Dated: [ ]

**Authority (1)**

**and**

**Academy Company (2)**

**and**

**Diocesan Trustee (3)**

**and**

**Diocesan Authority (4)**

\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

SCHOOL AGREEMENT – SCHOOLS WITH A RELIGIOUS

CHARACTER

relating to [ ] Academy

[DN: note that in the event that BSF ICT services are
relevant to this agreement, the agreement will need to be
reviewed and tailored so as to refer to rights and
obligations relating to the BSF ICT services at the
relevant clauses.]

\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

**Note for readers** - this document is intended for use where a school with a religious character, which is also a PFI school, is converting to Academy status.  Specific advice is needed if the document is to be used for a religious non-denominational school, a school with a religious character other than Church of England or Catholic, or for schools with a non-religious foundation. This is a model form only, provided for information purposes.  This document and any associated documentation are subject to ongoing and regular review and updating by the DfE and its advisors, and readers should check with the relevant DfE project lead on the correct version of documentation to be deployed on individual schemes.  Please note that this document and associated documentation is not a replacement for independent, specialist advice and local authorities and academies should ensure that they take appropriate legal and other advice when using this document.  The DfE and its advisors accept no liability whatsoever for any expense, liability, loss, claim or proceedings arising from reliance placed on this model document.

**As published on GOV.UK – [**[**Church Academies – model documents**](https://www.gov.uk/government/publications/church-academies-model-documents)**]**

**Background note for readers** – The ownership of school land by religious trustees is one of the defining features of a school with a religious character, along with an obligation to operate in accordance with the practices and tenets of the relevant religious body and its right to appoint governors of the school that will represent its interests. Schools occupy trustees’ land by permission not as of right. The trustees’ authority and control of land used by the schools remains largely undiminished, including the freedom to terminate this use, having given reasonable notice to the governing body of such intention in response to any proposal by the governing body to discontinue the school as provided for under the School Standards & Framework Act 1995 (s.30(10)). A case in 1995 established this as at least 2 years’ notice in maintained schools (to mirror the period of notice the governing body must serve under s.30(1)). An equivalent contractual term is to be found in the Church Supplemental Agreement (and in the secular version where the site trustees appointed by a foundation body agree to make the site available for the school), noting that the termination of the CSA will bring to an end the academy’s permission to use the site trustees’ land.

It’s possible that land owned by charity trustees may have originally been provided by the local authority (as opposed to land having a charitable origin) or been enhanced through public grant, for example where works are carried out under a PFI agreement. Schedule 22 of the SSFA98 provides a mechanism for the recovery of any qualifying public value in the event of disposal by trustees of land of private charitable origin or to prevent the disposal of publicly funded land used by a maintained school. This includes in the case of the latter a power of the Secretary of State to direct the trustees to transfer the land to the local authority (subject to a requirement to compensate the trustees for any charitable value that might otherwise be lost). There is a similar expectation where academy land is being disposed of, though the provisions in Schedule 1 of the Academies Act 2010 are more broadly drafted. Whilst the operation of these provisions is rare in practice (and even rarer still that any dispute arises in consequence of their operation), the principles underpinning the provisions provide important protections for both charity trustees and local authorities and the broader public purse.

Inevitably these protections lead to questions where any long-term site arrangement is to be put in place, such as is likely to be the case with any PFI agreement. The DfE expects these protections to be recognised and preserved in any PFI documentation. In consequence, this model form School Agreement (as with previous model form governing body agreements used for voluntary schools) anticipates that the site trustees will be a party to the agreement in order to provide assurance that access to the site by the PFI contractor will not be denied, subject to the trustees’ overriding power to serve notice to terminate the academy’s use of the site and in consequence the rights of access granted to the authority/PFI contractor.

Whilst a notice served by the trustees terminating the school/academy’s use of the site may result in the closure of the school (triggering the usual consequences under the PFI project agreement), it need not necessarily follow (except of course when such notice has been served in response to the school’s notice to discontinue). It is expected that a conversation will take place between the trustees, the school/academy trust, the LA and the DfE to consider the implications of the receipt of the trustees’ notice to quit. The drafting in this model form School Agreement acknowledges this conversation and the scope for the parties to agree a preferred outcome, which may include the land being transferred to the local authority for them to grant the academy trust a standard model form 125 year lease and for the School Agreement to continue without the future involvement of the site trustees. In the usual way, this model form School Agreement will sit alongside the DfE Principal Agreement, which provides a degree of formal comfort to local authorities in the event a loss occurs as a consequence of a breach of the School Agreement by the academy trust and/or the service of a notice to quit by the trustees. The approach and model drafting reflected in both this School Agreement and the DfE Principal Agreement has been developed in discussion with local authorities, PFI contractors and their funders, as well as both the Church of England Education Office and the Catholic Education Service, who together represent the majority of schools occupying trustee held land. Any queries or project specific issues should be raised with the relevant DfE project lead.

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**THIS AGREEMENT** is made on of [ ]

**BETWEEN**

(1) [ ] (the "**Authority**"); and

(2) [ ] (the "**Company**")

(3) [ ] (the "**Diocesan Trustees**")[[1]](#footnote-1) ; and

(4) [ ] (the "**Diocesan Authority**")[[2]](#footnote-2) .

**Background**

(A) The Company is a company incorporated in England and Wales, limited by guarantee with charitable objects.

(B) The Existing School is in an area in respect of which the Authority is responsible for securing that sufficient schools for providing primary education and secondary education are available in their area pursuant to Section 14 of the Education Act 1996.

(C) The Authority has entered into the Project Documents with a view, amongst other things, to procuring accommodation and related services at [ ] and the Existing School.

(D) The Authority is proposing to enter into the Academy Contracts with a view to the Company operating an academy from the Site of the Existing School.

(E) The Company and the Authority have agreed the terms and conditions of this Agreement.

(F) [The Company agrees that it is in the interests of the Company that it should enter into this Agreement which amongst other matters commits the Company to pay to the Authority a proportion of its budget and confirms to the Authority that some matters concerning the provision of the Services under the Project Agreement at the Existing School and subsequently the Academy shall be managed by the Authority in liaison with the Company as provided for in this Agreement and the Principal Agreement.]

(G) The Diocesan Trustees [are constituted for purposes that include securing the provision of education services having an ethos within their diocese and with other characteristics which are recognised in a trust deed and also][[3]](#footnote-3) currently hold the [Affected] Site for the purposes of the Existing School and will hold the [Affected] Site for use by the Company as an academy with a religious character as a [Catholic/Church of England] school.

(H) [The Diocesan Authority is the appropriate diocesan authority in relation to the School for the purposes of the Education Acts (defined by reference to section 578 of the Education Act 1996).]

(I) The [Diocesan Trustees] [and the] [Diocesan Authority] have agreed to enter into this Agreement to give their consent to the Company entering into these arrangements and to grant certain rights over the Site on the terms and conditions set out in this Agreement.

**It is agreed** as follows:

# 1 Definitions and interpretation

## 1.1 Definitions

In this Agreement, unless the context otherwise requires, the following terms shall have the meanings given to them below:

**"1954 Act"**

means the Landlord and Tenant Act 1954;

**"Academic Year"**

as defined in clause 1.1 of the Project Agreement;

**"Academy"**

the academy to be operated by the Company from the Commencement Date on the Site, which expression shall include the Site and the Facility on the Site;

**"Academy Contracts"**

this Agreement, the Principal Agreement, and the Project Agreement Deed of Variation, the Transfer Agreement and any Lease;

**"Academy Direct Losses"**

means all damages, losses, liabilities, claims, actions, costs, expenses (including the cost of legal or professional services, legal costs being on an indemnity basis), proceedings demands and charges whether arising under statute, contract or at common law provided always that this shall not include Indirect Losses;

**"Ad Hoc Use Area"**

as defined in clause 1.1 of the Project Agreement;

[**"Adjusted Schools Budget"**

means the sum of money which the Authority would otherwise have allocated annually to the Existing School were the Existing School not to have closed and the academy not to have opened, calculated in accordance with schedule 2 (Calculation of the Adjusted School Budget) (as adjusted in accordance with that schedule)][[4]](#footnote-4);

[**“Affected Site”**

that part of the Site in the ownership of the Diocesan Trustees as acknowledged in the Church Supplemental Agreement (being more particularly coloured blue on the Site Plan);[[5]](#footnote-5)]

**"Agreement"**

this Agreement and any Schedules annexed hereto;

**"Ancillary Rights"**

means the grant of:[[6]](#footnote-6)

(a) a non-exclusive licence to the Authority, any Authority Related Party, the Contractor and any Contractor Related Party (such licence to be capable of sub-licence) to enter and remain upon the Site in order to carry out the Works and provide the Services;

(b) such rights of access to and egress from the Site as are necessary for the Authority, any Authority Related Party, the Contractor and any Contractor Related Party to perform their respective obligations and exercise their rights under this Agreement and the Project Agreement and the ICT Contract and in particular for the purposes of implementing the Works and providing the Services [provided that such rights may be varied by the Diocesan Trustees or the Company (to the extent otherwise entitled) and the Parties acknowledge that any such variation shall be deemed to be a Medium Value Change requested by the Company [or the Diocesan Trustees] pursuant to Clause 29 of this Agreement];

(c) [rights of free and uninterrupted passage and running of water, soil, gas, electricity, telephone and other services in respect of all of the Service Media as referred to in the Project Agreement [provided that such rights of passage may be varied by [the Diocesan Trustees or] the Company (to the extent otherwise entitled) to such alternative routes as [the Diocesan Trustees] [the Company] may reasonably specify from time to time]; and]

(d) [the right, where necessary, to inspect, repair, maintain or renew such Services Media and the right (as between the Company[, the Diocesan Trustees] and the Authority, at the cost of the Authority) to connect into such Service Media and to construct such new Service Media as may from time be necessary to serve the Site provided that the prior written consent of [the Diocesan Trustees and] the Company is obtained (such consent not to be unreasonably withheld or delayed)]

provided that:

(i) the rights are granted insofar as [the Diocesan Trustees and] the Company are capable of granting them and such rights are subject to any [Disclosed Title Matters] [matters referred to in the Title Deeds]; and

(ii) the rights shall not in any circumstances entitle the Authority [or] any Authority Related Party [the Contractor or any Contractor Related Party] to exclusive occupancy or exclusive possession of the whole or any part of the Site (save as may be required by the Authority or any Authority Related Party [the Contractor or any Contractor Related Party] and approved by [the Diocesan Trustees and] the Company (such approval not to be unreasonably withheld or delayed) in order to comply with relevant health and safety legislation) on a temporary basis);

**"Approved Purposes"**

means in relation to Intellectual Property Rights procured under the Project Agreement, the purposes set out in Clause [ ] of the Project Agreement;

**"Articles of Association"**

the articles of association of the Company (as may be amended from time to time);

**"Authority Change"**

an [Authority Change] (as that term is defined under the Project Agreement);

**"Authority Direct Losses"**

means all damages, losses, liabilities, claims, actions, costs, expenses (including the cost of legal or professional services, legal costs being on an indemnity basis), proceedings demands and charges whether arising under statute, contract or at common law to the extent that the Authority is obliged to pay such amounts to the Contractor under the Project Agreement provided always that this shall not include Indirect Losses;

**"Authority Notice of Change"**

as defined in clause 1.1 of the Project Agreement;

**"Authority Related Party"**

(a) an officer, servant, agent, employee, contractor, or sub-contractor of the Authority acting in the course of his office or employment or appointment (as appropriate) at the Site; or

(b) any person visiting or using the Site at the invitation (whether express or implied) of the Authority

but excluding the Contractor, Contractor Related Parties and Company and Company Related Parties; [DN: Consider Project Agreement wording]

**"Authority’s Representative"**

the representative appointed by the Authority pursuant to Clause 6.1;

**"Building Contractor"**

as defined in clause 1.1 of the Project Agreement;

**"Business Day"**

a day (other than a Saturday or Sunday) on which banks are open for domestic business in the City of London;

**["Catering Deductions"[[7]](#footnote-7)**

as defined in clause 1.1 of the Project Agreement;]

**"Change in law"**

as defined in clause 1.1 of the Project Agreement;

**“Church Supplemental Agreement”**

means the agreement entered into on or about the date of this Agreement between the Secretary of State for Education, the Diocesan Trustees, [the Diocesan Authority] and the Company;

**"Collateral Warranties"**

means the collateral warranties provided for the benefit of the Authority from each of the Building Contractor, FM Contractor and Professional Team in accordance with clause 4 of the Project Agreement;[[8]](#footnote-8)

**"Commencement Date"**

means [ ];[[9]](#footnote-9)

**"Community Use"**

means use of the Site by the community by or at the invitation of the Company outside the School Day;

**"Compensation Event"**

as defined in clause 1.1 of the Project Agreement;

**"Company Assets"**

without limitation, any items of equipment and/or chattels brought onto the Site by the Company or Company Related Parties;

**"Contractor Default"**

as defined in clause 1.1 of the Project Agreement;

**["Contractor Equipment"**

as defined in clause 1.1 of the Project Agreement; [Note - not currently used - delete if not used in the developed agreement]]

**["Company Related Party"**

(a) an officer, agent or employee of the Company [and/or the Diocesan Trustees and/or the Diocesan Authority] acting in the course of his office or employment, including without limitation any member or director or officer] of the Company, any trustee or officer acting on behalf of [the Diocesan Trustees and/or the Diocesan Authority] and any member of the local governing body of the Academy;

(b) in relation to the Academy during the School Day any student of the Academy, or any person visiting the Academy at the invitation (whether express or implied) of the Company and/or the Diocesan Trustees [and/or the Diocesan Authority];

(c) in relation to the Academy during any period of Community Use, any person using the Academy for that purpose at the invitation, whether express or implied of the Company and/or the Diocesan Trustees [and/or the Diocesan Authority]; and

(d) any contractors and their officers, employees and agents involved in the operation and/or maintenance of works or services at the Site procured by the Company and/or the Diocesan Trustees [and/or the Diocesan Authority];

but excluding in each case the Authority, Authority Related Parties and Contractor and Contractor Related Parties;] [DN: Consider Project Agreement wording]

**"Company [and Diocesan Trustee] Representative"**

the representative appointed by the Company pursuant to Clause 7.2;

**"Competent Authority"**

a local authority or other body exercising statutory powers or duties;

**"Contractor"**

[ ] and counterparty of the Authority to the Project Agreement;

**"Contractor Related Party"**

as defined in clause 1.1 of the Project Agreement;

**"Deductions"**

in respect of the Academy any [Unavailability Deductions and/or Performance Deductions [Service Failure Deductions, Reporting Deductions, Catering Deductions] calculated pursuant to Schedule [ ] (Payment Mechanism) of the Project Agreement which reduces any monthly payment of the Unitary Charge by the Authority;

[**“Diocesan Authority”**

the appropriate diocesan authority in relation to the School for the purposes of the Education Acts (defined by reference to section 578 of the Education Act 1996) is [insert details of Diocesan Bishop or Diocesan Board of Education as the case may];][[10]](#footnote-10)

[**“Diocesan Authority Representative”**

the representative appointed by the Diocesan Authority pursuant to clause 7.2 of this Agreement;]

[**“Disclosed Title Matters”**

as defined in clause 1.1 of the Project Agreement;]

**"Dispute Resolution Procedure"**

the procedure for resolution of disputes set out in Clause 23 (Dispute Resolution);

**"DFE"**

the Department for Education;

**"Dedicated Schools Grant" or "DSG"**

has the meaning given to it in the Principal Agreement;

**"Existing School"**

[ ] School;

**"Expiry Date"**

as defined in clause 1.1 of the Project Agreement;

**"Facility"**

the facilities edged green on the Site Plan;

**"FM Contractor"**

as defined in clause 1.1 of the Project Agreement;

**"Funder Direct Agreement"**

means the direct agreement dated on or about the date of this Agreement and made between the Authority and the Contractor and [insert details of the senior lender];

**"Funding Agreement"**

the agreement entered into by the Company and the DfE dated [ ] relating to the funding of the Academy supplemental to an agreement between the Company and the Secretary of State for Education dated [ ] and any agreement in writing which supersedes, replaces or amends/varies those agreements;

**"Helpdesk"**

the helpdesk provided by the Contractor pursuant to the Project Agreement;

**"ICT Contract"**

means the contract for the provision of information communications technology to schools in the Authority's area (including the School Facilities) to be entered into by the Authority with the LEP on or around the date of this Agreement;

**"ICT Contractor"**

means [ ], a limited company registered in England and Wales;

**"Indirect Losses"**

loss of profits, loss of use, loss of production, loss of business, loss of business opportunity, or any claim for consequential loss or for indirect loss of any nature but excluding any of the same that relate to loss of revenue in each case arising under this Agreement or under the Project Agreement or loss of revenue in respect of Third Party Use; [DN: Consider Project Agreement wording]

**"Information"**

means all information, materials, documents and data relating to the Project, including:

(i) the design or construction of the Existing School (including the Construction Proposals and the Construction Programme), the operation and maintenance of the Existing School and/or the Academy or other matters in connection with the Existing School under the Project Agreement;

(ii) all property matters referred to or otherwise identified in this Agreement; and

(iii) all changes and updates of any such information, material, document and data;

**"Information Protocol"**

the obligations on the parties to provide and share information contained in Schedule [5];

**"Intellectual Property Rights"**

any and all patents, trade marks, service marks, copyright, database rights, moral rights, rights in a design, know-how, confidential information and all or any other intellectual or industrial property rights whether or not registered or capable of registration and whether subsisting in the United Kingdom or any other part of the world together with all or any goodwill relating or attached thereto which is created, brought into existence, acquired, used or intended to be used by the Company in relation to the Academy;

**"Lease"**

any lease referred to in Clause 8 and in the form set out in Schedule [4] with such amendments as are agreed by the Authority and the Company (both acting reasonably);

**"Legislation"**

(a) any Act of Parliament;

(b) any subordinate legislation within the meaning of Section 21(1) of the Interpretation Act 1978;

(c) any exercise of the Royal Prerogative; and

(d) any enforceable community right within the meaning of Section 2 of the European Communities Act 1972,

in each case in the United Kingdom;

**"LEP"**

means [ ] a limited company registered in England and Wales with company number [ ] whose registered office is at [ ];

**"LEP Related Party"**

as defined in clause 1.1 of the ICT Contract;

**["Payment Date"**

five (5) Business Days before the Unitary Charge becomes due and owing by the Authority to the Contractor in each Contract Month in accordance with Schedule [ ] of the Project Agreement]; [DN: Consider Project Agreement wording]

**"PFI Contractor Assets"**

means those Assets (as defined in the Project Agreement) provided by the Contractor to the Authority in accordance with the Project Agreement;

**"Principal Agreement"**

the agreement between the Authority, DfE and the Company known as the Principal Agreement dated on or about the date of this Agreement;

**"Project"**

the provision of Works and Services by the Contractor to the Authority in relation to each of the schools as contemplated in the Project Agreement;

**"Project Agreement Deed of Variation"**

the deed dated on or about the date of this Agreement between the Authority and the Contractor to vary the terms of the Project Agreement to reflect the closure of the Existing School as a [voluntary aided] [voluntary controlled] school and the opening of the Academy on the Commencement Date;

**"Project Agreement"**

the agreement dated [ ] between the Authority and the Contractor relating to the provision of the Works and Services at [ ] and the Existing School made under a Private Finance Initiative arrangement;

**"Project Documents"**

the Project Agreement and the Direct Agreement;

**"Project Document Losses":**

(a) means losses, liabilities, claims, actions, proceedings, demands, compensation, legal remedies, awards, costs, charges or expenses or loss of revenue suffered or incurred by the Company and/or the Diocesan Trustees arising from a breach by the Contractor or Contractor Related Party of the Project Agreement or any other liability attributable to the Contractor or a Contractor Related Party under the Project Agreement or the negligence or wilful misconduct of the Contractor or a Contractor Related Party; and/or

(b) means losses, liabilities, claims, actions, proceedings, demands, compensation, legal remedies, awards, costs, charges or expenses or loss of revenue suffered or incurred by the Company and/or the Diocesan Trustees arising from a breach by the LEP or a LEP Related Party of the ICT Contract or any other liability attributable to the LEP or a LEP Related Party under the ICT Contract or the negligence or wilful misconduct of the LEP or a LEP Related Party,

in each case including without limitation to the generality of the foregoing, any losses which may be incurred or suffered by or claims made against the Company and/or the Diocesan Trustees as a result of personal injury including (without limitation) injury resulting in death;

**"Project Insurances"**

the insurance policies described in Schedule [ ] of the Project Agreement, taken out and maintained by the Contractor under Clause [ ] of the Project Agreement;

**"Records"**

(a) the personnel files held by the governing body of the Existing School (“the Governing Body”) and Authority[[11]](#footnote-11) in respect of each of the Listed Employees (as defined in the Transfer Agreement) which will include all disciplinary, appraisal, attendance information and all other employment related information relating to the Listed Employees which is in the possession of the Authority or the Governing Body and which the Authority or, as the case may be, the Governing Body, can lawfully pass to the Company;

(b) all attendance performance and disciplinary records and all schemes of work relating to pupils transferring to the Academy in the possession of the Authority or the Governing Body and which can lawfully pass to the Company;

(c) all GCSE coursework for pupils currently in year 10 at the School in the possession of the Authority or the Governing Body;

(d) all GCSE text books and exercise books for year 10 pupils at the School in the possession of the Authority or the Governing Body;

(e) any other records in the possession of the Authority or the Governing Body which the Company may reasonably and lawfully require for the purpose of supporting pupils in their education; and

(f) any information required to be provided by the Governing Body of a maintained school to the Secretary of State for Children, Schools and Teachers under the Education (School Performance Information) (England) Regulations 2007 or the Education (Information about Individual Pupils) (England) Regulations 2006;

[others?]

**"Related Party"**

means any Company Related Party, Authority Related Party, Contractor Related Party or LEP Related Party (as the case may be);

**"Relevant Proportion"**

for the period from the Commencement Date until the earlier to occur of the Termination Date or the Expiry Date [X %] of the Adjusted Schools Budget, as adjusted in accordance with this Agreement;

**["Required Period"**

in relation to the Academy, the School Day and any period of planned Community Use;][ DN: Consider Project Agreement wording]

**"Relief Event"**

as defined in clause 1.1 of the Project Agreement;

**"Reporting Deductions"**

as defined in clause 1.1 of the Project Agreement;

**"Schedule"**

a schedule to this Agreement;

**"Schedule of Programmed Maintenance"**

the schedule of programmed maintenance provided by the Contractor to the Authority pursuant to Clause [ ] of the Project Agreement;

**"School Day"**

0800 to 1800 each Monday to Friday during a Term;

**"School Liaison Procedure"**

the procedure set out in Schedule 1 to this Agreement;

**“Schools Adjudicator”**

means the Office of the Schools Adjudicator which has responsibility for resolving disputes concerning the transfer and disposal of non-playing field land and assets;

**"Services"**

the services to be delivered by the Contractor to the Authority pursuant to the Project Agreement;

**"Service Failure Deductions"**

as defined in clause 1.1 of the Project Agreement;

**"Site"**

means the area edged red on the Site Plan;

**"Site Plan"**

the plans of the Site set out in Schedule 4 Part 9 (Site Plan);

**"Small Works Change"**

a request for Small Works to be carried out to the Academy in accordance with Clause [ ] of the Project Agreement;

**"Sub-Contractor"**

as defined in clause 1.1 of the Project Agreement;

**"Term"**

in relation to the Academy any of the terms notified to the Authority in accordance with Clause 18.3.1(b) of this Agreement;

**"Termination Date"**

the date of early termination of the Project Agreement in accordance with its terms or the date of early termination of this Agreement in accordance with its terms, whichever the earlier;

**"Third Party Use"**

means [ ];[[12]](#footnote-12)

**"Title Deeds"**

(i) entries contained in [ ]; and

(ii) entries contained in [ ];

**“Transfer Agreement”**

means an agreement entered into on or about the date hereof between (1) the Authority (2) the governing body of the Existing School and (3) the Company in relation to the transfer of assets, contracts and staff from the Authority and the governing body to the Academy;

**"Unavailability"**

as defined in schedule 6 (Payment Mechanism) of the Project Agreement;

**"Unavailability Deductions"**

as defined in clause 1.1 of the Project Agreement;

**"Unitary Charge"**

as defined in clause 1.1 of the Project Agreement;

**"VAT"**

value added tax at the rate prevailing at the time of the relevant supply charged in accordance with the provisions of the Value Added Tax Act 1994; and

**"Works"**

the works delivered by the Contractor to the Authority pursuant to the Project Agreement.

## 1.2 Interpretation

1.2.1 In this Agreement, unless the context otherwise requires:

(a) capitalised terms defined in the Project Agreement, as the context requires (unless otherwise defined in this Agreement), have the same meaning in this Agreement;

(b) headings and sub-headings are for ease of reference only and shall not be taken into account in the interpretation or construction of this Agreement;

(c) all references to clauses and schedules are references to the clauses of and the schedules to this Agreement unless otherwise stated;

(d) the Schedules form part of this Agreement;

(e) all references to agreements, documents or other instruments include (subject to all relevant approvals) a reference to that agreement, document or other instrument as amended, supplemented, substituted, novated or assigned from time to time;

(f) all references to any statutory provision shall include references to any statute or statutory provision which amends, extends, consolidates or replaces the same or which has been amended, extended, consolidated or replaced by the same and shall include any orders, regulations, codes of practice, instruments or other sub-ordinate legislation made under the relevant statute or statutory provision;

(g) words importing the singular include the plural and vice versa;

(h) words importing a gender include all genders;

(i) "person" includes an individual, partnership, forum, trust, body corporate, government, governmental body, authority, agency or unincorporated body of persons or association;

(j) the words "include" and "including" are to be construed without limitation;

(k) references to sub-contractors shall be to sub-contractors of any tier;

(l) a requirement not to unreasonably withhold consent includes a requirement not to unreasonably delay the giving or withholding of that consent;

(m) in relation to the parties, references to a public organisation shall be deemed to include a reference to any successor to such public organisation or any organisation or entity which has taken over either or both the functions and responsibilities of such public organisation. References to other persons shall include their successors and assignees;

(n) reference to "parties" means the parties to this Agreement and reference to "a party" means one of the parties to this Agreement; and

(o) in the event that the provisions of this Agreement are inconsistent with the terms of the Principal Agreement, the terms of the Principal Agreement prevail to the extent of any inconsistency.

1.2.2 For the avoidance of doubt, the terms of this Agreement operate as between the Authority and the Company and are not intended to effect an assignment, novation or other transfer by the Authority to the Company of any of the rights and obligations of the Authority under the Project Agreement.

# 2 Commencement and duration

2.1 This Agreement shall come into force on the date hereof and, subject to clause 27 (Termination) and clause 2.2, shall continue in force until the earlier to occur of the Termination Date and the Expiry Date.

2.2 The termination of this Agreement howsoever arising is without prejudice to the rights, duties and liabilities of relevant parties accrued prior to termination. The clauses of this Agreement which expressly or by implication have effect after termination will continue to be enforceable notwithstanding termination.

2.3 The parties agree that this Agreement shall replace any previous agreement made between the Authority, the governing body of the Existing School and the Diocesan Trustees which relates to the matters addressed in this Agreement and the Authority agrees not to pursue any action or right under such previous agreement against the Diocesan Trustees or the governing body of the Existing School except in the case of the latter as my be permitted pursuant to the terms of the Transfer Agreement.

# 3 Consent, project documents and academy contracts

## 3.1 Entering the Project Documents

Without prejudice to the rights and obligations of the parties under or in connection with this Agreement, the Company acknowledges that the Authority has entered into the Project Documents and the Diocesan Trustees consent to the Company entering into this Agreement. [[In accordance with the requirement of Section 8(4) of the Diocesan Boards of Education Measure 2001] the Diocesan Authority hereby consents to the carrying out of the Works and the Services pursuant to the Project Agreement on the terms set out in this Agreement.]

## 3.2 Compliance with Programme and Project Documents

Neither the Company nor the Diocesan Trustees shall take any action or fail to take any action, or (insofar as it is reasonably within their respective power) permit anything to occur which would cause the Authority to be in breach of its obligations under the Academy Contracts and the Project Documents.

## 3.3 Performance of Authority’s Obligations

The Authority owes obligations to the Contractor under the Project Documents. To the extent that these obligations relate to the Academy, the Authority undertakes to perform its obligations in a timely manner and acting reasonably and to consult with the Company and the Diocesan Trustees and take due regard of any comments jointly made by the Company and the Diocesan Trustees.

## 3.4 Amendments to Project Documents

3.4.1 Save as set out in clause 3.4.2, the Authority shall notify theDfE and the Company and the Diocesan Trustees of any proposed changes to the Project Documents that:

(a) may materially affect the operation of the Academy; and/or

(b) may result in additional costs for the Company ("Proposed Material Changes").

3.4.2 Any proposal for Authority Changes or Contractor Changes under clause [60] of the Project Agreement shall be dealt with in accordance with clause 26 (Exercise of Authority Change and Change Mechanism) and shall not constitute a Proposed Material Change.

3.4.3 The Authority shall consult with the Company and the Diocesan Trustees and shall have due regard to any representations made jointly by the Company and the Diocesan Trustees in respect of the Proposed Material Changes. The Authority shall act reasonably in light of the Company's and the Diocesan Trustees’ joint representations when deciding whether or not to continue with a Proposed Material Change.

3.4.4 The Authority shall as soon as reasonably practicable following any amendment described in clause 3.4.1 and/or described in clause 3.4.2, provide to the Company and the Diocesan Trustees copies of each amended Project Document.

## 3.5 Copies of Project Documents

The Authority has provided to the Company and the Diocesan Trustees copies of each of the relevant Project Documents and the Company and the Diocesan Trustees each confirm that they have conducted their own analysis of the Information supplied to the Company and the Diocesan Trustees or any of their respective nominees and advisers before the date of this Agreement.

## 3.6 Due Diligence

Neither the Authority nor any of its agents, servants or advisers shall be liable to the Company or the Diocesan Trustees (whether in contract, tort or otherwise and whether or not arising out of any negligence on the part of the Authority or any of its agents, servants or advisers) in respect of any inadequacy of any kind whatsoever in the Information and except as provided in Clause 6.3 and Schedule 3 the Authority gives no warranty or undertaking that the Information represents all of the information in its possession or power relevant or material to the Project nor in respect of any failure to disclose or make available to the Company and the Diocesan Trustees any information, documents or data or to keep the Information up to date or to inform the Company and the Diocesan Trustees of any inaccuracy, error, omission, unfitness for purpose, defects or inadequacy in the Information.

## 3.7 Information Share

The parties and their representatives shall co-operate to share Information which may be relevant concerning the operation of the Academy, without limitation:

3.7.1 the parties shall comply with the Information Protocol;

3.7.2 under the terms of the Project Documents the Authority is required to provide certain Information to the Contractor which is in the possession or control of the Company or the Diocesan Trustees. The Company and the Diocesan Trustees will provide such Information to the Authority within such time period as the Authority may reasonably require. Without limitation to the foregoing, the Company and/or the Diocesan Trustees shall notify the Authority promptly in writing when it becomes aware of any of the following events:

(a) plans to erect any new structures on the Site (other than pursuant to the Project Documents);

(b) any applications for planning consent for the Site; and

(c) any contract for the purchase, lease or licence of any ICT (including software) or equipment or ICT services proposed to be entered into by the Company which impacts on the Services at the Academy.

The parties agree that where and to the extent that the Authority or the Company or the Diocesan Trustees fails to supply or make available to the other (the "Uninformed Party") any information provided in accordance with this Clause 3.7 or pursuant to the Information Protocol (an "Information Default") and this affects the Uninformed Party's ability to comply with any obligation provided in, or discharge any liability in connection with this Agreement or gives rise to any additional or operates to increase any existing liability for the Uninformed Party under this Agreement, the Uninformed Party shall (subject to it taking all reasonable steps to mitigate the effects of such Information Default) be relieved of any such obligation and/or liability to the extent that reasonably reflects the impact of the relevant Information Default.

# 4 Enforcement of the project agreement

4.1 Where, in relation to the Site:

4.1.1 there is a breach of the Project Agreement by the Contractor;

4.1.2 there is an act or omission of the Contractor which entitles the Authority to make a claim under the Project Agreement;

4.1.3 there is damage to the Site that is the liability of the Contractor under the Project Agreement;

4.1.4 a dispute arises under Clause 23.1 of this Agreement; and/or

4.1.5 the Company and the Diocesan Trustees are co-insured parties under a Project Insurance and wishes to pursue a claim against insurers under a relevant Project Insurance,

the Authority and the Company and the Diocesan Trustees shall promptly liaise to consider whether and upon what basis the Authority should exercise any of the rights available to it under the Project Documents in respect of such breach, act or omission or whether and upon what basis the Company and/or the Diocesan Trustees would intend to exercise its right to make a claim against a relevant Project Insurance (as the case may be) provided that with the exception of any claims which may prejudice the operation of Clause [ ] of the Project Agreement, nothing in this Clause 4 shall be construed as preventing the Company and/or the Diocesan Trustees from making a claim under a relevant Project Insurance where it is a co-insured party.

4.2 If the Authority and the Company and the Diocesan Trustees cannot reach agreement on an issue raised pursuant to Clause 4.1, DfE shall adjudicate promptly on that issue, taking into account:

4.2.1 any time period required to take action in accordance with the Project Agreement and relevant circumstances;

4.2.2 the views of the Authority and (acting jointly) the Company and the Diocesan Trustees; and

4.2.3 any matter reasonably deemed relevant by DfE.

4.3 In the event that it is agreed by the parties or determined by DfE that:

4.3.1 the Authority should exercise its rights and remedies in respect of the relevant breach, act or omission, the Authority shall promptly use its best endeavours to do so; or

4.3.2 a relevant party should pursue a claim against an insurer under a Project Insurance, the relevant party shall (subject to any existing claim arrangements) endeavour to pursue such a claim.

4.4

4.4.1 The Authority shall use all reasonable endeavours to procure compliance by the Contractor with its obligations under the Project Agreement for the benefit of the Academy and jointly the Company and the Diocesan Trustees.

4.4.2 Where in this Agreement the Authority purports to limit its liability to the Company and the Diocesan Trustees to the equivalent benefit it receives under the Project Agreement or ICT Contract (as appropriate) such limitation shall be subject always to the Authority complying with clause 4.4.1.

4.4.3 In its monitoring of the Contractor, the Authority shall have regard (so far as is reasonable and practicable to do so) to any matter that the Company and/or the Diocesan Trustees (acting reasonably and acting jointly) considers should be enforced against the Contractor pursuant to the Project Agreement provided that the Company and the Diocesan Trustees shall notify the Authority of any such matters as soon as reasonably practicable.

## 4.5 Payment of Claims Following Contractor Default

4.5.1 Subject to Clause 4.5.2 the Authority shall promptly pay to the Company (who may hold those funds on trust for the Diocesan Trustees) any amounts it recovers under the Project Documents following a Contractor Default, to the extent they relate to the Academy.

4.5.2 Where the losses referred to in Clause 4.5.1 are suffered by the Company, the Diocesan Trustees and the Authority arising from the same matter and the amount recovered does not cover the total losses incurred, the Authority shall only be liable to the Company and the Diocesan Trustees under this Clause 4.5.2 for a proportionate amount of the amounts recovered taking into account the parties' respective claims. The Authority shall not be liable to the Company or the Diocesan Trustees under this Clause 4.5 for any amounts in excess of those recovered pursuant to the Project Documents.

4.6 [During the subsistence of the Project Agreement, the Authority shall provide to those pupils at the Academy from time to time entitled to free meals such free meals as a maintained school is required under Legislation from time to time in force to provide. It is acknowledged that the Authority has delegated the provision of such meals to the Contractor under the Project Agreement.] [DN: Consider Project Agreement wording]

4.7 The Authority will hold for the benefit of the Company and the Diocesan Trustees and will, where permitted to do so by the Project Documents, if so required by the Company or and the Diocesan Trustees (acting jointly), use reasonable endeavours to enforce in accordance with the terms thereof each Collateral Warranty given by the Building Contractor, FM Contractor and members of the Professional Team to the extent that the protections afforded by each such Collateral Warranty relate to the Academy. The Company will indemnify the Authority for the proportion of its costs of taking such action as relates to the proportion of the benefit of enforcement of such Collateral Warranty accruing to the Company and/or the Diocesan Trustees.

4.8 The Company and the Diocesan Trustees shall be entitled in any action or proceedings brought by the Authority in connection with this Agreement to rely on any right in defence of liability available to the Authority in the Project Agreement and to raise an equivalent right in defence of liability (save for set off and counterclaim) as would be available to the Authority in the Project Agreement and to raise an equivalent right in defence of liability (save for set off and counterclaim) as would be available in connection with a similar course of action by the Contractor against the Authority pursuant to the Project Agreement.

4.9 In the event of an Emergency to which Clause [ ] of the Project Agreement applies upon the request of the Company and the Diocesan Trustees (acting jointly), the Authority will instruct the Contractor to use its best endeavours to procure that such additional or alternative services (of a similar nature to the Services) shall be undertaken by the Contractor to ensure that the Emergency is dealt with and normal operation of the Academy resumes as soon as reasonably practicable and the Company will bear and pay any costs payable by the Authority to the Contractor under Clause [ ] of the Project Agreement in those circumstances. [DN: Consider Project Agreement wording]

# 5 Compensation events and relief events

5.1 If:

5.1.1 either the Authority or the Company has reason to believe that a Compensation Event has arisen whether the same is also a breach of this Agreement or otherwise or that a Relief Event has arisen; or

5.1.2 the Authority is notified by the Contractor that circumstances constituting a Compensation Event whether the same is also a breach of this Agreement or otherwise or that a Relief Event has or may have arisen,

in either case having or with the potential to have an impact on the Academy, then the Authority and the Company shall promptly consult regarding circumstances that give rise to the claim or potential claim and shall discuss whether there has been or may have been a Compensation Event or Relief Event and shall meet frequently thereafter to review information received from the Contractor in connection with the circumstances that give rise to any claim made by the Contractor with a view to considering the evidence provided.

5.2 In the event that a claim is made by the Contractor to which clause 5.1 applies, the Authority shall take due account of all information provided by the Company where the Company may be in whole or in part responsible for the circumstances that give rise to the Compensation Event and the Authority shall use all reasonable endeavours to resist such claim and to require mitigation of the claim where it ought reasonably to do so.

# 6 Company acknowledgement, undertakings and warranties

6.1 The Company:

6.1.1 warrants and represents to the Authority that the information set out in Schedule 3 Part 1 (Corporate Warranties) is true and accurate in all respects; and

6.1.2 acknowledges that the Contractor shall be entitled to provide the Services described in the Project Agreement at the Academy.

## 6.2 Authority Consents

The parties agree that in relation to the Project Agreement:

6.2.1 the Authority shall not give any consent, approval or authorisation of matters concerning the Academy without the prior operation of the procedures set out in this Clause 6.2;

6.2.2 the Authority shall inform the Company and the Diocesan Trustees of the decision it requires by when and shall provide any relevant information at its disposal to inform such a decision, following which the Company and the Diocesan Trustees (acting jointly) will ensure that the Company and the Diocesan Trustees (acting reasonably and acting jointly) give any consent, approval or other necessary response in accordance with the timescales within which the Authority has advised it is required to act; and

6.2.3 where the Company and the Diocesan Trustees (acting jointly):

(a) do not respond to the Authority in accordance with Clause 6.2.2, the Authority has discharged all obligations under this Clause 6.2 in respect of the relevant consent, approval or authorisation and shall be entitled to give such consent, approval or authorisation; or

(b) do not give consent, the Company and the Diocesan Trustees (acting jointly) will provide full written details of their joint objections to the Authority within such time period as the Authority has advised it is required to act to enable the Authority to comply with its obligations under the Project Documents.

6.2.4 Without prejudice to Clause 26.3.4, the Company and the Diocesan Trustees shall not be required to give any consent or approval sought by the Authority under Clause 6 or otherwise and the Company and the Diocesan Trustees may withhold or give such consent or approval in their absolute discretion, save where the Authority can demonstrate that the failure to give such consent or approval would have a material adverse effect in the context of all of the schools subject to the Project Agreement.

6.2.5 Subject to Clause 6.2.4, the Authority shall not give any consent or approval to which this Clause 6 applies if the Company and the Diocesan Trustees shall, in accordance with this Clause 6 have notified the Authority that they are jointly withholding their consent or approval.

6.3 The Authority warrants and represents that the information set out in Schedule 3 Part 2 is correct in all material respects.

6.4 Without prejudice to the provisions of Clause 8.8, the Diocesan Trustees warrant and represent that for the period of this Agreement the [Affected] Site is in the sole legal and beneficial ownership of the Diocesan Trustees.

6.5 Nothing in this Agreement shall be construed as a fetter or restriction on the exercise of the Authority’s statutory functions and/or related rights including planning, education or highways functions.

# 7 Representatives

7.1 The Authority shall, from time to time, appoint a representative to exercise the functions and powers of the Authority in relation to the performance of this Agreement notifying the Company, the Diocesan Trustees and DfE promptly of the identity of the relevant person. The Authority shall be entitled from time to time to amend the identity of its appointed representative by notice, in writing, to the Company, the Diocesan Trustees and to DfE.

7.2 The Company and the Diocesan Trustees shall, from time to time, appoint representatives to exercise the functions and powers of the Company and the Diocesan Trustees in relation to this Agreement notifying the Authority and DfE promptly of the identity of the relevant persons. The Company and the Diocesan Trustees shall be entitled from time to time to amend the identity of its appointed representative by notice, in writing, to the Authority and to DfE.

# 8 Licence to occupy and grant of lease

8.1 The Project Agreement and the ICT Contract require the Authority to grant a licence for certain access rights to the Site to the Contractor and the Contractor Related Parties. The Diocesan Trustees and the Company (the latter in acknowledgement of its day to day control of the Site and as tenant under any Lease granted by the Authority pursuant to Clause 8.3) hereby grant the Ancillary Rights to the Authority, any Authority Related Party, the Contractor and any Contractor Related Party for the purpose of implementing the Works and providing the Services PROVIDED THAT:

(1) save where the Company does continue to use and occupy the Site [incorporating the Affected Site] pursuant to Clauses 8.8.1, 8.8.2 or 8.8.3 but only in so far as the Company grants the Ancillary Rights, the grant of the Ancillary Rights by the Diocesan Trustees shall come to an end on the expiry of any notice served by the Diocesan Trustees purporting to terminate the Company’s occupation of the [Affected] Site in accordance with the provisions of the Church Supplemental Agreement; [and]

(2) in the event that such a notice is served as envisaged in Clause 8.1(1) the Diocesan Trustees acknowledge the Secretary of State’s powers under Schedule 1 of the Academies Act 2010 and any guidance issued thereunder from time to time dealing with the protection of public value[[13]](#footnote-13), and further acknowledge that the [Affected] Site has been enhanced at public expense and accordingly the Diocesan Trustees submit to the jurisdiction of the Schools Adjudicator in determining what proposals should be made for the Site [including specifically the Affected Site] also including but not limited to the use of any proceeds from any subsequent disposal of the [Affected] Site and to abide by any guidance issued from time to time by the Secretary of State for Education and/or the Schools Adjudicator in relation to such matters. The Diocesan Trustees acknowledge the Company’s and the Authority’s interests and the consequences for both of terminating the Company’s occupation of the [Affected] Site in accordance with the provisions of the Church Supplemental Agreement and this Agreement and agree to discuss and have due regard to any proposals submitted by either the Company or the Authority for the future use of the Site [including specifically the Affected Site] in an attempt to reach a local agreement which shall include in order of importance and priority:

8.1.1 continued use and occupation by the Company for the Academy on the basis that the Academy would no longer be designated a school with a religious character as recognised by the Diocesan Authority;

8.1.2 continued use and occupation by the Company for another academy for which the Company has responsibility which is not designated as a school with a religious character either on the basis that the other academy transfers to the Site or opens an annex to that academy on the Site;

8.1.3 continued use and occupation by the Company for other educational purposes,

and in the event that it is agreed that the Company shall continue to use the Site [incorporating the Affected Site] pursuant to Clause 8.1.1, Clause 8.1.2 or Clause 8.1.3 this will be on the basis of the following (both the Authority and the Diocesan Trustees agreeing to act as if Schedule 1 of the Academies Act 2010 incorporated the provisions of Schedule 22 of the School Standards & Framework Act and that the Secretary of State has the power to act on that basis):

(a) that the Authority will make an application to the Secretary of State for Education pursuant to paragraph 4 of Schedule 22 to the School Standards & Framework Act requesting that the [Affected] Site be transferred to the Authority by the Diocesan Trustees subject to the payment by the Authority to the Diocesan Trustees of such sum by way of consideration (if any) as the Secretary of State determines to be appropriate being the fair value of the [Affected] Site after taking into account any public value; and

(b) that the Authority shall grant and the Company shall accept a lease of the [Affected] Site once transferred to the Authority in the form of the DfE’s model 125 year lease as and from the date of such transfer on terms consistent with the grant of the Lease and in consequence the grant of the Ancillary Rights by the Company shall not come to an end and the Company shall continue to be bound by the terms of this Agreement including but not limited to the obligation to pay the Relevant Proportion,

but that, in circumstances where the Company does not continue to use the Site [incorporating the Affected Site] pursuant to Clause 8.1.1, Clause 8.1.2 or Clause 8.1.3 before the expiry of any notice served by the Diocesan Trustees purporting to terminate the Company’s occupation of the [Affected] Site in accordance with the provisions of the Church Supplemental Agreement, this Agreement shall immediately terminate and the parties acknowledge that:

8.1.4 the Authority may make an application to the Secretary of State for Education pursuant to paragraph 4 of Schedule 22 to the School Standards & Framework Act pursuant to which the Secretary of State may by order require the [Affected Site] to be transferred to the Authority by the Diocesan Trustees subject to the payment by the Authority to the Diocesan Trustees of such sum by way of consideration (if any) as the Secretary of State determines to be appropriate being the fair value of the [Affected] Site after taking into account any public value; or

8.1.5 that the Diocesan Trustees and the Authority may agree that the Authority shall acquire the [Affected] Site from the Diocesan Trustees for an amount to be determined by the Authority and the Diocesan Trustees but having regard to any guidance issued under Schedule 1 of the Academies Act 2010 from time to time dealing with the protection of public value, and the Diocesan Trustees acknowledge that the [Affected] Site has been enhanced at public expense.

8.2 For the avoidance of any doubt, the parties acknowledge that in the event of this Agreement being terminated in the circumstances envisaged by Clause 8.1 any Authority Direct Losses will be recoverable from the Secretary of State for Education as a “Normal Payment Matter” under limb (f) of the definition of “Normal Payment Matters” in the Principal Agreement.

8.3 The Authority shall grant and the Company shall accept a lease of any playing fields used by the Academy but not forming part of the Affected Site in the form of the DfE’s model 125 year lease as and from the [Commencement Date].

8.4 The Authority, as Landlord, has served on the Company, as tenant, a notice in relation to the Lease in the form set out in schedule 7 to the Regulatory Reform (Business Tenancies) (England and Wales) Order 2003 ("Order").

8.5 The Company (or a person duly authorised by the Company) has made a statutory declaration in the form or substantially in the form set out in paragraph 8 of schedule 2 to the Order.

8.6 The Authority and the Company agree that the provisions of sections 24 to 28 of the 1954 Act be excluded in relation to any Lease to be granted.

8.7 The Company is not entitled to any compensation under section 37 of the 1954 Act when any such Lease ends.

## 8.8 Authority and Contractor to Enter School Premises

Subject to Clause 8.1, the Company acknowledges that any Lease granted to the Company remains subject to the licence granted to the Contractor under the Project Agreement and acknowledges that the Authority, the Contractor and each of their employees, servants, agents and sub-contractors have sufficient authority to enter the Site from time to time for the purpose of carrying out their obligations under the Project Documents and shall not withhold such access.

8.9 Subject to Clause 8.1, the Company shall procure that in occupying the Site, there shall be no act or omission by the Company, or Company Related Parties which shall give rise to a right for any person to obtain title to or any right or interest over the Site or any part of it and/or cause any material disruption to the provision of the Works (if any) and/or the Services.

# 9 Company assets

9.1 The Company is entitled to use its own equipment and assets so as to facilitate the provision of education services by the Company at the Academy.

9.2 The Company acknowledges that Company Assets are and shall remain the responsibility of the Company and the Services provided by the Contractor do not (unless otherwise agreed in writing by the Authority after receiving consent from the Contractor) extend to any of the Company Assets.

9.3 The Company is responsible for any costs incurred by the Company in relation to the Company Assets.

9.4 For the avoidance of doubt, the Existing School, and any fixtures, fittings or equipment provided under the Project Documents or in respect of which the Authority is the legal or beneficial owner shall (unless transferred in accordance with clause 9.5) remain owned by the Authority.

9.5 Immediately upon termination or expiry of the Project Agreement (howsoever arising) if the Company shall at that time be operating the Academy the Authority shall transfer or procure the transfer to the Company of the PFI Contractor Assets (at no cost to the Company).

# 10 Fire regulations

10.1 The Company and Authority shall each act reasonably and in good faith to procure that an up to date fire folder is maintained for the Academy in accordance with the government guidance referring to the Regulatory Reform (Fire Safety) Order 2005. In particular, the Company shall:

10.1.1 prepare risk assessments for emergency events including fires;

10.1.2 prepare and communicate the evacuation procedures including instruction to staff and Pupils at the school on the correct action when discovering a fire and on the correct action when the fire alarm is sounded;

10.1.3 prepare notices/signs reinforcing the evacuation procedures; and

10.1.4 ensure and maintain discipline of occupants of the Academy to prevent fires and deliberate and/or accidental activation of the system.

# 11 Programmed maintenance

11.1 Where the Contractor proposes to carry out Programmed Maintenance which may impact on the Educational Services at the Academy, the Authority will not authorise the carrying out of such maintenance by the Contractor without prior consultation with the Company Representative and the Diocesan Trustees Representative (and the Authority shall have due regard to any representations made). Where the Programmed Maintenance would, if implemented, have a material and adverse effect on the Educational Services at the Academy, the Authority will not authorise the carrying out of such maintenance without the prior consent of the Company and the Diocesan Trustees.

11.2 The Authority shall provide the Company and the Diocesan Trustees with a copy of the Contractor's Schedule of Programmed Maintenance (insofar as it relates to the Academy) in each year of this Agreement. The Authority shall act reasonably and shall take the Company's and the Diocesan Trustees’ comments on the Schedule of Programmed Maintenance into account when making submissions to the Contractor. Without prejudice to the generality of the foregoing:

11.2.1 the Company and the Diocesan Trustees shall be entitled to raise comments on the Schedule of Programmed Maintenance and the Authority shall act reasonably and shall take the Company's and the Diocesan Trustees’ comments on the Schedule of Programmed Maintenance into account when making submissions to the Contractor for variations to be made to the Schedule of Programmed Maintenance under [clause 23.4.5] of the Project Agreement;

11.2.2 the Company shall, at any time, be entitled to request that the Authority require the Contractor to accelerate or defer any Programmed Maintenance in accordance with [clause 23.4.7 ] of the Project Agreement; and

11.2.3 where the Schedule of Programmed Maintenance contains proposals which would, if implemented, have a material and adverse effect on the Educational Services at the Academy, the Authority shall make submissions to the Contractor for variations to be made to the Schedule of Programmed Maintenance, as reasonably requested by the Company and the Diocesan Trustees.

# 12 Payment of contribution

## 12.1 Contribution

In consideration for the provision of the Services to the Academy, the Company shall with effect from the Commencement Date pay to the Authority the Relevant Proportion (as adjusted from time to time) in monthly instalments on each Payment Date occurring after the commencement of this Agreement.

## 12.1A Affordability Gap

The Company undertakes to pay to the Authority, in addition to the Relevant Proportion due under clause 12.1, any sum received by it from the Secretary of State for Education or his agent in respect of the Affordability Gap (as defined in the Principal Agreement), whether received as part of General Annual Grant or as an Earmarked Annual Grant. The Company shall make such payment to the Authority at the same time as the DfE is required to pay the DSG for the relevant year to the Authority.

## 12.2 VAT

If any supply made or referred to in this Agreement is or becomes chargeable to VAT, then the person receiving the supply (the "Recipient") shall in addition pay the person making the supply (the "Supplier") the amount of that VAT against receipt by the Recipient from the Supplier of a proper VAT invoice in respect of that supply.

## 12.3 Adjustment for Part Years

Where:

12.3.1 this Agreement commences part way through the accounting year (being each year commencing 1 April or as otherwise agreed); or

12.3.2 this Agreement and/or the Project Agreement is terminated or expires part way through the accounting year;

then the amount to be paid by the Company in respect of that year will be adjusted pro rata by reference to the number of days in that year in which services are provided under the Project Agreement, as the case may be, compared to the number of days in that year and, in the case of Clause 12.3.2 the Authority shall repay the Company any excess paid to the Authority by the Company within twenty (20) Business Days of such termination.

## 12.4 Flooding

For the avoidance of doubt, this Agreement will continue in full force and effect notwithstanding that DfE may have exercised its powers under the Articles of Association to require the appointment of additional members of the local governing body of the Academy.

## 12.5 [Utilities

The Company acknowledges that in accordance with the terms of Schedule [ ] (Payment Mechanism) of the Project Agreement, the Unitary Charge contains the costs of supply of gas, water, sewerage and electricity consumed at the Academy and that the Authority is responsible for payment of the Unitary Charge until expiry or earlier termination of, and subject to the terms of the Project Agreement. The Company shall be responsible for payment of any remaining utilities consumed on the Site including any ICT, ICT Services, internet service provision, voice and data telephone calls and line rentals until expiry or earlier termination of the Project Agreement. Following such expiry or earlier termination of the Project Agreement, the Company shall be responsible for procuring and maintaining the supply of relevant utilities consumed on the Site necessary to operate the Academy and the Site.] [DN: Consider Project Agreement wording]

## 12.6 Interest on Late Payment

Save where otherwise specifically provided, where any payment or sum of money due from one party to another party under any provision of this Agreement is not paid on or before the due date, it shall bear interest thereon at the Prescribed Rate from the due date (whether before or after any judgement) until actual payment and it is agreed between the parties that the Prescribed Rate provides a substantial remedy pursuant to Sections 8 and 9 of the Late Payment of Commercial Debts (Interest) Act 1998.

## 12.7 Adjustment of Contribution

12.7.1 Subject to clause 12.7.2, the Relevant Proportion shall be adjusted:

12.7.1.1 in accordance with [schedule [ ] (Indexation Provisions)];

12.7.1.2 on the occurrence of the circumstances referred to in clause 16.5 or 16.6 (Sharing of Insurance Cost Differentials);

12.7.1.3 on the occurrence of the circumstances referred to in clause 18 (Benchmarking and Market Testing); and/or

12.7.1.4 on the occurrence of the circumstances referred to in clause 26.3.1 (Authority Notice of Change)

and as specifically provided for elsewhere in this Agreement.

12.7.2 Where the Relevant Proportion is to be adjusted in accordance with the terms of this Agreement, the adjustment shall be proportionate having regard to all relevant matters including but not limited to:

12.7.2.1 any change to the Unitary Charge;

12.7.2.2 the proportion of the Unitary Charge represented by the Relevant Proportion;

12.7.2.3 the effect on the Academy and the Company;

12.7.2.4 the effect on the Authority

and shall be reasonable in all the circumstances.

# 12A Catering and NNDR

12A.1 [The Authority shall supply to the Company on a monthly basis evidence of the number of Free School Meals served at the School in the preceding month and which the Authority is liable for under the Project Agreement. The Company shall be liable to pay to the Authority all amounts required to discharge such liability within five (5) Business Days of receipt of such evidence.] [DN: Consider Project Agreement wording]

12A.2 The Company shall be directly liable to the relevant authority for National Non Domestic Rates.

# 13 Performance regime

## 13.1 Deductions

The Authority is entitled under the Project Documents to, inter alia, make Deductions. The provisions of this Clause 13 shall apply to the administration of and accounting for such Deductions in respect of the Academy.

## 13.2 Reporting

The Company shall procure that the Principal of the Academy (or a person authorised by the Company) shall in relation to the Academy:

13.2.1 use the Helpdesk established under the Project Agreement, as the case may be, to report any service failures eligible for Deductions;

13.2.2 promptly report any apparent Unavailability of relevant areas to the Helpdesk, in relation to the Project Agreement and to the Authority's Representative;

13.2.3 promptly review any report of the performance of the Contractor provided by the Authority and promptly notify any inaccuracies relating to the Academy to the Authority's Representative; and

13.2.4 promptly report and notify to the Authority's Representative any acts or omissions of the Contractor which the Company believes may reasonably constitute a breach by the Contractor of the Project Agreement.

## 13.3 Attribution of Deductions

13.3.1 Any deductions made by the Authority pursuant to the Project Agreement solely in relation to the Academy shall be credited to the Company as a proportional reduction of monthly instalments of the Relevant Proportion pursuant to Schedule 2 (calculation of the Adjusted School Budget).

# 14 Surveys

14.1 The Authority and the Company shall liaise throughout the term of this Agreement on matters relating to the condition of the buildings and any other structures, cabling, services and of the grounds which comprise the Site.

14.2 The Authority in exercising its rights to survey the Site and buildings on the Site under the Project Agreement shall liaise with the Company and the Diocesan Trustees’ Representative(s) and shall have regard to the views of the Company in setting times for a surveyor to assist the Authority in the undertaking of any such survey.

# 15 Indemnities

Where any party (the "Indemnified Party") wishes to make a claim under this Agreement against the other (the "Indemnifying Party") whether in relation to a claim made against it by a third party (a "Third Party Claim") or otherwise, then any and all claims by the Indemnified Party shall be made in accordance with Clause 4 (Normal Payment Matters) of the Principal Agreement.

# 16 Insurance

16.1 The Company acknowledges that it is responsible for procuring and maintaining insurances which:

16.1.1 cover the risk of any and all damages, losses, claims, actions costs, expenses, proceedings, demands, charges, physical loss, theft and/or indirect loss to the Company and the Diocesan Trustees and Company Assets; and

16.1.2 are otherwise required by Legislation in relation to risks relevant to the operation of the Academy and the provision of Educational Services at the Academy.

## 16.2 Company Insurance Requirements

Neither the Company nor the Diocesan Trustees shall take any action or fail to take any reasonable action, or (insofar as it is reasonably within its power) permit anything to occur in relation to it, which would entitle any insurer to refuse to pay any claim under any Project Insurance to which it is an insured, a co-insured or an additional insured person, or noted on the policy.

## 16.3 Authority Insurance Obligations

The Authority shall use all reasonable endeavours to procure due compliance by the Contractor of its obligations under clause [65] (Insurance) of the Project Agreement to procure the existence of insurances and shall in particular procure that such insurances:

16.3.1 where requested by the Company and the Diocesan Trustees, name the Company and the Diocesan Trustees as co insureds; and

16.3.2 where the Company and the Diocesan Trustees are co insured, include within the terms of such insurances non vitiation protection and a waiver of subrogation rights; and

16.3.3 are in terms that comply with the other provisions of clause [65] (Insurance) of the Project Agreement

and shall exercise its rights and/or remedies under the Project Agreement to such ends.

## 16.4 Evidence of Policies

The Authority shall provide to the Company and the Diocesan Trustees on reasonable notice:

16.4.1 copies of the material damage insurance policy relating to the Site; and

16.4.2 evidence that the premiums payable under the insurances referred to in Clause 16.3 have been paid and that the insurances are in full force and effect.

16.4A Without prejudice to Clause 16.3 the Authority shall forward to the Company and the Diocesan Trustees copies of any renewal policy received from the Contractor pursuant to Clause [ ] of the Project Agreement.

## 16.5 [Sharing of Insurance Cost Differentials

If, pursuant to Clause [ ] of the Project Agreement, it is agreed or determined that the Authority is responsible for meeting the costs of insurance policy premium variations and further to a review by the parties of the Insurance Benchmarking Report provided by the Contractor pursuant to Clause [ ] of the Project Agreement, it is agreed or determined pursuant to Clause 23 of this Agreement that all or part of the Authority’s liability to meet such costs has arisen solely due to the claims history at the Academy:

16.5.1 the Authority shall forthwith notify the Company of the same;

16.5.2 the Company shall make an appropriate adjustment to the Relevant Proportion to ensure the Authority is left in a no better and no worse position than before the premium variation occurred within ten (10) Business Days of receipt of notice; and

16.5.3 on the next immediate and subsequent Payment Date, payments of the Relevant Proportion shall be adjusted so as to ensure the Authority is in no better and no worse position than before the premium variation occurred.]

16.6 If, pursuant to clause [65.16] of the Project Agreement, it is agreed or determined that the Authority is to receive the benefit of any insurance policy premium variations and further to a review by the parties of the Joint Insurance Cost Report provided by the Contractor pursuant to clause [65.15.2] of the Project Agreement, it is agreed or determined pursuant to clause 23 (Dispute Resolution) of this Agreement that all or part of the cost benefit relates to the Academy:

16.6.1 the Authority shall forthwith notify the Company of the same;

16.6.2 the Company shall make an appropriate adjustment to the Relevant Proportion to reflect that part of the decrease attributed to the Company within ten (10) Business Days of receipt of notice; and

16.6.3 on the next immediate and subsequent Payment Date, payments of the Relevant Proportion shall be adjusted to reflect that part of the decrease attributed to the Company in accordance with clause 16.6.2

[DN: Consider Project Agreement wording]

# 17 Damage and vandalism

## 17.1 Reporting of Damage

Under the terms of clause [64] (Damage to the Facilities) of the Project Agreement the Contractor has agreed that it shall as soon as practicable inform the Company of the discovery of any damage to any part of the Site or any furniture, fittings and equipment within the Academy. The Company shall cooperate with the Contractor at all times in the performance by the Contractor of its obligations to identify and report any damage.

## 17.2 Authority Damage to the Facility

17.2.1 In order to facilitate the Contractor's responsibility to report damage on a timely basis (which in turn will facilitate the correct allocation of responsibility under the Project Agreement as between the Authority and the Contractor), the Company shall procure that the Company and Diocesan Trustees’ Representative(s) and the principal cooperate with the Contractor in agreeing whether or not any damage is Authority Damage (under the Project Agreement) and that the Contractor is kept informed of the principal's alternate as required by clause [64.2.3] of the Project Agreement.

17.2.2 Any damage to the Academy, the Facility, the Site or equipment on the Site provided pursuant to the Project Agreement occurring during the Required Periods [in an Ad Hoc Use Area whilst being used in accordance with clause [29.4] of the Project Agreement, or during a period of Community Use in the Area being used for Community Use ] in accordance with clause [64] (Damage to the Facilities) of the Project Agreement which is occasioned by the Company and/or Company Related Parties shall (except to the extent covered by any relevant Project Insurance) be the responsibility of the Company to the extent it is the responsibility of the Authority under the Project Documents ("Authority Damage").

17.2.3 The Company shall reimburse the Authority for any damages, costs, claims, liabilities and/or expenses properly incurred by the Authority, Contractor or any Contractor Related Parties arising from such Authority Damage within ten (10) Business Days of receipt of an invoice for the same from the Authority.

# 18 Benchmarking and market testing

18.1 In exercising its rights pursuant to Clause [ ] (Market Testing and Benchmarking) of the Project Agreement, the Authority shall consult with the Company Representative and all matters affecting the Academy which arise pursuant to any benchmarking or market testing exercise shall, so far as is compatible with the programme for the undertaking of the benchmarking exercise and any subsequent market testing, be referred to the School Liaison Procedure for consideration.

18.2 Where as a result of the benchmarking and market testing procedures referred to in Clause 18.1, there is an adjustment to the Unitary Charge, the Relevant Proportion paid by the Company shall be adjusted to take account of the outcome of the benchmarking and market testing procedures so that any such adjustment of the Relevant Proportion coincides with an adjustment of the Unitary Charge pursuant to Clause [ ] of the Project Agreement and leaves the Authority in a no better and no worse position than before the benchmarking and market testing procedures were undertaken in accordance with the Project Agreement provided that any adjustment made to the Relevant Proportion shall be no greater (if the Relevant Proportion is increased) or lesser (if the Relevant Proportion is reduced) than the average percentage adjustment which is made to the payment which is equivalent to the Relevant Proportion for the other PFI Schools following the completion of such benchmarking and market testing procedures at the PFI Schools in accordance with the Project Agreement. For the purposes of this Clause 18 the PFI Schools are the schools referred to in Recital C together with any successor schools or academies.

# 19 Consultation and liaison

The Authority shall convene a meeting of the School Liaison Committee in accordance with the procedures provided for in Schedule 1 no less frequently than quarterly.

# 20 Use and control of the school

20.1 The Company acknowledges that pursuant to the Project Agreement and this Agreement:

20.1.1 variations to a School Day may be agreed between the Authority and the Contractor which may involve the operation of the change procedure under the Project Agreement and additional costs incurred by the Company;

20.1.2 [the Existing School is entitled to a maximum of X hours of Community Use in aggregate per Academic Year without incurring additional costs. The Company shall be entitled to X of such hours provided that the Company’s use of the Academy for Community Use is subject to any existing arrangements for Community Use as at the date of this Agreement. Particulars of such use during the Academic Year 2008-09 are set out at Schedule 6;] [DN: Consider Project Agreement wording]

20.1.3 variations to the Community Use allocated hours may be agreed by the Authority and the Contractor which may involve the operation of the change procedure under the Project Agreement and additional cost to the Company;

20.1.4 the Company’s use of the Academy for Community Use is subject to any existing arrangements for Third Party Use as at the date of this Agreement, particulars of which are set out at Schedule 6;

20.1.5 [Ad Hoc Use of the Academy is permitted under Clause [ ] of the Project Agreement at no additional charge subject to the Ad Hoc Use being strictly limited to specified areas within the Academy;

20.1.6 Ad Hoc Use areas may differ between Ad Hoc Use outside of the Required Periods and Ad Hoc Use undertaken on Bank Holidays and Sundays.

20.1.7 that the Authority does not have the right to levy any Deductions under the Payment Mechanism set out in Schedule [ ] of the Project Agreement in relation to the Contractor’s obligation to provide access to the Academy for Ad Hoc Use. ] [DN: Consider Project Agreement wording]

20.2 [Outside of the above periods the Contractor is entitled to require the Site and any facilities on the Site (other than Company Assets, equipment or consumables owned by the Company or for which it is responsible, which are not provided under the Project Agreement) for purposes of third party income generation in accordance with Clause [ ] of the Project Agreement. ] [DN: Consider Project Agreement wording]

## 20.3 Requests for School Periods

20.3.1 The Company shall notify the Authority as follows in relation to Ad Hoc Use, Terms and Community Use:

(a) [Ad Hoc Use

The Authority shall on reasonable notice from the Company and where such access does not interrupt or prevent Third Party Use or any Programmed Maintenance or Unprogrammed Maintenance Works allow all officers of the Company and all members of the local governing body of the Company and all persons employed at the Academy and necessary invitees appropriate access for reasonably required use:

1. during an Ad Hoc Period at no additional charge to the Company for specified teaching spaces, library, school hall, and all administration areas at the Academy;
2. on Sundays and Bank Holidays at no additional charge to the Company other than for the reasonable costs incurred in re-opening and closing the Academy for such use to specified teaching spaces, and all administration areas at the Academy.

The Company shall not use more than the minimum area reasonably required for any such use and for the avoidance of doubt, the Authority does not have the right to levy any Deductions under the Payment Mechanism set out in Schedule [ ] of the Project Agreement in relation to the Contractor’s obligation to provide such access to the Academy for such use.] [DN: Consider Project Agreement wording]

(b) Terms

No later than [ ] in each year, the Company shall notify the Authority of the dates for Terms (including any half-term holidays) in the period 1st September to 31st August following that notice. The Company acknowledges the importance to the Authority of the dates for and length of Terms and half term holidays. Where, the Company requires Terms to have an aggregate yearly duration in excess of X days it shall propose an Authority Change pursuant to this Agreement. For the purposes of the year ending 31 August 2009, the Terms will be as follows:

Autumn Term:
Spring Term:
Summer Term:

(c) [Community Use

(i) In the event that the Company requires its Community Use of the Academy to have an aggregate duration in each School Year in excess of [X] hours it shall propose an Authority Change pursuant to this Agreement.

(ii) The Company acknowledges that pursuant to the Project Agreement the Contractor is entitled to charge a fee for Community Use which is in excess of X hours in a School Year at a rate calculated in accordance with the Project Agreement. Where the Company has requested such Community Use, any charges incurred by the Authority in respect of such Community Use shall be recoverable by Authority from the Company on demand.

(iii) Unless the parties agree in accordance with the terms of this Agreement and further, the Contractor and the Authority agree in accordance with terms of the Project Agreement, Community Use for the Academy may not exceed [X] hours in aggregate in any School Year.] [DN: Consider Project Agreement wording]

# 21 Authority indemnity

## 21.1 Indemnity for acts or omissions of the Contractor

The Authority shall be responsible for and shall release and indemnify the Company and the Diocesan Trustees (but without double counting), in respect of all Project Document Losses suffered or incurred by the Company or any servant, agent or representative of the Company to the extent that either:

21.1.1 the Authority recovers such Project Document Losses from the Contractor; or

21.1.2 the Authority would have been entitled to recover such Project Document Losses under the provisions of the Project Agreement save for failures by the Authority to perform its obligations under this Agreement;

whichever is the larger amount.

## 21.2 Indemnity for acts or omissions of the Authority and Authority Related Parties

The Authority shall, subject to clause 21.4 (Authority not Responsible), be responsible for, and shall release and indemnify the Company or any Company Related Party on demand from and against all liability for Academy Direct Losses arising from:

21.2.1 death or personal injury;

21.2.2 loss of or damage to property (including property belonging to the Company or the Diocesan Trustees or for which they are responsible) but excluding the land, buildings, plant, equipment and other assets which are the responsibility of the Contractor to provide under the Project Agreement and which form part of the Academy; and

21.2.3 third party actions, claims and/or demands (other than any which are the subject of the indemnity in clause 21.3) brought against the Company, the Diocesan Trustees or any Company Related Party,

which may arise out of, or in consequence of the performance or non-performance by the Authority of its obligations under this Agreement or the presence on the Site of the Authority or any Authority Related Party, the Contractor or any Contractor Related Party.

21.3 The Authority shall, subject to clause 21.4 (Authority not Responsible), be responsible for, and shall release and indemnify the Company, the Diocesan Trustees or any Company Related Party, on demand from and against all liability for Academy Direct Losses and Indirect Losses arising from third party actions, claims or demands (as described in clause 21.2.3) brought against the Company, the Diocesan Trustees or any Company Related Party for breach of statutory duty which may arise out of, or in consequence of a breach by the Authority of its obligations under this Agreement to the extent that there are no other remedies available to the Company and the Diocesan Trustees under this Agreement.

## 21.4 Authority not Responsible

The Authority shall not be responsible or be obliged to indemnify the Company and the Diocesan Trustees:

21.4.1 for any matter referred to in clause 21.2 or 21.3 that arises as a direct result of the Authority acting on a written notice issued by the Company or the Diocesan Trustees:

21.4.2 for any injury, loss, damage, cost and expense caused by the negligence or wilful misconduct of the Company, the Diocesan Trustees or any Company Related Party (other than to the extent such negligence or wilful misconduct would not have occurred but for a breach by the Authority of its obligations under this Agreement) or by the breach of the Company or the Diocesan Trustees of their obligations under this Agreement; or

21.4.3 to the extent that any cost and expense related to any injury, loss or damage, is the responsibility of the Company pursuant to clause 17 (Damage).

## 21.5 Authority Compensation

Without prejudice to any rights of the Company and the Diocesan Trustees at common law or in equity, where the Company or the Diocesan Trustees suffers or incurs Academy Direct Losses or Indirect Losses in connection with a breach by the Authority or an Authority Related Party of the Project Agreement and/or this Agreement or any other liability attributable to the Authority or the Authority Related Party under the Project Agreement or the negligence or wilful misconduct of the Authority or an Authority Related Party, and the indemnities contained in clauses 21.1 to 21.4 (inclusive) do not apply, the Authority shall compensate the Company and the Diocesan Trustees for all such Academy Direct Losses and Indirect Losses.

# 22 [Additional income

## 22.1 Income Calculation

The Company shall provide all reasonable assistance to the Authority where, in accordance with Clause [ ] of the Project Agreement, the Authority and Contractor seek to agree the Net Income generated from use of the Academy through Third Party use or Community Use.

## 22.2 Third Party Use – Approval

The Authority hereby agrees with the Company that where the Company reasonably believes that Third Party Use is not compatible with the use of the Academy for a school, the Authority shall at the request of the Company exercise its powers to regulate the use of the Academy under the terms of Clause [ ] of the Project Agreement.

## 22.3 Existing School Responsibility

[Not Used]

## 22.4 Income Share

Any income relating to the Site payable to the Authority under Clause [ ] of the Project Agreement shall not be credited to the Company. ] [DN: Consider Project Agreement wording]

# 23 Dispute resolution

## 23.1 Dispute Resolution Procedure

Where the Company and the Diocesan Trustees (acting jointly) do not believe that the Contractor is undertaking its obligations in accordance with the requirements of the Project Agreement insofar as they relate to the Academy, the Company and the Diocesan Trustees may (acting reasonably and acting jointly) request the Authority to consider in accordance with Clause 4 whether to submit such a dispute to the Dispute Resolution Procedure contained in the Project Agreement on behalf of the Company. The Authority shall act reasonably when considering any such request.

23.2 If a dispute arises in relation to any aspect of this Agreement, the Company and the Diocesan Trustees (acting jointly) and the Authority shall consult in good faith in an attempt to come to an agreement in relation to the disputed matter. If the parties fail to resolve the dispute within ten (10) Business Days of the initial consultation between them then any party may refer the matter to be resolved by a person nominated by or on behalf of DfE. DfE shall act reasonably in making such nomination, including ensuring the impartiality of the nominee regardless of whether there may be any financial benefit to DFE dependant on the nominee's decision. Subject to a decision made by a person nominated by or on behalf of DfE under this Clause, each party shall in relation to the Project Agreement bear their own costs arising from a dispute pursuant to this Clause 23.2.

23.3 Should a dispute arise which the Authority would not otherwise pursue other than at the Company’s and the Diocesan Trustees’ joint request, the Company shall reimburse the Authority in relation to all reasonable and proper costs incurred by the Authority in submitting the matter to the relevant adjudicator pursuant to the Project Agreement.

# 24 Employees

24.1 [Without prejudice to Clause 4, the Authority undertakes to duly enforce the provisions of Clause [ ] (Employees) of the Project Agreement for the benefit of the Company where requested to do so by the Company (acting reasonably).

24.2 In the event that the Company becomes aware of a breach by the Contractor of any obligations under Clause [ ] (Employees) of the Project Agreement, the Company shall give notice (including reasonable particulars of the alleged breach) to the Authority and the Authority undertakes to promptly take up such matter with the Contractor enforcing the terms of the relevant clause to the maximum extent practicable in the circumstances.

24.3 Where the Company considers that any person employed at the Academy (whether in connection with the Works or Services or otherwise) should be removed pursuant to the power available to the Authority under the Project Agreement, the Company shall be entitled to serve written notice on the Authority requiring the Authority to exercise its power to procure removal of that person from the Site and the Authority shall promptly do so. ] [DN: Consider Project Agreement wording]

# 25 Employee transfers

The parties shall co-operate and consult with relevant employees as required under TUPE so that the parties may comply with their respective obligations under TUPE in connection with the Project and obligations in the Academy Contracts.

# 26 Exercise of authority change and change mechanism

## 26.1 Changes Not Proposed by the Company

Where there is any proposal for an Authority Change or a Contractor Change ("**Change**") under the Project Agreement that is not proposed by the Company and the Diocesan Trustees (acting jointly):

26.1.1 the Authority shall notify the Company and the DfE of all relevant information in relation to the proposed Change including without limitation, the Authority’s opinion, the available options, the decision required and time periods for both parties to respond; and

26.1.2 the Authority shall not agree to any proposed Change which is reasonably likely to have an adverse effect upon the provision of the Services at the Academy or a material adverse financial impact on the Academy, without the prior consent of:

(a) the Company and the Diocesan Trustees (acting jointly, and which shall not be unreasonably withheld or delayed); or

(b) DfE, in the event that either:

(i) the Company and the Diocesan Trustees (acting jointly) has not provided its consent under Clause 26.1.2(a); or

(ii) the proposed Change would have a material adverse financial impact on the Academy.

## 26.2 Changes Proposed by the Company

26.2.1 The Company (either on its own behalf or on behalf of the Diocesan Trustees) may at its own cost, acting reasonably, request the Authority to request an Authority Change pursuant to the Project Agreement and shall provide the Authority and DfE with all relevant information in relation to the proposed Authority Change including so far as it is able, all matters set out in Clause [ ] of the Project Agreement. The parties acknowledge that as at the date of this Agreement the Company has requested the Authority Changes set out at Schedule [3 Part [ ]] and that such request is, from the date of this Agreement, subject to this Clause 26.

26.2.2 The Authority may decline to submit an Authority Notice of Change to the Contractor, where if to put forward such a proposed Authority Change to the Contractor would:

(a) be prejudicial to the Project as a whole or another school within the Project;

(b) Not Used;

(c) be in breach of the requirements for Authority Changes set out in Clause [ ] of the Project Agreement;

(d) result in material additional costs or increased liabilities for the Authority in a manner not adequately compensated for by either the Company and/or DfE; and/or

(e) not be in the format of an Authority Notice of Change as required by Clause [ ] of the Project Agreement.

26.2.3 Where the Authority does not decline the Company’s proposed Authority Change pursuant to Clause 26.2.2:

(a) the Authority shall submit an Authority Notice of Change to the Contractor as soon as practicable and keep the Company informed as to any information regarding the proposed Authority Change received from the Contractor as well as any revisions, estimates and/or amendments to that proposed Authority Change;

(b) the Company shall at its own cost provide all assistance to the Authority, including; procuring additional information to assist the proposed Authority Change; details of proposals for provision of funding for capital expenditure required to implement the Authority Change, attending relevant discussions with the Contractor in seeking to agree the contents of the [Estimate] provided by the Contractor in accordance with Clause [ ] of the Project Agreement;

(c) the Authority shall promptly provide the Company with a copy of the Estimate relevant to the Authority Change (including any revisions to such Estimate) and a copy of the proposed notice confirming the Authority Change;

(d) the Company shall provide written notice to the Authority either confirming the relevant Estimate or requesting the Authority withdraw the relevant Authority Notice of Change within at least ten (10) Business Days before the Authority is required to advise the Contractor that either the contents of the relevant Estimate are agreed by the Authority or the Authority Notice of Change is withdrawn in accordance with Clause [ ] of the Project Agreement;

(e) subject to Clause 26.3.4 the Authority shall not confirm with the Contractor any Estimate in relation to an Authority Notice of Change requested by the Company under this Clause 26.2, without the prior written consent of the Company (not to be unreasonably withheld or delayed); and

(f) subject to Clause 26.3.4 the Authority shall not withdraw an Authority Notice of Change requested by the Company under this Clause 26.2, without the prior written consent of the Company (not to be unreasonably withheld or delayed).

## 26.3 Payment for Changes

Where any Change is likely to lead to an adjustment of the Unitary Charge or any payments from the Authority to the Contractor of a lump sum:

26.3.1 where pursuant to Clause 26.2 there is an increase in payments from the Authority to the Contractor or the payment to the Contractor of a lump sum arising from the implementation of an Authority Notice of Change requested by the Company, the Company shall, unless agreed otherwise in writing by the parties bear the entire increase or reimburse the full amount of the lump sum to the Authority, to the extent related to the Company's request;

26.3.2 where pursuant to Clause 26.1, there is an increase in payments from the Authority to the Contractor or the payment to the Contractor of a lump sum arising from the implementation of a Change under the Project Agreement, the Company shall, unless agreed otherwise in writing between the parties, pay to the Authority such proportion of the Authority's increased liability which relates to the Academy through either:

(a) a contribution to payment of a lump sum payable by the Authority to the Contractor in relation to the Change; or

(b) an adjustment to the Relevant Proportion,

so as to ensure the Authority is left in no better and no worse position than if the Change had not been implemented;

26.3.3 where pursuant to either Clause 26.1 or Clause 26.2, there is a decrease in payments from the Authority to the Contractor arising from the implementation of the Change, a proportionate adjustment to the Relevant Proportion to reflect such decrease shall apply as soon as reasonably practicable following the implementation of the relevant Authority Change so as to ensure the Authority is left in no better and no worse position than if the Change had not been implemented;

26.3.4 notwithstanding Clause 26.1 and Clause 26.2, where the Company has not responded to the Authority within the time periods reasonably required by the Authority, the Authority may, after giving reasonable warning, proceed to exercise its rights and/or satisfy its obligations in the Project Documents in relation to the proposed Authority Change and/or Contractor Change and any decision made by the Authority in respect of such change shall be deemed to be approved by the parties pursuant to this Clause 26.

# 27 Termination

## 27.1 Occurrence

This Agreement shall terminate on the earlier of the:

27.1.1 expiry or termination of the Project Agreement; or

27.1.2 closure of the Academy; or

27.1.3 termination of the Funding Agreement save where this Agreement is to be or has been novated to a suitable replacement sponsor pursuant to the terms of the Principal Agreement; or

27.1.4 termination of the Church Supplemental Agreement save where a new lease is granted to the Company pursuant to Clause 8.1(b).

# 28 Assignment etc.

28.1 In the event that the Authority novates, assigns or otherwise transfers its rights and obligations under the Project Agreement to another person then the Authority will novate this Agreement and any Lease of the Site to that party.

28.2 Notwithstanding Clause 28.1, this Agreement and any Lease may be novated in accordance with the terms of the Principal Agreement.

28.3 Subject to Clauses 28.1 and 28.2, no party shall otherwise novate, assign or transfer its rights or obligations under this Agreement without the prior written consent of the other party.

# 29 Governing law

## 29.1 Applicable Law

This Agreement and any non-contractual obligation arsing out of it is subject to the laws of England and Wales.

## 29.2 Jurisdiction

Except as provided in this agreement, the parties agree that any disputes between the parties shall be subject to the exclusive jurisdiction of the courts of England and Wales.

# 30 Third party rights

## 30.1 Entitlement of Third Parties

No term of this Agreement is intended to give any entitlement as against any party to any person who is not a party to this Agreement.

## 30.2 Exclusion of Contracts (Rights of Third Parties) Act 1999

No term of this Agreement may be enforced by any person other than a party to this Agreement under the Contracts (Rights of Third Parties) Act 1999.

# 31 Miscellaneous provisions

## 31.1 Provisions to Remain in Force

If any term, condition or provision of this Agreement shall be held to be invalid, unlawful or unenforceable to any extent, such term, condition or provision shall not affect the validity, legality and enforceability of the other provisions of or any other documents referred to in this Agreement.

## 31.2 Entire Agreement

This Agreement and the documents referred to in this Agreement contain all the terms which the parties have agreed in relation to the subject matter of this Agreement.

## 31.3 Waiver

No term or provision of this Agreement shall be considered as waived by a party to this Agreement unless a waiver is given in writing by that party. No waiver shall be a waiver of a past or future default or breach, nor shall it amend, delete or add to the terms, conditions or provisions of this Agreement unless (and only to the extent) expressly stated in that waiver.

## 31.4 Counterparts

This Agreement may be executed and delivered in any number of counterparts, each of which so executed will be an original, but together will constitute one and the same instrument.

## 31.5 Intellectual Property Rights

31.5.1 At the request of the Company where required to exercise its rights or perform its obligations under this Agreement and where permitted by the Project Agreement the Authority shall grant to the Company a sub-licence in respect of Intellectual Property Rights licensed to the Authority under or pursuant to the Project Agreement which may only be used by the Company in accordance with the Approved Purposes.

31.5.2 [The Company hereby grants to the Authority a non exclusive irrevocable and royalty free licence (carrying the right to grant sub-licences) to use for the duration of this Agreement solely for the purposes of discharging the Authority's obligations in relation to the Facilities and/or the Site under the Project Agreement any Intellectual Property Rights which are or may become vested in the Company. ] [DN: Consider Project Agreement wording]

## 31.6 Confidentiality

31.6.1 Neither the Company nor the Authority shall publish or cause to be published or communicate to any third party any matter relating to this Agreement except with the prior written consent of the other (such consent not to be unreasonably withheld or delayed).

31.6.2 The parties shall comply with their duties and responsibilities under the Data Protection Act 2018 in the performance of this Agreement and shall not unlawfully process or disclose information subject to this Act.

## 31.7 Freedom of Information

The parties agree that they will each cooperate to the extent they are legally able to do so to enable any party receiving a request for information under the Freedom of Information Act 2000 to respond to that request promptly and within the statutory timescales. This cooperation shall include but not be limited to finding, retrieving and supplying information held, directing requests to other persons as appropriate and responding to any requests by the party receiving a request for comments or other assistance.

## 31.8 Amendments

This Agreement may not be varied except by an agreement in writing signed by duly authorised representatives of the parties.

## 31.9 No Agency

31.9.1 Nothing in this Agreement shall be construed as creating a partnership or as a contract of employment between the parties.

31.9.2 Save as expressly provided otherwise in this Agreement, the Company shall not be, or be deemed to be, an agent of the Authority and the Company shall not hold itself out as having authority or power to bind the Authority in any way.

## 31.10 No Double Recovery

Notwithstanding any other provisions of this Agreement, no party shall be entitled to recover compensation or to make a claim under this Agreement in respect of any loss that it has incurred to the extent that it has already been compensated in respect of that loss pursuant to this Agreement or otherwise.

## 31.11 Further Assurance

Each party shall do all things and execute all further documents necessary to give full effect to this Agreement.

## 31.12 Severability

If any provision of this Agreement shall be declared invalid, unenforceable or illegal by the courts of any jurisdiction to which it is subject, such provision may be severed and such invalidity, unenforceability or illegality shall not prejudice or affect the validity, enforceability or legality of the remaining provisions of this Agreement.

# 32 Notices

## 32.1 Form of Notice

All notices under this Agreement shall be in writing and all certificates, notices or written instructions to be given under the terms of this Agreement shall be served by sending the same by first class post or by hand, leaving the same at:

If to the Authority: [ ]

If to the Company: [ ]

If to the Diocesan Trustees: [ ]

## 32.2 Communication with Representatives

Where the information or documentation is to be provided or submitted to the Authority’s Representative or the Company Representative it shall be provided or submitted by sending the same by first class post or by hand, leaving the same at:

If to the Authority’s Representative:

If to the Company Representative:

If to the Diocesan Trustees’ Representative:

## 32.3 Change of Address

Any party to this Agreement (and any Representative) may change its nominated address or facsimile number by prior notice to the other parties.

## 32.4 Service

Notices given by post shall be effective upon the earlier of actual receipt and two (2) Business Days after mailing. Notices delivered by hand shall be effective upon delivery.

## 32.5 Accrued Rights

The Parties agree that this Agreement shall be extended if at any time it becomes apparent to any Party that any of their obligations or rights accruing to any of them in respect of this Agreement will not have been carried out or completed by the termination of the Project Agreement.

**IN WITNESS** whereof the parties have executed this Agreement as a Deed.

**EXECUTED** as a **DEED** (but
not delivered until the date hereof)
by the affixing of the Common Seal
of [ ]
in the presence of:

\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

Authorised Officer

**EXECUTED** as a **DEED** by [ ] )
acting by: )
 )
 ------------------------------------------------------
 Director / Secretary

------------------------------------------------------

------------------------------------------------------

------------------------------------------------------
Director

**EXECUTED** as a **DEED** by [ ] )
acting by: )
 )

------------------------------------------------------Diocesan Trustee/Authorised Signatory

------------------------------------------------------------
Diocesan Trustee/Authorised Signatory

# Schedule 1 – School Liaison Procedure

[ ]

# Schedule 2 – Calculation of the Adjusted School Budget

[ ]

# Schedule 3 – Corporate Warranties

## Part 1 - Warranties by the Company

### 1 Due incorporation of the Company and its capacity

1.1 The Company is duly incorporated under the law of England and Wales and has the corporate power to own its assets and to carry on its activities as they are now being conducted.

1.2 The Company:

1.2.1 has the power to enter into and to exercise its rights and perform its obligations under this Agreement; and

1.2.2 has taken all necessary action to authorise the execution of and the performance by it of its obligations under this Agreement.

1.3 The Company is not subject to any other statutory or contractual obligation, compliance with which will or is likely to, have a material adverse effect on the ability of the Company to perform its obligations under this Agreement, the Funding Agreement or the Principal Agreement.

1.4 This Agreement constitutes or will when executed constitute legal, valid, binding and enforceable obligations on the Company.

1.5 Every consent and approval required by the Company in connection with the execution, delivery, validity or enforceability of this Agreement or the performance by the Company of its obligations under this Agreement have been obtained or made and is in full force and effect and there has been no fault in the observance of the conditions or restrictions (if any) imposed or in connection with any of the same.

### 2 No Litigation

No claim is presently being asserted and no litigation, arbitration or administrative proceeding is presently in progress or, to the best of the knowledge of the Company, pending or threatened against the Company or any of its assets which will or might have a material adverse effect on the ability of the Company to perform its obligations under this Agreement.

### 3 Solvency of the Company

3.1 No proceedings or other steps have been taken and not discharged (nor, to the best of the knowledge of the Company threatened) for its winding-up or dissolution or for the appointment of a receiver, administrative receiver, administrator, liquidator or similar officer in relation to any of the Company’s assets or revenues.

3.2 The Company undertakes to inform the Authority as soon as reasonably practicable of any proposed meetings of creditors which relate to the Company's business.

## Part 2 - Warranties by the Authority

1 The Acceptance Certificates were issued under Clause [ ] of the Project Agreement on [ ] ;

2 The copies of the documents issued to the Company and/or its advisers listed in Part 3 of this Schedule are complete and accurate copies of the documents in question.

3 There have been no changes or amendments to the Project Agreement other than the changes made pursuant to the Authority Notices of Change listed in Part [4] of this Schedule.

4 There have been no changes to the parties to the [FM Agreement].

5 There are not now, nor have there been any disputes referred to adjudication pursuant to Clause [ ] of the Project Agreement.

## Part 3 Documents

1 The Project Agreement and Schedules dated [ ] .

# Schedule 4 - Leases

# Schedule 5 – Information Protocol

1 The parties recognise the benefit of cooperation and sharing of Information as part of a prudent risk management strategy. Each party shall notify the other parties of relevant timescales (contractual and non-contractual) to which they are bound or committed, and shall use reasonable endeavours to facilitate exchange of Information in good time to meet such timescales.

2 The Authority shall provide to DfE and the Company (in each case solely in respect of matters affecting the Site):

2.1 promptly upon becoming aware of the same, details of any actual or potential claim made or potentially to be made against the Authority under the Project Documents which the Authority may seek to recover from the Company or DfE;

2.2 on reasonable request, details of claims that the Authority is progressing under the Project Documents (irrespective of whether the claims are being made at the request of the Company or DfE);

2.3 any notice of termination served on the Authority pursuant to the Project Documents;

2.4 service of any notice by the Authority under a Project Document purporting to terminate that agreement;

2.5 details of any matter which may lead to an increase in the Relevant Proportion including indexation, any benchmarking/market testing, any insurance costs review and any Change in Law; an

2.6 such other information as DfE or Company may reasonably require.

3 The Authority shall provide to the Company (in each case solely in respect of matters affecting the Site):

3.1 copies of insurance certificates obtained from the Contractor and copies of insurance reports provided by the Contractor as part of the insurance premia sharing mechanism under the Project Agreement;

3.2 copies of performance reports received from the Contractor pursuant to the relevant payment mechanisms;

3.3 quarterly (or more regular by agreement of the parties) reports on instances of Authority Damage, together with details of the costs associated with the same and the proposed or agreed responsibility for such costs;

3.4 copies of any survey reports obtained by the Authority having exercised its rights to require surveys pursuant to the Project Documents;

3.5 copies of planned maintenance programmes provided to the Authority by the Contractor pursuant to the Project Documents;

3.6 notice of any intention on the part of the Authority to exercise its step in rights pursuant to the Project Documents;

3.7 details of any information given to the Authority by the Contractor under Clauses [ ] of the Project Agreement;

3.8 details of any information given by the Authority to the Contractor under Clause [ ] of the Project Agreement.

4 The Company shall provide to the Authority and to DfE, promptly upon becoming aware of the same, details of any actual or potential claim made or potentially to be made against the Authority under the Project Documents.

5 The Company shall provide to the Authority:

5.1 details of any breaches of the Project Documents by the Contractor not addressed by the relevant payment mechanisms of which it is aware;

5.2 details of any grounds to exercise rights or remedies in favour of the Authority under the Project Documents of which it is aware;

5.3 details of any instances of damage to the Site, the Facility or ICT of which it is aware, together with details of any contact with the Contractor it has in respect of the same.

6 A party providing information pursuant to this Schedule 5 may require payment of its reasonable costs in providing such information where, acting reasonably, it believes it is appropriate to do so given the nature or volume of the information or requests for information, or any other relevant factors.

# Schedule 6 – School Use Information

[ ]

Third Party Use

1. The term Diocesan Trustees has been used for references to the site/charity trustees in order to avoid confusion with the academy trustees. If the term Diocesan Trustees (or Diocesan Trustee where the site is held by a corporate body within the Diocese) is inappropriate, references could be changed to “Site Trustees” or the “Foundation Body”. This may include references to individuals, for example the Vicar and Church Wardens, where relevant. [↑](#footnote-ref-1)
2. The appropriate diocesan authority for Church of England schools is the Diocesan Board of Education. For Catholic schools, it is the DiocesanBishop. If no obligations are to be undertaken by the Diocesan Bishop as Diocesan Authority then the Diocesan Bishop need not be a party to the Agreement.For non-denominational VA Schools and foundation schools with a foundation, references to a Diocesan Authority should be deleted and appropriate amendments will need to be made to reflect other religious bodies or other appropriate diocesan authority. Consequential amendments will also need to be made to the DFE Principal Agreement. Further advice can be obtained from the project lead. [↑](#footnote-ref-2)
3. The additional words in brackets may be used where the Diocesan Trustees feel it is important to record the over-arching influence of the trust arrangements. The Diocesan Trustees should indicate their preference. [↑](#footnote-ref-3)
4. This definition has assumed an existing school is being converted into an Academy. It will, however, depend on each project and the funding allocated from central government. [↑](#footnote-ref-4)
5. To be used if only part of the Site is owned by the Diocesan Trustees. [↑](#footnote-ref-5)
6. These rights are intended to mirror the rights granted to the Contractor in the PFI Project Agreement and reflected in the current Governing Body Agreement or Governors Agreement but the details may need to be checked. [↑](#footnote-ref-6)
7. Catering may need a bespoke approach on a scheme by scheme basis, depending on whether catering is an Authority, Contractor or Academy Trust responsibility. [↑](#footnote-ref-7)
8. Given the potential for cross-contamination with the Authority/PFI SPV relationship (for example in relation to the subordination of step-in rights as set out in the standard form funder direct agreement), we have not included an obligation on the Authority to procure collateral warranties in favour of the Academy Trust. Instead, clause 5.6 requires Authority to exercise its rights under a collateral warranty, where requested to do so by Academy. [↑](#footnote-ref-8)
9. To be agreed on a project specific basis. Parties should note that the Commencement Date triggers the payment of the Academy Contribution and is the date on which the Lease comes into force. It is expected that this will be the date of services availability under the Project Agreement be after the Independent Certifier has certified the Works to be complete. [↑](#footnote-ref-9)
10. Include a definition of Diocesan Authority if not to be a party to the Agreement. [↑](#footnote-ref-10)
11. Staff employed in a voluntary aided school are employed by the Governing Body, staff employed in a voluntary controlled school are employed by the Authority. All staff will transfer to the Company on conversion. [↑](#footnote-ref-11)
12. This should be consistent with the Project Agreement definition. [↑](#footnote-ref-12)
13. A broad approach has been taken to acknowledge any public value. A more detailed assessment of what constitutes public value in land of private charitable origin or land which has been provided at public expense will be undertaken if and when triggered by the service of a trustees’ notice. [↑](#footnote-ref-13)