



Education  
Funding  
Agency

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Paula Burgess  
All Saints Academy  
Houghton Road  
Dunstable  
Bedfordshire  
LU5 5AB

06 February 2015

Dear Paul

**Deed of Variation – All Saints Academy, Dunstable**

Please find enclosed a copy of the Deed of Variation for the **All Saints Academy**, Dunstable which has been executed on behalf of the Secretary of State.

If you have any queries regarding this, please contact Aleksandra Wasik-Hyde by emailing [academy.questions@education.gsi.gov.uk](mailto:academy.questions@education.gsi.gov.uk)

Yours sincerely

Sharron Philogene  
Academies – London, South & East of England  
Education Funding Agency

Enc

Dated 23 January ~~2015~~ 2015

Secretary of State for Education

and

All Saints Academy Dunstable

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Deed of Variation

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This Deed is dated

23 January 2015

~~2014~~

**Between**

(1) **The Secretary of State for Education** ("the **Secretary of State**"),

and

(2) **All Saints Academy Dunstable**, a charitable company incorporated in England and Wales with registered number 6853140 ("the **Academy Trust**")

together referred to as the "Parties"

**INTRODUCTION**

- A. The Parties entered into a funding agreement dated 7 August 2009 ("the **Existing Funding Agreement**") relating to the establishment, maintenance and funding of an independent school known as All Saints Academy Dunstable.
- B. The Parties now wish to vary, amend and re-state the terms of the Existing Funding Agreement on the terms set out in this Deed.

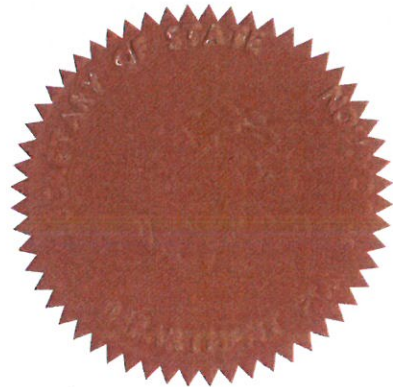
**LEGAL AGREEMENT**

- 1. Any word or phrase used in this Deed shall, if that word or phrase is defined in the Amended Funding Agreement (as defined in clause 2 below), bear the meaning given to it in the Amended Funding Agreement.
- 2. The Secretary of State and the Academy Trust agree that with effect from the date of this Deed, the Existing Funding Agreement shall be amended and re-stated in the form of the Funding Agreement set out in the Schedule (the "**Amended Funding Agreement**"). For the avoidance of doubt, the Amended Funding Agreement does not terminate or suspend the Existing Funding Agreement but further amends and re-states it

EXECUTED AND DELIVERED AS A DEED by the Parties on the ~~2014~~ 23<sup>rd</sup> day of  
2015 JANUARY

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


  
Duly Authorised by the Secretary of State for Education



Executed on behalf of All  
Saints Academy Dunstable

  
Director

Print name... DAVID FRASER

Witnessed by 

Full name... SHARON REID

Address... 55 BLAKENEY DRIVE, LUTON

Occupation... CLERK TO GOVERNORS

**Schedule**  
**Amended Funding Agreement**



Department  
for Education

# **Mainstream academy and free school: single model funding agreement**

**July 2014**

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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	✓	



## 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 All Saints Academy Dunstable (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 6853140. 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 run an independent school in England, according to the provisions of the Academies Act 2010, to be known as All Saints Academy Dunstable (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.

"**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.

**“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

## **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 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.

## **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 9.1 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

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;

- 2.26. Pupils on roll in a Predecessor School which was a maintained or independent school will transfer automatically to the Academy on opening. All children already offered a place at that Predecessor School must be admitted to the Academy.
- 2.27. 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 may determine admission arrangements (subject to consultation in line with the Codes) that give priority for admission to children attracting the Pupil Premium, including the service premium (the "pupil premium admission criterion"), but not above looked-after children and previously looked-after children.
- 2.29. Where the Academy Trust applies the pupil premium admission criterion, it must provide information in its admission arrangements about eligibility for the premiums.
- 2.30. For the purposes of applying the pupil premium admission criterion only, sections 1.9(f) and 2.4(a) of the School Admissions Code do not apply insofar as they prevent admission authorities from giving priority to children according to the financial or occupational status of parents or using supplementary forms that ask for:
- (a) any personal details about their financial status; or
  - (b) whether parents are serving in the armed forces (of any nation), stationed in England, and exercising parental care and responsibility for the child in question.
- 2.31. The Secretary of State may:
- (a) direct the Academy Trust to admit a named pupil to the Academy:
    - (i) following an application from an LA including complying with a school attendance order as defined in section 437 of the Education Act 1996. Before doing so the Secretary of State will consult the Academy Trust; or

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.

references to “the required collective worship” were references to collective worship in accordance with the tenets and practices of the Academy’s specified religion or religious denomination;

- (c) the Academy Trust must ensure that the quality of religious education given to pupils at the Academy and the contents of the Academy’s collective worship given in accordance with the tenets and practices of its specific religion or religious denomination are inspected. The inspection must be conducted by a person chosen by the Academy Trust, and the Academy Trust must ensure that the inspection complies with the statutory provisions and regulations which would apply if the Academy were a foundation or voluntary school designated as having a religious character.

2.51. Not used.

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;

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;



- 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;

- (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 – 3.19 Not used

3.20. The Secretary of State will calculate GAG based on the pupil count at the Academy. In order to calculate GAG for the Academy Financial Year in which the Academy opens, the pupil count will be determined on the same basis as that used by the relevant LA for determining the budget of the maintained Predecessor School.

3.21. For Academy Financial Years after that referred to in clause 3.20, 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. Not used.

the following 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. The Academy Trust may apply to the Secretary of State for financial assistance in relation to proposed redundancies at the Academy. In response to such an application, the Secretary of State may at his discretion agree to meet a proportion of the Academy Trust's costs arising from the inclusion of academies in the schedules to the Redundancy Payments (Continuity of Employment in Local Government) (Modification) Order 1999. The Secretary of State may agree to meet the costs of an employee's prior eligible service, being service before the Academy opened, but the Academy Trust must meet the costs of service after the Academy opened. The Secretary of State's financial assistance in this respect will only be available in the first two years after the Academy opens.
- 3.34. The Secretary of State may pay the Academy Trust's costs in connection with the transfer of employees from a Predecessor School under the Transfer of Undertakings (Protection of Employment) Regulations 2006. Such payment will be agreed on a case-by-case basis. The Academy Trust must not budget for such a payment unless the Secretary of State confirms in writing that it will be paid.
- 3.35. The Academy Trust may receive additional funding from an LA under an agreement with that LA for the provision for pupils who require high levels of support for SEN. The Academy Trust must ensure that all provision received under that agreement is provided for those pupils.

## **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).

- 4.25. 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.

- 4.35. 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**

**"Land"** means the land at Houghton Road, Dunstable, Bedfordshire, LU5 5AB and demised by the Lease.

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

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

### **Restrictions on Land transfer**

- 5.1. The Academy Trust must:

- (a) within 28 days after signing this Agreement, apply to the Land Registry using Form RX1 for the following restriction (the **"Restriction"**) to be entered in the proprietorship register for the Land:

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

- (b) take any further steps reasonably required to ensure that the Restriction is entered on the proprietorship register;
- (c) promptly confirm to the Secretary of State when the Restriction has been registered;

## Option notice

### 5.6. The Academy Trust:

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

## Property notices

### 5.7. 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.

- (a) agrees that the Secretary of State may give orders or directions to the Academy Trust as though the Academy were a maintained school and sections 496 and 497 applied to the governing body of that maintained school; and
  - (b) must act in accordance with any such order or direction from the Secretary of State.
- 6.3. If a complaint made to the governing body of the Predecessor School has not been fully investigated when the Academy opens, the Academy Trust must continue to investigate that complaint in accordance with the complaints procedures established by that governing body.
- 6.4. If a complaint is made to the Academy Trust about matters arising wholly or partly during the 12 months before the Academy opened, the Academy Trust agrees to investigate that complaint as if the matter complained of had taken place after the Academy opened.

## **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.



he may serve a Termination Notice.

7.8. If the Chief Inspector gives a notice referred to in clause 7.6 to the Academy Trust within two years after the Academy opened, the Secretary of State may only serve a Termination Warning Notice under clause 7.6 if:

- (a) the Chief Inspector has held a monitoring inspection under section 8 of the Education Act 2005 later than two years after the Academy opened; and
- (b) the Chief Inspector considers that the Academy is not making enough progress towards the removal of the designation referred to in his notice.

Nothing in this clause prevents or prejudices the Secretary of State exercising any other rights arising from or under this Agreement (including, for the avoidance of doubt, any rights under clauses 7.2 to 7.5).

#### **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

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.

7.14. 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.

7.15. Not used.

7.16. Not used.

7.17. Not used.

7.18. Not used.

7.19. Not used.

## **Change of Control**

- 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:
- (f) 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
  - (g) 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.

- (c) any matter which, the Academy Trust reasonably believes should remain confidential.

## **Notices**

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

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

<b>Name of party</b>	<b>Position of contact</b>	<b>Address</b>
Secretary of State	Head of Academies Division	Department for Education, Sanctuary Buildings, Great Smith Street, London SW1P 3BT
Academy Trust	Chair of Board of Charity Trustees	All Saints Academy Dunstable, Houghton Road, Dunstable, Bedfordshire, LU5 5AB

## **General provisions**

8.7. The Academy Trust cannot assign this Agreement.

8.8. 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

## **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.

- 9.1. Clause 2.4 does not apply to anyone whom the Academy Trust appoints as the Special Educational Needs Co-ordinator under section 317(3A) of the Education Act 1996, who must instead meet the requirements in Regulation 3 of the Education (Special Educational Needs Co-ordinators) (England) Regulations 2008.
- 9.2. The Academy Trust must comply with all the duties imposed on maintained schools, with regard to pupils with SEN and disabilities, in:
  - (a) Part 4 of the Education Act 1996;
  - (b) The Education (Special Educational Needs) (Information) Regulations 1999; and
  - (c) The Education (Special Educational Needs Co-ordinators) (England) (Amendment) Regulations 2008.
- 9.3. Where a child who has SEN is being educated in the Academy, those concerned with making special educational provision for the child must secure that the child engages in the activities of the school together with children who do not have SEN, as far as is reasonably practicable and is compatible with:
  - (a) the child receiving the special educational provision which his learning difficulty calls for;
  - (b) the provision of efficient education for the children with whom he will be educated; and
  - (c) the efficient use of resources.
- 9.4. The Academy's website must include details of the implementation of its policy for pupils with SEN; the arrangements for the admission of disabled pupils; the steps taken to prevent disabled pupils from being treated less favourably than other pupils; and the facilities provided to assist access to the Academy by disabled pupils (disability being as defined for the purposes of the Equality Act 2010).

- 10.8. Clauses 9.1 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

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