



Department
for Education

School-based Nursery Capital Grant 2025 to 2026: grant funding agreement terms and conditions

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Introduction

1. This document sets out the Terms and Conditions forming part of the Grant Funding Agreement and should be read in conjunction with the [School-based Nursery \(SBN\) Capital Grant 2025 to 2026 Information for Applicants](#), the [Establishing School-based Nursery Provision guidance](#), the School-based Nursery Capital Fund Post Approval Guidance document (attached) and the Grant Offer Letter (attached), which also includes a declaration that you need to sign and return.
2. The parties confirm that the Grant Funding Agreement is intended to be legally binding.
3. In the Grant Funding Agreement, the Department is acting as part of the Crown.

Definitions

4. For the purposes of the Grant Funding Agreement:

"Assets" means the new and/or existing buildings and/or facilities (including associated plant and infrastructure) owned by you and/or secured by you pursuant to a long-term lease, as such buildings and facilities are identified in the Grant Application, which are to be developed and/or refurbished by the Grant;

"Background IPRs" means any and all Intellectual Property Rights (IPR) that subsist in IPR Materials and other items which are:

- a. owned by or licensed to you or us prior to the date of the Grant Funding Agreement; or
- b. developed by or on behalf of you or us during the Funding Period but not in connection with the Funded Activities;

"Code of Conduct" means the document entitled "Code of Conduct for Recipients of Government General Grants" available on [Codes of conduct for suppliers and grant recipients](#). Published by the Cabinet Office in November 2018, it is available (at the Commencement Date) and is updated from time to time.

[06 Code of Conduct for Grant Recipients.pdf](#), "Commencement Date" means the date on which these Terms and Conditions are accepted;

"Committed" means funding that you are contractually obliged to pay a third party in respect of any part of the Funded Activities provided i) that the relevant Funded Activities have been undertaken by the third party at the particular date ii) that the payment to a third party is approved as part of the Funded Activities and iii) the arrangement to pay the third party is on standard arms' length terms;

"Confidential Information" means any information (however conveyed, recorded or preserved) disclosed by us or you (or by our or your personnel) to the other (and/or the other's personnel) whether before or after the Commencement Date, including (without limitation):

- a. any information that ought reasonably to be considered to be

confidential (whether or not it is so marked) relating to:

- i. our or your business, affairs, customers, clients, suppliers or plans; and
 - ii. our or your operations, processes, product information, know-how, designs, trade secrets or software;
- b. any information developed by us or you in the course of delivering the Funded Activities;
- c. any Personal Data disclosed by us to you; and
- d. any information derived from any of the above, but not including:
- e. information which:
- i. was public knowledge at the time of disclosure (otherwise than by breach of condition 104);
 - ii. was in our or your possession, without restriction as to its disclosure, before receiving it from the other;
 - iii. is received from a third party (who lawfully acquired it) without restriction as to its disclosure; or
 - iv. is independently developed without access to the Confidential Information; and
- f. the content of the Grant Funding Agreement, save in respect of any information which is exempt from disclosure under the Information Acts;

“Consents” means all permits, licences, permissions, consents, approvals, certificates and authorisations (whether statutory or otherwise) and whether required in order to comply with Law or as a result of the rights of any third party;

“Crown Body” means the government of the United Kingdom (including the Northern Ireland Assembly and Executive Committee, the Scottish Executive and the National Assembly for Wales), including, but not limited to, government ministers and government departments and particular bodies, persons, commissions or agencies from time to time carrying out functions on its behalf;

“Data Protection Legislation” means (i) the UK GDPR as amended from time to time; (ii) the Data Protection Act 2018; (iii) Regulations made under the Data Protection Act 2018; (iv) the Law Enforcement Directive (Directive (EU) 2016/680);

“Department” means the Department for Education;

“EIR” means the Environmental Information Regulations 2004;

“Eligible Expenditure” means payments made by you during the Funding Period in accordance with condition 21 but which must not include Ineligible Expenditure;

“Event of Default” will have the meaning given in condition 67;

“Financial Year” means each period of 12 months from 1 April to 31 March;

“FOIA” means the Freedom of Information Act 2000 and any subordinate legislation made under that Act from time to time together with any guidance or codes of practice issued by the relevant government department concerning the legislation;

“Funded Activities” are the works to refurbish, improve, develop and/or procure (as the case may be and as detailed in the approved Grant Application) the Assets as such works may be amended in accordance with an approved Scope Change Request Form, and which works must be for educational purposes only, in delivering created or expanded school-based nursery provision;

“Funding Period” means the period commencing on and from the Commencement Date to earliest of i) the date on which we approve the Project Completion Return or ii) the date of termination, or iii) 31 March 2027 save as may be amended in accordance with any approved Scope Change Request Form;

“Grant” means, subject to the provisions of these Terms and Conditions, the sum of money we will pay to you up to the amount set out in the Grant Offer Letter;

“Grant Application” means the bid response submitted via the online portal by the applicant and any supporting information and/or images submitted via email;

“Grant Funding Agreement” means these Terms and Conditions and the Grant Offer Letter;

“Grant Offer Letter” means the letter from us to you to which this document is annexed, including its annexes and any documents referred to in it;

“Grant Manager” means the individual who has been nominated by us to be the day-to-day point of contact for you in relation to the Grant;

“HRA” means the Human Rights Act 1998 and any subordinate legislation made under that Act from time to time, together with any guidance or codes of practice issued by the relevant Government department from time to time;

“Ineligible Expenditure” means the expenditure referred to at condition 24;

“Information Acts” means the Data Protection Legislation, FOIA and the EIR, as amended from time to time;

“Intellectual Property Rights” or “IPRs” means copyright, rights related to or affording protection similar to copyright, rights in databases, patents and rights in inventions semi-conductor topography rights, trade marks, rights in internet domain names and website addresses and other rights in trade names, designs, know-how, trade secrets and any modifications, amendments, updates and new releases of the same and all similar or equivalent rights or forms of

protection which subsist or will subsist now or in the future in any part of the world;

“IPR Material” means all material produced by you or on your behalf during the Funding Period (including but not limited to, materials expressed in any form of report, database, design, document, technology, information, know how, system or process);

“Law” means any law, statute, subordinate legislation within the meaning of Section 21(1) of the Interpretation Act 1978, bye-law, right within the meaning of Section 4(1) EU Withdrawal Act 2018 as amended by EU (Withdrawal Agreement) Act 2020, regulation, order, regulatory policy, mandatory guidance or code of practice, judgment of a relevant court of law, or directives or requirements of any regulatory body with which you are bound to comply; in each case, as amended or replaced from time to time;

“Losses” means any and all losses, liabilities, damages, costs, expenses (including legal fees), disbursements, costs of investigation, litigation, settlement, judgement, interest and penalties whether arising in contract, tort (including negligence), breach of statutory duty, misrepresentation or otherwise;

“Material Breach” means any breach of one or more terms or conditions of this Grant Funding Agreement which, in the reasonable opinion of the Department, has or will have a serious and adverse impact on delivery of the Funded Activities and/or the Department’s ability to monitor such delivery;

“Month” means calendar month;

“Payment Profile” means the schedule of payments set out in Annex C to the Grant Offer Letter, as such the Payment Profile may be amended in accordance with these Terms and Conditions (including, without limitation, in accordance with condition 18);

“Personal Data” has the meaning in the UK GDPR;

“Post Approval Guidance” means the document entitled ‘School-based Nursery Capital Fund Post Approval Guidance’ attached with this document and updated by us from time to time.

“Prohibited Act” means:

- a. directly or indirectly offering, giving or agreeing to give to any of our servants (and/or any servants of the Crown) any gift or consideration of any kind as an inducement or reward for:
 - i. doing or not doing (or for having done or not having done) any act in relation to the obtaining or performance of the Grant Funding Agreement; and/or
 - ii. showing or not showing favour or disfavour to any person in relation to the Grant Funding Agreement;
- b. committing any offence:

- iii. under the Bribery Act 2010 (and/or any subordinate legislation made under that Act from time to time), together with any guidance or codes of practice issued by the relevant Government department concerning that Act and/or such legislation;
 - iv. under legislation creating offences in respect of fraudulent acts; and/or
 - v. at common law in respect of fraudulent acts in relation to the Grant Funding Agreement; and/or
 - c. defrauding or attempting to defraud or conspiring to defraud us or the Crown;
- “Project Completion Return” means a completed return in the form provided by us following completion of the Funded Activities;
- “Project Monitoring Return” means each monthly return submitted electronically by you about progress with the Funded Activities;
- “Project Representative” means the representative appointed by you to liaise with us about Funded Activities;
- “Provider Contribution” means the contribution from you (or a third party to you) to meet the balance of the costs not supported by the Grant (which costs would otherwise, if funded by the Grant, fall to be regarded as Eligible Expenditure) of the carrying out and completion of the Funded Activities;
- “Public Procurement Law” means the Public Contracts Regulations 2015, the Concession Contracts Regulations 2016, the Defence Security Public Contracts Regulations 2011, the Utilities and Contracts Regulations 2016, the Procurement Act 2023 and the Procurement Regulations 2024, each as may be amended, supplemented and/or replaced from time to time;
- “Scope Change Request Form” means a completed change request form (entitled “School-based Nursery Capital Fund Scope Change Request Form”);
- “School-based Nursery” for the purposes of this programme means to create or expand school-based nursery provision by using surplus space in primary-phase school buildings;
- “Secretary of State” means the Secretary of State for Education;
- “Special Payment” means any payment and/or expenditure by you to a third party where no legal obligation exists for such payment and/or expenditure;
- “Terms and Conditions” means the terms and conditions as set out in this document;
- “UK GDPR” means the General Data Protection Regulation (Regulation (EU) 2016/679) as transposed into United Kingdom national law by operation of section 3 of the European Union (Withdrawal) Act 2018, together with the Data Protection, Privacy and Electronic Communications (Amendments etc.) (EU Exit) Regulations 2019;

“Unspent” means funding that has not been spent or Committed by you;
“us/we/our” means the Secretary of State and the Department;
“VAT” means value added tax chargeable in the United Kingdom;
“you/your” means the recipient of the Grant pursuant to the Grant Offer Letter.

Grant Offer and duration of the Grant Funding Agreement

5. Payment of the Grant is subject to you complying with the Terms and Conditions of this Grant Funding Agreement (“Terms and Conditions”) and the requirements set out in the Post Approval Guidance and to such further conditions and requirements that we may from time to time specify.
6. The Terms and Conditions will subsist for a minimum period of 2 years following the date that the school-based nursery provision established using the Grant starts accepting children.

Purpose of the Grant

7. The Grant will be paid only in respect of Eligible Expenditure incurred by you to deliver the Funded Activities. Without prejudice to the forgoing provisions of this condition, the Grant must not be used to fund activities that are not Funded Activities, including, without limitation, those that may be party-political in intention, use or presentation, or to propagate a religion or belief.
8. Upon completion of the Funded Activities, the Assets must primarily be used to provide nursery places for a period of 2 successive years immediately following the end of the Funding Period.
9. The Grant will be paid by the Secretary of State pursuant to Section 14-16 of the Education Act 2002.
10. You must use the Grant for the sole purpose of the Funded Activities. Requests for changes to the Funded Activities must (where they are of the nature referred to in Section 6 of the Post Approval Guidance) be submitted to SBN.grantmonitoring@education.gov.uk or otherwise in accordance with our written instructions from time to time, using a Scope Change Request Form prior to entering into commitments for and/or incurring any liabilities in respect of activities not already specified in the Grant Application. Scope Change Request Forms will be considered on a case-by-case basis and may not be approved.
11. You must additionally comply with all applicable provisions in your [Academy](#)

[Funding Agreement](#)¹ and the [Academy trust handbook 2025](#)² (or, in the case of an organisation which is not an academy, any equivalent Funding or budget requirements of the Department or local authority) as if such requirements were incorporated into these Terms and Conditions.

Amount of Grant

12. The maximum amount of the Grant is stipulated in the Grant Offer Letter.
13. Any additional costs that arise through the carrying out and/or completion of the Funded Activities must be met by you, including (without limitation) where such additional costs:
 - a. arise in connection with the rectification of substandard and/or defective goods, works and/or services provided by third parties in connection with the Funded Activities; and/or
 - b. arise as a result of any increases in the cost of the Funded Activities whether or not due to inflation; and/or
 - c. are committed to and/or incurred by you prior to our approval of a Scope Change Request Form (save where expressly agreed by us to the contrary).
14. You must secure and contribute to the Funded Activities all other sources of funding identified in the Grant Application (including any Provider Contribution). Where the actual cost of the Funded Activities is less than the amount set out in the approved Payment Profile (including without limitation cost savings secured through efficient procurement or appropriate value engineering), the Grant will be reduced by an amount reflecting the relevant funding proportions set out in the Grant Offer Letter.
15. Where the value of the Grant exceeds £50,000, an amount equivalent to 20% of the Grant will be withheld until full project completion and sign off has been approved. Further information is set out in the Post Approval Guidance.

Payment arrangements

16. In accordance with regulations on Managing Public Money³, HM Treasury dated May 2023, the Grant (and any instalment payment of the Grant) will not

¹ <https://www.gov.uk/government/publications/academy-and-free-school-funding-agreements>

² <https://www.gov.uk/government/publications/academy-trust-handbook/academy-trust-handbook-2025-effective-from-1-september-2025>

³ https://assets.publishing.service.gov.uk/media/684ae4c6f7c9feb9b0413804/Managing_Public_Money.pdf

be paid in advance of need.

17. Subject to the provisions of these Terms and Conditions (including, without limitation, conditions 18 and 19, condition 34, condition 68 and conditions 73 to 77 (inclusive), we will pay the relevant instalment of the Grant:
 - a. in accordance with the Payment Profile;
 - b. in pounds sterling (GBP) and into a bank located in the UK; and
 - c. (in aggregate) up to the maximum stated in the Grant Offer Letter.
18. We reserve the right to vary the Payment Profile in respect of future payments of the Grant and/or (where appropriate) to require repayment of the whole or relevant part of the Grant (as the case may be) to ensure that payments are not being made in advance of need and/or to ensure that the Grant is only being paid and/or applied in respect of Eligible Expenditure, including (without limitation):
 - a. to ensure that payments made reflect progress of the Funded Activities; and/or
 - b. to reflect any underspend and/or surplus in respect of the Funded Activities and/or from other capital projects funded by us.
19. Where there is any underspend after the completion of the Funded Activities, you must notify us of and (unless where expressly agreed by us in accordance with the Post Approval Guidance) return such underspend to us. You must not use any such underspend to extend the scope of the Funded Activities and/or to deliver other goods, works and/or services without our prior written approval. Where an underspend has been identified, we may seek to recover such underspend in accordance with condition 18.
20. The Payment Profile will not commence (and we will not make any payment of Grant) until:
 - a. these Terms and Conditions have been accepted, by the return of the Terms and Conditions Acceptance Declaration and initial project monitoring form, which is included as part of the letter informing you that you have been successful in your bid, signed by your Accounting Officer or the section 151 officer at the school, trust, academy or Local Authority (as applicable), scanned and sent to SBN.grantmonitoring@education.gov.uk;
 - b. you have provided satisfactory evidence (where applicable to your project) that any Provider Contribution required (for example, where your project will cost more than the maximum £150,000 grant funding available) is in place, and, for the avoidance of doubt, expenses you or a third party incur prior to the satisfaction of the above requirements which may otherwise fail to be regarded as Eligible Expenditure may not be paid; and
 - c. for the avoidance of doubt, expenses you or a third party incur prior to the

satisfaction of the above requirements which may otherwise fail to be regarded as Eligible Expenditure may not be paid.

Eligible Expenditure

21. Eligible Expenditure consists of payments made by you for the purposes of the carrying out and completion of the Funded Activities. Eligible Expenditure does not include any VAT that is recoverable from HM Revenue and Customs but can include:
 - a. fees charged or to be charged to you by the external auditors/accountants for reporting/certifying that the Grant paid was applied to its intended purposes; and
 - b. retentions for building work where these are held by you until the work has been completed satisfactorily.
22. A payment is defined as being made by you at the moment when money passes out of your control. This may take place when:
 - a. legal tender is passed to a contractor and/or supplier;
 - b. a letter is posted to a contractor or supplier containing a cheque; or
 - c. an electronic instruction is sent to a bank to make a payment to a contractor or supplier by direct credit or bank transfer.
23. You must not deliberately incur liabilities for Eligible Expenditure in advance of need; nor pay for Eligible Expenditure sooner than the due date for payment.
24. The following costs must be excluded from and do not form part of (and you must not, in any circumstances, claim the following as) Eligible Expenditure:
 - a. any and all costs that are excluded in accordance with the section titled 'What funding is available' and Annex B of the School-based Nursery Capital Grant Information for applicants;
 - b. any work that is not included in the scope of works detailed in your application (unless formally approved by us following submission of a Scope Change Request Form);
 - c. payments that support activity intended to influence or attempt to influence Parliament, Government or political parties, or attempting to influence the awarding or renewal of contracts and grants, or attempting to influence legislative or regulatory action;
 - d. activities of a political or exclusively religious nature:

- e. works or activities that you have a statutory duty to provide;
 - f. payments reimbursed or to be reimbursed by other public or private sector grants;
 - g. contributions in kind (i.e. a contribution in goods or services, as opposed to money);
 - h. depreciation, amortisation or impairment of fixed assets owned by you;
 - i. interest payments (including service charge payments for finance leases);
 - j. any gifts to individuals;
 - k. entertaining (entertaining for this purpose means anything that would be a taxable benefit to the person being entertained, according to current UK tax regulations);
 - l. statutory fines, criminal fines, penalties or damages or any associated legal costs;
 - m. bad debts to related parties; and/or
 - n. costs, liabilities and/or expenditure incurred before the grant was awarded and funding agreement signed,
("Ineligible Expenditure").
25. The amount of the Grant will be deemed to be inclusive of any VAT payable by us in respect of the Grant Funding Agreement and/or the Funded Activities and we will not pay any additional amounts in respect of VAT howsoever arising.
26. All sums or other consideration payable by you to us or provided by you to us will be deemed to be exclusive of all VAT payable and where any such sums become payable or due or such other consideration is provided you must pay to us (at the same time or, as the case may be, on demand by us) in addition to such sums or other consideration all VAT so payable upon receipt of a valid VAT invoice.

Progress reporting

27. You must provide reports on progress by completing a Project Monitoring Return form in accordance with Section 3 of the Post Approval Guidance.
28. You must also inform us as soon as practicable of any delay in the delivery of, or any matter which might impact on the scope or delivery of, the Funded Activities.

29. We will withhold payments of the Grant if you fail to provide a completed Project Monitoring Report on time and/or fail to provide such further information and/or assistance as we require pursuant to these conditions and/or the Post Approval Guidance. You will be responsible for any additional costs that arise as a result of such failure.
30. You must inform us immediately if you are experiencing any financial, administrative, operational and/or managerial difficulties that may hinder or prevent you from fulfilling your obligations under the Grant Funding Agreement.
31. You will carry out and complete the Funded Activities in accordance with the timetable set out in the Grant Application. If you fail to deliver the Funded Activities in accordance with the Grant Application, the Grant may be withdrawn and any amount of the Grant not spent by the successful completion of the project, or by 1st September 2027, is at risk of being withdrawn.
32. You will put in place appropriate information, monitoring and internal reporting systems to secure delivery which will ensure that the Grant is spent only on the Funded Activities and in line with these Terms and Conditions (including in line with the Payment Profile).
33. We reserve the right to increase the level of monitoring in respect of the Funded Activities, including site visits and visits to your premises (if different). If progress is deemed unsatisfactory and/or the Funded Activities (and/or the carrying out and completion of the Funded Activities) is not in accordance with the Grant Application and/or the initial Project Monitoring Form we reserve the right to suspend or withdraw the Grant. You will meet with us as reasonably requested.
34. Following completion of the Funded Activities, you will complete and provide to us a Project Completion Return in accordance with Sections 3 and 5 of the Post Approval Guidance, providing us with confirmation that the Grant has been spent on Eligible Expenditure. Payment of the final instalment of the Grant will be withheld until the Project Completion Return and such additional information is provided and we are so satisfied. You will be responsible for any additional costs that arise as a result of such withholding. Failure to submit a Project Completion Return within 90 days of completion of the Funded Activities will constitute a Material Breach, unless the Department is satisfied that there is an acceptable reason for the delay.

Records to be kept and retention period

35. You must:
 - a. keep, maintain and retain, and (where applicable) procure that your

contractors (and its or their sub-contractors) keep, maintain and retain, books of account and other financial documents relating to the Grant Funding Agreement, including (without limitation) money received and disbursed pursuant to the Grant and any income generated in connection with the use and/or enjoyment of any of the Funded Activities, such documentation to include (without limitation) invoices, receipts and other accounting records; and

- b. maintain detailed records of the systems referred to in condition 43.
- 36. You must create and keep the records (and other documentation) referred to in condition 35 (and such additional information and/or documentation relating to and/or arising out of or in connection with the Grant Funding Agreement) available at any reasonable time for inspection and/or audit by (and provide copies of such records and/or other documentation upon request to) our officials and/or their representatives and/or the Controller and Auditor General of the National Audit Office, or their representatives. You will act reasonably in cooperating with any such inspection and/or audit, including by granting access to relevant documentation, premises and/or personnel (as requested).
- 37. You must retain all records, information and documentation referred to in condition 35 for at least seven years from the end date of the Grant Funding Agreement.
- 38. You must keep a register of the Assets (whether acquired, refurbished, developed and/or improved wholly or partly as a result of the Funded Activities), such register to include a description of the Asset, full details of any acquisition, refurbishment, development and/or improvement of the Asset (as the case may be), full details of the ownership of the Asset and, subject to condition 39, any disposal of the Asset.

Disposal of assets and change of use

- 39. You must seek our prior written approval if you wish to sell, dispose of or otherwise transfer or change the use of any Asset that was acquired, refurbished, developed and/or improved (whether in whole or in part) as a result of the Funded Activities. Any approval (which the Department will not unreasonably withhold or delay but in respect of which, the Department may attach conditions in its absolute discretion intended to preserve the use and/or value of the Assets for the provision of early years education) may be subject to the satisfaction of certain conditions, including (without limitation) in relation to the application of any proceeds of sale. This condition will continue for a period of 2 years from completion of the Funded Activities. For Academy Trusts, the disposal of, transfer or change of use of any asset must also be completed in compliance with the Academy Trust Handbook.

Procurement requirements, Value for Money and Subsidy Control

40. Where you procure the supply of any goods, works and/or services (including both construction and professional services) from a third party in connection with this Funding Agreement, you must develop and implement a suitable procurement strategy. You must provide the Department with a copy of that strategy on request. You acknowledge that it is your responsibility to secure any statutory approvals including, without limitation, planning permission and building regulations approval in connection with the Funded Activities. You must also ensure that:
- a. You comply in all respects with Public Procurement Law when procuring such goods, works and/or services where those regulations apply; and
 - b. You obtain best value for money by reference to all applicable statutory and non-statutory guidance, including without limitation any applicable requirements in Procurement Policy Notes or Statements, Annex 4.6 of [Managing public money](#)⁴, and the [Academy trust handbook 2025](#)⁵; and
 - c. You use a suitable framework or other appropriate competitive process to select a contractor; and
 - d. You obtain appropriate technical, legal and public procurement advice to support your activity; and
 - e. You use a suitable form of contract and specification; and
 - f. You include in your contract requirements for the contractor to maintain insurances adequate to cover risks under the building contract (including construction all risks, professional indemnity and public liability insurance).
41. You will ensure that your acceptance and usage of the Grant does not put us or any part of Crown Body in breach of the UK's obligations in respect of subsidy control or State aid obligations and must maintain appropriate records of compliance with any applicable subsidy control regime insofar as you are required by law to do so. For the purposes of ensuring compliance with this condition, the Parties hereby each acknowledge and accept that:
- a. all Eligible Expenditure claimed by you relates principally to capital projects, works, services and goods, as the case may be, procured on ordinary market terms, for facilities intended to be used in connection with the carrying out of activities the principal purposes of which are non-economic, such as the provision of education or childcare for children not offered on a commercial basis, whether by you or a third party;

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https://assets.publishing.service.gov.uk/media/684ae4c6f7c9feb9b0413804/Managing_Public_Money.pdf

⁵ <https://www.gov.uk/government/publications/academy-trust-handbook/academy-trust-handbook-2025-effective-from-1-september-2025>

- b. to the extent that economic activities are carried out in the facilities, it is likely that they would be ancillary to the non-economic activities and the value of the Grant from which they economic activities benefit from the Grant, these relative to the core non-commercial activities do would not cumulatively exceed 20% of the total Eligible Expenditure value of Grant claimed;
- c. for the avoidance of doubt, no part of the Grant may be retained by you for your own management or administration costs.

Without prejudice to condition 41(b) above, you must in any event ensure that all reasonable and appropriate measures are taken (where necessary), and maintained, to prevent the Grant from being used by you to cross-subsidise any economic activities. The Parties nevertheless each acknowledge and accept that, even if any part of the facilities in respect of which Eligible Expenditure has been claimed are let or licensed to a nursery school or childcare provider and used by that school or provider to a significant extent on a commercial basis, the risk of such commercial activities being cross-subsidised and deemed to be subsidies would be mitigated if the lease or licence is granted on terms equivalent to market terms or if the school or provider is contractually required to ensure that the different activities are suitably ringfenced.

- 42. If you enter into a contract with a third party for the provision of goods, works and/or services in connection with the Funded Activities, you must specify in any such contract that all valid invoices issued by that third party to you will be paid by you within 30 days of receipt. We will not pay (and will have no responsibility for) invoices received from third parties in connection with the Funded Activities.
- 43. You must take all reasonable steps to satisfy yourself that any third party that you engage to provide goods, works and/or services in connection with the Funded Activities is suitable in all respects to provide such goods, works and/or services.

Financial and Workforce Controls, Management and Organisation and Audit

- 44. You must have a sound system of internal financial controls (in accordance with general accounting practices having regard to the amount of funding and size of the organisation) to safeguard against fraud, theft, money laundering, terrorist financing or any other impropriety, or mismanagement in connection with the administration of the Funding and must require that the internal/external auditor's report on the adequacy or otherwise of that system. Your system must enable you, your staff and contractor and supply chain staff to report any financial irregularity, and any financial irregularity (whether proven or suspected) relating to the Funded Activities must be referred to the Department as soon as it is identified and you must explain to the Department what steps are being taken to investigate the irregularity and keep the Department informed about the progress of such investigation. The Department may then request the

referral (which the organisation is obliged to carry out) to external auditors or other third parties as required.

45. The Department will have the right, at its absolute discretion, to insist that the organisation take additional steps to address any actual or suspected fraud, theft or other financial irregularity and/or to suspend future payment of the Funding to the organisation. Any grounds for suspecting financial irregularity includes what the organisation, acting with due care, should have suspected as well as what is actually proven.
46. For the purposes of condition 45 “financial irregularity” includes (but is not limited to) potential fraud or other impropriety, mismanagement, and the use of the Funding for any purpose other than those stipulated in the Funding Agreement. The organisation may be required to provide statements and evidence to the Department or the appropriate organisation as part of pursuing sanctions, criminal or civil proceedings.
47. You must:
 - a. ensure that the systems referred to in condition 44 are the subject of internal and independent external assessment and review (including as to the adequacy or otherwise of those systems) and you must provide a report detailing the outcomes of such assessment and review as soon as reasonably practicable following a request from to do so (for academies, please refer to Academies Financial Handbook ref 2.3); and
 - b. take such steps as we, or our representatives, may require from time to time to satisfy us that such systems are appropriate to enable you to carry out and complete the Funded Activities, to achieve the objectives of this Grant Funding Agreement and/or to meet the required objectives, standards and/or practices of HM Treasury's Public Sector Internal Audit Standards and/or HM Treasury's Government Internal Audit Standards.
48. You must comply with the recommendations of the Public Accounts Committee and any other expenditure controls specified by Government.
49. You must, as soon as reasonably practicable following a request from us, provide us with independent assurance and certification that the Grant has been used for delivery of the Funded Activities, such assurance and certification may include (without limitation) at our discretion the provision by you of:
 - a. where the Grant is clearly segregated from other funds, your annual accounts audited by an independent and appropriately qualified auditor; or
 - b. where the Grant is not clearly segregated from other funds, a statement showing that the Grant has been certified by an independent and appropriately qualified auditor, accompanied by your annual audited accounts.

50. You must notify us as soon as reasonably practicable after becoming aware of any case of fraud or theft (whether proven or suspected) relating to the Funded Activities (for academies please refer to Academies Financial Handbook ref 4.8.2).

Assignment and Transfer

51. If you are re-brokered and/or taken over by or merged with and/or come under the control of another organisation (including another academy trust) you will ensure that the responsibility for the Funded Activities and the obligations and liabilities arising under the Grant Funding Agreement are expressly included in the agreements giving effect to such re-brokering, take over, merger or change of control (as the case may be).

Losses, Gifts and Special payments

52. You must obtain prior written consent from us before:
- a. writing-off any debts or liabilities;
 - b. offering to make and/or making any Special Payments; and/or
 - c. offering to give and/or giving any gifts and you must keep a record of all gifts both given and received by you,
- in each case, in connection with the Grant and/or the Grant Funding Agreement.

Marketing, advertising, and communications

53. All publicity materials related to your Funded Activities should reference the 'School-based Nursery' scheme under which the funding was awarded. These materials should include the 'Best Start in Life' branding and the appropriate 'Best Start in Life | School-based Nursery' logo.
54. This includes signage featuring the 'Best Start in Life | School-based Nursery' logo. The DfE will support the provision of signage, either through direct supply or funding. The method and timing of provision will be determined by the DfE to the grant recipient.
55. If your setting also offers a Breakfast Club and you wish to promote both services together, you may instead use the 'Best Start in Life' branding along with the following statement: *'We provide a government-funded Breakfast Club and School-based Nursery as part of Best Start in Life.'*
56. Signage may be tailored to different areas of your premises. For example, you may use the 'Best Start in Life | School-based Nursery' logo variant at the school gates and the 'Best Start in Life | Breakfast Club' logo on the breakfast club host building.

Intellectual Property Rights

57. All rights (including Intellectual Property Rights) and title in and to any Background IPRs will remain your or our property (as the case may be) or the property of your or our licensors (as the case may be).
58. All rights (including Intellectual Property Rights) and title in and to any IPR Material will vest in you (or your licensors).
59. You grant to us a non-exclusive, irrevocable and royalty-free, sub-licensable, worldwide licence to use all the IPR Material for the purpose of supporting any other development and/or refurbishment projects undertaken pursuant to or in connection with the SBN Capital Grant.
60. Ownership of third party software or other IPR to deliver services will remain with the relevant third party. You must ensure you do not breach any Crown or third party IPR.
61. You must ensure that you have obtained the relevant agreement from the third party proprietor before any additions or variations are made to the standard 'off- the-shelf' versions of any third party software and other IPR. You will obtain and maintain all appropriate licences to use the third party software.
62. Other than as expressly set out in the Grant Funding Agreement, neither you nor we will have any right to use any of the other's names, logos or trademarks without the other's prior written consent.

Insurance

63. You must ensure that adequate and appropriate insurances are in place (including third party/public liability insurance) with an insurer of good repute to cover all insurable claims and liabilities arising under or in connection with the Grant Funding Agreement and the carrying out and completion of the Funded Activities. You must provide evidence of such insurances (and to confirm they are in full force and effect) to us on request.

Changes to the Department's requirements

64. You will use your best endeavours to accommodate any changes to our needs and requirements under the Grant Funding Agreement notified to you. In the event that you do not or are not able to do so within a reasonable time after notification we may, at our discretion, reduce the amount of or withdraw the Grant.

Amendment or variation of the Grant Funding Agreement

65. Without prejudice to condition 10, no amendment or variation to the Grant Funding Agreement will be effective unless it is in writing and agreed by those authorised to do so on behalf of each of the parties.

Termination without fault

66. The Grant Funding Agreement may be terminated by either party giving at least 1 months' notice in writing.
67. In the event of a change of Government or in policy direction, this Capital Grant Funding Agreement may be terminated by us with immediate effect by notice in writing (such notice period as will be reasonable in all the circumstances).
68. If you terminate this Funding Agreement under condition 62 we may require you to repay to us the whole or part of the Grant paid to you up to the date of termination.
69. If we terminate this Funding Agreement under condition 62, we will, subject to condition 66, pay reasonable costs incurred or Committed in respect of the delivery of Funded Activities performed prior to the date of termination.
70. Reasonable costs will be identified by the Department within two months of the notice given by the Department (unless the Department agrees to extend this period in its absolute discretion).

Termination, Repayment and Recovery of Funding on an Event of Default

71. We may exercise our rights set out in condition 68 if any of the following events occur (each an Event of Default). In each case the event may be caused by acts or omissions by you as an organisation, or by any of your directors or employees (whether or not expressly acting on your behalf or authorised by you) or any representatives:
- a. you fail to comply with any of your obligations under conditions 8, 10, 27 to 34 inclusive, 35, 36, 40, 44 to 50 inclusive, 86 and 93;
 - b. you otherwise fail to comply with your obligations under the Funding Agreement, to an extent which is a Material Breach in the opinion of the Department;
 - c. you do not commence the carrying out of the Funded Activities within 3 months of the Commencement Date;

- d. you fail, in our opinion, to make satisfactory progress with the Funded Activities and, in particular, in accordance with the Grant Application;
- e. you obtain any funding from a third party which, in our opinion, undertakes activities that are likely to bring the reputation of the Funded Activities, and/or us into disrepute;
- f. you provided us with any materially misleading and/or inaccurate information in the Grant Application and/or in subsequent related correspondence;
- g. you commit (or have committed) a Prohibited Act or fail to report a Prohibited Act to us (whether such Prohibited Act is committed by you or a third party) immediately upon becoming aware of it;
- h. during the Funding Period, any of your directors, employees, servants or agents commits any dishonest or negligent act or omission, or otherwise brings the Funded Activities, the SBN Capital Grant, and/or us into disrepute, or any financial irregularity (as defined in condition 46) occurs;
- i. you:
 - i. cease to operate for any reason, or pass a resolution (or any court of competent jurisdiction makes an order) that you be wound up or dissolved (other than for the purpose of a bona fide and solvent reconstruction or amalgamation); and/or
 - ii. become Insolvent as defined by section 123 of the Insolvency Act 1986, or are declared bankrupt, or are placed into receivership, administration or liquidation, or a petition has been presented for your winding up, or you enter into any arrangement or composition for the benefit of your creditors, or you are unable to pay your debts as they fall due;
- j. a court, tribunal or independent body or authority of competent jurisdiction requires any part of the Grant paid to be recovered by reason of breach of the UK's obligations under the Trade and Cooperation Agreement or the terms of any UK subsidy control legislation; and/or
- k. you are transferred and/or taken over by or merged with and/or come under the control of another organisation (including another academy trust) which will, in our reasonable opinion:
 - i. be materially detrimental to, or result in fundamental changes to, the Funded Activities and/or the Grant Funding Agreement;
 - ii. result in the new body corporate being unable to receive the

Grant; and/or

iii. raise national security concerns.

72. Where we determine that an Event of Default has or may have occurred, we may by written notice to you (and without prejudice to any other rights under these Terms and Conditions) take any one or more of the following actions:

- a. suspend the payment of the Grant for such period as we will determine;
- b. reduce (and notify you of the reduction of) the amount of the Grant, in which case the payment of Grant will thereafter be made in accordance with the reduction;
- c. cease to make payments of the Grant to you and (in addition) require you to repay to us the whole or any part of the Grant previously paid to you. Such sums will be recoverable as a civil debt, or, at the Department's discretion, from other payments, grants or funding which would otherwise be paid or payable to you by the Department for any purpose whether or not under the terms of other agreements; and/or
- d. terminate the Grant Funding Agreement.

Transfer of Responsibility on Expiry or Termination of the Grant Funding Agreement

73. You must provide us with whatever support we may from time to time require (including, without limitation, delivery of relevant documents and data) in connection with the Grant Funding Agreement and/or the Funded Activities prior to the end of the Funding Period or earlier termination of the Grant Funding Agreement and/or the transfer of responsibility for the Funded Activities (as the case may be), including (without limitation) to ensure a smooth transfer of responsibility for the Funded Activities.

74. You must deliver a detailed written exit plan as soon as reasonably practicable following a notice to terminate the Grant Funding Agreement, (as the case may be) to provide for (amongst other things) the cessation or smooth transfer (as the case may be) of the Funded Activities following the end of the Funding Period or earlier termination of the Grant Funding Agreement.

Consequences of termination

75. Nothing in the Grant Funding Agreement will affect any provision of the Grant and/or the Grant Funding Agreement which is expressly or by implication intended to apply or to continue to apply on or after the termination (for any

reason) of the Grant Funding Agreement, or end of the Funding Period, including, without limitation, conditions 7 to 10 inclusive, 37 to 39 inclusive, 50, 79, 81, and 104.

76. We will not be liable to pay any of your costs (or those of any contractor) related to any transfer or termination of the employment of any employees engaged in the provision of the Funded Activities prior to the date of termination or end of the Funding Period, including, without limitation, where we terminate the Grant Funding Agreement.

Liability

77. We make no commitment to provide any further grant or to continue to pay the Grant after the end of the Funding Period.
78. We accept no liability for any consequences or Losses, whether arising directly or indirectly, that may arise out of or in connection with:
- a. you carrying out, completing and/or benefiting from the Funded Activities;
 - b. the use of the Grant by any person;
 - c. any reduction, suspension, cessation, withdrawal or request for repayment of the Grant; and/or
 - d. subject to condition 65, any termination of the Grant Funding Agreement for any reason and/or on end of the Grant Funding Agreement.
79. You must indemnify and hold us harmless with respect to all actions, claims, charges, demands, losses and/or proceedings suffered or incurred by us and/or made or brought against us (as the case may be) arising from or incurred by reason of your acts and/or omissions in relation to the Funded Activities, the non-fulfilment of and/or non-compliance with your obligations under the Grant Funding Agreement and/or your obligations to third parties.
80. Save in respect of any liabilities that cannot be lawfully limited, our liability to you under the Grant Funding Agreement is limited to the obligation to make payment of the Grant when due and payable in accordance with the Grant Funding Agreement.

Conflicts of interest

81. You warrant that, as at the date of the Funding Agreement, to the best of your knowledge after making reasonable inquiries, no conflict of interest is likely to arise in performing this Funding Agreement.
82. You must set up formal procedures that require your officers, members and

employees to declare any personal, business or financial interest in any matter concerning the Funded Activities and to be excluded from any discussion or decision-making relating to the matter concerned.

Information

83. If requested by us, you will promptly provide any information required about the organisation, operation and financial control of your affairs including any correspondence with your auditors. In particular any information (including, without limitation, in relation to any issues and/or concerns) relating to the Funded Activities.

Management surveys

84. You will permit and comply with any surveys of management controls and systems, including internal audit reviews, as may be required by us.

Recovery of Grant

85. Without prejudice to our other rights and remedies and to the other terms and conditions of the Grant Funding Agreement, we may at our absolute discretion withdraw, suspend or terminate payments of Grant and/or require all or part of the Grant to be repaid on demand, subject always to such terms as we may specify, if and whenever any one or more of the following events occurs:
- a. you do not comply with any of the terms and conditions of the Grant Funding Agreement or the requirements of the Post Approval Guidance;
 - b. you fail to procure completion of any of the Funded Activities by the dates required in the Grant Application, subject to any extension agreed between the parties following the issue of a Scope Change Request Form;
 - c. upon completion of the Funded Activities you fail to use the Assets primarily to support the delivery of early years education for a period of 2 years from the end of the Funding Period; or
 - d. you sell, dispose of or otherwise transfer or change the use of any Asset that was acquired, refurbished, developed and/or improved (whether in whole or in part) as a result of the Funded Activities within a period of 2 years from the end of the Funding Period without our prior written approval (which we will be entitled to give or withhold in our absolute discretion).
86. Without prejudice to condition 16 and conditions 18 to 19 (inclusive), you may not retain (and you will not be entitled to claim) any portion of the Grant that has not been used in the relevant Financial Year without our written permission. Any portion of the Grant which remains Unspent at the end of a Financial Year (or as a result of termination (for any reason), or breach of any condition, of the Grant

Funding Agreement) must be returned to us and (where applicable) not carried forward for use in the following (or any subsequent) Financial Year.

87. Any monies which we do not agree that you are entitled to retain (including, without limitation, in the circumstances contemplated in condition 18, and/or any money incorrectly paid by us to you as a result of an administrative error or otherwise, in respect of which you will notify us promptly of such payment) must be repaid to us within 30 days of a request by us to do so. If any amount payable by you or repayable to us in accordance with this condition or any other provision of the Grant Funding Agreement is not paid within 30 days of a request for payment; we reserve the right to unilaterally deduct that amount from any other sum which is due or which may later become due to you under the Grant Funding Agreement or any other agreement or contract you may have with us, or pursue civil recovery action against you.
88. If you are wound up or go into liquidation, administration, receivership, or bankruptcy, or enter into any compromise or other arrangement of your debts with your creditors, then we will be entitled to recover any Grant money that has not been spent and withhold any further payments of the Grant. If any of the money is held by your contractors, you must make best efforts to recover it.
89. We will only pay up to or an agreed percentage of the grant awarded amount. We will not be liable for any additional costs incurred.

Code of Conduct for Grant Recipients

90. You agree to comply with the Code of Conduct and ensure that your representatives undertake their duties in a manner consistent with the principles set out in the Code of Conduct. You must immediately notify us if you become aware of any actual or suspected breaches of the principles outlined in the Code of Conduct.
91. You must immediately notify us if you become aware of any actual or suspected breaches of the principles outlined in the Code of Conduct.
92. You acknowledge that a failure to notify us of an actual or suspected breach of the Code of Conduct may result in us immediately suspending any further obligation to pay any Grant until remedial action has been taken to our satisfaction, terminating the Funding Agreement and taking action to recover some or all of the Grant paid to you.

Revision

93. The Grant Funding Agreement may be reviewed. After consultation with you, we may revise or revoke any provision of the Grant Funding Agreement.

Your Project Personnel

94. You must ensure that you employ or engage suitable personnel to manage the delivery of the Funded Activities. For the avoidance of doubt you may not use the Funding to cover employment costs of any internal staff employed or engaged for this purpose.
95. You acknowledge that all personnel employed, or otherwise engaged, by you in the conduct of the agreed Funded Activities will be your sole responsibility.
96. You must have appropriate policies in place at all times to help you comply with the law and good practice in employment including (without limitation) the Equality Act 2010.

Statutory Obligations, Consents and other Requirements

97. You will adhere to and comply with your obligations under Law, including, without limitation, under the Information Acts and the HRA, and relating to anti- bribery and anti-corruption.
98. You hereby acknowledge that we are subject to requirements under the Information Acts. Where requested by us, you will provide reasonable assistance and cooperation (including the provision of any relevant information and/or documentation) to us to assist us to comply with our information disclosure obligations.
99. On request from us, you will provide us with all such relevant documents and information relating to your data protection policies and procedures as we may reasonably require.
100. You acknowledge that we, acting in accordance with the codes of practice issued and revised from time to time under the Information Acts, may disclose information concerning you and the Grant Funding Agreement without consulting you.
101. You will take reasonable steps to notify us as soon as reasonably practicable of a request for information to the extent that it is permissible and reasonably practical for you to do so. Notwithstanding any other provision in the Grant Funding Agreement, we will be responsible for determining in our absolute discretion whether any information is exempt from disclosure in accordance with the Information Acts.
102. You will be responsible for identifying, obtaining, implementing (in accordance with their terms) and maintaining any Consents arising out of or in connection with the performance of your obligations under the Grant Funding Agreement and/or the carrying out and completion of the Funded Activities and/or the operation and maintenance of the Assets. These Terms and

Conditions do not (and will not) imply Secretary of State approval in respect of any matter for which approval or consent would otherwise be required to be obtained from the Secretary of State, including (without limitation) for significant changes to funding agreements or any land transactions (including, without limitation, acquisitions, sales and/or leases of property) required to deliver, or to contribute funds for, the Funded Activities. You will be required to seek such approval and/or consent separately as necessary.

103. Health and Safety – You must ensure (and provide evidence if requested by the Department) that you have knowledge and understanding of how you will fulfil your obligations under the Construction (Design and Management) Regulations 2015 (CDM 2015). You will have to comply with your CDM 2015 duties. This will include making sure that other duty holders working on the project comply with their CDM 2015 duties and monitoring CDM 2015 compliance on the project. Your duties can be carried out with the support of a competent Construction Health and Safety Practitioner.
104. You will ensure that the buildings and/or facilities arising out of the carrying out and completion of the Funded Activities will, where you are a school or academy, be designed to achieve the sustainability and design standards within Output Specification 2021 (S21), unless otherwise agreed with us.
105. Notwithstanding the above, you must comply with any local planning or other requirements which require higher standards.

Data Protection

106. You and we will adhere to and comply at all times with our respective obligations under Data Protection Legislation. Your agreement of these Terms and Conditions also confirms that you have read and understood the Department's [Personal Information Charter](#)⁶. This details how the Department collects and uses any personal data.
107. Given the nature of the Grant Funding Agreement and the Funded Activities, we do not envisage that you or we will process any Personal Data for or on behalf of the other, under or in connection with the Grant Funding Agreement and/or the Funded Activities. Where and to the extent that in undertaking the obligations set out in the Grant Funding Agreement or performing the Funded Activities, you or we anticipate that the other will process any Personal Data for and on behalf of the other, you or we must notify the other and you and we will agree a variation to the Grant Funding Agreement to incorporate appropriate provisions in accordance with Article 28 of the UK GDPR, or as otherwise required by the Data Protection Legislation.

⁶ <https://www.gov.uk/government/organisations/department-for-education/about/personal-information-charter>

Confidentiality and Transparency

108. Except to the extent set out in this condition 104 or condition 105 or where disclosure is expressly permitted, we and you must treat all Confidential Information belonging to the other as confidential and must not disclose any Confidential Information belonging to the other to any person without that other's prior written consent, except to such persons who are directly involved in the provision of the Funded Activities and who need to know the information.
109. You give your consent for us to publish the Grant Funding Agreement in any medium in its entirety (except, without prejudice to condition 105, for any information which is exempt from disclosure under the Information Acts and/or the Data Protection Legislation, which will be redacted), including from time to time any agreed changes to the Grant Funding Agreement.
110. Nothing in these conditions will prevent us from disclosing any information:
- a. for the purpose of the examination and certification of our accounts and/or pursuant to section 6(1) of the National Audit Act 1983;
 - b. to any government department, consultant, contractor or other person engaged by us, provided that we will only disclose information which is necessary for the purpose concerned and obtains appropriate confidentiality undertakings in relation to such information;
 - c. where disclosure is necessary to enable the Department to exercise its rights under the Funding Agreement; and/or
 - d. where disclosure is required by Law.

Interpretation and Resolution of Disputes

111. You and we must seek to resolve questions arising on the interpretation of the arrangements in the Grant Funding Agreement.
112. You and we must use all reasonable endeavours to resolve in good faith, and settle amicably, any dispute that arises during the continuance of the Grant Funding Agreement.
113. In the event that a dispute arises as a result of the Grant and/or the Grant Funding Agreement, the dispute must be referred in the first instance to your Project Representative and our Grant Manager.
114. If the dispute cannot be resolved by these representatives within a maximum of 30 days, or a longer period agreed between the parties, from the date you were informed of the Department's decision, then the matter may be escalated to the Spending Manager and equivalent in your Organisation.

Further escalation to the Senior Responsible Officer for the Department and your Chief Executive, or their delegated authorities may be used, if necessary.

115. If the dispute cannot be resolved within 30 days of the escalation date to the Senior Responsible Officer, or their delegated authority, then the Department's final decision will be confirmed in writing by our Senior Responsible Officer, or their delegated authority.

Notices

116. All notices and communications in relation to the Grant Funding Agreement must be in writing and will be deemed to have been duly given if personally delivered, e-mailed, or mailed (first class postage prepaid) to the address of the relevant party as stated in the Grant Offer Letter. All notices and other communications must be marked for the attention of the Grant Manager (for us) and the Project Representative (for you).

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- 117. If personally delivered or e-mailed all such communications will be deemed to have been given when received (except that if received on a non-working day or after 5.00pm on any working day, they will be deemed received on the next working day) and if mailed all such communications will be deemed to have been given and received on the second working day following such mailing.

Third Party Rights

118. No term of the Funding Agreement is enforceable under the Contracts (Rights of Third Parties) Act 1999 by a person who is not party to the Funding Agreement.

Governing law

119. The Grant Funding Agreement will be governed by and construed in accordance with the law of England and Wales and you and we irrevocably submit to the exclusive jurisdiction of the courts of England and Wales.



Department
for Education

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