Department
for Education

Mainstream academy and free school: single funding agreement

December 2014

FUNDING AGREEMENT: SINGLE MAINSTREAM ACADEMY/FREE SCHOOL

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SUMMARY

Information about the Academy:

Name of Academy Trust	Hoe Valley School
Company number	8833418
Name of academy	Hoe Valley School
Opening date	9th September 2015
Type of academy (indicate whether academy or free school)	Free School
Religious designation	None
Wholly or partly selective	No
Name of predecessor school (where applicable)	None
Capacity	840
Age range	11-18
Number of sixth form places	240
Number of boarding places	0
SEN unit / Resource provision	None
Land arrangements (Version 1-7 or other)	6
Address and title number of Land	**Egley Road, Woking, GU22 0NH**
Contact details for the Chair of Board of Charity Trustees	Lynne O'Reilly The Company's Registered Office

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

Clause No	Descriptor	Applied	Not used
1.19	Only applies to free schools and new provision academies	#	
2.9.A	Clause applies where an academy was previously a VC or foundation school designated with a religious character		#
2.12, 2.13	Only applies where the academy has an SEN unit		#
2.23	Only applies where there was a predecessor independent school		#
2.24	Only applies where the academy provides boarding		#
2.26	Clause does not apply to free schools (unless there was a predecessor independent school), or new provision academies		#
2.32	Clause applies only to academies and free schools designated with a religious character		#
2.33	Clause applies only to academies that were formerly wholly selective grammar schools		#
2.34	Clause applies only to academies that were formerly partially selective grammar schools		#
2.39	Clause applies to free schools and new provision academies designated with a religious character		#
2.50	Clause only applies where the academy is designated with a religious character		#
2.51	Clause only applies where the academy has not been designated with a religious character	#	
2.52	Clause applies where an academy was previously a VC school or foundation school designated with a religious character		#
2.52c)	Sub-clause applies if the academy is designated with a denominational religious character – CE etc. rather than 'Christian'		#
3.16 – 3.21	Option 1 applies to converter and sponsored academies: if used delete option 2		#

Clause No	Descriptor	Applied	Not used
3.16 – 3.21	Option 2 applies to free schools and new provision academies: if used delete option 1	#	
3.23	Clause does not apply to academy converters	#	
3.33	Clause only applies to full sponsored and intermediate sponsored academies with approved Academy Action Plans		#
3.34	Clause does not apply to free schools (unless there was a predecessor independent school), or new provision academies		#
4.5	Clause applies where the academy has 16-19 provision	#	
4.5A	Clause only applies to free schools	#	
4.11	Clause to be included where relevant circumstances apply – and only in relation to academy converters		#
4.16	Clause only applies where a Start-Up period applies to the academy	#	
6.1 – 6.4	Clauses do not apply to free schools and new provision academies		#
7.6A	Clause applies only to a boarding academy/free school		#
7.8	Clause only applies to sponsored academies		#
7.15	Clause applies to free schools and may be applied to new provision academies	#	
7.16	Clause applies to free schools and may be applied to new provision academies	#	
7.17	Clause applies to free schools and may be applied to new provision academies	#	
7.18	Clause applies to free schools and may be applied to new provision academies	#	
7.19	Clause applies to free schools and may be applied to new provision academies	#	
8.12	Clause only applies to schools which are designated with a Church of England or Roman Catholic		#

Clause No	Descriptor	Applied	Not used
	character		

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

Descriptor	Clause No.	Applied	Not used
Amendment in clause to correct cross references and pick up the co-ordination derogation in 2.27 and pick up para 2.31 which is not a derogation	**2.25**	#	
Clause recognising that a derogation from the admission code was agreed with ministers to allow the Trust to give priority to founders children in their admissions policy.	2.28	#	
Pupil Premium priority is no longer a derogation as it is permitted for all schools under 1.39A of the Code	2.29		#
Pupil Premium priority is no longer a derogation as it is permitted for all schools under 1.39A of the Code	2.30		#

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 Hoe Valley School (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 8833418. 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 Hoe Valley School (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.

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

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

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

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 6 Academy Financial Years and covers the period up to the first Academy Financial Year in which all age groups are present at the Academy (that is, all the pupil cohorts relevant to the age range of the Academy will have some pupils present).

"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. Unless an Academy operated by the Academy Trust is designated as a school with a religious character under the Religious Character of Schools (Designation Procedure) (Independent Schools) (England) Regulations 2003, it agrees to be bound by the prohibition against discrimination in section 85 of the Equality Act 2010.

1.19. The Academy Trust must ensure that so far as is reasonably practicable and consistent with clause [2.51] 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 9th September 2015.

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 members of the Academy Trust, stating the date of their appointment and, where applicable, the name of the member they replaced as soon as is practicable and in any event within 14 days of their appointment.

1.25. The Academy Trust must not appoint any new or replacement *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 or election or the resignation or removal or 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 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 clauses 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.

2.9A Not used

Pupils

2.10. The planned capacity of the Academy is 840 in the age range 11-19, including a sixth form of 240 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.

SEN unit

2.12. Not used

2.13. Not used

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. Where the Academy Trust provides milk to pupils, it must be provided free of charge to pupils who would be eligible for free milk if they were pupils at a maintained school.

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. For each Academy Financial Year the Academy Trust must, where applicable, publish, on the Academy's website, information about:

a) the amount of year 7 literacy and numeracy catch-up premium grant that it will receive during the Academy Financial Year;

b) what it intends to spend its year 7 literacy and numeracy catch-up premium grant on;

c) what it spent its year 7 literacy and numeracy catch-up premium grant on in the previous Academy Financial Year; and

d) the impact of the previous year's year 7 literacy and numeracy catch-up premium grant on educational attainment, and how that effect was assessed.

Charging

2.19. 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. Subject to clauses 2.27 and 2.28 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.

2.26. 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. If the Academy is a free school, the Academy Trust is not required to participate in coordination for its first intake of pupils.

2.28. The Academy Trust is also permitted by the Secretary of State to determine admission arrangements that give priority for admission (but not above looked after children and previously looked after children) to children whose parents have permitted Founders status. The Academy Trust should ensure that they grant Founders status according to the requirements of Charity law, which permit special provision to be made for a small group of the general beneficiaries of the Charity providing that the greatest benefit is to the wider community. The Academy Trust should only grant Founders status to a parent or guardian whom the Company has identified in its discretion as having genuinely played a material role in setting up the school and, where appropriate, whose continued role is deemed by the Company to be needed to establish the school in its early years for the benefit of the public as a whole.

2.29. Not used.

2.30. Not used.

a)

b) .

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 specified at clause 2.30, 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, and includes English, mathematics and science.

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) where applicable, the names of any phonics or reading schemes in operation for Key Stage 1;

d) where applicable, the GCSE options and other Key Stage 4 qualifications, or other future qualifications specified by the Secretary of State, offered by the Academy; and

e) 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 clause 2.51.

2.50. Not used

2.51. Subject to clause 2.49, 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.

2.52. Not used

2.53. 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.

2.54. 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

2.55. 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.

2.56. 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.

2.57. 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) where applicable, the Academy's most recent Key Stage 2 results as published by the Secretary of State in the School Performance Tables, broken down as follows:

i. "% achieving Level 4 or above in reading, writing and maths";

ii. "% making expected progress in reading", "% making expected progress in writing", and "% making expected progress in maths";

iii. in relation to reading, "% achieving Level 5 or above";

iv. in relation to writing, "% achieving Level 5 or above"; and

v. in relation to maths, "% achieving Level 5 or above";

b) where applicable, 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";

c) information about where and how parents (including parents of prospective pupils) can access the most recent report about the Academy published by the Chief Inspector; and

d) information about where and how parents (including parents of prospective pupils) can access the School Performance Tables published by the Secretary of State.

2.58. 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.

3.4. Except with the Secretary of State's consent, the Academy Trust must not make commitments to spending which have substantial implications for future grant. No decision by the Academy Trust will commit the Secretary of State to paying any particular amount of grant.

Capital Grant

3.5. The Secretary of State may pay a grant ("**Capital Grant**") to the Academy Trust for the purpose of spending on items of Capital Expenditure.

3.6. "**Capital Expenditure**" means expenditure on:

a) acquiring land and buildings;

b) erecting, enlarging, improving or demolishing any building including any fixed plant, installation, wall, fence or other structure, or any playground or hard standing;

c) installing electrical, mechanical or other services other than necessary repairs and maintenance due to normal wear and tear;

d) buying vehicles;

e) installing and equipping premises with furnishings and equipment, other than necessary repairs and maintenance due to normal wear and tear;

f) installing and equipping premises with computers, networking for computers, operating software and ICT equipment, other than necessary updates or repairs and maintenance due to normal wear and tear;

g) providing and equipping premises, including playing fields and other facilities for social activities and physical recreation other than necessary repairs and maintenance due to normal wear and tear;

h) works of a permanent character other than the purchase or replacement of minor day-to-day items;

i) any major repairs or replacements which are specified as capital expenditure in any grant letter relating to them;

j) such other items (whether like or unlike any of the foregoing) of a substantial or enduring nature which the Secretary of State agrees are capital expenditure for the purposes of this Agreement;

k) professional fees properly and reasonably incurred in connection with the provision of any of the above; and

l) VAT and other taxes payable on any of the above.

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

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

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

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

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

General Annual Grant (GAG)

3.12. The Secretary of State will pay GAG to the Academy Trust 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;

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) Children's Centres; or

e) 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 immediately follows the Academy Financial Year in which all planned year groups will be present at the Academy (that is, all the pupil cohorts relevant to the age range of the Academy will have some pupils present), the basis of the pupil number count for the purpose of determining GAG will no longer be the estimate provided in accordance with clause 3.17, 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. For Academy Financial Years which immediately follow the Academy Financial Year in which all planned year groups will be present at the Academy, the basis of the pupil count for determining GAG will be:

a) for pupils in Year 11 and below, the Schools Census which is used to fund maintained schools for the financial year overlapping with the Academy Financial Year in question; and

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 or during the period when year groups are present who have transferred from the Predecessor School, 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.

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 Predecessor School or the Predecessor School's foundation, the Academy Trust must, if required by the Secretary of State, pay all or part of the sale proceeds to the LA or to the Secretary of State, taking into account the amount of the proceeds to be reinvested by the Academy Trust.

Transactions outside the usual planned range

4.33. 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 5.12(a).

"**Land**" means the land at Egley Road, Woking, GU22 0NH, being the land registered with title number SY339912 and demised by the Lease.

"**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.

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

"**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 (including the Landlord) which materially affects the Academy Trust's ability to use the Land for the purposes of the Academy.

"The Temporary Lease" means the leasehold agreement or its equivalent between the Academy Trust and any third party in respect of the Temporary Site, and "the Leases" means both the Lease and the Temporary Lease.

"The Temporary Site" means the land (including for the avoidance of doubt all buildings structures landscaping and other erections situated at and known as Woking Park, Kingfield Road, Woking, Surrey, GU22 9BA forming the temporary site 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 5.14(b) or 5.21(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 [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

5.4. The Academy Trust must comply with the Leases and promptly enforce its rights against the Landlord in relation to each lease.

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

a) terminate, renew, vary, surrender, dispose of or agree any revised rent under the Leases; or

b) grant any consent or licence; or

c) create or allow any encumbrance; or

d) part with or share possession or occupation; or

e) enter into any onerous or restrictive obligations,

in respect of all or part of the Land or temporary site.

5.6. 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 or the temporary site.

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

5.8. After notifying the Secretary of State under clause 5.7, the Academy Trust must:

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

b) allow the Secretary of State to take all necessary action, with or instead of the Academy Trust, to remedy or prevent the breach, and

c) use its best endeavours to help the Secretary of State to remedy or prevent the breach.

5.9. If the Academy Trust has not entered into the Lease by 1st June 2015 the Secretary of State may serve a Termination Notice.

Property notices

5.10. 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

5.11. The Academy Trust grants and the Secretary of State accepts an option (the "**Option**") to acquire the Academy Trust's interest in 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 5.14 or 5.21. 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

5.12. 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

5.13. 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

5.14. 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 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 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

5.15. If:

a) the Academy does not reach its planned capacity, as stated in clause 2.10, within 7 Academy Financial Years; or

b) the Academy Trust or the Secretary of State serves notice to terminate

this Agreement under clause 7.1; 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 the Land as required by the Secretary of State and account for the sale proceeds to the Secretary of State in payment of the Debt, after which the Secretary of State will carry out the Discharge Process over the Land.

Exercise of Rights

5.16. On termination of this Agreement, the Secretary of State may give notice that he intends to exercise his rights under clauses 5.11, 7.30 or 7.31 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.

5.17. 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 7.30(b); and

c) the Secretary of State will carry out the Discharge Process;

5.18. 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.

5.19. If, on termination of this Agreement, the Secretary of State exercises his rights under clause 7.30, 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.

5.20. If, on termination of this Agreement, the Secretary of State agrees under clause 7.31 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.

5.21. 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.

5.22. If the Secretary of State consents to the sale of the Land, subject to any of the conditions in clause 5.21(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.

5.23. 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.

5.24. Not used.

Payment of Debt

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

5.26. If the Academy Trust:

a) sells some or all of the Land in accordance with clause 5.21, 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. COMPLAINTS

6.1. Not used.

6.2. Not used.

6.3. Not used.

6.4. Not used.

7. TERMINATION

Termination by either party

7.1. 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

7.2. 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.

7.3. A Termination Warning Notice served under clause 7.2 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.

7.4. 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.

7.5. If the Secretary of State considers that the Academy Trust has not responded to the Termination Warning Notice as specified under clause 7.3(c), or has not completed the action required in the Termination Warning Notice under clauses 7.3(a) and (b) (and any further action specified under clause 7.4) he may serve a Termination Notice.

Termination by the Secretary of State after inspection

7.6. 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.

7.6A Not used.

7.7. If the Secretary of State has served a Termination Warning Notice under clause 7.6 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,

he may serve a Termination Notice.

7.8. Not used.

Termination by the Secretary of State

7.9. 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.

7.10. 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.

7.11. 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.

7.12. 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.

7.13. For the purposes of clause 7.12 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.

.14. For the purposes of clause 7.13:

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.

.15. If at any time before the Academy opens, the total number of prospective pupils who have accepted offers of places to attend the Academy in September 2015 is less than 84, the Secretary of State may:

a) require the Academy Trust not to open the Academy until 84 prospective pupils have accepted offers of places to attend the

b) serve a Termination Notice.

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.

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.

18. If full planning permission (including where relevant listed building consent) in respect of the Land has not been obtained by 31 January 2016, the Secretary of State may serve a Termination Notice. If full planning permission (including where relevant listed building consent) in respect of the Temporary site has not been obtained by 1 June 2015, the Secretary of State may serve a Termination Notice.

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

7.20. The Secretary of State may at any time, subject to clause 7.21, 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.

7.21. 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.

7.22. 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.

7.23. When notifying the Secretary of State under clause 7.22, 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 7.20.

Funding and admission during notice period

7.24. If the Secretary of State serves a Termination Notice under clause 7.1, 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.

7.25. If the Secretary of State serves a Termination Warning Notice or a Termination Notice otherwise than under clause 7.1, 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

7.26. 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.

7.27. Subject to clauses 7.28 and 7.29, if the Secretary of State terminates this Agreement under clause 7.1, he will indemnify the Academy Trust. If the Secretary of State terminates this Agreement otherwise than under clause 7.1, he may at his discretion indemnify or compensate the Academy Trust.

7.28. 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.

7.29. 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 7.27, 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.

7.30. 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 7.30(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.

7.31. The Secretary of State may:

a) waive all or part of the repayment due under sub-clause 7.30(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.

8. OTHER CONTRACTUAL ARRANGEMENTS

Information

8.1. 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.

8.2. 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

8.3. 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.

.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.

.5. The Academy Trust may exclude from items provided under clause 8.4 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.

lotices

.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

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):

ame of party	**Position of contact**	**Address**
ecretary of State	Head of Academies Division	Department for Education, Sanctuary Buildings, Great Smith Street, London SW1P 3BT
cademy Trust	Chair of Board of Charity Trustees	The Company's Registered Office

eneral provisions

.7. The Academy Trust cannot assign this Agreement.

.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.

.9. Termination of this Agreement will not affect the accrued rights, remedies, obligations or liabilities of the parties to this Agreement existing at termination.

.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.

.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

England and Wales, and submitted to the exclusive jurisdiction of the courts of England and Wales.

8.12. Not used.

This Agreement was executed as a Deed on 2nd March 2015

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

..... and .....

Director **Director**

or .....

Company Secretary

or .....

Witness

Name:

Address:

The Corporate Seal of

THE SECRETARY OF STATE FOR EDUCATION

affixed to this deed is authenticated by:

.....

Duly Authorised

ANNEXES

9. 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 sections 37(2) of the Children and Families Act 2014.

9.1. Except as set out in clause 10 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.

9.2. Not used.

9.3. Not used.

9.4. Not used.

10. ADMISSION OF PUPILS WITH SEN AND DISABILITIES

10.1. 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.

10.2. 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.

0.3. 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.

0.4. 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.

0.5. 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.

0.6. 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.

0.7. 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.

0.8. Clauses 10.1 to 10.7 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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