

**DEED OF NOVATION AND VARIATION
OF THE
SUPPLEMENTAL FUNDING AGREEMENT FOR THE ALBANY**

The Parties to this Deed are:

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

(2) **RAEDWALD TRUST**, a charitable company incorporated in England and Wales with registered company number 08702099 whose registered address is at Parkside School, 291 Spring Road, Ipswich, Suffolk, IP4 5ND ("**RT** "); and

(3) **BELIEVE ENGAGE SUCCEED TRUST**, a charitable company incorporated in England and Wales with registered company number 10025988 whose registered address is at Riverwalk Campus, Mayfield Road, Bury St. Edmunds, Suffolk, England, IP33 2PD(the "**Company**"),

together referred to as the "Parties".

INTRODUCTION

- A. The Albany is an academy within the meaning of the Academies Act 2010 (the "academy") and is currently operated by the Company (a multi academy trust).
- B. The Secretary of State and the Company entered into a Supplemental Funding Agreement deemed to be dated 31 January 2019 subsequently confirmed by Deed of Confirmation dated 25 August 2020 (the "**Agreement**") for the maintenance and funding of the academy (attached as Schedule 1).
- C. It is proposed that, with effect from 00.01 am on 1 September 2023 ("Transfer Date"), RT will assume responsibility for the management and operation of the academy in succession to the Company.
- D. The Parties wish to novate the Agreement to RT and the Secretary of State and RT wish to vary the terms of the Agreement subject to the provisions of this Deed.

LEGAL AGREEMENT

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

NOVATION

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

3. The references in the Agreement to the Master Funding Agreement between the Company and the Secretary of State shall be read as a reference to the Master Funding Agreement between the RT and the Secretary of State.

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

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

OBLIGATIONS AND LIABILITIES

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

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

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

INDEMNITY

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

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

VARIATION

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

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

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

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

COUNTERPARTS

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

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

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



[REDACTED]
Duly authorised by the **SECRETARY OF STATE FOR EDUCATION**

Date 29/08/2023

EXECUTED as a deed by
RAEDWALD TRUST acting by
one director in the presence of a
witness:

[REDACTED]
Director
[REDACTED]
Print name.....
Date 21 August 2023
.....

[REDACTED]
Print name.....

[REDACTED]
[REDACTED]

EXECUTED as a deed by
BELIEVE ENGAGE SUCCEED
TRUST acting by one director in
the presence of a witness:

Director
Print name.....
Date

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

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

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

EXECUTED as a deed by
RAEDWALD TRUST acting by
one director in the presence of a
witness:

Director
Print name.....
Date

Witness
Print name.....
Address.....
Occupation.....

EXECUTED as a deed by
BELIEVE ENGAGE SUCCEED
TRUST acting by one director in
the presence of a witness:

Director
Print name
Date 21/8/23

Witness

Print name

Address...

Occupation



Schedule 1
Supplemental Funding Agreement



Department
for Education

Alternative provision academy and free school: supplemental funding agreement

March 2018

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SUMMARY SHEET

Information about the Academy:

Name of Academy Trust	Believe Engage Succeed Trust
Company number	10025988
Date of Master Funding Agreement	1 February 2019
Name of academy	Albany
Opening date	1 February 2019
Type of academy (indicate whether academy or free school)	Academy
Name of predecessor school (where applicable)	Albany PRU
Capacity number	54
Age range	11-16
Number of sixth form places	N/A
Number of boarding places	N/A
SEN unit / Resource provision	SEMH, MLD
Land arrangements (Version 1-8 or other)	Versions 2 and 3
Address and title number of Land	The Albany, Beard Road, Bury St Edmunds, IP32 6SA (title numbers SK214731 & SK347301)

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

Clause No.	Descriptor	Applied	Not used
1.I	Only applies to free schools and new provision academies		X
2.D, 2.E	Only applies where the academy has an SEN unit		X
2.F	Only applies where there was a predecessor independent school		X
2.I	Clause does not apply to free schools (unless there was a predecessor independent school), or new provision academies	X	
2.U	<i>Clause reflects the requirements for religious education and daily collective worship</i>		X
3.C	Clause only applies to full sponsored and intermediate sponsored academies with approved Academy Action Plans		X
3.D	Clause does not apply to free schools (unless there was a predecessor independent school), or new provision academies	X	
5.G.1	Clause applies only to a boarding academy/boarding free school		X
5.I	Clause only applies to sponsored academies		X
5.K	Clause applies to free schools and may be applied to new provision academies		X
5.L	Clause applies to free schools and may be applied to new provision academies		X
5.M	Clause applies to free schools and may be applied to new provision academies		X
5.N	Clause applies to free schools and may be applied to new provision academies		X
5.O	Clause applies to free schools and may be applied to new provision academies		X

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

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

Descriptor	Clause No.	Applied	Not used

1. ESTABLISHING THE ACADEMY

- 1.A This Agreement made between the Secretary of State for Education and Believe Engage Succeed Trust is supplemental to the master funding agreement made between the same parties and dated 1 February 2019 (the "**Master Agreement**").

Definitions and Interpretation

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

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

"**The Academy**" means the Albany Alternative Provision Academy.

"**Commissioner**" means local authorities and/or schools referring children/pupils to the Alternative Provision Academy for admission under the legal powers set out in clauses 2.G to clauses 2.M.

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

"**Prospective Pupils**" means those pupils who have been referred to the Academy and accepted a place.

"**Pupil Premium**" means the amount allocated by a local authority from the pupil premium grant to a school under the terms and conditions of the grant;

"**Pupil Premium Grant**" means a grant of that name paid to a local authority by the Secretary of State under section 14 of the 2002 Act in respect of pupils who are entitled to a pupil premium;

"**Pupil Referral Unit (PRU)**" means an Academy or Free School which meets the requirements set out in Section 19(2) of the Education Act 1996.

"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.

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

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

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

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

The Academy

1.F The Academy is an Alternative Provision Academy as defined in clause 1.4 of the Master Agreement.

1.G The Academy Trust will establish and maintain the Academy in accordance with the Master Agreement and this Agreement.

1.H The Academy Trust will open the Academy on 1 February 2019.

1.I Not used.

1.J Further to clause 1.13(b) of the Master Agreement the Academy Trust must ensure that the educational provision is made at the Academy for children of compulsory school age who, by reason of illness, exclusion from school or otherwise, may not for any period receive suitable education unless alternative provision is made for them.

2. RUNNING OF THE ACADEMY

Teachers and staff

- 2.A Subject to clause 2.A.1 and 7.A of this Agreement (if used), the Academy Trust may, in accordance with any relevant Guidance, employ anyone it believes is suitably qualified or is otherwise eligible to plan and prepare lessons and courses for pupils, teach pupils, and assess and report on pupils' development, progress and attainment.
- 2.A.1 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, or are no longer looked after by an LA because of an adoption, special guardianship or child arrangements order, or because they have been adopted from 'state care' outside England and Wales, and in doing so must comply with the law, regulations and guidance that apply to maintained schools. The Academy Trust must ensure the designated person undertakes appropriate training and has regard to any guidance issued by the Secretary of State.

Pupils

- 2.B The planned number of places at the Academy is 54 places in the age range 11-16 years for pupils with a statement of special educational needs in SEN categories SEMH, MLD, naming the Academy or predecessor school. The planned number of places and the age ranges is/are not determinative of GAG. GAG for each Academy Financial Year will be determined by the Secretary of State in accordance with clauses 3.12 and 3.15 of the Master Agreement.
- 2.C Where the Company considers that there is a need to increase the overall planned number of places stated in clause 2.B, the Company must seek the approval of the Secretary of State and the requirements of this Agreement may be amended accordingly by agreement between the Secretary of State and the Company.

SEN unit

- 2.D Not used.

2.E Not used.

Charging

2.F Not used.

Admissions

2.G The Academy Trust will act in accordance with equalities law

2.H Except where clauses 2.I, 2.J, 7.A and 8.A apply, the Academy Trust may not admit a child of compulsory school age unless it is by way of a referral from a Commissioner through one of the referral routes set out in Clause 2.J

2.I 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.J 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 no longer meet the requirements at 1C of the Academies Act, do not comply with this Agreement, or are otherwise unlawful.

2.K The Academy Trust may only admit a child of compulsory school age:

- a) referred by a local authority where the local authority has a duty to that child under section 19 of the Education Act 1996.
- b) referred by a maintained school or Academy where the maintained school or Academy has a duty under Section 100 of the Education and Inspections Act 2006.
- c) referred by a maintained school under powers set out in section 29(A) of the Education Act 2002.
- d) referred by an Academy under general powers in the Articles of the Academy Trust for the purpose of improving the child's behaviour.

2.L The Academy Trust shall have a referral policy.

2.M Any changes to admission arrangements proposed by the Academy Trust should be discussed with Commissioners and must be agreed with the Secretary of State.

Pupil registration and information sharing

2.N The Academy Trust must ensure that pupils attending the Academy are appropriately registered, in line with its legal duties and those of any other school that the pupil attends.

2.O As far as reasonably practicable, in agreeing contractual arrangements with Commissioners the Academy Trust shall request appropriate information on the needs and prior attainment of pupils who will attend the Academy.

2.P The Academy Trust will provide regular feedback to Commissioners (and in any event when requested by the Commissioner to do so) on progress made by the pupil, the pupil's needs and attainment.

Objections and determinations

2.Q The Academy Trust must make clear when determining the Academy's admission arrangements, that objections should be submitted to the ESFA or any successor to it.

- 2.R A determination of an objection, by the ESFA or any successor to it on behalf of the Secretary of State, or by the Secretary of State, will be binding upon the Academy.

Curriculum

- 2.S The Academy Trust may provide for the teaching of religious education and a daily act of collective worship at the Academy.
- 2.T 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.U].
- 2.U Not used.
- 2.V 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.W The Academy Trust must prevent political indoctrination, and secure the balanced treatment of political issues, in line with the requirements for maintained schools set out in the Education Act 1996, and have regard to any Guidance.

3. GRANT FUNDING

General Annual Grant (GAG)

3.A GAG for each Academy Financial Year for the Academy will include:

- a) funding equivalent to that which would be received by a PRU maintained by the local authority with similar characteristics, determined by the Secretary of State and taking account of the number of pupils and/or places at the Academy;
- b) funding to cover necessary functions which would be carried out by the relevant LA if the Academy were a school maintained by a local authority;
- c) payments in respect of further, specific grants made available to schools maintained by the local authority, where the Academy meets the requisite conditions and criteria necessary for a school maintained by the local authority to receive these grants.
- d) funding for matters for which it is necessary for the Academy to incur extra costs, for as long as those costs are deemed necessary by the Secretary of State; and
- e) The Secretary of State may make provision, within his absolute discretion, for GAG to be adjusted in-year if the number of pupils attending the Academy at specified dates exceeds or falls below thresholds specified by letter. Arrangements for this will be set out in the Annual Letter of Funding or its equivalent.

Calculation of GAG

- 3.B** The Secretary of State recognises that if he serves a Termination Notice or a Termination Warning Notice, or otherwise terminates the Master Agreement, the intake of new pupils during the notice period may decline. In these circumstances the Secretary of State may pay a larger GAG in the notice period, to enable the Academy to operate effectively.

Other relevant funding

- 3.C** Not used.

3.D Not used.

Carrying forward of funds

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

4. LAND

"Main Site Land" means the land at The Albany, Beard Road, Bury St Edmunds, IP32 6SA, being the land registered with title number SK214731 and demised by the Main Site Lease.

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

"Additional Land" means the land at The Albany, Beard Road, Bury St Edmunds, IP32 6SA, being the land registered with title number SK347301 and demised by the Lease.

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

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

Restrictions on Additional Land transfer

4.A The Academy Trust must:

- a) within 28 days of the signing of this Agreement in circumstances where the Additional Land is transferred to the Academy Trust prior to the date of this Agreement, or otherwise within 28 days of the transfer of the Additional Land to the Academy Trust, apply to the Land Registry using Form RX1 for the following restriction (the "Restriction") to be entered in the proprietorship register for the Additional 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;
- d) If it has not registered the Restriction, permit the Secretary of State to do so in its place; and
- e) not, without the Secretary of State's consent, apply to disapply, modify, cancel or remove the Restriction, whether by itself, a holding company, a subsidiary company, or a receiver, administrator or liquidator acting in the name of the Academy Trust.

Obligations of the Academy Trust

- 4.B The Academy Trust must keep the Additional Land clean and tidy and make good any damage or deterioration to the Additional Land. The Academy Trust must not do anything to lessen the value or marketability of the Additional Land without the Secretary of State's consent.
- 4.C The Academy Trust must comply with the Additional Lease and promptly enforce its rights against the Additional Landlord.
- 4.D The Academy Trust must not, without the Secretary of State's consent:

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

In respect of all or part of the Additional Land.

Option

- 4.E The Academy Trust grants and the Secretary of State accepts an option (the **"Option"**) to acquire all the Additional Land at nil consideration. The Secretary of State may exercise the Option in writing on termination of this Agreement. If the Option is exercised, completion will take place 28 days after the exercise date in accordance with the Law Society's Standard Conditions of Sale for Commercial Property in force at that date.

Option Notice

- 4.F The Academy Trust:
- a) must, within 14 days after acquiring the Additional 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 Additional Land or, if later, after signing this Agreement, apply to register a Class C(iv) land charge in the Land Charges Registry, and send the Secretary of State a copy of the relevant entry within 7 days after the registration has been completed. If the Secretary of State considers that the Academy Trust has not complied with this clause, he may apply to secure the registration.

Property Notices

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

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

Breach of Additional Lease

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

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

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

Sharing the Additional Land

4.J Where:

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

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

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

- 4.L** For the purposes of clause 4.J:

- a) a **basic need** will arise when the forecast demand for pupil places in the area where the Academy is situated is greater than the existing capacity to provide them;
 - b) a **parental need** will arise when the DfE is actually aware of an additional demand for pupil places in the area where the Academy is situated, following representations from parents in that area; and
 - c) **planned capacity** has the meaning given in clause 2.B.
- 4.M The parties' rights and obligations in respect of the Main Site Land are set out in the private lease dated 23 March 2001 and made between The East Anglian Roman Catholic Trustee (1) and Suffolk County Council (2) and assigned to the Academy Trust by Deed of Assignment dated
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5. TERMINATION

Termination by either party

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

Termination Warning Notice

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

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

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

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

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

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

Termination by the Secretary of State after inspection

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

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

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

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

5.G.1 Not used.

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

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

he may serve a Termination Notice.

5.I Not used.

Termination by the Secretary of State

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

5.K Not used.

5.L Not used.

5.M Not used.

5.N Not used.

5.O Not used.

Funding and admission during notice period

5.P If the Secretary of State serves a Termination Notice under clause 5.A, the Academy Trust may continue during the notice period to admit pupils to the Academy, and to receive GAG and EAG, in accordance with this Agreement.

- 5.Q If the Secretary of State serves a Termination Warning Notice or a Termination Notice otherwise than under clause 5.A, the Academy Trust may continue during the notice period to admit pupils to the Academy (unless the Secretary of State specifies otherwise), and to receive GAG and EAG, in accordance with this Agreement.

Notice of intention to terminate by Academy Trust

- 5.R The Secretary of State will, before the start of each Academy Financial Year, provide the Academy Trust with a final funding allocation indicating the level of GAG and EAG to be provided in the next Academy Financial Year (the **"Funding Allocation"**).
- 5.S If the Academy Trust is of the opinion that, after receipt of the Funding Allocation for the next Academy Financial Year (the **"Critical Year"**) and after taking into account all other resources likely to be available to the Academy, including other funds that are likely to be available to the Academy from other academies operated by the Academy Trust (**"All Other Resources"**), it is likely that the cost of running the Academy during the Critical Year would cause the Academy Trust to become insolvent (and for this reason only) then the Academy Trust may give written notice of its intention to terminate this Agreement on 31 August before the Critical Year.
- 5.T Any notice given by the Academy Trust under clause 5.S must be provided to the Secretary of State within six weeks of the Secretary of State issuing the Funding Allocation. The notice given by the Academy Trust under clause 5.S must specify:
- a) the grounds upon which the Academy Trust's opinion is based, including:
 - i. evidence of those grounds;
 - ii. any professional accounting advice the Academy Trust has received;

- iii. a detailed statement of steps which the Academy Trust proposes to take to ensure that the running costs of the Academy are reduced such that costs are less than the Funding Allocation and All Other Resources, and the period of time within which such steps will be taken; and
 - b) the shortfall in the Critical Year between the Funding Allocation and All Other Resources expected to be available to the Academy Trust to run the Academy and the projected expenditure on the Academy; and
 - c) a detailed budget of income and expenditure for the Academy during the Critical Year (the "**Projected Budget**").
- 5.U Both parties will use their best endeavours to agree whether or not the cost of running the Academy during the Critical Year would cause the Academy Trust to become insolvent. Both parties recognise that they will need to engage in a constructive dialogue at the time about how best to provide education for the pupils at the Academy and use their best endeavours to agree a practical solution to the problem.
- 5.V If no agreement is reached by 30 April (or another date if agreed between the parties) as to whether the cost of running the Academy during the Critical Year would cause the Academy Trust to become insolvent, then that question will be referred to an independent expert (the "**Expert**") for resolution. The Expert's determination will be final and binding on both parties. The Expert will be requested to specify in his determination the amount of the shortfall in funding (the "**Shortfall**").
- 5.W The Expert will be an Insolvency practitioner with significant professional experience of educational institutions or academies. If the parties fail to agree upon the appointment of the Expert then the Expert will be appointed by the President of the Institute of Chartered Accountants in England and Wales. The Expert's fees will be borne equally between the parties.
- 5.X The Expert will be required in reaching his determination to take account of advice from an educational specialist who is professionally familiar with the

issues arising from the budget management of schools. If the parties fail to agree upon the appointment of the educational specialist then the educational specialist will be appointed by the Chairman of the Specialist Schools and Academies Trust (or any successor or equivalent body). The educational specialist's fees will be borne equally between the parties.

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

Effect of termination

- 5.Z If this Agreement is terminated, the Academy will cease to be an Academy within the meaning of sections 1 and 1C of the Academies Act 2010.
- 5.AA Subject to clauses 5.BB and 5.CC, if the Secretary of State terminates this Agreement under clause 5.A, he will indemnify the Academy Trust. If the Secretary of State terminates this Agreement otherwise than under clause 5.A, he may at his discretion indemnify or compensate the Academy Trust.
- 5.BB The amount of any such indemnity or compensation will be determined by the Secretary of State, having regard to representations made to him by the Academy Trust, and will be paid as and when the Secretary of State considers appropriate.
- 5.CC The categories of expenditure incurred by the Academy Trust in consequence of termination, for which the Secretary of State may indemnify the Academy Trust under clause 5.AA, may include:
- a) staff compensation and redundancy payments;

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

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

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

5.EE The Secretary of State may:

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

6. OTHER CONTRACTUAL ARRANGEMENTS

Annexes

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

The Master Agreement

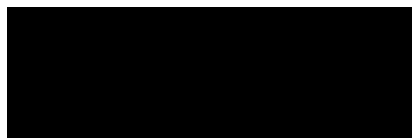
- 6.B Except as expressly provided in this Agreement, all provisions of the Master Agreement have full force and effect.

General

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

This Agreement was executed as a Deed on 6 February 2019

Executed on behalf of the Academy Trust by:



Director

and

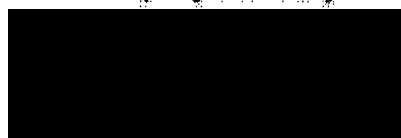
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Director

or

XXXXXXXXXXXXXXXXXXXX

Company Secretary

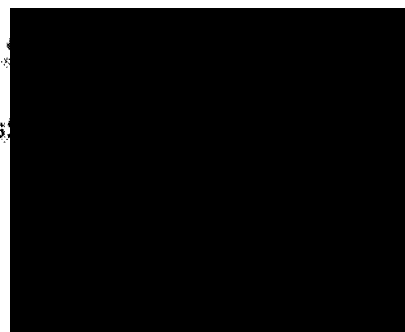


or

Witness

Name:

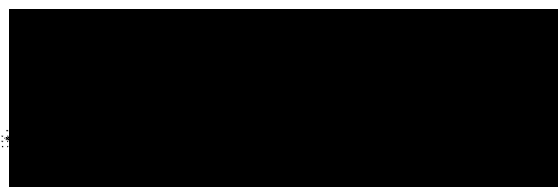
Address:



The Corporate Seal of

THE SECRETARY OF STATE FOR EDUCATION

affixed to this deed is authenticated by:



Duly Authorised

ANNEXES

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

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

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

8. ADMISSION OF CHILDREN WITH A STATEMENT OF SPECIAL EDUCATIONAL NEEDS

(Clauses 8.A-8.G only apply where the pupil has a statement of special educational needs (SEN) rather than an EHC plan and where they therefore continue to be subject to the relevant provisions of the Education Act 1996. EHC plans are replacing statements of SEN but although all statements of SEN should have been converted to an EHC plan by the 1 April 2018 this clause is retained to protect pupils who still have a statement of special education need after this date. The detail on the drafting of a statement below is retained to protect pupils in exceptional circumstances.)

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

- 8.A The Academy Trust must admit all children with a Statement of SEN naming the Academy.
- 8.B The Academy Trust must have regard to the Special Educational Needs Code of practice 2001 when dealing with statements of SEN.
- 8.C Where the LA sends the Academy Trust a draft statement with a proposal that the Academy is named in the final statement, the Academy Trust must respond within 15 working days unless the time period falls within a school holiday that is longer than two weeks in which case the Academy Trust should respond within 15 working days of the end of the school holiday.
- 8.D In its response the Academy Trust must either:
- a. consent to being named in the final statement or
 - b. explain why it believes that admitting the child would be incompatible with the provision of efficient education for other children and the efficient use of resources, including why no reasonable steps could secure compatibility. In doing so the Academy Trust must have regard to the relevant legislation and Code of Practice. 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. The final decision as to whether to name the Academy falls to the LA.
- 8.E If the Academy Trust considers that the LA should not have named the Academy in the statement of SEN, it may ask the Secretary of State to determine whether the LA has acted unreasonably, and to make an order directing the LA to reconsider. The Academy Trust must admit the pupil if such a determination is pending. The Secretary of State's determination will be final, subject only to any right of appeal which a parent of the child may have to the First-tier Tribunal (Special Educational Needs and Disability) or the Upper Tribunal Administrative Appeals Chamber.
- 8.F If a parent of a child for whom the LA maintains a statement appeals to the First-tier Tribunal (Special Educational Needs and Disability) 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.

- 8.G Where it has been finally determined that the Academy be named in a child's Statement of SEN, the Academy Trust must admit the child to the Academy, notwithstanding any other admissions requirements in this Agreement.
- 8.H Clauses 8.A to 8.G only apply insofar as the relevant provisions of the Children and Families Act 2014 relating to SEN and disability do not apply to Academies and Free Schools.



Department
for Education

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Schedule 2
Amended Supplemental Funding Agreement



Department
for Education

Alternative provision academy and free school: supplemental funding agreement

December 2020 v4

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SUMMARY SHEET

Information about the Academy:

Name of Academy Trust	Raedwald Trust
Company number	08702099
Date of Master Funding Agreement	29 August 2023
Name of academy	The Albany
Opening date	The Academy opened 1 February 2019 and will be transferred to the Academy Trust on the 1 September 2023
Type of academy (indicate whether academy or free school)	Alternative Provision Academy
Name of predecessor school (where applicable)	Albany PRU
Capacity number	5
Age range	11 to 16
Number of sixth form places	N/A
Number of boarding places	N/A
SEN unit / Resource provision	N/A
Land arrangements (Version 1-8 or other)	Version 3
Address and title number of Land (and Temporary Site)	Temporary Site: Westbrook Tuition Centre, Brooklands Close, Bury St Edmunds, IP33 3JX Title number: SK319413

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

Clause No.	Descriptor	Applied	Not used
1.I	Only applies to free schools and new provision academies		X
2.F	Only applies where there was a predecessor independent school		X
2.I	Clause does not apply to free schools (unless there was a predecessor independent school), or new provision academies	X	
2.U	<i>Clause reflects the requirements for religious education and daily collective worship</i>		X
3.C	Clause only applies to full sponsored and intermediate sponsored academies with approved Academy Action Plans		X
3.D	Clause does not apply to free schools (unless there was a predecessor independent school), or new provision academies	X	
5.G.1	Clause applies only to a boarding academy/boarding free school		X
5.I	Clause only applies to sponsored academies		X
5.K	Clause applies to free schools and may be applied to new provision academies		X
5.L	Clause applies to free schools and may be applied to new provision academies		X
5.M	Clause applies to free schools and may be applied to new provision academies		X
5.N	Clause applies to free schools and may be applied to new provision academies		X

Clause No.	Descriptor	Applied	Not used
5.O	Clause applies to free schools and may be applied to new provision academies		X

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

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

Descriptor	Clause No.	Applied	Not used

1. ESTABLISHING THE ACADEMY

1.A This Agreement made between the Secretary of State for Education and Raedwald Trust is supplemental to the master funding agreement made between the same parties and dated 29 August 2023 (the “**Master Agreement**”).

Definitions and interpretation

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

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

“**the Academy**” means the The Albany, an Alternative Provision Academy which is an Academy or a Free School which meets the requirements set out in section 1C(1) of the Academies Act 2010.

“**Commissioner**” means local authorities and/or schools referring children/pupils to the Alternative Provision Academy for admission under the legal powers set out in clauses 2.G to clauses 2.M.

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

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

“**Prospective Pupils**” means those pupils who have been referred to the Academy and accepted a place.

“**Pupil Premium**” means the amount allocated by a local authority from the pupil premium grant to a school under the terms and conditions of the grant;

“**Pupil Premium Grant**” means a grant of that name paid to a local authority by the Secretary of State under section 14 of the 2002 Act in respect of pupils who are entitled to a pupil premium;

“**Pupil Referral Unit (PRU)**” means an Academy or Free School which meets the requirements set out in Section 19(2) of the Education Act 1996.

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

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

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

- 1.D The Interpretation Act 1978 applies to this Agreement as it applies to an Act of Parliament.
- 1.E Reference in this Agreement to clauses and annexes will, unless otherwise stated, be to clauses and annexes to this Agreement.

The Academy

- 1.F The Academy is an Alternative Provision Academy as defined in clause 1.4 of the Master Agreement.
- 1.G The Academy Trust will establish and maintain the Academy in accordance with the Master Agreement and this Agreement.
- 1.H The Academy opened on the 1 February 2019 and will transfer to the Academy Trust on the 1 September 2023.
- 1.I Not used
- 1.J Further to clause 1.13(b) of the Master Agreement the Academy Trust must ensure that the educational provision is made at the Academy for children of compulsory school age who, by reason of illness, exclusion from school or otherwise, may not for any period receive suitable education unless alternative provision is made for them.

2. RUNNING OF THE ACADEMY

Teachers and staff

- 2.A Subject to clause 2.A.1 of this Agreement (if used), the Academy Trust may, in accordance with any relevant Guidance, employ anyone it believes is suitably qualified or is otherwise eligible to plan and prepare lessons and courses for pupils, teach pupils, and assess and report on pupils' development, progress and attainment.
- 2.A.1 The Academy Trust must designate a staff member at the Academy as responsible for promoting the educational achievement of registered pupils at

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

Pupils

- 2.B The planned number of places at the Academy is 5 places in the age range 11 to 16. The planned number of places is not determinative of GAG. GAG for each Academy Financial Year will be determined by the Secretary of State in accordance with clauses 3.12 and 3.15 of the Master Agreement.
- 2.C Where the Academy Trust considers that there is a need to increase the overall planned number of places stated in clause 2.B, the Academy Trust must seek the approval of the Secretary of State and the requirements of this Agreement may be amended accordingly by agreement between the Secretary of State and the Company.
- 2.D Not used
- 2.E Not used
- 2.F Not used

Admissions

- 2.G The Academy Trust will act in accordance with equalities law.
- 2.H Except where clauses 2.I, 2.K, 2.J and Annex A apply, the Academy Trust may not admit a child of compulsory school age unless it is by way of a referral from a Commissioner through one of the referral routes set out in Clause 2.J
- 2.I 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.J The Secretary of State may:
 - a) direct the Academy Trust to admit a named pupil to the Academy:

- i. following an application from a LA including complying with a school attendance order as defined in section 437 of the Education Act 1996. Before doing so the Secretary of State will consult the Academy Trust; or
- ii. where in relation to a specific child or children the Academy Trust has failed to act in accordance with the Codes or this Agreement or has otherwise acted unlawfully; or
- b) direct the Academy Trust to amend its admission arrangements where they no longer meet the requirements at section 1C of the Academies Act, do not comply with this Agreement, or are otherwise unlawful.

2.K The Academy Trust may only admit a child of compulsory school age:

- a) referred by a local authority where the local authority has a duty to that child under section 19 of the Education Act 1996.
- b) referred by a maintained school or academy where the maintained school or academy has a duty under Section 100 of the Education and Inspections Act 2006.
- c) referred by a maintained school under powers set out in section 29(A) of the Education Act 2002.
- d) referred by an academy under general powers in the Articles of Association of the academy trust for the purpose of improving the child's behaviour.

2.L The Academy Trust shall have a referral policy. Any referral policy will include the number of places to be provided, the age range of pupils, the oversubscription criteria, and a fair, transparent and objective process for considering whether the education provided will be appropriate for prospective pupils. The Academy Trust will consult on any changes to its referral policy with key stakeholders including the local authority, local schools, any other school or local authority which has previously commissioned places and any other relevant parties.

2.M Any changes to admission arrangements proposed by the Academy Trust should be discussed with Commissioners and must be agreed with the Secretary of State.

Pupil registration and information sharing

2.N The Academy Trust must ensure that pupils attending the Academy are appropriately registered, in line with its legal duties and those of any other school that the pupil attends.

- 2.O As far as reasonably practicable, in agreeing contractual arrangements with Commissioners the Academy Trust shall request appropriate information on the needs and prior attainment of pupils who will attend the Academy.
- 2.P The Academy Trust will provide regular feedback to Commissioners (and in any event when requested by the Commissioner to do so) on progress made by the pupil, the pupil's needs and attainment.

Objections and determinations

- 2.Q The Academy Trust must make clear when determining the Academy's admission arrangements, that objections should be submitted to the ESFA or any successor to it.
- 2.R A determination of an objection, by the ESFA or any successor to it on behalf of the Secretary of State, or by the Secretary of State, will be binding upon the Academy.

Curriculum

- 2.S The Academy Trust may provide for the teaching of religious education and a daily act of collective worship at the Academy.
- 2.T 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.U].
- 2.U Not used
- 2.V The Academy Trust must comply with paragraph 2A of the Schedule to The Education (Independent School Standards) Regulations 2014 in relation to the provision of Relationships Education, Relationships and Sex Education and Health Education.
- 2.W The Academy Trust must prevent political indoctrination, and secure the balanced treatment of political issues, in line with the requirements for maintained schools set out in the Education Act 1996, and have regard to any Guidance.

3. GRANT FUNDING

General Annual Grant (GAG)

3.A GAG for each Academy Financial Year for the Academy will include:

- a) funding equivalent to that which would be received by a PRU maintained by the local authority with similar characteristics, determined by the Secretary of State and taking account of the number of pupils and/or places at the Academy;
- b) funding to cover necessary functions which would be carried out by the relevant LA if the Academy were a school maintained by a local authority;
- c) payments in respect of further, specific grants made available to schools maintained by the local authority, where the Academy meets the requisite conditions and criteria necessary for a school maintained by the local authority to receive these grants.
- d) funding for matters for which it is necessary for the Academy to incur extra costs, for as long as those costs are deemed necessary by the Secretary of State; and
- e) The Secretary of State may make provision, within his absolute discretion, for GAG to be adjusted in-year if the number of pupils attending the Academy at specified dates exceeds or falls below thresholds specified by letter. Arrangements for this will be set out in the Annual Letter of Funding or its equivalent.

Calculation of GAG

3.B The Secretary of State recognises that if he serves a Termination Notice or a Termination Warning Notice, or otherwise terminates the Master Agreement, the intake of new pupils during the notice period may decline. In these circumstances the Secretary of State may pay a larger GAG in the notice period, to enable the Academy to operate effectively.

3.B.1. Not used

Other relevant funding

3.C Not used

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

Carrying forward of funds

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

4. LAND

Version 3: existing site to be held under church supplemental agreement or lease from site trustees

The parties' rights and obligations in respect of the Land are set out in the lease dated _____ and made between (1) Olive Academies and (2) Raedwald Trust. For the purposes of this clause, the Land has the meaning given in the lease.

5. TERMINATION

Termination by either party

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

Termination Warning Notice

- 5.B The Secretary of State may serve a Termination Warning Notice where he considers that:
- a) the Academy Trust has breached the provisions of this Agreement or the Master Agreement; or
 - b) the standards of performance of pupils at the Academy are unacceptably low; or
 - c) there has been a serious breakdown in the way the Academy is managed or governed; or
 - d) the safety of pupils or staff is threatened, including due to breakdown of discipline.
 - e) the Academy is Coasting provided he has notified the Academy Trust that it is Coasting.
- 5.C A Termination Warning Notice served under clause 5.B will specify:

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

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

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

Termination by the Secretary of State after inspection

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

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

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

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

5.G.1 Not used

- 5.H If the Chief Inspector gives a notice referred to in clause 5.F to the Academy Trust within two years after the Academy opened, the Secretary of State may only serve a Termination Warning Notice under clause 5.F if:
- 5.I 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
- 5.J the Chief Inspector considers that the Academy is not making enough progress towards the removal of the designation referred to in his notice.
- 5.K 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 5.B to 5.E).

Termination by the Secretary of State

- 5.L If the Secretary of State has determined that the Academy will be removed from the Register of Independent Schools and no appeal against that determination is pending, he may serve a Termination Notice.
- 5.M Not used
- 5.N Not used
- 5.O Not used
- 5.P Not used
- 5.Q Not used

Funding and admission during notice period

- 5.R If the Secretary of State serves a Termination Notice under clause 5.A, the Academy Trust may continue during the notice period to admit pupils to the Academy, and to receive GAG and EAG, in accordance with this Agreement.
- 5.S If the Secretary of State serves a Termination Warning Notice or a Termination Notice otherwise than under clause 5.A, the Academy Trust may continue during the notice period to admit pupils to the Academy (unless the Secretary of State specifies otherwise), and to receive GAG and EAG, in accordance with this Agreement.

Notice of intention to terminate by Academy Trust

- 5.T The Secretary of State will, before the start of each Academy Financial Year, provide the Academy Trust with a final funding allocation indicating the level

of GAG and EAG to be provided in the next Academy Financial Year (the **"Funding Allocation"**).

5.U If the Academy Trust is of the opinion that, after receipt of the Funding Allocation for the next Academy Financial Year (the **"Critical Year"**) and after taking into account all other resources likely to be available to the Academy, including other funds that are likely to be available to the Academy from other academies operated by the Academy Trust (**"All Other Resources"**), it is likely that the cost of running the Academy during the Critical Year would cause the Academy Trust to become insolvent (and for this reason only) then the Academy Trust may give written notice of its intention to terminate this Agreement on 31 August before the Critical Year.

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

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

5.W Both parties will use their best endeavours to agree whether or not the cost of running the Academy during the Critical Year would cause the Academy Trust to become insolvent. Both parties recognise that they will need to engage in a constructive dialogue at the time about how best to provide education for the pupils at the Academy and use their best endeavours to agree a practical solution to the problem.

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

Effect of termination

- 5.BB If this Agreement is terminated, the Academy will cease to be an Academy within the meaning of sections 1 and 1C of the Academies Act 2010.
- 5.CC Subject to clauses 5.BB and 5.CC, if the Secretary of State terminates this Agreement under clause 5.A, he will indemnify the Academy Trust. If the Secretary of State terminates this Agreement otherwise than under clause 5.A, he may at his discretion indemnify or compensate the Academy Trust.
- 5.DD The amount of any such indemnity or compensation will be determined by the Secretary of State, having regard to representations made to him by the

Academy Trust, and will be paid as and when the Secretary of State considers appropriate.

5.EE 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 clause 5.AA, may include:

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

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

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

5.GG The Secretary of State may:

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

6. OTHER CONTRACTUAL ARRANGEMENTS

Annexes

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

The Master Agreement

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

General

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

Information Sharing with Local Authorities – Statutory Responsibilities

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

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

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

ANNEXES

Annex A

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

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



Department
for Education

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