

**DEED OF NOVATION AND VARIATION
OF THE
FUNDING AGREEMENT FOR MULBERRY UTC ACADEMY**

The Parties to this Deed are:

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

(2) **MULBERRY SCHOOLS TRUST**, a charitable company Incorporated in England and Wales with registered company number 10035860 whose registered address is at Richard Street, Commercial Road, London E1 2JP ("**MST**"); and

(3) **MULBERRY UTC**, a charitable company Incorporated in England and Wales with registered company number 08295058 whose registered address is at Richard Street, Commercial Road, London E1 2JP (the "**Company**"),

together referred to as the "Parties".

INTRODUCTION

- A. Mulberry UTC is an academy within the meaning of the Academies Act 2010 (the "academy") and is currently operated by the Company (a single academy trust).
- B. The Secretary of State and the Company entered into a Funding Agreement on 31 March 2016 (the "**Agreement**") for the maintenance and funding of the academy (attached as Schedule 1).
- C. It is proposed that, with effect from 00.01 am on 1 August 2017 ("Transfer Date"), MST will assume responsibility for the management and operation of the academy in succession to the Company.
- D. The Parties wish to novate the Agreement to MST and the Secretary of State and MST wish to vary the terms of the Agreement subject to the provisions of this Deed.

LEGAL AGREEMENT

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

NOVATION

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

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

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

OBLIGATIONS AND LIABILITIES

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

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

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

INDEMNITY

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

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

VARIATION

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

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

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

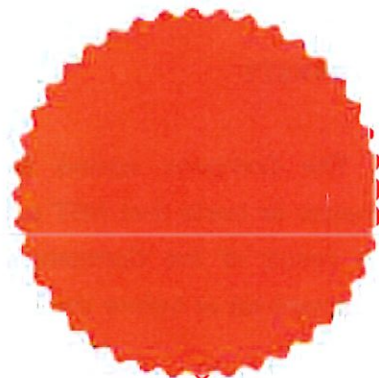
14. The Parties irrevocably agree that the courts of England and Wales shall have exclusive jurisdiction to settle any dispute or claim that arises out of, or in connection with, this deed or its subject matter or formation (including non-contractual disputes or claims).

COUNTERPARTS

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

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

EXECUTED as a deed by affixing the corporate seal)
of **THE SECRETARY OF STATE FOR EDUCATION**)
authenticated by:-)



Mary Pooley

Duly authorised by the **SECRETARY OF STATE FOR EDUCATION**

Date 2 AUGUST 2017

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

Director M. Traynor
Print name MARK TRAYNOR
Date 26th July 2017

Witness J. Michaels
Print name JACK MICHAELS
Address 6th Floor, Richmond Road
Occupation Paralegal

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

Director Akin Mung Farlow
Print name A KINKE FARLOW
Date 28.7.2017

Witness S. Murphy
Print name S. MURPHY
Address Flat 4 Robin Court, Upper Walthamstow Rd
Occupation Personal Assistant

Schedule 1
Funding Agreement



Department
for Education

Mulberry UTC: single funding agreement

February 2015

FUNDING AGREEMENT: SINGLE UTC

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SUMMARY

Information about the Academy:

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|---|--|
| Name of Academy Trust | Mulberry UTC |
| Company number | 08295058 |
| Name of academy | Mulberry UTC |
| Opening date | 04/09/2017 |
| Type of academy (indicate whether UTC or Studio School) | UTC |
| Capacity | 800 |
| Age range | 14-19 |
| Number of sixth form places | 600 |
| Land arrangements (Version 1-4 or other) | Version 1 |
| Address and title number of Land | 64 Parnell Road, London E3 2RU Title Number EGL 499649 |
| Contact details for the Chair of Board of Charity Trustees | Jane Farrell jane.farrell@theewgroup.com |

1. ESTABLISHING THE ACADEMY

Introduction to this agreement

- 1.1. This Agreement is between the Secretary of State for Education (the "**Secretary of State**") and Mulberry UTC (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 08295058 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 an independent school in England, according to the provisions of the Academies Act 2010, to be known as Mulberry UTC (the "**Academy**"), 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.
- 1.4. In this Agreement these capitalised words and expressions will have the following meanings:

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

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

"Articles" means the Academy Trust's articles of association.

"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.

"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.

"DfE" and the expression **"Department"** means the Department for Education or any successor Department which has responsibility for schools.

"EFA" means the Education Funding Agency.

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

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

"LA" means a local authority.

"Parents" means parents or guardians.

"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.

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

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

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

"Start-Up Period" means up to 7 Academy Financial Years and covers the period up to the first Academy Financial Year in which it is planned that the Academy will be at full capacity.

"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 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.

- 1.5. 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. References to this Agreement include any and all annexes.
- 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) the "school" refers to the Academy;
 - b) the "head teacher" may refer to the Academy's head teacher or principal;
 - c) the Academy Trust will be deemed to be the "responsible authorities"; and
 - d) references to registered pupils will be treated as references to registered pupils at the Academy.

1.11. References in this 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. The Academy Trust must ensure that the Academy meets the requirements in section 1A of the Academies Act 2010.

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

1.15. The Academy Trust must conduct the Academy 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 4.6–4.8; and
- d) this Agreement.

1.16. The Academy Trust must, as soon as is reasonable, establish an appropriate mechanism for receiving and managing 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 for the Academy to be 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. The Academy Trust agrees to be bound by the prohibition against discrimination in section 85 of the Equality Act 2010.
- 1.19. The Academy Trust must ensure that so far as is reasonably practicable and consistent with clauses 2.51 and 2.52 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.
- 1.20. The Academy Trust is not required to publish information under this Agreement if to do so would breach its obligations under the Data Protection Act 1998.

Academy opening date

- 1.21. The Academy Trust will open the Academy on 04/09/2017.

Governance

- 1.22. The Academy will be governed by a board comprising the Charity Trustees of the Academy Trust (the "**Board of Charity Trustees**").
- 1.23. The Board of Charity Trustees must have regard to any Guidance on the governance of Academy Trusts.
- 1.24. The Academy Trust must provide to the Secretary of State the names of all new or replacement Charity Trustees and members 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 Trustee or member they replaced as soon as is practicable and in any event within 14 days of their appointment or election.

- 1.25. The Academy Trust must not appoint any new or replacement Charity Trustees or 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. The Academy Trust must not amend or remove the provisions in its Articles relating to the appointment, election, resignation or removal of Charity Trustees or members ("the Governance Articles") without the Secretary of State's consent.
- 1.27. 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.
- 1.28 If the Secretary of State consents to the proposed changes, the Academy Trust shall approve any changes to the Governance 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 ACADEMY

Length of school day and year

- 2.1. The length of the school day and year is the responsibility of the Academy Trust.

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. Subject to clause 2.5 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.
- 2.5. 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 an LA, and in doing so must comply with the law, regulations and guidance that apply to maintained schools.
- 2.6. Teachers' pay and conditions of service are the responsibility of the Academy Trust.
- 2.7. The Academy Trust must ensure that all teachers employed at the Academy have access to the Teachers' Pension Scheme and, in so doing, must comply with the requirements of this scheme and with Fair Deal for staff pensions guidance published by HM Treasury.
- 2.8. The Academy Trust must, in accordance with the Local Government Pension Scheme (Administration) Regulations 2008 and with Fair Deal for staff pensions guidance published by HM Treasury, ensure that all affected staff employed in the Academy other than teachers have access to the Local Government Pension Scheme, unless an individual expressly chooses to opt out of the Scheme in accordance with the regulations.
- 2.9. Where a member of the Teaching Staff employed at the 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 have 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.

Pupils

- 2.10. The planned capacity of the Academy is 800 in the age range 14-19, including a sixth form of 600 places. The Academy will be an all ability inclusive school.
- 2.11. The Academy Trust must ensure that the Academy meets the needs of individual pupils, including pupils with SEN and disabilities, both those with and without statements of SEN.

Safeguarding

- 2.12 The Academy Trust will abide by the requirements of and have regard to any Guidance on:
 - a) safeguarding, in particular that contained in the guidance document entitled "Safeguarding Children and Safer Recruitment in Education" as amended from time to time; and
 - b) the employment and work placement/work experience opportunities for pupils, in particular that contained in the document named "Guidance on the Employment of Children" as amended from time to time.
- 2.13 The Academy Trust will take appropriate steps to ensure that any work placement/work experience opportunities for pupils are suitable, so as to safeguard the health, safety and welfare of pupils whilst employed or on work placement/work experience either on or off the school premises.

School meals

- 2.14. The Academy Trust must provide school lunches and free school lunches in accordance with the provisions of sections 512(3) and 512ZB(1) of the Education Act 1996 as if references in sections 512 and 512ZB to a local authority were to the Academy Trust and as if references to a school maintained by the local authority were to the Academy.

2.15. The Academy Trust must comply with school food standards legislation as if it were a maintained school.

2.16. Not used.

Pupil Premium

2.17. For each Academy 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 its Pupil Premium allocation on;
- c) what it spent its Pupil Premium allocation on in the previous Academy Financial Year; and
- d) the impact of the previous year's Pupil Premium allocation on educational attainment.

2.18. Not used.

Charging

2.19. 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 the Academy were a maintained school.

2.20. There must be no charge for admission to or attendance at the Academy and the Academy will only charge pupils where the law allows maintained schools to charge.

2.21. Clause 2.20 does not prevent the Academy Trust receiving funds from an LA or a charity in respect of the admission and attendance of a pupil with SEN to the Academy.

2.22. Notwithstanding clause 2.20, the Academy Trust may charge people who are not registered pupils at the Academy for education provided or use of facilities.

2.23. Not used.

2.24. Not used.

Admissions

2.25. The Academy Trust will act in accordance with, and will ensure that its Independent Appeal Panel is trained to act in accordance with, the School Admissions Code and School Admission Appeals Code published by the DfE (the "Codes") and all relevant admissions law as they apply to maintained schools, and with equalities law. Reference in the Codes or legislation to "admission authorities" will be deemed to be references to the Academy Trust.

2.26. Not used.

2.27. 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 unless it opts out of doing so in any admissions year by notifying the LA in writing no later than the date of determining its admissions policy for the Academy.

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

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

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

- a) any personal details about their financial status; or
- b) whether parents are serving in the UK armed forces or were serving in the UK armed forces, and are exercising parental care and responsibility for the child in question.

2.31 The Secretary of State may:

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

2.32 Not used.

2.33 Not used.

2.34 Not used.

2.35 The Academy Trust must ensure that parents and 'relevant children' (as described in the Codes) have the right to appeal to an Independent Appeal Panel if they are dissatisfied with an admission decision of the Academy Trust. The arrangements for appeals must comply with the Codes as they apply to foundation

and voluntary aided schools. The determination of the appeal panel is binding on all parties.

2.36 Subject to clause 2.37, 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.

2.37 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.

2.38 The Office of the Schools Adjudicator ("**OSA**") will consider objections to the Academy's admission arrangements (except objections against the agreed variations from the Codes, over which it has no jurisdiction). The Academy Trust must therefore make it clear, when determining the Academy's admission arrangements, that objections should be submitted to the OSA. The OSA's determination of an objection is binding on the Academy and the Academy Trust must make appropriate changes to its admission arrangements as quickly as possible.

2.39 Not used.

Exclusions

2.40 If asked to by an LA, the Academy Trust must enter into an agreement with that LA that 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 which the LA has a similar agreement; or
- b) the Academy Trust permanently excludes a pupil from the Academy,

the arrangements for payment will be the same as if the Academy were a maintained school, under regulations made under section 47 of the School Standards and Framework Act 1998.

Curriculum

2.41 The curriculum is the responsibility of the Academy Trust.

2.42 The Academy Trust must ensure that the curriculum provided to pupils up to the age of 16 is balanced and broadly based, includes English, mathematics and science, and includes provision for technical education with an emphasis on creative industries, digital technologies and healthcare.

2.43 The Academy Trust must publish on the Academy's website information about its curriculum, including:

- a) the content of the curriculum;
- b) its approach to the curriculum;
- c) the GCSE options and other Key Stage 4 qualifications, or other future qualifications specified by the Secretary of State, offered by the Academy; and
- d) how parents (including parents of prospective pupils) can obtain more information about the Academy's curriculum.

2.44 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 the Academy.

2.45 The Academy Trust must provide for the teaching of evolution as a comprehensive, coherent and extensively evidenced theory.

2.46 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.

2.47 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.

2.47A The Academy Trust must ensure the Academy promotes principles that support equality of opportunity for all.

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

2.49 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 clauses 2.51 and 2.52.

2.50 Not used

2.51 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;

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

2.53 Not used.

2.54. The Academy Trust must have regard to any Guidance, further to section 403 of the Education Act 1996, on sex and relationship education to ensure that children at the Academy are protected from inappropriate teaching materials and that they learn the nature of marriage and its importance for family life

and for bringing up children. The Academy Trust must also have regard to the requirements in section 405 of the Education Act 1996, as if the Academy were a maintained school.

- 2.55. The Academy Trust must ensure that careers guidance is provided at the Academy, in accordance with the requirements on maintained schools in the Education Act 1997.

Assessment

- 2.56. The Academy Trust must:

- a) ensure that pupils 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, to ensure that pupils at the Academy take part in assessments, and in teacher assessments of pupils' performance;
- c) 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;
- d) for all Key Stages, allow monitoring and moderation of the Academy's assessment arrangements as required by the Secretary of State.

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

- 2.58. 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 Academy's website:

- a) the Academy's most recent Key Stage 4 results as published by the Secretary of State in the School Performance Tables, broken down as follows:
 - i. "% achieving 5 + A* - C GCSEs (or equivalent) including English and maths GCSEs";
 - ii. "% achieving the English Baccalaureate"; and
 - iii. "% of pupils making expected progress";
- b) 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
- c) information about where and how parents (including parents of prospective pupils) can access the School Performance Tables published by the Secretary of State.

2.59. The Secretary of State may direct the 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 the Academy.
- 3.2. "**Recurrent Expenditure**" means any money spent on the establishment, conduct, administration and maintenance of the 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.

General Annual Grant (GAG)

3.12. The Secretary of State will pay GAG to the Academy Trust to cover the Academy's normal running costs or capital expenditure, 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 and lighting); maintenance of grounds (including boundary fences and walls); insurance; cleaning materials and contract cleaning; water and sewerage; fuel and light (including electricity and gas); rents; rates; purchase, maintenance, repairs and replacement of furniture and fittings;**
- h) medical equipment and supplies;**
- i) staff development (including in-service training);**
- j) curriculum development;**
- k) the costs of providing school meals for pupils (including the cost of providing free school lunches to pupils who are eligible to receive**

them), and any discretionary grants to pupils to meet the cost of pupil support, including support for pupils with SEN or disabilities;

- l) administration; and
- m) establishment expenses and other institutional costs.

3.13. GAG for each Academy Financial Year for the Academy will include:

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

3.14. The Academy Trust must use GAG only for maintaining, carrying on, managing and developing the Academy in accordance with this 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, the Academy Trust must not use GAG for:

- a) education and training for adults who are not pupils of the Academy, other than staff professional development; or
- b) nursery provision for which parents are charged a fee;
- c) nursery provision to children outside the Academy's age range in clause 2.10;
- d) any additional cost of providing sport and leisure facilities for a purpose not permitted in clause 3.14.

Calculation of GAG

- 3.16. Subject to clause 3.18, 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 3.17.
- 3.17. 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.
- 3.18. In the Academy Financial Year which is 9 Academy Financial Years after the Academy opening date, the basis of the pupil number count for the purpose of determining GAG will no longer be the estimate provided in accordance with clause 3.17, but in that and all following Academy Financial Years will be determined in accordance with clause 3.21.
- 3.19. For any Academy Financial Year in which GAG for the Academy has been calculated in accordance with clauses 3.16 and 3.17, 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.
- 3.20. Not used.
- 3.21. In the 9th Academy Financial Year after the Academy opening date and all following Academy Financial Years, the basis of the pupil count for determining GAG will be:

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

3.22. 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 2.10. 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.

3.23. The Secretary of State may pay a further element of GAG to the Academy Trust during the Start-Up Period in order 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; and
- b) meet the costs associated with the recruitment and induction of additional staff.

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

3.24. The Secretary of State recognises that if a Termination Notice or a Termination Warning Notice is served, 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.

Earmarked Annual Grant (EAG)

- 3.25. 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 described in the relevant funding letter. The Academy Trust must spend EAG only in accordance with that letter.
- 3.26. Where the Academy Trust is seeking a specific EAG for any Academy Financial Year, it must send a letter to the DfE outlining its proposals and the reasons for the request.

Arrangements for paying GAG and EAG

- 3.27. Before each Academy Financial Year, the Secretary of State will notify the Academy Trust of the GAG and EAG amounts which, subject to parliamentary approval, the Secretary of State plans for that Academy Financial Year and how they have been calculated.
- 3.28. The amount of GAG for an Academy Financial Year will be decided 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**").
- 3.29. 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.
- 3.30. The Annual Letter of Funding will, as well as stating the grant amounts, set out how they 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.
- 3.31. The Secretary of State will pay GAG in monthly instalments on or before the 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.

3.32. 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

3.33. Not used

3.34. Not used.

3.35. The Academy Trust may receive additional funding from an 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, which for the avoidance of doubt apply both before and after the Academy has opened.

- 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 obligations 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 prescribed as the principal regulator under the Charities Act 2011.
- 4.5. The Academy Trust must comply with the 16 to 19 Funding Guidance published by the Secretary of State, in respect of its provision for pupils 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 which includes an amount to cover VAT, the Academy Trust shall, having paid the VAT, promptly submit a VAT reclaim application to Her Majesty's Revenue and Customs (HMRC). Any failure by the Academy Trust to submit a VAT reclaim application to HMRC, or to pursue the application diligently, or to repay any reclaimed amount to the Secretary of State as soon as reasonably practicable following receipt will be taken into account by the Secretary of State in:
- a) calculating and paying any subsequent grant to the Academy Trust; or
 - b) adjusting GAG payable to the Academy Trust in subsequent Academy Financial Years.

Application of the Academies Financial Handbook

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

Budgeting for funds

- 4.9. The Academy Trust must balance its budget from each Academy Financial Year to the next. For the avoidance of doubt, this does not prevent the Academy Trust from:
 - a) subject to clause 4.14, carrying a surplus from one Academy Financial Year to the next; or
 - b) carrying forward from previous Academy Financial Years sufficient cumulative surpluses on grants from the Secretary of State to meet an in-year deficit on such grants in a subsequent financial year, in accordance with clauses 4.14-4.17; 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 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. 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. Not used.
- 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 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 the 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 made in accordance with clause 3.23 for the Start-Up Period may be carried forward, without limitation or deduction, until the Start-Up Period ends.
- 4.17. Any additional grant made in accordance with clause 3.24, for a period after the Secretary of State has served a Termination Notice or a Termination Warning Notice, may be carried forward without limitation or deduction until the circumstances set out in clause 3.24 cease to apply, or the Academy closes.
- 4.18. Any unspent grant not allowed to be carried forward under clauses 4.14-4.17 may be taken into account in the payment of subsequent grant.

Annual accounts and audit

- 4.19. The Academy Trust must prepare and file with Companies House the annual reports and accounts required by the Companies Act 2006.

4.20. 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 were a registered charity; and
- b) additionally as the Secretary of State directs.

4.21. The Academy Trust's accounts must be audited annually by independent auditors appointed in line with the Academies Financial Handbook.

4.22. The accounts must carry an audit report stating whether, in the auditors' opinion, the accounts show a true and fair view of the Academy Trust's affairs. The accounts must also be accompanied by such other audit reports, relating to the use of grants and other matters, as the Secretary of State directs.

4.23. The Academy Trust's annual report must include the names of all members of the Academy Trust who served during the year.

4.24. 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.

4.25. The Academy Trust must publish on its website its annual reports and accounts, current memorandum of association, Articles and Funding Agreement and the names of its Charity Trustees and members. The Secretary of State may also publish the Academy Trust's annual reports and accounts, and the audit report, as he sees fit.

Keeping financial records

4.26. 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

- 4.27. The books of accounts and all relevant records, files and reports of the Academy Trust, including those relating to financial controls, must be open at all reasonable times to officials of the DfE and the National Audit Office, and to their agents and contractors, for inspection or carrying out value for money assessments. 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.
- 4.28. 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

- 4.29. In relation to Publicly Funded Assets, the Academy Trust must not, without the Secretary of State's consent:
- a) acquire or dispose of freehold land;
 - b) take up or grant a lease of land;
 - c) dispose of any other class of capital asset,
- except as permitted in the Academies Financial Handbook, and subject to Part 3 of Schedule 1 to the Academies Act 2010.
- 4.30. The Academy Trust must give 30 days' notice to the Secretary of State, whether or not the circumstances require his approval, of its intention to take any of the actions in clause 4.29.

Retaining proceeds from the disposal of capital assets

- 4.31. 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.

- 4.32. If the Academy Trust sells a capital asset which was transferred to it for no or nominal consideration from an LA, 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

- 4.33. 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; or
- b) write off any debts or liabilities owed to it; or
- c) offer to make any special payments as defined in HM Treasury's publication 'Managing Public Money' (including ex gratia payments, staff severance payments and compensation payments)

above any values specified in the Academies Financial Handbook.

- 4.34. The Academy Trust must give the Secretary of State 30 days' notice, whether or not the circumstances require his consent, of its intention to do any of the actions in clause 4.33.
- 4.35. 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

4.36. 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. LAND CLAUSES

"Debt" means an amount equal to 100% of the Land Value;

"Discharge Process" means the removal of:

- i. the Legal Charge registered with Companies House against the Academy Trust;
- ii. the Legal Charge from the charges register at the Land Registry against the title for the Land;
- iii. the restriction in the proprietorship register referred to in clause 5.3(a);
and
- iv. the notice in the proprietorship register referred to in clause 5.8(a).

"Land" means the land at 64 Parnell Road, London E3 2RU being the land registered with title number EGL499649 , which is to be the permanent site of the Academy.

"Land Value" means, at any time:

- i. where the Land has been disposed of as a result of the enforcement of the Legal Charge by the Secretary of State, the proceeds of that disposal after payment of the seller's necessary and reasonable costs in connection with the disposal; or
- ii. In any other case, the Market Value.

"Legal Charge" means the legal charge over the Land to be entered into by the Academy Trust in favour of the Secretary of State, in a form and substance satisfactory to the Secretary of State.

"Market Value" means the market value (as defined in the current edition of the RICS Valuation Standards) of the relevant part of the Land as determined by a professionally qualified independent valuer.

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

Debt

- 5.1. The Academy Trust must pay the Debt to the Secretary of State on termination of this Agreement or in accordance with clauses 5.10(b) or 5.17(b)(i) or on a sale of all or part of the Land with or without the Secretary of State's consent.
- 5.2. The Debt is secured by the Legal Charge.

Restrictions on Land transfer

- 5.3. The Academy Trust must:
- a) apply to the Land Registry using form RX1 for the following restrictions (each a **"Restriction"**) to be entered in the proprietorship register for the Land by the following deadlines:
 - i. within 28 days after acquiring the Land:
"No disposition of the registered estate by the proprietor of the registered estate is to be registered without a written consent signed by the Secretary of State for Education of Sanctuary Buildings, Great Smith Street, London SW1P 3BT"; and
 - ii. within 28 days after entering into the Legal Charge:
"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 proprietor for the time being of the charge dated 30/03/2015 in favour of The

Secretary of State for Education referred to in the charges register or by its conveyancer”;

- b) take any further steps required to ensure that each Restriction is entered on the proprietorship register;
- c) promptly confirm to the Secretary of State when each Restriction has been registered;
- d) if it has not registered each 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 a 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

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

- a) grant any consent or licence; or
- b) create or allow any encumbrance; or
- c) part with or share possession or occupation; or
- d) enter into any onerous or restrictive obligations,

in respect of all or part of the Land.

5.5. 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 Land.

Property notices

5.6. 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

5.7. The Academy Trust grants and the Secretary of State accepts an option (the "Option") to acquire all or part of the Land at nil consideration. The Secretary of State may exercise the Option in writing if this Funding Agreement is terminated for any reason, or if the Academy Trust cannot use all or part of the Land as the permanent site of the Academy under clauses 5.10 or 5.17. If the Option is exercised, completion will take place 28 days after the exercise date in accordance with the Law Society's Standard Conditions of Sale for Commercial Property in force at that date.

Option notice

5.8. The Academy Trust:

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

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

Legal Charge

5.9. The Academy Trust must

- (a) enter into the Legal Charge:
 - i. on completion of the acquisition of the Land, if at that time the Academy Trust is an exempt charity for the purposes of the Charities Act 2011, or
 - ii. within two weeks after the Academy opens, if the Academy Trust is not an exempt charity for the purposes of the Charities Act 2011 when it acquires the Land;
- (b) within 21 days from the date of the Legal Charge, register it with Companies House or, if required by the Secretary of State, use all reasonable endeavours to assist the Secretary of State in doing so, including signing and executing any necessary documents;
- (c) within 28 days from the date of the Legal Charge, apply to the Land Registry for the Legal Charge to be entered on the charges register, taking any other steps required to have the Legal Charge registered and promptly confirming to the Secretary of State when this has been done; and
- (d) if it has not registered the Legal Charge, allow the Secretary of State to register it, and use all reasonable endeavours to help register the Legal Charge, including signing and executing any necessary documents and dealing with requisitions from the Land Registry.

Land not used for the purposes of the Academy

5.10. If the Academy Trust cannot use all or part of the Land as the permanent site of the Academy but the Secretary of State agrees not to terminate this Agreement on that basis, the Secretary of State may notify the Academy Trust that:

- a) he intends to exercise the Option to transfer the Land or the relevant part of it for nil consideration to himself or his nominee;
- b) the Academy Trust must pay the Debt or the Market Value; and/or
- c) the Academy Trust must sell the Land or the relevant part of it, keeping some or all of the sale proceeds to fulfil its charitable purposes by funding the purchase of an alternative permanent site for the Academy, and accounting to the Secretary of State for any proceeds not so used.

Sharing the Land

5.11. If:

- a) the Academy does not reach its planned capacity, as stated in clause 2.10, within 6 Academy Financial Years; or
- b) the Academy Trust or the Secretary of State serves notice to terminate this Agreement under clause 6.1; or
- c) the Secretary of State considers that not all the Land is needed for the operation of the Academy at planned capacity,

then:

- i. the Academy Trust must share occupation of the 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; or
- ii. the Academy Trust must sell part of the Land as required by the

Secretary of State and account for the sale proceeds to the Secretary of State in part payment of the Debt, after which the Secretary of State will carry out the Discharge Process over the part of the Land that has been sold.

Exercise of Rights

5.12. On termination of this Agreement, the Secretary of State may give notice that he intends to exercise his rights under clauses 5.7, 6.30 or 6.31 or under the Legal Charge. Any such notice must state which clause of this Agreement the Secretary of State intends to exercise, and is without prejudice to his right to exercise any other rights available to him.

5.13. If the Secretary of State exercises the Option on termination of this Agreement, then:

- a) the Academy Trust will be deemed to have paid the Debt to the Secretary of State;
- b) the Academy Trust will be deemed to have paid to the Secretary of State a proportion of the proceeds from the sale of the Land under clause 6.30(b); and
- c) the Secretary of State will carry out the Discharge Process;

5.14. If the Secretary of State enforces the Legal Charge on the termination of this Agreement, then:

- a) the Academy Trust will be deemed to have paid the Debt to the Secretary of State after the Debt has been realised by a receiver;
- b) the Academy Trust will be deemed to have paid to the Secretary of State a proportion of the proceeds from the sale of the Land as required under clause 4.31; and
- c) the Secretary of State will carry out the Discharge Process.

5.15. If, on termination of this Agreement, the Secretary of State exercises his rights under clause 6.30, then:

a) the Academy Trust will be deemed to have paid the Debt to the Secretary of State; and

b) the Secretary of State will carry out the Discharge Process.

5.16. If, on termination of this Agreement, the Secretary of State agrees under clause 6.31 that the Academy Trust may invest the proceeds from the sale of the Land for its charitable objects, or directs the Academy Trust to pay all or part of the sale proceeds to the relevant LA, then:

a) the Academy Trust will be deemed to have paid the Debt to the Secretary of State; and

b) the Secretary of State will carry out the Discharge Process.

5.17. If the Academy Trust applies to the Secretary of State for consent to sell all or part of the Land, and if the Secretary of State agrees that the Land is no longer needed or cannot be used for the purposes of the Academy, he may:

a) exercise the Option; or

b) consent to the sale subject to one or more of the following conditions:

i. that (notwithstanding clause 4.31) the Academy Trust pays the Debt (or, if it proposes to sell only part of the Land, pays the Market Value of the part sold) to the Secretary of State;

ii. that pursuant to clause 4.31, the Academy Trust keeps some or all of the sale proceeds for its charitable purposes, accounting to the Secretary of State for the remainder; or

iii. that pursuant to clause 4.32, the Academy Trust pays all or some of the sale proceeds to the relevant LA and may reinvest all or some of the sale proceeds for its charitable purposes.

5.18. If the Secretary of State consents to the sale of the Land, subject to any of the conditions in clause 5.17(b):

a) If the Secretary of State enforces the Legal Charge, then:

- i. the Academy Trust will be deemed to have paid the Debt to the Secretary of State after the Debt has been realised by a receiver;
 - ii. the Academy Trust will be deemed to have paid a proportion of the sale proceeds to the Secretary of State as required under clause 4.31; and
 - iii. the Secretary of State will carry out the Discharge Process;
- b) if all of the Land is sold and the Secretary of State agrees that the Academy Trust may keep some or all of the sale proceeds for its charitable purposes, accounting to the Secretary of State for the remainder, then:
 - i. the Academy Trust will be deemed to have paid the Debt to the Secretary of State;
 - ii. the Academy Trust will be deemed to have paid a proportion of the sale proceeds to the Secretary of State as required under clause 4.31; and
 - iii. the Secretary of State will carry out the Discharge Process;
- c) if part of the Land is sold, and the Secretary of State agrees that the Academy Trust may keep some or all of the sale proceeds for its charitable purposes, accounting to the Secretary of State for the remainder, then:
 - i. the Academy Trust will be deemed to have paid the Debt to the Secretary of State to the extent of the Market Value;
 - ii. the Academy Trust will be deemed to have paid a proportion of the sale proceeds to the Secretary of State, as required under clause 4.31, in relation to the relevant part of the Land; and
 - iii. the Secretary of State will carry out the Discharge Process in relation to the part of the Land which has been sold;

- d) If the Secretary of State directs the Academy Trust to pay some or all of the proceeds from the sale of the Land to the relevant LA under clause 4.32, or agrees that the Academy Trust may reinvest the sale proceeds for its charitable purposes, the Secretary of State will carry out the Discharge Process in relation to the part of the Land which has been sold.

5.19. If the Secretary of State exercises the Option over all of the Land and the Academy Trust transfers all of the Land to the Secretary of State for nil consideration, then:

- a) the Academy Trust will be deemed to have paid the Debt to the Secretary of State;
- b) the Academy Trust will be deemed to have paid a proportion of the sale proceeds to the Secretary of State as required under clause 4.31; and
- c) the Secretary of State will carry out the Discharge Process.

5.20. If the Secretary of State exercises the Option over only part of the Land, and the Academy Trust transfers that part of the Land to the Secretary of State for nil consideration, then:

- a) the Academy Trust will be deemed to have paid the Debt to the Secretary of State to the extent of the Market Value;
- b) Academy Trust will be deemed to have paid a proportion of the sale proceeds to the Secretary of State, as required under clause 4.31, in relation to the part of the Land transferred, and
- c) the Secretary of State will carry out the Discharge Process in relation to the part of the Land which has been transferred.

Payment of Debt

5.21. If the Academy Trust pays the Debt to the Secretary of State, the Secretary of State will carry out the Discharge Process.

5.22. If the Academy Trust:

a) sells some or all of the Land in accordance with clause 5.17(b), or

b) pays the Debt to the Secretary of State,

it will negotiate in good faith with the Secretary of State to agree a deed of variation for this Agreement.

6. TERMINATION

Termination by either party

6.1. 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

6.2. 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
- 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 by a breakdown of discipline.

6.3. A Termination Warning Notice served under clause 6.2 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.

- 6.4. 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.
- 6.5. If the Secretary of State considers that the Academy Trust has not responded to the Termination Warning Notice as specified under clause 6.3(c), or has not completed the action required in the Termination Warning Notice under clauses 6.3(a) and (b) (and any further action specified under clause 6.4) he may serve a Termination Notice.

Termination by the Secretary of State after inspection

- 6.6. 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.

- 6.7. If the Secretary of State has served a Termination Warning Notice under clause 6.6 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,

the Secretary of State may serve a Termination Notice.

- 6.8. Not used.

Termination by the Secretary of State

- 6.9. If the Secretary of State has determined that the Academy will be removed from the Register of Independent Schools and no appeal against the determination is pending, he may serve a Termination Notice.
- 6.10. The Secretary of State may serve a Termination Notice if any of the following events occurs, 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; or
 - c) the Academy Trust cannot pay its debts within the meaning of section 123 of the Insolvency Act 1986 with, for the purposes of this clause, section 123 (1)(a) of this Act having an effect as if £10,000 were substituted for £750. The Academy Trust will not be considered unable to pay its debts for the purposes of this clause if it is contesting any such demand in good faith ; 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.

6.11. 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.

6.12. 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.

6.13. For the purposes of clause 6.12 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 Academy.

6.14. For the purposes of clause 6.13:

- 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.

6.15 If on or after 31 March 2017 or at any time thereafter but before the Academy opens, the total number of prospective pupils who have accepted offers of places to attend the Academy in September 2017 is less than either (i) 40 Year 10 or (ii) 90 Year 12 pupils, the Secretary of State may:

- a) require the Academy Trust not to open the Academy until both 40 prospective Year 10 pupils and 90 prospective Year 12 pupils have accepted offers of places to attend the Academy; or

serve a Termination Notice.

6.16 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.

6.17 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.

6.18 If full planning permission (including where relevant listed building consent) in respect of the Land has not been obtained by 31 August 2016, the Secretary of State may serve a Termination Notice.

6.19 If at any time before the Academy opening date, the Secretary of State considers that:

- a) the Academy would, on opening, provide an unacceptably low standard of education; or
- b) the safety of pupils or staff at the Academy would, on opening, be threatened; or
- c) the staff employed at the Academy are unsuitable; or
- d) there is a serious breakdown in the way the Academy Trust is being managed or governed; or
- e) the buildings and other structures on the Land are unsuitable or the Academy Trust has not obtained Building Regulations approval,

he may either:

- A. require the Academy Trust:
 - i. not to open the Academy; or
 - ii. not to admit pupils of a particular age range, to be determined by the Secretary of State; or
 - iii. not to use any building or other structure on the Land,

until each relevant matter in paragraphs (a) to (e) above has been resolved to the Secretary of State's satisfaction; or

B. serve a Termination Notice.

Change of Control

6.20 The Secretary of State may at any time, subject to clause 6.21, 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.

6.21 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.

6.22 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.

6.23 When notifying the Secretary of State under clause 6.22, 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 under clause 6.20.

Funding and admission during notice period

6.24 If the Secretary of State serves a Termination Notice under clause 6.1, 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.

6.25 If the Secretary of State serves a Termination Warning Notice or a Termination Notice otherwise than under clause 6.1, 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.

Effect of Termination

- 6.26 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.
- 6.27 Subject to clauses 6.28 and 6.29, if the Secretary of State terminates this Agreement under clause 6.1, he will indemnify the Academy Trust. If the Secretary of State terminates this Agreement otherwise than under clause 6.1, he may at his discretion indemnify or compensate the Academy Trust.
- 6.28 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.
- 6.29 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 6.27, 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.
- 6.30 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 6.30(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.

6.31 The Secretary of State may:

- a) waive all or part of the repayment due under sub-clause 6.30(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.

7. OTHER CONTRACTUAL ARRANGEMENTS

Information

- 7.1 The Academy Trust must promptly provide to the Secretary of State any information that he requests about the Academy Trust or the Academy, 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 the Academy.

Access by the Secretary of State's Officers

- 7.3 The Academy Trust must allow DfE officials to enter the Academy at any reasonable time. All records, files and reports relating to the running of the Academy must be available to them at any reasonable time. Two DfE officials may attend and speak at any meetings of the Board of Charity Trustees or any other meetings of Charity Trustees of the Academy Trust, but will 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.
- 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 or any committee to which it 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 the Academy;
- b) a named pupil at, or candidate for admission to, the Academy; and
- c) any matter which, the Academy Trust reasonably believes should remain confidential.

Notices

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

- a) must be in writing (excluding email, except where agreed in advance) and in English;
- b) must be delivered by hand or sent by pre-paid first-class post or other next working day delivery service;
- c) will be deemed to have been received:
 - i. if delivered by hand, at the time when a delivery receipt is signed or when the notice is left at the address in paragraph (d), or
 - ii. if posted, at 9.00 am on the second working day after posting; and
- d) must be sent to the party for the attention of the contact and at the address listed as follows (or to a different contact or address previously

notified to the sending party, the change taking effect five business days after deemed receipt of the notice):

| Name of party | Position of contact | Address |
|----------------------|--|--|
| Secretary of State | Head of Free Schools Division | Department for Education, Sanctuary Buildings, Great Smith Street, London SW1P 3BT |
| Academy Trust | Headteacher of Mulberry School for Girls | Mulberry School For Girls, Richard Street, London, England, E1 2JP |

General provisions

- 7.7 The Academy Trust cannot assign this Agreement.
- 7.8 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 it), or a single or partial exercise of such a right or remedy, is not a waiver of, and does not prevent or restrict any initial or further exercise of, that or any other right or remedy.
- 7.9 Termination of this Agreement will not affect the accrued rights, remedies, obligations or liabilities of the parties to this Agreement existing at termination.
- 7.10 This Agreement may be executed in any number of counterparts, each of which when executed and delivered will constitute a duplicate original, but all of which will together constitute the same agreement.
- 7.11 This Agreement and any dispute or claim arising out of or in connection with it or its subject matter or formation (including non-contractual disputes or claims) will be governed by and construed in accordance with the law of England and Wales, and submitted to the exclusive jurisdiction of the courts of England and Wales.

This Agreement was executed as a Deed on

31/3/16

2016

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

Vanessa Ogden.

and

.....

Director

Director

or

.....

Company Secretary

or

Jim Tupper

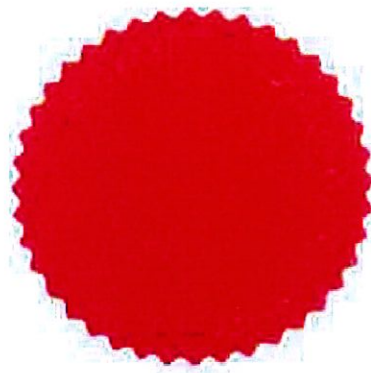
Witness

Name:

Address:

The Corporate Seal of

THE SECRETARY OF STATE FOR EDUCATION



affixed to this deed is authenticated by:

...Kris Sibley

Duly Authorised

ANNEXES

8. PUPILS WITH SPECIAL EDUCATIONAL NEEDS (SEN) AND DISABILITIES

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

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

8.1 Except as set out in clause 9 below, the Children and Families Act 2014 imposes duties directly on Academies in respect of pupils with special educational needs, including the admission of pupils with EHC plans. If an Academy Trust considers that a LA should not have named the Academy in an EHC plan, it may ask the Secretary of State to determine whether the LA has acted unreasonably, and to make an order directing the LA to reconsider. The Secretary of State's determination will be final, subject to any right of appeal which a parent of the child may have to the First Tier Tribunal (Special Educational Needs and Disability) or the Upper Tribunal Administrative Appeals Chamber.

8.2 Not used.

8.3 Not used.

8.4 Not used.

9. ADMISSION OF PUPILS WITH SEN AND DISABILITIES

9.1 The Academy Trust must, subject to its right of appeal to the Secretary of State, admit all pupils with a Statement of SEN naming the Academy.

9.2 Where an LA proposes to name the Academy in a Statement of SEN, it must give the Academy Trust written notice of this, stating why it considers the Academy to be suitable for the pupil in question. Within 15 days of receipt of the LA's notice, the Academy Trust must consent to being named, except where admitting the child would be incompatible with the provision of efficient education for other children, and no reasonable steps could secure

compatibility. In deciding whether a child's inclusion would be incompatible with the efficient education of other children or the efficient use of resources, the Academy Trust must have regard to the relevant Guidance issued to maintained schools.

- 9.3 If the Academy Trust decides that admitting the child would be incompatible with the provision of efficient education or the efficient use of resources, it must, within the 15 days, notify the LA in writing, giving its reasons for its decision.
- 9.4 The Academy Trust must then seek to establish from the LA whether or not it agrees with this determination. If the LA does not agree with the Academy Trust's response, and names the Academy in the child's Statement of SEN, the Academy Trust must admit the child to the school as specified in the statement or otherwise by the LA.
- 9.5 If in such case, the Academy Trust considers that the LA should not have named the Academy in the statement, it may ask the Secretary of State to determine whether the LA has acted unreasonably, and to make an order directing the LA to reconsider. The Secretary of State's determination will be final, subject only to any right of appeal which a parent of the child may have to the First-tier Tribunal (Special Educational Needs and Disability) or the Upper Tribunal Administrative Appeals Chamber.
- 9.6 If a parent of a child for whom the LA maintains a statement appeals to the First-tier Tribunal (Special Educational Needs and Disability) or the Upper Tribunal Administrative Appeals Chamber, either for or against the naming of the Academy in the child's statement, then the Tribunal's decision will be binding, even if it is different from that of the Secretary of State.
- 9.7 Where it has been finally determined that the Academy be named in a child's Statement of SEN, the Academy Trust must admit the child to the Academy, notwithstanding any other admissions requirements in this Agreement.

- 9.8 Clauses 9.1 to 9.7 only apply insofar as the relevant provisions of the Children and Families Act 2014 relating to SEN and disability do not apply to Academies and Free Schools.



Department
for Education

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Schedule 2
Supplemental Funding Agreement



Department
for Education

Mulberry Schools Trust – Mulberry UTC: supplemental funding agreement

July 2017

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SUMMARY SHEET

Information about the Academy:

| | |
|---|---|
| Name of Academy Trust | Mulberry Schools Trust |
| Company number | 10035860 |
| Date of Master Funding Agreement | 27 April 2017 |
| Name of academy | Mulberry UTC |
| Opening date | 1 September 2017 |
| Capacity number | 800 |
| Age range | 14 - 19 |
| Number of sixth form places | 600 |
| Land arrangements (Version 1-4 or other) | Version 1 |
| Address and title number of Land | Bow Fire Station, 64 Parnell Road, London E3 2RU Title Number EGL 499649 |

1. ESTABLISHING THE ACADEMY

- 1.A This Agreement made between the Secretary of State for Education and Mulberry Schools Trust is supplemental to the master funding agreement made between the same parties and dated 27 April 2017 (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 Mulberry UTC 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.

"**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**" means up to 7 Academy Financial Years and covers the period up to the first Academy Financial Year in which it is planned that the Academy will be at full capacity.

"**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 University Technical College as defined in clause 1.4 of the Master Agreement.
- 1.G The Academy Trust will establish and maintain the Academy in accordance with the Master Agreement and this Agreement.
- 1.H The Academy Trust will open the Academy on 1 September 2017.
- 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 2.4 of the Master Agreement, 7.A of this Agreement and section 67 of the Children and Families Act 2014, the Academy Trust may, in accordance with any relevant Guidance, employ anyone it believes is suitably qualified or is otherwise eligible to plan and prepare lessons and courses for pupils, teach pupils, and assess and report on pupils' development, progress and attainment.

- 2.A.1 Not used.

Pupils

- 2.B The planned capacity of the Academy is 800 in the age range 14-19, including

a sixth form of 600 places. The Academy will be an all ability inclusive school

- 2.B.1 The Academy Trust must ensure that the Academy meets the needs of individual pupils, including pupils with SEN and disabilities, both those with and without statements of SEN.

Safeguarding

- 2.C The Academy Trust will abide by the requirements of and have regard to any Guidance on:
- a) safeguarding, in particular that contained in the guidance document entitled "Safeguarding Children and Safer Recruitment in Education" as amended from time to time; and
 - b) the employment and work placement/work experience opportunities for pupils, in particular that contained in the document named "Guidance on the Employment of Children" as amended from time to time.
- 2.D The Academy Trust will take appropriate steps to ensure that any work placement/work experience opportunities for pupils are suitable, so as to safeguard the health, safety and welfare of pupils whilst employed or on work placement/work experience either on or off the school premises.

Charging

- 2.E Not used.

Admissions

- 2.F Subject to clauses 2.K– 2.L the Academy Trust will act in accordance with, and will ensure that its Independent Appeal Panel is trained to act in accordance with, the School Admissions Code and School Admission Appeals Code published by the DfE (the "Codes") and all relevant admissions law as they apply to foundation and voluntary aided schools, and with equalities law. Reference in the Codes or legislation to "admission authorities" will be deemed to be references to the Academy Trust.
- 2.G 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 unless it opts out of doing so in any admissions year by notifying the LA in writing no later than the date of determining its admissions policy for the Academy.
- 2.I The Academy Trust may determine admission arrangements (subject to consultation in line with the Codes) that give priority for admission to children attracting the Pupil Premium, including the service premium (the "pupil premium admission criterion"), but not above looked-after children and previously looked-after children.
- 2.J Where the Academy Trust applies the pupil premium admission criterion, it must provide information in its admission arrangements about eligibility for the premiums.
- 2.K For the purposes of applying the pupil premium admission criterion only, sections 1.9(f) and 2.4(a) of the School Admissions Code do not apply insofar as they prevent admission authorities from giving priority to children according to the financial or occupational status of parents or using supplementary forms that ask for:
- a) any personal details about their financial status; or
 - b) whether parents are serving in the UK armed forces or were serving in the UK armed forces, and are exercising parental care and responsibility for the child in question.
- 2.L The Secretary of State may:
- a) direct the Academy Trust to admit a named pupil to the Academy:
 - i. following an application from an LA including complying with a school attendance order as defined in section 437 of the Education Act 1996. Before doing so the Secretary of State will consult the Academy Trust; or

- ii. where in relation to a specific child or children the Academy Trust has failed to act in accordance with the Codes or this Agreement or has otherwise acted unlawfully; or
 - b) direct the Academy Trust to amend its admission arrangements where they do not comply with the Codes or this Agreement, or are otherwise unlawful.
- 2.M Not used.
- 2.N Not used.
- 2.O Not used.
- 2.P The Academy Trust must ensure that parents and 'relevant children' (as described in the **Codes**) have the right to appeal to an Independent Appeal Panel if they are dissatisfied with an admission decision of the Academy Trust. The arrangements for appeals must comply with the Codes as they apply to foundation and voluntary aided schools. The determination of the appeal panel is binding on all parties.
- 2.Q Subject to clause 2.R, the meaning of "**relevant area**" for the purposes of consultation requirements in relation to admission arrangements is that determined by the relevant LA for maintained schools in the area in accordance with the Education (Relevant Areas for Consultation on Admission Arrangements) Regulations 1999.
- 2.R If the Academy does not consider the relevant area determined by the LA for the maintained schools in the area to be appropriate, it must apply to the Secretary of State by 1 August before the academic year in question for a determination of the appropriate relevant area for the Academy, setting out the reasons for this view. The Secretary of State will consult the Academy Trust and the LA in whose area the Academy is situated in reaching a decision.
- 2.S The Office of the Schools Adjudicator ("**OSA**") will consider objections to the Academy's admission arrangements (except objections against the agreed

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

2.T Not used.

Curriculum

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

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

2.V.1 The Academy Trust must ensure that the curriculum provided to pupils up to the age of 16 is balanced and broadly based, and includes English, mathematics and science, and includes provision for technical education with an emphasis on creative industries, digital technologies and healthcare.

2.V.2 Not Used.

2.W Not used.

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

- a) provision must be made for religious education to be given to all pupils at the Academy in accordance with the requirements for agreed

syllabuses in section 375(3) of the Education Act 1996 and paragraph 2(5) of Schedule 19 to the School Standards and Framework Act 1998;

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

2.Y Not used.

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

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

3. GRANT FUNDING

Calculation of GAG

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 is 9 Academy Financial Years after the Academy opening date, 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 In the 9th Academy Financial Year after the Academy opening date and all following Academy Financial Years, the basis of the pupil count for determining GAG will be:
- a) for pupils in Year 11 and below, the Schools Census which is used to fund maintained schools for the financial year overlapping with the Academy Financial Year in question; and
 - b) for pupils in Year 12 and above, the formula which is in use at the time for maintained schools
- 3.G The Secretary of State may, at his discretion, adjust the basis of the pupil count to take account of any diseconomies of scale which may affect the

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

- 3.H The Secretary of State may pay a further element of GAG to the Academy Trust during the Start-Up Period in order 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; and
 - b) meet the costs associated with the recruitment and induction of additional staff.

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

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

Other relevant funding

3.J Not used.

3.K 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**

"Debt" means an amount equal to 100% of the Land Value;

"Discharge Process" means the removal of:

- i. the Legal Charge registered with Companies House against the Academy Trust;
- ii. the Legal Charge from the charges register at the Land Registry against the title for the Land;
- iii. the restriction in the proprietorship register referred to in clause 4.C(a); and
- iv. the notice in the proprietorship register referred to in clause 4.H(a).

"Land" means the land at Bow Fire Station, 64 Parnell Road, London, E3 2RU being the land registered with title number EGL499649, which is to be the permanent site of the Academy.

"Land Value" means, at any time:

- i. where the Land has been disposed of as a result of the enforcement of the Legal Charge by the Secretary of State, the proceeds of that disposal after payment of the seller's necessary and reasonable costs in connection with the disposal; or
- ii. in any other case, the Market Value.

"Legal Charge" means the legal charge over the Land to be entered into by the Academy Trust in favour of the Secretary of State, in a form and substance satisfactory to the Secretary of State.

"Market Value" means the market value (as defined in the current edition of the RICS Valuation Standards) of the relevant part of the Land as determined by a professionally qualified independent valuer.

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

Debt

4.A The Academy Trust must pay the Debt to the Secretary of State on termination of this Agreement or in accordance with clauses 4.J(b) or 4.Q(b)(i) or on a sale of all or part of the Land with or without the Secretary of State's consent.

4.B The Debt is secured by the Legal Charge.

Restrictions on Land transfer

4.C The Academy Trust must:

a) apply to the Land Registry using form RX1 for the following restrictions (each a **"Restriction"**) to be entered in the proprietorship register for the Land by the following deadlines:

i. within 28 days after acquiring the Land:

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

ii. within 28 days after entering into the Legal Charge:

"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 proprietor

for the time being of the charge dated [date of charge] in favour of The Secretary of State for Education referred to in the charges register or by its conveyancer”;

- b) take any further steps required to ensure that each Restriction is entered on the proprietorship register;
- c) promptly confirm to the Secretary of State when each Restriction has been registered;
- d) if it has not registered each 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 a 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.D The Academy Trust must not, without the Secretary of State's consent:

- a) grant any consent or licence; or
- b) create or allow any encumbrance; or
- c) part with or share possession or occupation; or
- d) enter into any onerous or restrictive obligations,

in respect of all or part of the Land.

4.E 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 Land.

Property Notices

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

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

Option

4.G The Academy Trust grants and the Secretary of State accepts an option (the “**Option**”) to acquire all or part of the Land at nil consideration. The Secretary of State may exercise the Option in writing if this Funding Agreement is terminated for any reason, or if the Academy Trust cannot use all or part of the Land as the permanent site of the Academy under clauses 4.J or 4.Q. If the Option is exercised, completion will take place 28 days after the exercise date in accordance with the Law Society’s Standard Conditions of Sale for Commercial Property in force at that date.

Option Notice

4.H The Academy Trust:

- a) must, within 14 days after acquiring the Land or, if later, after signing this Agreement, apply to the Land Registry on Form AN1 (including a copy of this Agreement) for a notice of the Option (the “**Option Notice**”) to be entered in the register, taking any further steps required to have the Option Notice registered and promptly confirming to the Secretary of State when this has been done;
- b) if it has not registered the Option Notice, agrees that the Secretary of State may apply to register it using Form UN1;
- c) must not, without the Secretary of State’s consent, apply to disapply,

modify or remove the Option Notice, whether by itself, a holding company, a subsidiary company, or a receiver, administrator or liquidator acting in the name of the Academy Trust, and

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

Legal Charge

4.1 The Academy Trust must

- a) enter into the Legal Charge:
 - i. on completion of the acquisition of the Land, if at that time the Academy Trust is an exempt charity for the purposes of the Charities Act 2011, or
 - ii. within two weeks after the Academy opens, if the Academy Trust is not an exempt charity for the purposes of the Charities Act 2011 when it acquires the Land;
- b) within 21 days from the date of the Legal Charge, register it with Companies House or, if required by the Secretary of State, use all reasonable endeavours to assist the Secretary of State in doing so, including signing and executing any necessary documents;
- c) within 28 days from the date of the Legal Charge, apply to the Land Registry for the Legal Charge to be entered on the charges register, taking any other steps required to have the Legal Charge registered and promptly confirming to the Secretary of State when this has been done; and

- d) if it has not registered the Legal Charge, allow the Secretary of State to register it, and use all reasonable endeavours to help register the Legal Charge, including signing and executing any necessary documents and dealing with requisitions from the Land Registry.

Land not used for the purposes of the academy

4.J If the Academy Trust cannot use all or part of the Land as the permanent site of the Academy but the Secretary of State agrees not to terminate this Agreement on that basis, the Secretary of State may notify the Academy Trust that:

- a) he intends to exercise the Option to transfer the Land or the relevant part of it for nil consideration to himself or his nominee;
- b) the Academy Trust must pay the Debt or the Market Value; and/or
- c) the Academy Trust must sell the Land or the relevant part of it, keeping some or all of the sale proceeds to fulfil its charitable purposes by funding the purchase of an alternative permanent site for the Academy, and accounting to the Secretary of State for any proceeds not so used.

Sharing the Land

4.K If:

- a) the Academy does not reach its planned capacity, as stated in clause 2.B, within 6 Academy Financial Years; or
- 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 Land is needed for the operation of the Academy at planned capacity,

then:

- i. the Academy Trust must share occupation of the 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; or

- ii. the Academy Trust must sell part of the Land as required by the Secretary of State and account for the sale proceeds to the Secretary of State in part payment of the Debt, after which the Secretary of State will carry out the Discharge Process over the part of the Land that has been sold.

Exercise of Rights

4.L On termination of this Agreement, the Secretary of State may give notice that he intends to exercise his rights under clauses 4.G, 5.DD or 5.EE or under the Legal Charge. Any such notice must state which clause of this Agreement the Secretary of State intends to exercise, and is without prejudice to his right to exercise any other rights available to him.

4.M If the Secretary of State exercises the Option on termination of this Agreement, then:

- a) the Academy Trust will be deemed to have paid the Debt to the Secretary of State;
- b) the Academy Trust will be deemed to have paid to the Secretary of State a proportion of the proceeds from the sale of the Land under clause 5.DD(b); and
- c) the Secretary of State will carry out the Discharge Process;

4.N If the Secretary of State enforces the Legal Charge on the termination of this Agreement, then:

- a) the Academy Trust will be deemed to have paid the Debt to the Secretary of State after the Debt has been realised by a receiver;
- b) the Academy Trust will be deemed to have paid to the Secretary of State a proportion of the proceeds from the sale of the Land as required under clause 4.29 of the Master Agreement; and

- c) the Secretary of State will carry out the Discharge Process.
- 4.O If, on termination of this Agreement, the Secretary of State exercises his rights under clause 5.DD, then:
- a) the Academy Trust will be deemed to have paid the Debt to the Secretary of State; and
 - b) the Secretary of State will carry out the Discharge Process.
- 4.P If, on termination of this Agreement, the Secretary of State agrees under clause 5.EE that the Academy Trust may invest the proceeds from the sale of the Land for its charitable objects, or directs the Academy Trust to pay all or part of the sale proceeds to the relevant LA, then:
- a) the Academy Trust will be deemed to have paid the Debt to the Secretary of State; and
 - b) the Secretary of State will carry out the Discharge Process.
- 4.Q If the Academy Trust applies to the Secretary of State for consent to sell all or part of the Land, and if the Secretary of State agrees that the Land is no longer needed or cannot be used for the purposes of the Academy, he may:
- a) exercise the Option; or
 - b) consent to the sale subject to one or more of the following conditions:
 - i. that (notwithstanding clause 4.29 of the Master Agreement) the Academy Trust pays the Debt (or, if it proposes to sell only part of the Land, pays the Market Value of the part sold) to the Secretary of State;
 - ii. that pursuant to clause 4.29 of the Master Agreement, the Academy Trust keeps some or all of the sale proceeds for its charitable purposes, accounting to the Secretary of State for the remainder; or
 - iii. that pursuant to clause 4.30 of the Master Agreement, the

Academy Trust pays all or some of the sale proceeds to the relevant LA and may reinvest all or some of the sale proceeds for its charitable purposes.

4.R If the Secretary of State consents to the sale of the Land, subject to any of the conditions in clause 4.Q(b):

- a) if the Secretary of State enforces the Legal Charge, then:
 - i. the Academy Trust will be deemed to have paid the Debt to the Secretary of State after the Debt has been realised by a receiver;
 - ii. the Academy Trust will be deemed to have paid a proportion of the sale proceeds to the Secretary of State as required under clause 4.29 of the Master Agreement; and
 - iii. the Secretary of State will carry out the Discharge Process;
- b) if all of the Land is sold and the Secretary of State agrees that the Academy Trust may keep some or all of the sale proceeds for its charitable purposes, accounting to the Secretary of State for the remainder, then:
 - i. the Academy Trust will be deemed to have paid the Debt to the Secretary of State;
 - ii. the Academy Trust will be deemed to have paid a proportion of the sale proceeds to the Secretary of State as required under clause 4.29 of the Master Agreement; and
 - iii. the Secretary of State will carry out the Discharge Process;
- c) if part of the Land is sold, and the Secretary of State agrees that the Academy Trust may keep some or all of the sale proceeds for its charitable purposes, accounting to the Secretary of State for the remainder, then:
 - i. the Academy Trust will be deemed to have paid the Debt to the

Secretary of State to the extent of the Market Value;

- ii. the Academy Trust will be deemed to have paid a proportion of the sale proceeds to the Secretary of State, as required under clause 4.29 of the Master Agreement, in relation to the relevant part of the Land; and
 - iii. the Secretary of State will carry out the Discharge Process in relation to the part of the Land which has been sold;
- d) if the Secretary of State directs the Academy Trust to pay some or all of the proceeds from the sale of the Land to the relevant LA under clause 4.30 of the Master Agreement, or agrees that the Academy Trust may reinvest the sale proceeds for its charitable purposes, the Secretary of State will carry out the Discharge Process in relation to the part of the Land which has been sold.

4.S If the Secretary of State exercises the Option over all of the Land and the Academy Trust transfers all of the Land to the Secretary of State for nil consideration, then:

- a) the Academy Trust will be deemed to have paid the Debt to the Secretary of State;
- b) the Academy Trust will be deemed to have paid a proportion of the sale proceeds to the Secretary of State as required under clause 4.29 of the Master Agreement; and
- c) the Secretary of State will carry out the Discharge Process.

4.T If the Secretary of State exercises the Option over only part of the Land, and the Academy Trust transfers that part of the Land to the Secretary of State for nil consideration, then:

- a) the Academy Trust will be deemed to have paid the Debt to the Secretary of State to the extent of the Market Value;
- b) Academy Trust will be deemed to have paid a proportion of the sale

proceeds to the Secretary of State, as required under clause 4.29 of the Master Agreement, in relation to the part of the Land transferred, and

- c) the Secretary of State will carry out the Discharge Process in relation to the part of the Land which has been transferred.

Payment of Debt

4.U If the Academy Trust pays the Debt to the Secretary of State, the Secretary of State will carry out the Discharge Process.

4.V If the Academy Trust:

- a) sells some or all of the Land in accordance with clause 4.Q(b), or
- b) pays the Debt to the Secretary of State,

it will negotiate in good faith with the Secretary of State to agree a deed of variation for this Agreement.

5. TERMINATION

Termination by either party

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

Termination Warning Notice

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

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

- b) the standards of performance of pupils at the Academy are unacceptably low; or
- c) there has been a serious breakdown in the way the Academy is managed or governed; or
- d) the safety of pupils or staff is threatened, including due to breakdown of discipline; 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 If on or after 31 March 2017 or at any time thereafter but before the Academy opens, the total number of prospective pupils who have accepted offers of places to attend the Academy in September 2017 is less than either (i) 40 Year 10 or (ii) 155 Year 12 pupils, the Secretary of State may:

- a) require the Academy Trust not to open the Academy until both 40 prospective Year 10 pupils and 155 prospective Year 12 pupils have accepted offers of places to attend the Academy; or

- b) serve a Termination Notice.
- 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 If full planning permission (including where relevant listed building consent) in respect of the Land has not been obtained by 31 August 2016, the Secretary of State may serve a Termination Notice.
- 5.O If at any time before the Academy opening date, the Secretary of State considers that:
- a) the Academy would, on opening, provide an unacceptably low standard of education; or
 - b) the safety of pupils or staff at the Academy would, on opening, be threatened; or
 - c) the staff employed at the Academy are unsuitable; or
 - d) there is a serious breakdown in the way the Academy Trust is being managed or governed; or
 - e) the buildings and other structures on the Land are unsuitable or the Academy Trust has not obtained Building Regulations approval,
- he may either:
- A. require the Academy Trust:

- i. not to open the Academy; or
- ii. not to admit pupils of a particular age range, to be determined by the Secretary of State; or
- iii. not to use any building or other structure on the Land,

until each relevant matter in paragraphs (a) to (e) above has been resolved to the Secretary of State's satisfaction; or

B. serve a Termination Notice.

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.

This Agreement was executed as a Deed on 2 August 2017

Executed on behalf of the Academy Trust by:

M. Fayer

and

.....

Director

Director

or

.....

Company Secretary

or

.....

Witness

Name: JACK MICHAELS

Address: 646 Lower Richmond Road
London
SW15 1LL

The Corporate Seal of

THE SECRETARY OF STATE FOR EDUCATION

affixed to this deed is authenticated by:



Mary Pooley

Duly Authorised

ANNEXES

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

“**Statement of SEN**” means a statement made under section 324 of the Education Act 1996.

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

7.A Except as set out in clause 8 below, the Children and Families Act 2014 imposes duties directly on Academies in respect of pupils with special educational needs, including the admission of pupils with EHC plans. If an Academy Trust considers that a LA should not have named the Academy in an EHC plan, it may ask the Secretary of State to determine whether the LA has acted unreasonably, and to make an order directing the LA to reconsider. The Secretary of State's determination will be final, subject to any right of appeal which a parent of the child may have to the First Tier Tribunal (Special Educational Needs and Disability) or the Upper Tribunal Administrative Appeals Chamber.

7.B Not used.

7.C Not used.

7.D Not used.

8. ADMISSION OF PUPILS WITH SEN AND DISABILITIES

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

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

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

- 8.C If the Academy Trust decides that admitting the child would be incompatible with the provision of efficient education or the efficient use of resources, it must, within the 15 days, notify the LA in writing, giving its reasons for its decision.
- 8.D The Academy Trust must then seek to establish from the LA whether or not it agrees with this determination. If the LA does not agree with the Academy Trust's response, and names the Academy in the child's statement of SEN, the Academy Trust must admit the child to the school as specified in the statement or otherwise by the LA.
- 8.E If in such case, the Academy Trust considers that the LA should not have named the Academy in the statement, it may ask the Secretary of State to determine whether the LA has acted unreasonably, and to make an order directing the LA to reconsider. The Secretary of State's determination will be final, subject only to any right of appeal which a parent of the child may have to the First-tier Tribunal (Special Educational Needs and Disability) or the Upper Tribunal-Administrative Appeals Chamber.
- 8.F If a parent of a child for whom the LA maintains a statement appeals to the First-tier Tribunal (Special Educational Needs and Disability), either for or against the naming of the Academy in the child's statement, then the Tribunal's decision will be binding, even if it is different from that of the Secretary of State.
- 8.G Where it has been finally determined that the Academy be named in a child's statement of SEN, the Academy Trust must admit the child to the Academy, notwithstanding any other admissions requirements in this Agreement.

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



Department
for Education

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Dated

2 August

2017

(1) MULBERRY UTC

- and -

(2) MULBERRY SCHOOLS TRUST

TRANSFER AGREEMENT

BWB
Betes Wells Braithwaite



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THIS AGREEMENT is made on

2 August

2017

BETWEEN

- (1) **MULBERRY UTC**, a company registered in England and Wales with company number 08295058 whose registered office is at Richard Street, Commercial Road, London E1 2JP (the Transferor).
- (2) **MULBERRY SCHOOLS TRUST**, a company registered in England and Wales with company number 10035860 whose registered office is at Richard Street, Commercial Road, London E1 2JP (the Transferee).

BACKGROUND

- (A) Mulberry UTC is a single academy trust wishing to join Mulberry Schools Trust, a multi academy trust, which in turn wishes to admit Mulberry UTC to the multi academy trust's group of academies.
- (B) The Transferor has agreed to transfer to the Transferee the whole of the property, business and assets relating to the Academy and the Transferee has agreed to assume all of the liabilities and obligations of the Transferor which relate to the Academy, upon the terms of this agreement.

AGREED TERMS

1 DEFINITIONS

- 1.1 In this agreement, unless the context otherwise requires, the following expressions have the meanings set opposite them:

| | |
|---------------------|--|
| "Academy" | Mulberry UTC academy situated at Bow Fire Station, 64 Parnell Road, London E3 2RU |
| "Assets" | means all property, undertaking, rights and assets, whether tangible or intangible, of whatever nature used or held by the Transferor exclusively for the purposes of the Academy but excluding the Excluded Assets. |
| "Business" | the activities relating to the Academy carried on by the Transferor at Completion. |
| "Completion" | completion of the transfer of the Business to the Company in accordance with clause 5 of this agreement. |
| "Contracts" | means the contracts entered into by the Transferor for the purpose of operating the Academy in the ordinary course of business which are still in force at the Transfer Date and listed in Schedule 1. |
| "Employees" | means any employees of the Transferor or of any other persons who are assigned to the Academy or to services provided in connection with the Academy and listed in Schedule 3. |

| | |
|---------------------------------------|--|
| "Excluded Assets" | those assets listed in Schedule 2. |
| "Intellectual Property Rights" | means intellectual property rights whether registered or not, including any patents, copyright and design rights, trade marks, service marks, database rights, rights in passing-off and know-how. |
| "Liabilities" | the book debts, other debts, liabilities, losses or claims against and obligations of any nature (including VAT) of the Academy at Completion (whether actual or contingent) which arise out of, relate to or are attributable to the Business, the Assets or the Contracts. |
| "TUPE" | the Transfer of Undertakings (Protection of Employment) Regulations 2006. |
| "VAT" | value added tax chargeable under the VATA 1994 and any similar replacement or additional tax. |
| "VATA 1994" | the Value Added Tax Act 1994. |

1.2 In the interpretation of this agreement:

- 1.2.1 the headings are for convenience only and shall not affect the interpretation of this agreement;
- 1.2.2 unless the context otherwise requires the singular shall include the plural and vice versa;
- 1.2.3 a reference to any party shall include that party's personal representatives, successors or permitted assigns;
- 1.2.4 a reference to a statute or statutory provision is a reference to it as it is in force for the time being taking account of any amendment, extension, or re-enactment and includes any subordinate legislation for the time being in force made under it; and
- 1.2.5 a reference to writing or written includes faxes but not e-mail or any other form of electronic communication.

2 AGREEMENT TO TRANSFER

- 2.1 In consideration of the covenants on the part of the Transferee herein, the Transferor shall transfer to the Transferee to take over as a going concern, with effect from Completion, the whole of the Business, Contracts and Assets of the Academy subject to the terms and conditions of this Agreement.
- 2.2 The transfer of the Business shall include the goodwill of the Business, together with the exclusive right for the Transferee to represent itself as carrying on the Business.

3 CONSIDERATION

In consideration for the transfer by the Transferor referred to in clause 2, from Completion the Transferee shall assume responsibility for the satisfaction, fulfilment and discharge of all of the Liabilities and the Contracts.

4 VALUE ADDED TAX

- 4.1 The Transferor and the Transferee consider that the Business is being transferred as a going concern.
- 4.2 If HM Revenue & Customs refuses to accept that the transfer of the Business is a transfer of a going concern, the Transferee shall pay to the Transferor VAT on the assets transferred as assessed by HM Revenue & Customs and the Transferor shall provide the Transferee with a tax invoice to support a claim by the Transferee for a recovery of tax paid.

5 COMPLETION

Completion of the transfer of the Business and the Assets shall take place with effect from 1 August 2017 when the Transferor shall allow the Transferee to take possession of the Assets.

6 ASSETS

- 6.1 If any release, consent or approval is required pursuant to any agreement, deed, regulation or otherwise in order to complete the transfer from the Transferor to the Transferee of the ownership of the Business:
- 6.1.1 the Transferee shall use all reasonable endeavours (both before and after Completion) to obtain the release, consent or approval as soon as practicable;
- 6.1.2 from Completion until all of the Transferor's rights in or to the relevant Assets have been effectively transferred to the Transferee the Transferor shall:
- 6.1.2.1 hold the relevant Asset on trust for the Transferee, shall forthwith give the Transferee notice of any notices or other material communications or information received by them in relation thereto and shall act under the direction of the Transferee in all matters relating to the relevant Asset (so far as they lawfully may do so); and
- 6.1.2.2 use all reasonable endeavours to procure as soon as is practicable the grant to the Transferee of rights equivalent to those enjoyed by the Transferor or (at the option of the Transferee) procure as soon as is practicable a novation and upon the grant to the Transferee of such rights or upon such novation (in either case) in a form which is satisfactory to the Transferee, such trust shall determine and the Transferor shall, where appropriate, surrender their rights.

7 CONTRACTS

- 7.1 With effect from Completion the Transferee shall, to the extent that they have not been fully performed, assume responsibility for the carrying out of the Contracts and shall indemnify the Transferor against any Liabilities, losses or claims arising in respect of the Contracts from that date.
- 7.2 In cases where the Transferor has entered into agreements or contracts with third parties on terms where the purported assignment or novation would be a breach of, or otherwise cause or entitle such third parties to terminate such agreements or contracts, and the parties have used their best endeavours to obtain the agreement of such third parties to such assignment or novation, then such agreements or contracts shall not be, or be deemed to have been, so assigned or novated and the same shall continue and subsist in the name of the Transferor but on the basis that:
- 7.2.1 The Transferor shall not incur any liability thereby and the Transferee shall indemnify the Transferor accordingly;

- 7.2.2 the obligations of the Transferor under such contracts shall be performed by the Transferee in accordance with their respective terms;
 - 7.2.3 in consideration of such performance, the Transferor shall direct or procure that all payments due to it under such contracts in respect of work carried out by the Transferee after Completion shall be paid to the Transferee; and
 - 7.2.4 the Transferor shall on behalf of the Transferee take such action and enforce all claims arising under such agreements or contracts against such third parties upon receiving the written request of the Transferee to do so.
- 7.3 Subject to clause 7.2 the Transferor shall without delay execute such deeds of novation as the Transferee requires to novate agreements or contracts with third parties.

8 EMPLOYEES

- 8.1 The parties acknowledge and agree that the transfer of the Business pursuant to this agreement is a transfer to which TUPE applies and the contracts of employment of the Employees shall transfer to the Transferee pursuant to TUPE with effect from Completion.
- 8.2 The Transferee will employ the Employees from Completion and will indemnify the Transferor against any claims of whatever nature arising after Completion out of or in relation to the contracts of employment of the Employees or the transfer of employment of the Employees to the Transferee.

9 PENSIONS

- 9.1 The parties acknowledge that the Transferee is a "scheme employer" for the purposes of the Local Government Pension Scheme (Administration) Regulations 2008 ("the LGPS Regulations" which expression shall include any regulations amending or replacing the regulations from time to time) and that the LGPS Regulations shall apply to the Transferee (as the person carrying on the business of the Academy).
- 9.2 The parties acknowledge that the Transferee is an "employer" for the purposes of the Teachers' Pension Scheme Regulations 1997 SI 1997/3001 ("the TPS Regulations" which expression shall include any regulations amending or replacing the regulations from time to time) and that the TPS Regulations shall apply to the Transferee (as the person carrying on the business of the Academy).
- 9.3 The Transferee acknowledges that the Employees shall be, or as the case may be, remain eligible for membership of the LGPS or the TPS (as the case may be) while employed at the Academy following the Transfer Date subject to the terms of the LGPS Regulations and the TPS Regulations.
- 9.4 The Transferee shall be responsible for any LGPS deficit relating to the Employees' membership of the LGPS referable to service up to and including the Transfer Date.
- 9.5 The Transferee shall be responsible for all employer contributions payable to the LGPS and the TPS in respect of the Employees and any other sum due to the LGPS and the TPS in respect of the Employees.
- 9.6 The Transferee shall:
- 9.6.1 maintain such documents and information as will be reasonably required to manage the pension aspects of any onward transfer of any of the Eligible Employees;
 - 9.6.2 promptly provide to the Transferor such documents and information which the Transferor may reasonably request in advance of any onward transfer of any person engaged or employed by the Transferee; and

- 9.6.3 fully co-operate with the reasonable requests of the Transferor relating to any administrative tasks necessary to deal with the pension aspects of any onward transfer of any person engaged or employed by the Transferee.

10 TITLE

The Transferee shall accept without investigation such title, if any, as the Transferor has to the Assets.

11 BENEFICIAL OWNERSHIP

Beneficial ownership of the Assets shall not pass to the Transferee until Completion.

12 CONFIDENTIALITY

Each party undertakes to the others that it will keep the contents of this Agreement confidential as between the parties and the Department for Education (or its successors) except to the extent that disclosure is required by law.

13 WINDING UP MULBERRY UTC

- 13.1 The Transferor may apply such amount as may reasonably be required to ensure that it is properly wound-up following Completion, provided that any unapplied surplus amount remaining after the costs of winding-up have been paid shall be transferred to the Transferee, as provided for by this Agreement.

- 13.2 The Transferor shall have the period of 6 months after the Effective Date to conclude its winding up after which any surplus as referred to in 13.1 above shall be transferred to the Transferee.

- 13.3 The Transferee shall provide assistance to the Transferor as necessary to give effect to the winding up of the Transferor in accordance with all applicable laws and regulations.

14 FURTHER ASSURANCE

The Transferor and the Transferee shall do and sign or execute or procure to be done, signed or executed all such other acts, deeds, documents and things as may be necessary or desirable to vest the Assets and rights hereby agreed to be transferred to the Transferee and to give the Transferee the full benefit of such Assets and rights.

15 GENERAL

- 15.1 This agreement shall in so far as it remains to be performed continue in full force and effect notwithstanding Completion.

- 15.2 No variations to this agreement shall be effective unless in writing and signed on behalf of each party.

- 15.3 This agreement contains the entire agreement between the parties relating to the transactions provided for in it and supersedes any previous agreements between the parties relating to its subject matters. Each of the parties acknowledges that in agreeing to enter into this agreement it has not relied on any representations or undertakings except those contained in this agreement.

- 15.4 This agreement shall be binding on and enure to the benefit of each party's respective successors in title and assignees as the case may be.

- 15.5 No one other than a party to this agreement, their successors and permitted assignees, shall have any right to enforce any of its terms.

15.6 This agreement may be executed in any number of counterparts, each of which when executed shall constitute a duplicate original, but all the counterparts shall together constitute the one agreement. No counterpart shall be effective until each party has executed at least one counterpart.

15.7 This agreement shall be governed in all respects by English law.

15.8 If any of the provisions of this agreement is or at any time becomes illegal, invalid or unenforceable in any respect, the legality, validity and enforceability of the remaining provisions of this agreement shall not in any way be affected or impaired thereby.

This agreement has been entered into on the date stated at the beginning of it.

Signed by: *Min Ming Fung* (Director)

Duly authorised for and on behalf of

MULBERRY UTC

In the presence of:

Witness: *S. Murphy*

Address: *Flat 4 Robin Court, Upper Walthamstow Rd*

Occupation: *Personal Assistant*

Signed by: *M. Yagnov* (Director)

Duly authorised for and on behalf of

MULBERRY SCHOOLS TRUST

In the presence of:

Witness: *JACK MICHAELS*

Address: *646 Lower Richmond Road*

Occupation: *Paralegal*

SCHEDULE 1
THE TRANSFERRING CONTRACTS

| | What? | Who with? | Account number | External contact | MUTC contact | End date | Notes |
|---|----------------------|---|------------------------------------|--|-----------------|------------------------------|----------------|
| 1 | Gas metering | Npower 2 Princes Way, Solihull, West Midlands, B91 3ES | 00334282 | Shahena.Begum@ npower.com | Sajeed Patni | 12 months | Already signed |
| 2 | Gas supply | Npower 2 Princes Way, Solihull, West Midlands, B91 3ES | 00334282 | Shahena.Begum@ npower.com | Sajeed Patni | One-off | Already signed |
| 3 | Electricity metering | EDF Atlantic House Hazlewick Ave Henson Rd Crawley | Customer number:5800M O21204 | Anwar Kabir, <u>Anwar.Kabir@edfenergy.com</u> | Sajeed Patni | 12 months - 30.04.2018 | Already signed |

| What? | Who with? | Account number | External contact | MUTC contact | End date | Notes |
|-------|--|----------------------------|--|--------------|---|--|
| | RH101QQ | | | | | |
| 4 | Electricity supply EDF Atlantic House Hazlewick Ave Henson Rd Crawley RH101QQ | Contract ref:1200062049945 | Anwar Kabir, Anwar.Kabir@edfenergvy.com | Sajeed Patni | 12 months - 30.04.2018 | Already signed |
| 5 | Water metering and supply Thames water Clearwater Court, Vastern Road, Reading RG1 8DB | | | | n/a | Arranged through Wates to date - we have not yet signed anything - we can do so as MST, trading as MUTC |
| 6 | IT infrastructure/devices contract via ESFA Joskos solutions Ltd | JKS070717 | Quintus Timmer Quintust@joskos.com | Jo Armitage | n/a | Already signed, copy available from JA |
| 7 | Support for ICT infrastructure Joskos solutions Ltd | n/a | Sean Donohoe SeanD@joskos.com | Jo Armitage | Will be 12 months from 1 Sept 2017 | Will be signed in Aug 2017 - we can do it from MST trading as MUTC |
| 8 | Broadband, managed service including Schools Broadband Unit 2-4 | None given | Tom Clarke tom.clark@talk- | Sajeed | 36 month contract | Already signed |

| What? | Who with? | Account number | External contact | MUTC contact | End date | Notes |
|---|--|----------------|---|---------------------------|--------------------------------|---------------------------------------|
| firewall/filtering | Backstone Business Park Dansk Way, Ilkley West Yorkshire. LS29 8JZ | | straight.com | Patni | from go live date (tbc) | |
| 9 Broadband EECs | Schools Broadband Unit 2-4 Backstone Business Park Dansk Way, Ilkley West Yorkshire. LS29 8JZ | None given | Tom Clarke tom.clark@talk-straight.com | Jo Armitage | One-off | Already signed but not yet delivered |
| 10 Wayleave for Virgin media (Broadband Installation) | Virgin Media Ltd Media House Bartley Wood Business Park Hook RG27 9UP | 994749-1528876 | Rebecca Fitzsimmons, Rebecca.Fitzsimmons@virginmedia.co.uk | Vanessa Ogden/Jo Armitage | Till work done (tbc) | Already signed but not yet acted upon |
| 11 Broadband fail-over line | Schools Broadband Unit 2-4 Backstone Business | None given | Tom Clarke tom.clark@talk- | Jo Armitage | 36 month contract from go live | Already signed |

| What? | Who with? | Account number | External contact | MUTC contact | End date | Notes |
|--|--|----------------|--|--------------|---|---|
| | Park Dansk Way, Ilkley West Yorkshire. LS29 8JZ | | straight.com | | date (probably Aug 2017) | |
| 12 Temporary broadband | Broadband wherever | | Ketan Ketan@broadband wherever.net | Jo Armitage | Dec 2018 | To be signed by end of this week we can do it from MST trading as MUTC |
| 13 Telephone system and support | Schools Broadband Unit 2-4 Backstone Business Park Dansk Way, Ilkley West Yorkshire. LS29 8JZ | | Tom Clarke tom.clark@talk- straight.com | Jo Armitage | 12 months from installation (Aug 2017) | Just about to be signed (by end of week), PO already submitted from MUTC |
| 14 SIP lines (telephone) | Schools Broadband Unit 2-4 Backstone Business Park Dansk Way, Ilkley West Yorkshire. LS29 | | Tom Clarke tom.clark@talk- straight.com | Jo Armitage | tbc | Just about to be signed (by end of week) PO already submitted from MUTC |

| | What? | Who with? | Account number | External contact | MUTC contact | End date | Notes |
|----|-------------------------------------|---|----------------|--|---------------------------|--------------------------------------|----------------|
| | | 8JZ | | | | | |
| 15 | Analogue telephone lines (red care) | ECL 47 Prideaux Rd, Eastbourne, BN21 2NB 01323 403 503 | | Matt Greenfield matthewg@e-ecl.com | Jo Armitage | 3 years from installation (aug 2017) | Already signed |
| 16 | SIMS licencing | Capita SIMS Franklin Court Priory Business Park Cardington Bedfordshire MK44 3JZ | Have requested | Darren Harvey, darren.harvey@capita.co.uk | Louise O'Brien | 12 months from go live (July 2017) | Already signed |
| 17 | SIMS support | 3BM Head Office Addison Annexe, 131 Addison Gardens, | Have requested | Vanessa Exton vanessa.exton@3bm.co.uk | Louise O'Brien/Sham Haque | 31 Aug 2018 | Already signed |

| | What? | Who with? | Account number | External contact | MUTC contact | End date | Notes |
|----|---|--|----------------|---|--------------|--|--|
| | | London, W14 0DT | | | | | |
| 18 | Mulberryutc.co.uk domain hosting | Go Agency 74 The Maltings, Standstead Abbotts, Hertfordshire SG12 8HG | | Paul Roffey (through Shanaz) paul@goagency.co.uk | Shanaz Begum | Annual roll over in July (30 days notice to end) | This was on the MSfG list so may have already been dealt with |
| 19 | Support for Sharp copiers | Sharp Business Systems UK Plc, 4 Furzeground Way Stockley Park Uxbridge UB11 1EZ | | Charlton, James James.Charlton@sharpharp.eu | Jo Armitage | 12 months from go live (Aug 2017) | We have agreed this through the Joskos contract but we have not signed anything yet. We can do it as MST trading as MUTC |
| 20 | Support for ID card and cashless catering hardware and software | AMI Education Hithercroft Road Wallingford Oxfordshire OX10 9BT 01491 20 21 28 | | support@amieducation.com | Jo Armitage | tbc | We have agreed this through the Joskos contract but we have not signed anything yet. We can do it as MST trading as MUTC |

| | What? | Who with? | Account number | External contact | MUTC contact | End date | Notes |
|----|--|---|----------------|--|--------------|----------|--|
| 21 | Support for card access system (actwinpro software) | Smart Security 01252 547725 | | Phone number main | Jo Armitage | tbc | Linked to Joskos contract - we will need to sign this before end of August |
| 22 | Web-hosting and support for Eclipse (library software) | MLS Arden House, Shepley Lane, Hawk Green, Marple, Stockport, Cheshire, SK6 7JW | - | admin@microlib.co.uk | Jo Armitage | tbc | We have agreed this through the Joskos contract but we have not signed anything yet. We can do it as MST trading as MUTC |
| 23 | SSL certification | tbc | | | Jo Armitage | | We are committed to this through the Joskos contract - we can do it as MST trading as MUTC |
| 24 | Microsoft licence | Microsoft via CDW Ltd 10 Fleet St London EC4 7RB 0207-791-6298 | | | Jo Armitage | | We are committed to this through the Joskos contract - we can do it as MST trading as MUTC |
| 25 | Veeam licence (Backup) | Veeam Software | | support@veeam.com | Jo Armitage | | We are committed to this through the Joskos contract - we can do it as MST trading as MUTC |

| | What? | Who with? | Account number | External contact | MUTC contact | End date | Notes |
|----|--|---|----------------|-----------------------|--------------|----------|--|
| 26 | VMWare licence support and subscription contract (virtual environment) | | | vi-hotline@vmware.com | Jo Armitage | | We are committed to this through the Joskos contract – we can do it as MST trading as MUTC |
| 27 | Adobe Creative cloud licence (incl Photoshop) | Adobe | | | Jo ARmitage | | We are committed to this through the Joskos contract – we can do it as MST trading as MUTC |
| 28 | Salamander licence-AD provisioning | Salamandersoft Ltd 30 College Street, East Bridford, NG13 8LF | | | Jo Armitage | | We have agreed this through the Joskos contract but we have not signed anything yet. We can do it as MST trading as MUTC |
| 29 | Impero licence – | Impero Solutions Ltd, Oak House, Mere Way, Ruddington Fields Business Park, Nottingham, NG116JS | | | Jo ARmitage | | We have agreed this through the Joskos contract but we have not signed anything yet. We can do it as MST trading as MUTC |
| 30 | Autograph licence | Chartwell Yorke 114 High Street Belmont Village Bolton | - | | Jo Armitage | n/a | We have agreed this through the Joskos contract but we have not signed anything yet. We can do it as MST trading as MUTC |

| | What? | Who with? | Account number | External contact | MUTC contact | End date | Notes |
|----|--------------------------------------|--|--------------------------------|---|--------------|---------------------------------------|--|
| | | BL78AL | | | | | |
| 31 | SISRA License | SISRA Analytics 145 Edge Lane, Liverpool, L7 2PF. | SIS- SOP86200617 -11147S | Sophie Rawson srawson@sisra.com | Jo Armitage | 3 years from go live - Aug 2017 | To be signed this week – we can do it as MST trading as MUTC |
| 32 | Elsevier Clinical Skills licences | ELSEVIER Health Sciences Clinical Solutions UKNE 125 London Wall London UK EC2Y 5AS | | Renato Nardiello, r.nardiello@elsevier.com | Jo Armitage | Aug 31 2017 | We have agreed this through the Joskos contract but we have not signed anything yet. We can do it as MST trading as MUTC |
| 33 | Planet E-stream support | Planet Enterprises Ltd, The Old School, 690 Bradford Road, Birkenshaw, West Yorkshire, BD11 2DR, | | Carol Booth Carol@planetdv.net | Jo Armitage | | We have agreed this through the Joskos contract but we have not signed anything yet. We can do it as MST trading as MUTC |

**SCHEDULE 2
EXCLUDED ASSETS**

None.

SCHEDULE 3
LIST OF TRANSFERRING EMPLOYEES

| | |
|--------------------------|--------------------------------|
| Ben Rew | Senior Vice Principal |
| Ruthanna Christofides | Director of Learning (Science) |

