Introduction and definitions

- 1.1 This Agreement is between the Secretary of State for Education (the “**Secretary of State**”) and Birmingham Ormiston Academy (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 06832416. 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.

¹ Parent has the meaning set out in section 576 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.

“**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

Birmingham Ormiston Academy	CEO	1 Grosvenor Street, Birmingham, B4 7QD
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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 C
BIRMINGHAM ORMISTON ACADEMY
SUPPLEMENTAL FUNDING AGREEMENT



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	Birmingham Ormiston Academy
Company number	06832416
Date of Master Funding Agreement	2021
Name of Academy	Birmingham Ormiston Academy
Date opened	1 September 2011
Type of academy (indicate whether academy or free school)	Academy
Religious designation	N/A
Wholly or partly selective	Wholly selective
Name of predecessor school (where applicable)	N/A
Capacity number (of statutory school age places) (if the Academy has a nursery provision, please provide a breakdown of capacity for nursery pupils and statutory school age places)	950
Age range (including nursery provision where the nursery is part of the school)	14-19
Number of sixth form places	650
Number of boarding places	N/A
SEN unit / Resource provision	N/A
Land arrangements (Version 1-8 or other)	Version 7
Academy and title number of Land (and Temporary Site)	Permanent Site: 1 Grosvenor Street, Birmingham, West Midlands, B4 7QD

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

1. **ESTABLISHING THE ACADEMY**

- 1.A This Agreement made between the Secretary of State for Education and Birmingham Ormiston Academy is supplemental to the master funding agreement made between the same parties and dated 2021 (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 Birmingham Ormiston 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 2011.
- 1.I The Academy Trust must ensure that so far as is reasonably practicable and consistent with clause 2.X of this Agreement and the Equality Act 2010, the policies and practices adopted by the Academy (in particular regarding curriculum, uniform and school food) enable pupils of all faiths and none to play a full part in the life of the Academy, and do not disadvantage pupils or parents of any faith or none. For the avoidance of doubt, this requirement applies irrespective of the proportion of pupils of any faiths or none currently attending or predicted to join the school.

2. RUNNING OF THE ACADEMY

Teachers and staff

- 2.A Subject to clause 2.A.2 and Annex A of this Agreement and section 67 of the Children and Families Act 2014, the Academy Trust may, in accordance with any relevant Guidance, employ anyone it believes is suitably qualified or is otherwise eligible to plan and prepare lessons and courses for pupils, teach pupils, and assess and report on pupils' development, progress and attainment.
- 2.A.1 Not used.
- 2.A.2 The Academy Trust must designate a staff member at the Academy as responsible for promoting the educational achievement of registered pupils at

the Academy who are being looked after by a la, or are no longer looked after by a la because of an adoption, special guardianship or child arrangements order, or because they have been adopted from 'state care' outside England and Wales, and in doing so must comply with the law, regulations and Guidance that apply to maintained schools. The Academy Trust must ensure the designated person undertakes appropriate training and has regard to any Guidance.

Pupils

- 2.B The planned capacity of the Academy is 950 and the age range is 14-19], including a sixth form of 650 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.

SEN Unit or Resourced Provision

- 2.C Not used.

- 2.D Not used.

Charging

- 2.E Not used.

- 2.E.1 Not used.

Admissions

- 2.F Subject to clauses 2.L and 2.M the Academy Trust will act in accordance with, and will ensure that its Independent Appeal Panel is trained to act in accordance with, the School Admissions Code and School Admission Appeals Code published by the Department for Education (the "Codes") and

all relevant admissions law as they apply to foundation and voluntary aided schools, and with equalities law. Reference in the Codes or legislation to “admission authorities” will be deemed to be references to the Academy Trust.

2.G Not used.

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

2.I Not used.

2.J Not used.

2.K Not used.

2.L The Secretary of State may:

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

2.M Not used.

2.N Not used.

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

Adjudicator's decision within two months of the decision (or by 28 February following the decision, whichever is sooner), unless an alternative timescale is specified by the Adjudicator.

2.T Not used.

Curriculum

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

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

2.W Not used.

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

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

- 2.Y Not used.
- 2.Z The Academy Trust must comply with paragraph 2A of the Schedule to The Education (Independent School Standards) Regulations 2014 in relation to the provision of Relationships Education, Relationships and Sex Education and Health Education.
- 2.AA The Academy Trust must prevent political indoctrination, and secure the balanced treatment of political issues, in line with the requirements for maintained schools set out in the Education Act 1996, and have regard to any Guidance.

3. GRANT FUNDING

Calculation of GAG

- 3.A Subject to clause 3.C, the basis of the pupil number count for the purposes of determining GAG for an Academy Financial Year will be the Academy Trust's most recent estimate provided in accordance with clause 3.B.
- 3.B The Secretary of State will, in advance of each Academy Financial Year for the Academy, request that the Academy Trust provides an estimate of the number of pupils on roll in the following September for the purposes of determining GAG for an Academy Financial Year. The Academy Trust must provide the requested estimate to the Secretary of State as soon as reasonably practicable.
- 3.C In the Academy Financial Year which immediately follows the Academy Financial Year in which all planned year groups will be present at the Academy (that is, all the pupil cohorts relevant to the age range of the Academy will have some pupils present), the basis of the pupil number count for the purpose of determining GAG will no longer be the estimate provided in accordance with clause 3.B, but in that and all following Academy Financial Years will be determined in accordance with clause 3.F.
- 3.D For any Academy Financial Year in which GAG for the Academy has been

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

3.E Not used

3.F For Academy Financial Years which immediately follow the Academy Financial Year in which all planned year groups will be present at the Academy, the basis of the pupil count for determining GAG will be:

- a) for pupils in Year 11 and below, the Schools Census which is used to fund maintained schools for the financial year overlapping with the Academy Financial Year in question; and
- a) 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 Not used.

Carrying forward of funds

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

4. LAND

"Permanent Land" means the land at 1 Grosvenor Street, Birmingham, West Midlands, B4 7QD, being the land registered and demised by the Permanent Lease.

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

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

Restrictions on Permanent Land transfer

4.A The Academy Trust must:

- a) within 28 days of the signing of this Agreement in circumstances where the Permanent Land is transferred to the Academy Trust prior to the date of this Agreement, or otherwise within 28 days of the transfer of the Permanent 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 Permanent 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 required to ensure that the Restriction is entered on the proprietorship register of the Academy Trust’s title;
- c) promptly confirm to the Secretary of State when the Restriction has been registered;
- d) if it has not registered the Restriction, allow 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 Permanent Land clean and tidy and make good any damage or deterioration to the Permanent Land. The Academy Trust must not do anything to lessen the value or marketability of the Permanent Land without the Secretary of State’s consent. The Academy Trust must comply with the Permanent Lease and promptly enforce its rights against the Permanent Landlord.
- 4.C The Academy Trust must not, without the Secretary of State’s consent:
 - a) terminate, renew, vary, surrender, dispose of or agree any revised rent under the Permanent Lease; or
 - 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 Permanent Land Provided that the Academy Trust may grant a licence or share occupation of part of the Permanent 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 Permanent Lease and where no relationship of landlord and tenant arises as a result of such occupation.

- 4.D The Academy Trust must obtain the Secretary of State's consent before taking any action, including the service of any notice or waiver of any condition, under any contract relating to the acquisition of the Permanent Land.
- 4.E If the Academy Trust is, or if it is reasonably foreseeable that it will be, in material breach of the Permanent 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.F After notifying the Secretary of State under clause 4.E, 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.
- 4.G Not used.
- 4.H If any part of the property situated on the Permanent Land is damaged or destroyed by an insured risk and the Academy Trust receives the proceeds of insurance but it cannot apply those proceeds to rebuild or reinstate the

property because it is impossible or impractical to do so, then the Academy Trust shall pay the insurance proceeds to the Secretary of State in full.

Property notices

4.I 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.

Option

4.J The Academy Trust grants and the Secretary of State accepts an option (the “**Option**”) to acquire the Permanent 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 any of the conditions (a) to (c) in clause 4.M applies; or
- d) if the Academy Trust cannot use all or part of the Permanent Land as the permanent site of the Academy under clause 4.L.

4.J.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.K The Academy Trust:

- a) must, within 14 days after acquiring the Permanent 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 Permanent 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 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.

Permanent Land not used for the purposes of the Academy

- 4.L If the Academy Trust cannot use all or part of the Permanent 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 Permanent Land for nil consideration to himself or his nominee.

Sharing the Permanent Land

4.M If:

- a) Not used;

- b) the Academy Trust or the Secretary of State serves notice to terminate this Agreement under clause 5.A or
- c) the Secretary of State considers that not all the Permanent Land is needed for the operation of the Academy at planned capacity,

the Academy Trust must share occupation of the Permanent Land with such other Academy as the Secretary of State considers appropriate and enter into any legal arrangements which the Secretary of State requires for this purpose provided that 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.

Exercise of Rights

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

5. **TERMINATION**

Termination by either party

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

Termination Warning Notice

- 5.B The Secretary of State may serve a Termination Warning Notice where he considers that:
 - a) the Academy Trust has breached the provisions of this Agreement or the Master Agreement; or
 - b) the standards of performance of pupils at the Academy are unacceptably low; or
 - c) there has been a serious breakdown in the way the Academy is managed or governed; or

- d) the safety of pupils or staff is threatened, including due to breakdown of discipline; or
- e) the Academy is Coasting provided he has notified the Academy Trust that it is Coasting.

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

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

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

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

Termination by the Secretary of State after inspection

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

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

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

5.G In deciding whether to give notice of his intention to terminate under clause

5.F, the Secretary of State will have due regard to the overall performance of the Academy Trust.

5.G.1 Not used.

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

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

he may serve a Termination Notice.

5.I Not used.

Termination by the Secretary of State

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

5.K Not used.

5.L If at any time after the Academy has opened, the Secretary of State considers that the Academy is not financially viable because of low pupil numbers, then he may:

- a) serve a Termination Warning Notice; or
- b) serve a Termination Notice.

5.M If both parties agree that the Academy is not financially viable because of low pupil numbers, they may jointly terminate this Agreement after agreeing the precise terms of termination.

5.N Not used.

5.O 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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