

Catholic Multi Academy Model
(for Mainstream Academies and 16-19 Academies)

THE ROMERO CATHOLIC ACADEMY

MASTER FUNDING AGREEMENT

For a Catholic Multi Academy

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ACADEMIES

MASTER FUNDING AGREEMENT

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SCHEDULE 1

Model Supplemental Funding Agreement for a Catholic Multi Mainstream Academy

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INTRODUCTION

- 1) This Agreement is made under section 1 of the Academies Act 2010, between the Secretary of State for Education (“the Secretary of State”) and The Romero Catholic Academy (the “Company”).
- 2) The Company is a company incorporated in England and Wales, limited by guarantee with registered Company number .
- 3) The Company intends to establish and maintain, and to carry on or provide for the carrying on of a number of Academies in accordance with this Agreement and the Supplemental Agreements.
- 4) This Agreement and the Supplemental Agreements will apply in respect of an Academy from such time as a Supplemental Agreement relating to that Academy shall have been entered into between the Secretary of State and the Company.
- 5) The following expressions used in this Agreement have the respective meanings assigned to them by the numbered clauses of this Agreement referred to immediately after the reference to the expressions -
 - a) “Academies Financial Handbook” - clause 67;
 - b) "Academy Committee" – clause 15;
 - c) “Accounting Officer” – clause 66;
 - d) "Annual Letter of Funding" - clause 60;
 - e) "Capital Expenditure" - clause 37;
 - f) “Capital Grant” – clause 37;
 - g) "EAG" - clause 36;
 - h) "GAG" – clause 36;
 - i) “Recurrent Expenditure” – clause 36;
 - j) "specified work" – clause 20;
 - k) “Start-up Period” – clause 50;

- l) "transferred staff member" – clause 20A;
- 6) In this Agreement the following words and expressions shall have the following meanings:-

“Academy Financial Year” means the year from 1st September to 31st August or such other period as the Secretary of State may from time to time specify by notice in writing to the Company;

“Academy” means a Mainstream Academy in respect of which a Supplemental Agreement has been entered into between the Secretary of State and the Company and the expression “Academies” shall refer to all or any of such Academies;

“admission requirements” – are annexed to the relevant Supplemental Agreement;

"the Articles" means the Articles of Association of the Company for the time being in force;

“this Agreement” means this agreement and its annexes and a reference in this Agreement to a numbered clause or annex is a reference to the clause or annex of this Agreement bearing that number or letter as the same may be amended or supplemented from time to time;

“Business Day” means any day other than a Saturday, Sunday, Christmas Day, Good Friday or a day which is a bank holiday with the meaning given to that expression in the Banking and Financial Dealings Act 1971;

"Catholic" means in full communion with the See of Rome;

“Control” in relation to a body corporate (‘Entity’) means either the legal or beneficial ownership of 30 per cent or more of the issued shares in the Entity ordinarily having voting rights or the power of a person (‘A’) otherwise to secure –

- (a) either by means of the holding of shares in that Entity or having an interest conferring voting rights at general meetings of the membership of the Entity or of any other body corporate;
- (b) by virtue or any powers conferred by the Articles or other document regulating that Entity or any other Entity or partnership including, without limitation, the power to appoint or remove a majority of the directors thereof, or
- (c) by virtue of any agreement, understanding or arrangement between any person or persons,

that the affairs of the first-mentioned Entity are conducted in accordance with the wishes of A and 'Controls' shall be construed accordingly;

"DfE" means Department for Education and any successor;

"Diocesan Bishop" means the Bishop of the Diocese and includes any person, agency or office exercising ordinary jurisdiction in his name;

"Diocese" means the Catholic diocese in which the relevant Academy is situated;

"Early Years Provision" has the same meaning as that given it by s.20 Childcare Act 2006 , provided that, for the avoidance of doubt, pupils who:

(a) attend the Academy;

(b) have not yet reached the age of five and are in a reception class; and

(c) in respect of whom the Academy Trust may otherwise charge a fee under clause 13(f), shall be excluded from the definition;

"Land" means all and any part of the land (including for the avoidance of doubt all buildings, structures, landscaping and other erections) leased or which is leased in the future to the Company by an LA for use by the Academies established by and under the control of the Company;

"LA" means the Local Authority in the area in which the relevant Academy is situated;

"Mainstream Academy" means an Academy meeting the requirements referred to in clause 12;

"Memorandum" means the memorandum of association of the Company for the time being in force;

"parents" means parents or guardians;

"persons" includes a body of persons, corporate or incorporate;

"Premises" means all and any part of the land (including for the avoidance of doubt all buildings, structures, landscaping and other erections) leased or which is leased in the future to the Company by the Trustees for use by the Academies established by and under the control of the Company;

"Principal" means the head teacher of an Academy;

“Principal Regulator” means the body or person appointed as the Principal Regulator under the Charities Act 2011;

"Property means the Land and the Premises;

"Scheme of Delegation" means the Scheme of Delegation for the Academy as provided under the Articles;

references to “school” shall where the context so admits be references to an Academy;

“SEN” means special educational needs, and the expressions “special educational needs” and “special educational provision” have the meaning set out in section 312 of the Education Act 1996;

“SENCO” means Special Educational Needs Co-ordinator;

“Statement of SEN” means a statement made under section 324 of the Education Act 1996;

any reference to a statute or statutory provision shall include any statute or statutory provision which replaces or supersedes such statute or statutory provision including any modification or amendment thereto;

“Supplemental Agreement” means an agreement supplemental to this Agreement, substantially in the form set out in Schedule 1 to this Agreement to be entered into by the Secretary of State and the Company pursuant to which the Company agrees to establish and maintain, and to carry on or provide for the carrying on, and the Secretary of State agrees to fund, an Academy in accordance with the terms and conditions of that Supplemental Agreement and this Agreement;

"Trustees" means the Birmingham Roman Catholic Diocesan Trustees Registered being the body corporate under Part 12 of the Charities Act 2011 for the Trustees of the Birmingham Diocesan Trust registered charity number 234216 of Cathedral House, St Chad's, Queensway, Birmingham B4 6EX;

7) The Interpretation Act 1978 shall apply for the interpretation of this Agreement and any Supplemental Agreement as it applies for the interpretation of an Act of Parliament.

8) Expressions defined in this Agreement shall have the same meaning where used in

any Annex to this Agreement or Supplemental Agreement.

9) Questions arising on the interpretation of the arrangements in this Agreement shall be resolved by the Secretary of State after consultation with the Company

10) Section 1 (3) of the Academies Act 2010 states that -

“(3) An Academy agreement is an agreement between the Secretary of State and the other party under which-

(a) the other party gives the undertakings in subsection (5), and

(b) the Secretary of State agrees to make payments to the other party in consideration of those undertakings.”

LEGAL AGREEMENT

11) In consideration of the Company undertaking to establish and maintain, and to carry on or provide for the carrying on of a number of schools / independent schools in England meeting the requirements referred to in clause 12 (“**the Mainstream Academies**”), the Secretary of State agrees to make payments to the Company in accordance with the conditions and requirements set out in this Agreement and Supplemental Agreements. If it is agreed between the Secretary of State and the Company that the Company will establish and maintain, and to carry on or provide for the carrying on of an Academy, the parties will enter into a Supplemental Agreement in relation to that Academy. For the avoidance of doubt, any obligations imposed upon or powers given to an Academy by this Agreement or any Supplemental Agreement are also imposed upon the Company.

REQUIREMENTS OF A MAINSTREAM ACADEMY

12) The requirements of a **Mainstream Academy** are those set down in section 1A of the Academies Act 2010.¹

12A) Number not used

12B) Number not used

¹ Any Supplemental Funding Agreement entered into in relation to an Academy which is a “selective school” within the meaning of Section 6(4) of the Academies Act 2010 will clarify that section 1A(1)(c) (requirement to provide education for pupils of different abilities) will not apply.

REQUIREMENTS OF A CATHOLIC MULTI ACADEMY

- 12C) In addition to clauses 11 and/or 12 above where applicable, the parties acknowledge that an additional requirement of this Company is that it is a Catholic Multi Academy and that each Academy is to be conducted as a Catholic school in furtherance of the Object of the Company set out in the Articles.

CONDITIONS OF GRANT

General

- 13) Other conditions and requirements in respect of an Academy, unless specified otherwise in a Supplemental Agreement, are that:
- a) the school will be at the heart of its community, promoting community cohesion and sharing facilities with other schools and the wider community;
 - b) there will be assessments of pupils' performance as they apply to maintained schools, and the opportunity to study for qualifications in accordance with clause 30 d);
 - c) in respect of **Mainstream Academies**, the admissions policy and arrangements for the school will be in accordance with admissions law, the Diocesan Bishop's model admissions policy from time to time annexed to the Scheme of Delegation to the extent permitted by law, and the DfE Codes of Practice, as they apply to maintained schools;
 - d) teachers' levels of pay and conditions of service for all employees will be the responsibility of the Company;
 - e) there will be an emphasis on the needs of the individual pupils including pupils with SEN, both those with and without statements of SEN;
 - f) there will be no charge to pupils (or their parents or guardians) in respect of admission to, or attendance at the school and subject to clause 34(e) the school will only charge pupils where the law allows maintained schools to charge.
 - g) the Company shall as soon as reasonably practicable establish an appropriate mechanism for the receipt and management of donations and shall use reasonable endeavours to procure donations through that mechanism for the purpose of the objects specified in the Articles.

- 13A) Clause 13 f) does not prevent the Company receiving funds from a local authority or a charity in respect of the admission of a pupil with SEN to an Academy.

Governance

- 14) Each Academy will be governed by the Company. The Company shall have regard to (but for the avoidance of doubt shall not be bound by) any guidance as to the governance of Academies that the Secretary of State may publish.
- 15) The Company shall establish, for each Academy, an Academy Committee under a legally binding Scheme of Delegation in the form attached to the Articles of Association. The role of the Academy Committee and the membership of it shall be set out in the Scheme of Delegation but the Company will, as a minimum, ensure that:
- a) two parents of pupils at the Academy (to be elected by the parents of registered pupils of the Academy) shall be members of the Academy Committee;
 - b) up to two employees at the Academy (to be elected by employees of the Academy) shall be members of the Academy Committee; and
 - c) any advice of the Academy Committee is brought to the attention of the Directors of the Company.
- 15A) The Company must not amend or remove the provisions in its Articles relating to the appointment or election or the resignation or removal of Directors or Members (“**the Governance Articles**”) without the Secretary of State’s consent.
- 15B) Before any change to the Governance Articles is proposed the Company must give notice to the Secretary of State of:
- a) the proposed amendment or removal; and
 - b) the reason for it.
- 15C) If the Secretary of State consents to the proposed changes, the Company shall resolve to amend the Articles as soon as reasonably practicable and provide the Secretary of State with a copy of the resolution and the amended Articles.

Conduct

- 16) Each Academy shall be conducted in accordance with:
- a) the Articles;
 - b) all provisions by or under statute which confer rights or impose obligations on Academies including, without limitation, the independent schools standards prescribed under section 157 of the Education Act 2002 to the extent they apply to the Academy
 - c) the terms of this Agreement and the relevant Supplemental Agreement.

Disclosure and Barring Service Checks

- 17) The Company shall comply with the requirements of the Education (Independent School Standards) (England) Regulations 2010 (or such regulations as may for some time being be applicable) in relation to carrying out enhanced criminal records checks, obtaining enhanced criminal records certificates and making any further checks, as required and appropriate for members of staff, supply staff, individual Directors and Academy Representatives.
- 17A) The Company shall, on receipt of a copy of an enhanced criminal record certificate, on request from the Secretary of State or his agents, as soon as possible thereafter submit information contained in the certificate to the Secretary of State in accordance with section 124 of the Police Act 1997.

Pupils

- 18) Each **Mainstream Academy** will be an all ability inclusive² school whose requirements for:
- a) the admission of pupils to the Academy are set out in the relevant annex to the Supplemental Agreement;
 - b) the admission to the Academy of and support for pupils with SEN and with disabilities (for pupils who have and who do not have statements of SEN) are set out in Annex B to this Agreement;

² If one of the Mainstream Academies is a "selective school" within the meaning of Section 6(4) of the Academies Act 2010 then the Supplemental Funding Agreement for that Academy will provide that that Academy is not required to be an all ability inclusive school.

- c) pupil exclusions are set out in regulations made by virtue of section 51A of the Education Act 2002.

Designated Teacher for Looked after Children

- 18A) The Company will in respect of each Academy act in accordance with, and be bound by, all relevant statutory and regulatory provisions and have regard to any guidance and codes of practice issued pursuant to such provisions, as they apply at any time to a maintained school, relating to the designation of a person to manage the teaching and learning programme for children who are looked after by a LA and are registered pupils at the school. For the purpose of this clause, any reference to the governing body of a maintained school in such statutory and regulatory provisions, or in any guidance and code of practice issued pursuant to such provisions, shall be deemed to be references to the Directors of the Company.

Teachers and other staff

- 19) In respect of **Mainstream Academies:**
 - a) subject to clause 19 b), the Company shall, in accordance with any guidance which the Secretary of State may issue on the qualifications of teaching and other staff in Academies, employ anyone it deems is suitably qualified or is otherwise eligible under a contract of employment or for services to carry out planning and preparing lessons and courses for pupils, delivering lessons to pupils, assessing the development, progress and attainment of pupils, and reporting on the development, progress and attainment of pupils. The Company shall also follow any guidance which the Diocesan Bishop may issue on the qualifications of teaching and other staff as a policy pursuant to the Scheme of Delegation but in the event of any conflict the guidance issued by the Secretary of State shall take precedence over that conflicting provision in the guidance issued by the Diocesan Bishop.
 - b) clause 19 a) does not apply to anyone who:
 - i) is appointed as the SENCO by the Company under section 317(3A) of the Education Act 1996, who must meet the requirements set out in Regulation 3 of the Education (Special Educational Needs Co-ordinators) (England) Regulations 2008 (SI 2008/2945); or
 - ii) is appointed as a designated teacher for looked after children further to clause 18A.
- 20) Number not used

- 21) The Company shall ensure that all teachers employed at each Academy have access to the Teachers' Pension Scheme and, in so doing, will comply with the statutory provisions underlying the scheme.
- 22) The Company shall ensure that all employees at each Academy other than teachers have access to the Local Government Pension Scheme in accordance with the Local Government Pension Scheme (Administration) Regulations 2008 (SI 2008/239) (or such other regulations as may for the time being be applicable).
- 22A) Where a teacher employed at an Academy applies for a teaching post at another Academy, 16 to 19 Academy, maintained school, school maintained by a local authority or institution within the further education sector, the Company must at the request of the governing body or directors of the academy company of that other educational institution:
 - a) advise in writing whether or not, in the preceding two years, there has been any formal consideration of that teacher's capability to perform their role at the Academy, or the school the Academy replaced; and
 - b) provide written details of the concerns which gave rise to any such consideration of that teacher's capability, the duration of the proceedings and their outcome.

Curriculum, curriculum development and delivery and RE and collective worship

- 23) The curriculum provided by each Academy to pupils up to the age of 16 shall be broad and balanced.
- 23A) Number not used
- 23B) The Company shall publish information in relation to the current curriculum provision at each Academy. Such information shall include details relating to:
 - a) the content of the curriculum;
 - b) its approach to the curriculum;
 - c) the GCSE options (and other Key Stage 4 qualifications) or other future qualifications, as specified by the Secretary of State, offered by each Academy;
 - d) the names of any phonics or reading schemes in operation for Key Stage 1; and

- e) how parents (including prospective parents) can obtain further information in relation to the curriculum at each Academy.
- 23C) Subject to the requirements of clauses 23, 23B and 24 to 29A, the curriculum will be the responsibility of the Company.
- 24) In respect of **Mainstream Academies**, the Company shall ensure that the broad and balanced curriculum includes English, mathematics and science.
- 24A) Sections 42A (provision of careers guidance) and 45A (guidance as to discharge of duties) of the Education Act 1997 shall be deemed to apply to each Academy with the following modifications:
- a) each Academy shall be treated as falling within the meaning of “a school” under section 42A (2);
 - b) the Company shall be deemed to be the “responsible authorities” for the purposes of subsection 42A(3); and
 - c) references to registered pupils shall be treated as references to registered pupils at each Academy.
- 25) The Company shall make provision for the teaching of religious education and for a daily act of collective worship at each **Mainstream Academy**.
- 26) Each **Mainstream Academy** is designated with a Catholic religious character in accordance with section 124B of the School Standards and Framework Act 1998 or further to section 6(8) of the Academies Act 2010 and in consequence:
- a) subject to clause 28, and paragraph 4 of Schedule 19 to the School Standards and Framework Act 1998 which shall apply as if the Academies were voluntary aided schools each with a religious character, the Company shall ensure that provision is made for religious education to be given to all pupils at the Academies in accordance with the tenets of the Catholic religion;
 - b) subject to clause 28, the Company shall comply with the requirements of section 70(1) of, and Schedule 20 to, the School Standards and Framework Act 1998 as if each Academy was a foundation school with a religious character or a voluntary school, and as if references to 'the required collective worship' were references to collective worship in accordance with the tenets and practices of the Catholic religion;

- c) the Company shall ensure that the quality of religious education given to pupils at each Academy and the contents of each Academy's collective worship given in accordance with the tenets and practice of the Catholic religion are inspected. Such inspections shall be conducted by a person chosen by the Company in consultation with the Diocesan Bishop and each Academy shall secure that such inspection shall comply with the requirements set out in any statutory provision and regulations as if the Academy were a foundation or voluntary school which has been designated under section 69(3) of the School Standards and Framework Act 1998 as having a Catholic religious character.
- 27) Number not used
- 28) Section 71(1) – (6) and (8) of the School Standards and Framework Act 1998 shall apply as if each Academy were a community, foundation or voluntary school, and as if references to “religious education” and to “religious worship” in that section were references to the religious education and religious worship provided by each Academy in accordance with clause 26 above.
- 29) The Company shall have regard to any guidance issued by the Secretary of State further to section 403 of the Education Act 1996 on sex and relationship education to ensure that children at each Academy are protected from inappropriate teaching materials and they learn the nature of marriage and its importance for family life and for bringing up children. The Company shall also have regard to the requirements set out in section 405 of the Education Act 1996 which shall apply to each Academy as if it were a maintained school.
- 29A) The Company agrees to act in accordance with sections 406 (Political Indoctrination) and 407 (Duty to secure balance treatment of political issues) of the Education Act 1996 as if it were a maintained school, subject to the following modifications:
- a) references to any maintained school shall be treated as references to each Academy;
- b) references to registered pupils shall be treated as references to registered pupils at each Academy;
- c) references to the governing body or the local authority shall, in each case, be treated as references to the Company; and
- d) references to the head teacher shall, in each case, be treated as references to the

Principal of each Academy.³

Assessment

- 30) The Secretary of State will notify the appropriate body for assessment purposes about each Academy.
- a) The Company shall ensure that each **Mainstream Academy** complies with any guidance issued by the Secretary of State from time to time to ensure that pupils take part in assessments and in teacher assessments of pupils' performance as they apply to maintained schools.
- b) The Company shall report to any body on assessments under clause 30 as the Secretary of State shall require and shall provide such information as may be required by that body as applies to maintained schools.
- c) In respect of all Key Stages, the Company will submit each Academy to monitoring and moderation of its assessment arrangements as required by the Secretary of State.
- d) In relation to courses of education or training at an Academy which are funded from its GAG, the Company may offer:
- i) any course of education or training which leads to a qualification that is approved by the Secretary of State for the purposes of section 96 of the Learning and Skills Act 2000; and
- ii) any course of education or training not falling within paragraph i) if the Secretary of State gives his specific written approval for it.
- 30A) Subject to clause 30B, the Company shall ensure that the following information is published on the website for each **Mainstream Academy**:
- a) The school's most recent Key Stage 2 results as published by the Secretary of State under the following column headings in the School Performance Tables published on the Department for Education's website:
- i) "% achieving Level 4 or above in English and maths";

³ Please also see the Charity Commission guidance (CC9): "Speaking out: Guidance on Campaigning and Political Activities by Charities" <http://www.charity-commission.gov.uk/Publications/cc9.aspx>

- ii) “% making expected progress”;
 - iii) in relation to English, “% achieving Level 5 or above”; and
 - iv) in relation to maths, “% achieving Level 5 or above”.
- b) The school’s most recent Key Stage 4 results as published by the Secretary of State under the following column headings in the School Performance Tables published on the Department for Education’s website:
- i) “% achieving 5 + A* - C GCSEs (or equivalent) including English and maths GCSEs”;
 - ii) “% achieving the English Baccalaureate”; and
 - iii) “% of pupils making expected progress”.
- c) Information as to where and by what means the most recent report about the school published by the Chief Inspector may be accessed.
- d) Information as to where and by what means the School Performance Tables published by the Secretary of State on the Department for Education’s website may be accessed.
- 30B) There is no requirement to publish information under clause 30A if to do so would be in breach of the Company’s obligations under the Data Protection Act 1998.
- 30C) Subject to clause 30B, the Company shall ensure that a copy of all information referred to in clause 30A is issued to the Diocesan Bishop.

Exclusions Agreement

- 31) In respect of **Mainstream Academies**, the Company shall, if invited to do so by an LA, enter into an agreement in respect of an Academy with that LA, which has the effect that where:
- a) the Company admits a pupil to that Academy who has been permanently excluded from a maintained school, that Academy itself or another academy with whom the LA has a similar agreement; or
 - b) the Company permanently excludes a pupil from that Academy;

payment will flow between the Company and the LA in the same direction and for the same amount that it would, were that Academy a maintained school, under Regulations made under section 47 of the School Standards and Framework Act 1998 relating to the addition or deduction of a maintained school's budget following a permanent exclusion or the admission of a permanently excluded pupil. At the date of this Agreement, the applicable Regulation is Regulation 23 of the School and Early Years Finance (England) Regulations 2012.

School Meals

- 32) The Company shall, if requested to do so by or on behalf of any pupils at any Academy, provide school lunches for those pupils unless it would be unreasonable for it to do so. Subject to the provisions of clause 33 charges may be levied for lunches, but the Company shall otherwise fund the cost of such school lunches from its GAG for **Mainstream Academies**.
- 33) In relation to a pupil who is himself or whose parents are in receipt of benefits mentioned in section 512ZB of the Education Act 1996 (or equivalent provision governing the entitlement to free school lunches of pupils at maintained schools), the Company shall ensure that a school lunch is provided for such a pupil free of charge to be funded by the Company.

Charging

- 34) Sections 402 (obligation to enter pupils for public examinations), 450 - 457 (charges), 459 (regulations about information about charges and school hours), 460 (voluntary contributions), 461 (recovery of sums as civil debt) and 462 (interpretation re charges) of the Education Act 1996 (including, for the avoidance of doubt, any secondary legislation made further to those provisions) shall be deemed to apply to each Academy with the following modifications:
- a) references to any maintained school shall be treated as references to an Academy;
 - b) references to registered pupils shall be treated as references to registered pupils at an Academy;
 - c) references to the governing body or the local authority shall, in each case, be treated as references to the Company;

- d) the Company may charge persons who are not registered pupils at an Academy for education provided or for facilities used by them at that Academy; and
- e) the Company may charge registered pupils at an Academy for Early Years Provision provided in excess of the provision funded by the LA in accordance with its duty under section 7 of the Childcare Act 2006.

International Education Surveys

- 34A) Section 538A of the Education Act 1996 (power to direct participation in international surveys) shall be deemed to apply to each Academy with the following modifications:
- a) references to the governing body shall be treated as references to the Company; and
 - b) references to a community, foundation or voluntary school shall be treated as references to the Academy.

Pupil Premium

- 34B) For **Mainstream Academies** that receive Pupil Premium Funding,⁴ the Company shall publish in each Academy Financial Year information in relation to:
- a) the amount of Pupil Premium allocation that it will receive during the Academy Financial Year;
 - b) on what it intends to spend the Pupil Premium allocation;
 - c) on what it spent its Pupil Premium in the previous Academy Financial Year;
 - d) the impact in educational attainment, arising from expenditure of the previous Academy Financial Year's Pupil Premium.

DURATION OF SCHOOL DAY AND YEAR

- 34C) In respect of **Mainstream Academies**, the duration of the school day and year will be the responsibility of the Company.

GRANTS TO BE PAID BY THE SECRETARY OF STATE

⁴ The Pupil Premium is additional funding for schools to support pupils from low-income families. In instances when those pupils are in special settings, the funding can either be allocated to the setting where they are being educated, or held by the Local Authority to spend specifically on additional educational support to raise the standard of attainment for these pupils. The Local Authority must consult non-mainstream settings about how the Premium for these pupils should be used.

General

- 35) The Secretary of State shall pay grants towards Recurrent Expenditure and may pay grants towards Capital Expenditure for each Academy. Except with the Secretary of State's prior agreement, the Company shall not budget for its expenditure in any Academy Financial Year in excess of expected income (subject to clause 80). The Company shall not enter into commitments which are likely to have substantial implications for future levels of grant, or for the period for which grant may be required. No decision by the Company shall commit the Secretary of State to paying any particular amount of grant.
- 36) "Recurrent Expenditure" means any expenditure on the establishment, conduct, administration and maintenance of the Academy which does not fall within the categories of capital expenditure set out at clause 37. The Secretary of State shall pay two separate and distinct grants in respect of recurrent expenditure: General Annual Grant ("GAG") and Earmarked Annual Grant ("EAG").
- 36A) Grants paid by the Secretary of State (be they GAG, EAG or Capital Grant) shall not be used by the Company for Early Years Provision for which a Company is entitled to make a charge under clause 34(e) of this Agreement without the prior written consent of the Secretary of State except where the use of such funds is merely incidental to their use for the establishment and maintenance, carrying on or providing for the carrying on of an Academy.

Capital Grant

- 37) "Capital Expenditure" means expenditure on:
- a) the acquisition of land and buildings;
 - b) the erection, enlargement, improvement or demolition of any building including fixed plant, installation, wall, fence or other structure, or any playground or hard standing;
 - c) the installation of electrical, mechanical or other services other than necessary replacements, repairs and maintenance due to normal wear and tear;
 - d) the purchase of vehicles and other self-propelled mechanical equipment;
 - e) the installation and equipping of premises with furnishings and equipment, other than necessary replacements, repairs and maintenance due to normal wear and tear;

- f) the installation and equipping of premises with computers, networking for computers, operating software and information and communication technology equipment, other than necessary updates or necessary replacements, repairs and maintenance due to normal wear and tear;
- g) the provision and equipping of premises, including playing fields and other facilities for social activities and physical recreation other than necessary replacements, repairs and maintenance due to normal wear and tear;
- h) works of a permanent character other than the purchase or replacement of minor day-to-day items;
- i) any major repairs or replacements which are specified as constituting capital expenditure in any grant letter relating to them;
- j) such other items (whether of a like or dissimilar nature to any of the foregoing) of a substantial or enduring nature as the Secretary of State may agree shall constitute capital expenditure for the purposes of this Agreement;
- k) all professional fees properly and reasonably incurred in connection with the provision of any of the above;
- l) VAT and other taxes payable on any of the above.

“Capital Grant” means grant paid to the Company in respect of Capital Expenditure.

- 38) Where an Academy is to open in new premises, or where existing premises are to be substantially refurbished or remodelled to enable the Academy to open in such premises, the Secretary of State, may, in his absolute discretion be responsible for meeting the incurred Capital Expenditure for that Academy. To that end, the Secretary of State will consider providing funding in accordance with any arrangements as he considers appropriate.
- 38A) The parties acknowledge that while and to the extent an Academy operates from Property or any part of it pursuant to a lease with a third party (without limitation the Trustees and/or the LA) that in respect of the occupation of and use of that Property or any part of it the terms of the relevant lease shall prevail over any provisions in this Agreement.
- 39) Any Capital Expenditure incurred in respect of each Academy on which Capital Grant

payments are sought from the Secretary of State will require the specific prior written agreement of the Secretary of State, which agreement shall not be unreasonably withheld or delayed.

- 40) Any payment of Capital Grant to the Company under this Agreement is subject to the fulfilment of the following conditions:
- a) such grants are used solely to defray expenditure approved by the Secretary of State;
 - b) the Company certifying and providing evidence that all planning and other consents necessary for the development and all related infrastructure to be completed have been obtained or put in place;
 - c) Any other conditions that the Secretary of State may specify; and
 - d) the Company procuring the written consent of the Trustees in any event, and the LA where applicable, to any proposed works at the Property for which Capital Grant is requested or to the acquisition of any land and/or buildings.
- 40A) In recognition of the Trustees' interest in all Premises and the possible effect of Capital Grant paid by the Secretary of State in relation to Capital Expenditure on such Premises, the Secretary of State commits to the following:
- a) to acknowledging the Trustees' right to consent or to withhold its consent (acting reasonably) to the carrying out of any works to Premises which are to be paid for from any Capital Grant and/or the acquisition of any land to be used by an Academy;
 - b) to recognise the Trustees' interest in ensuring that any works to Premises are carried out properly; and
 - c) to acknowledge and take full account of any financial contribution that any third party, such as the Trustees, agrees to make or that the Company makes to the cost of such works other than through Capital Grant.
- 40B) In the event that the Company wishes to acquire any interest in land for the purposes of an Academy, the parties agree that the Trustees shall be given reasonable notice of the same by the Company together with a copy of all relevant information which the Company has gathered about the land and its acquisition, including (without

limitation) the likely purchase price, the amount of Capital Grant which the Company has applied or intends to apply to the Secretary of State to pay in respect of such acquisition and any conditions which the Secretary of State may have indicated he is minded to specify in respect of such Capital Grant and/or the land and the Trustees shall be afforded the opportunity to acquire such interest. In such circumstances:

- a) where the Trustees notify the Company that they agree to acquire the land for the purposes of the Academy any Capital Grant paid to the Company for the purposes of such acquisition shall be paid to the Trustees by the Company or as the Trustees direct to be used solely for the purpose of such acquisition; and
- b) following such acquisition the Trustees shall grant a lease to the Company on the same terms (*mutatis mutandis*) as the existing lease between the Company and the Trustees and, where possible, with a co-terminus expiry date and until the Trustees either acquire or notify the Company and the Secretary of State that they do not wish to acquire such land the Company shall not proceed with such acquisition.
- c) The parties acknowledge and agree that any interest in land acquired by the Trustees wholly or partly as a result of payments of Capital Grant made by the Secretary of State to the Company, and which are then paid to the Trustees, or paid as the Trustees direct, shall be considered to be land that has been acquired or enhanced in value wholly or partly by payments made by or on behalf of the Secretary of State for the purposes of Schedule 1 to the Academies Act 2010.

Arrangements for Payment of Capital Grant

- 41) Capital Grant will be paid by the Secretary of State to the Company on the basis of claims for grant submitted to the Secretary of State in the notified format with supporting invoices and certificates as required by the Secretary of State. If a dispute arises as to whether a claim is or is not acceptable both parties undertake to attempt to resolve it in good faith. In the event of such a dispute, the Secretary of State shall pay to the Company so much of the claim as shall not be in dispute.

General Annual Grant

- 41A) GAG paid by the Secretary of State in respect of an Academy shall only be spent by the Company towards the normal running costs of the Academies.
- 42) Clauses 42A to 53 apply in respect of **Mainstream Academies** only.

- 42A) GAG will be paid by the Secretary of State to the Company in order to cover the normal running costs of each **Mainstream Academy**. These will include, but are not limited to:
- a) teachers' salaries and related costs (including full and part time teaching staff and seconded teachers);
 - b) non-teaching staff salaries and related costs (including pension contributions, educational support staff, administrative and clerical staff and manual and premises related staff);
 - c) employees' expenses;
 - d) the purchase, maintenance, repair and replacement:
 - (i) of teaching and learning materials and other educational equipment, including books, stationery and ICT equipment and software, sports equipment and laboratory equipment and materials;
 - (ii) of other supplies and services;
 - e) examination fees;
 - f) repairs, servicing and maintenance of buildings (including redecoration, heating, plumbing, lighting etc); maintenance of grounds (including boundary fences and walls); cleaning materials and contract cleaning; water and sewage; fuel and light (including fuel oil, solid and other fuel, electricity and gas); rents; rates; purchase, maintenance, repairs and replacement of furniture and fittings;
 - g) insurance;
 - h) medical equipment and supplies;
 - i) staff development (including in-service training);
 - j) curriculum development;
 - k) the costs of providing school meals for pupils (including the cost of providing free school meals to pupils who are eligible to receive them), and discretionary grants to pupils to meet the cost of pupil support, including support for pupils with SEN or

disabilities (taking account of the fact that separate additional money will be available for pupils with Statements of SEN);

- l) administration;
 - m) establishment expenses and other institutional costs.
- 43) Subject to clauses to 51-52, GAG for each Academy Financial Year for each **Mainstream Academy** will include:
- a) funding equivalent to that which would be received by a maintained school with similar characteristics, determined by the Secretary of State and notified in the Annual Letter of Funding or its equivalent, taking account of the number of pupils at each Academy; and
 - b) funding in respect of functions which would be carried out by the LA if each Academy was a maintained school.
- 44) The GAG for each Academy Financial Year for each **Mainstream Academy** will also include, payable on a basis equivalent to that applied to maintained schools:
- a) funding for matters for which it is necessary for that Academy to incur extra costs, for as long as those costs are deemed necessary by the Secretary of State; and
 - b) payments in respect of further, specific grants made available to maintained schools, where the relevant Academy meets the requisite conditions and criteria necessary for a maintained school to receive these grants, such payments to be at the discretion of the Secretary of State.
- 45) Subject to clause 47, the basis of the pupil number count for the purposes of determining GAG for the Academy Financial Year in which a **Mainstream Academy** opens shall be the same basis as that used by the LA for determining the budget share of the predecessor maintained school as adjusted by numbers counted in any subsequent Schools Census, as determined by the Secretary of State.
- 46) Subject to clause 47, the basis of the pupil number count for the purpose of determining GAG for a Mainstream Academy for Academy Financial Years after the Academy Financial Year in which the Academy opens will be:

- a) for the pupil number count for pupils in Year 11 and below, the Schools Census which is used to fund maintained schools for the financial year overlapping with the Academy Financial Year in question; and
 - b) for the pupil number count for pupils in Year 12 and above, the formula which for the time being is in use for maintained schools for the calculation of pupil numbers for pupils in Year 12 and above for the purpose of calculating their level of funding.
- 47) Where either of the following conditions applies in respect of an Academy Financial Year, the basis of the pupil count shall be determined by the Secretary of State, taking account of any diseconomies of scale that the Academy will be under as a result of such condition(s) applying. The conditions are:
- a) not all planned Year-groups will be present at the Academy (that is, not all the pupil cohorts relevant to the age-range of the Academy will have some pupils present); or
 - b) the total number of pupils as measured in the Schools Census which is used to fund maintained schools for the financial year overlapping with the Academy Financial Year in question is less than 90% of the planned final size of the Academy, as specified in the Academy's Supplemental Agreement, and has not at any previous time been 90% or more of that number.
- 48) For any Academy Financial Year in which GAG for a **Mainstream Academy** has been calculated in accordance with clause 45, no adjustment shall be made to the following Academy Financial Year's formula funding element of GAG for that Academy to recognise variation from the pupil count basis used.
- 49) For any Academy Financial Year in which GAG for a **Mainstream Academy** is calculated in accordance with clause 46, no adjustment will be made to the formula funding element in the following Academy Financial Year's formula funding element of GAG unless the Company demonstrates to the satisfaction of the Secretary of State that there has been a significant impact on balances. For any other element of GAG the Secretary of State may make adjustments to recognise a variation in pupil numbers from that used to calculate the element of grant in question; the basis of these will be set out in the Annual Letter of Funding in respect of the Relevant Academy.
- 50) The Secretary of State recognises that:

- a) in relation to **Mainstream Academies** which open with intakes representing only a proportion of the final planned size of the Academy, payments based simply upon the number of pupils present are unlikely to be sufficient to meet that Academy's needs in the Academy Financial Years before all age groups are present at their planned size (the "Start-up Period") because of a lack of economies of scale. The Secretary of State may pay an appropriately larger GAG in the Start-up Period than would be justified solely on the basis of the methods set out in clauses 43-49, in order to enable the Academy to operate effectively⁵;
 - b) in relation to **Mainstream Academies** which open with pupils transferred from one or more maintained schools which have closed, additional GAG resources may be required to take account of transitional costs including any costs associated with supporting the integration of pupils from the closed schools and, where necessary, to offer a dual curriculum. If the Secretary of State has indicated that such additional GAG will be payable, the Company will make a bid for this addition to GAG based upon need and providing appropriate supporting evidence.
- 51) During the Start-up Period or during the period when year groups are present who have transferred from a predecessor school or schools, the Secretary of State will pay a further element of GAG additional to that calculated in accordance with the methods set out in clauses 43-49 to allow the relevant **Mainstream Academy** to:
- a) purchase a basic stock of teaching and learning materials (including library books, text books, software, stationery, science equipment and equipment for physical education) and other consumable materials; and
 - b) meet the costs associated with the recruitment and induction of additional teaching and other staff.

After the Start-up Period these costs will be met through the ordinary GAG.

- 52) The Secretary of State recognises that if he serves notice of intention to terminate a Supplemental Agreement in respect of an Academy the intake of new pupils during the notice period is likely to decline and that in such circumstances payments based simply upon the number of pupils attending the relevant **Mainstream Academy** are unlikely to be sufficient to meet that Academy's needs during the notice period. The

⁵ Note that a larger GAG for the Start-Up Period is not applicable to schools applying to convert further to the Academies Act 2010.

Secretary of State undertakes to pay a reasonable and appropriately larger GAG with respect to that Academy in the notice period than would be justified solely on the basis of the methods set out in clauses 43-49, in order to enable the Academy to operate effectively.

- 53) The Secretary of State also recognises that if this Agreement or a Supplemental Agreement is terminated for any reason by either party the number of pupils at the relevant **Mainstream Academy or Mainstream Academies** is likely to decline. In these circumstances both parties undertake to attempt to resolve issues arising from such termination in good faith and with the aim of protecting the interests and the education of the pupils at the Academy or Academies.
- 54) Number not used.

Earmarked Annual Grant

- 55) Earmarked Annual Grant (“EAG”) may be paid by the Secretary of State to the Company in respect of either Recurrent Expenditure or Capital Expenditure for such specific purposes as may from time to time be agreed between the Secretary of State and the Company and described in the Annual Letter of Funding for that Academy provided that where the EAG relates to Capital Expenditure the Trustees and/or the LA where applicable, give their consent in advance to such purposes in writing. The Company shall only spend EAG in accordance with the scope, terms and conditions of the grant set out in the relevant Annual Letter of Funding.
- 56) Where the Company is seeking a specific EAG in relation to any Academy Financial Year, it shall submit a letter outlining its proposals and the reasons for its request to the DfE accompanied by the Trustees' and/or the LA's written consent to the specific purpose for which any Capital Expenditure element of the EAG is proposed.

Arrangements for Payment of GAG and EAG

- 57) The Secretary of State shall notify the Company at a date preceding the start of each Academy Financial Year of the GAG and EAG figures in respect of each Academy which, subject to Parliamentary approval, the Secretary of State plans for that Academy Financial Year and of the assumptions and figures on which these are based.
- 58) If GAG or EAG is calculated incorrectly due to a mistake of the Secretary of State then:

- a) if this leads to an underpayment of GAG, the Secretary of State will correct the underpayment in subsequent Academy Financial Years;
 - b) if this leads to an overpayment of GAG, the Secretary of State reserves the right to recover any overpaid grant in subsequent Academy Financial Years, as appropriate, having considered all the relevant circumstances and taking into account any representations from the Company.
- 59) If GAG or EAG is calculated incorrectly because the Company provides incorrect information to the Secretary of State then;
- a) if this leads to an underpayment of GAG, the Secretary of State may correct the underpayment in subsequent Academy Financial Years;
 - b) if this leads to an overpayment of GAG, the Secretary of State reserves the right to recover any overpaid grant in subsequent Academy Financial Years, as appropriate, having considered all the relevant circumstances and taking into account any representations from the Company.
- 60) The amounts of GAG for an Academy Financial Year will be determined annually by the Secretary of State. The amount of GAG for each Academy for the initial Academy Financial Year will be notified to the Company in a funding letter at a date preceding that year. For subsequent years the amount of GAG for each Academy will be notified to the Company in a funding letter preceding that Academy Financial Year (the "Annual Letter of Funding"). The Annual Letter of Funding for each Academy will not include the amount that the Company will receive in respect of grants for which information to enable timely calculation is not available or is incomplete, such grants will be notified as soon as practicable later in the year. Amounts of EAG for each Academy will be notified to the Company wherever possible in the relevant Academy's Annual Letter of Funding or as soon as practicable thereafter.
- 61) The Secretary of State undertakes to pay GAG for each Academy in monthly instalments on or before the twenty fifth day of each month, each such instalment to fund the salaries and other payroll costs for the relevant month of all monthly paid employees and all other costs payable during the next following month. The detailed arrangements for payment will be set out in each Academy's Annual Letter of Funding.

Other relevant funding

- 62)⁶ Number not used
- 63) The Secretary of State may meet costs incurred by the Company in connection with the transfer of employees from any predecessor school under the Transfer of Undertakings (Protection of Employment) Regulations 2006. Payment of grant in respect of such costs is to be agreed between the parties on a case by case basis and the Company shall not budget on the basis that it will receive any grant in respect of such costs unless it is specifically notified that such grant will be paid.
- 64) The Company may also receive funding from a LA in respect of the provision detailed in statements of SEN for pupils attending an Academy in accordance with the provisions of section 483A of the Education Act 1996 and regulations made under that section. The Company shall ensure that all provision detailed in statements of SEN is provided for such pupils.
- 65) Number not used
- 65A) The Secretary of State shall meet the costs of any relevant statutory denominational inspection at any Academy requested by the Company pursuant to clause 26C of this Agreement and notified by the Company to the Secretary of State provided these do not occur in relation to that Academy more often than once every three years.

FINANCIAL AND ACCOUNTING REQUIREMENTS

General

- 66) The Company shall appoint an Accounting Officer and shall notify the Secretary of State of that appointment.
- 67) In relation to the use of grant paid to the Company by the Secretary of State, the Company shall abide by the requirements of and have regard to the guidance in the Academies Financial Handbook published by the DfE and amended from time to time and as modified to take account of the fact that the Company manages more than one Academy, which sets out in detail provisions for the financial management of each Academy including guidance on financial systems and controls and accounting

⁶ NOTE. For **Mainstream Academies** with approved Academy Action Plans see appropriate wording to be included as set out in Section B of the Appendix below.

and reporting requirements, in so far as these are not inconsistent with any accounting and reporting requirements and guidance that it may be subject to by virtue of its being a charity.

- 67A) The Company shall abide by the requirements of the current 16 to 19 Funding Guidance published by the Secretary of State and as amended from time to time, or such other guidance on 16 to 19 funding issued by the Secretary of State as may from time to time be applicable, in respect of any of its provision for persons who are above compulsory school age until the academic year in which they reach the age of 19.
- 68) The formal budget plan must be approved each Academy Financial Year by the Directors of the Company.
- 69) Any payment of grant by the Secretary of State in respect of each Academy is subject to his being satisfied as to the fulfilment by the Company of the following conditions:
- a) in its conduct and operation it shall apply financial and other controls which conform to the requirements both of propriety and of good financial management;
 - b) arrangements have been made to maintain proper accounting records and that statements of income and expenditure and balance sheets may be produced in such form and frequency as the Secretary of State may from time to time reasonably direct;
 - c) in addition to the obligation to fulfil the statutory requirements referred to in sub-clause f) below, the Company shall prepare its financial statements, Directors' report, Annual Report, Annual Accounts and its Annual Return for each Academy Financial Year in accordance with the Statements of Recommended Practice as issued by the Charity Commission and updated from time to time as if the Company was a non-exempt Charity and/or in such form or manner and by such date as the Secretary of State may reasonably direct and shall file these with the Secretary of State and the Principal Regulator before the 31st December of each Academy Financial Year;
 - d) a statement of the accounting policies used should be sent to the Secretary of State with the financial statements and should carry an audit report stating that, in the opinion of the auditors, the statements show a true and fair view of the Company's affairs and that the grants were used for the purposes intended;

- e) the Company shall ensure that its accounts are audited annually by independent auditors appointed under arrangements approved by the Secretary of State;
 - f) the Company prepares and files with the Companies Registry such annual accounts as are required by the Companies Act 2006;
 - g) the Company shall publish on its website its Annual Accounts, Annual Report, Memorandum, Articles, Funding Agreement and a list of the names of the Directors of the Company; and
 - h) the Company insures or procures insurance by another person of its assets in accordance with normal commercial practice or under the terms of any subsisting leases in respect of the leasehold interest of the Property upon which each Academy is situated.
- 70) In addition, and at his expense, the Secretary of State may instruct auditors to report to him on the adequacy and effectiveness of the accounting systems and internal controls maintained by the Company to standards determined by the Secretary of State and to make recommendations for improving the financial management of the Company.
- 71) The books of accounts and all relevant records, files and reports of the Company including those relating to financial controls, shall be open at all reasonable times to officials of the DfE and the National Audit Office and to contractors retained by the DfE or the National Audit Office for inspection or the carrying out of value for money studies; and the Company shall secure that those officials and contractors are given reasonable assistance with their enquiries. For the purposes of this clause 'relevant' means in any way relevant to the provision and use of grants provided by the Secretary of State under this Agreement.
- 72) The Company shall submit information in relation to the finances of each Academy to the Secretary of State in accordance with the requirements of the Academies Financial Handbook as amended from time to time, or as otherwise specified from time to time by the Secretary of State.
- 73) At the beginning of any Academy Financial Year the Company may hold unspent GAG for any Academy from previous Academy Financial Years amounting to such percentage (if any) as for the time being is specified in the Academies Financial Handbook, or otherwise as the Secretary of State may specify by notice in writing to

the Company prior to the beginning of that Academy Financial Year of the total GAG payable for the Academy in the Academy Financial Year just ended or such higher amount as may from time to time be agreed. The Company shall use such carried forward amount for such purpose, or subject to such restriction on its use, as for the time being is specified in the Academies Financial Handbook, or otherwise as the Secretary of State may specify by notice in writing to the Company.

- 74) Notwithstanding clause 73, any additional grant provided over and above that set out in clauses 43-49 in relation to **Mainstream Academies** and made in accordance with clauses 50-52 may be carried forward without limitation or deduction until the Start-up Period or the circumstances set out in clause 52 come to an end.
- 75) Any unspent GAG not allowed to be carried forward under clauses 73-74 may be taken into account in the payment of subsequent grant.
- 75A) GAG paid by the Secretary of State shall only be used by the Company in accordance with the Company's Objects and for the educational charitable purpose of advancing for the public benefit education in the United Kingdom, in particular but without prejudice to the generality of the foregoing by establishing, maintaining, carrying on, managing and developing Catholic Academies offering a broad and balanced curriculum. Such funds shall not be used by the Company for any other charitable purpose without the prior written consent of the Secretary of State, except where the use of such funds for that charitable purpose is merely incidental to their use for the educational charitable purpose of advancing for the public benefit education in the United Kingdom.
- 76) The Company may also spend or accumulate funds from private sources or public sources other than grants from the Secretary of State for application to the benefit of an Academy as it sees fit. Any surplus arising from private sources or public sources other than grants from the Secretary of State shall be separately identified in the Company's balance sheet.
- 77) None of the actions listed below shall be taken by the Company in relation to assets or property funded (whether in whole or in part) by the Secretary of State or otherwise coming within the meaning of publicly funded land as defined by paragraph 22(3) of Schedule 1 to the Academies Act 2010, without the prior written consent of the Secretary of State and/or of the Trustees, granted or not as the case may be, in accordance with clauses 78, 78A and 78B. The actions referred to are:

- a) except such as are given in normal contractual relations, give any guarantees, indemnities or letters of comfort;
 - b) write off any debts or liabilities owed to it, nor offer to make any ex gratia payments (such as staff severance or compensation payments);
 - c) make any sale or purchase of or otherwise dispose of freehold or leasehold property including entering into a contract to dispose of or acquire land or granting or entering into an option to acquire an interest in property; or
 - d) grant or take up any leasehold or tenancy agreement provided that the consent of the Secretary of State shall not be required for a leasehold or tenancy agreement for a term of three years or less.
- 78) The Company shall provide 30 days prior written notice to the Secretary of State and to the Trustees, whether or not the circumstances require the Secretary of State's consent, of its intention to:
- a) give any guarantees, indemnities or letters of comfort;
 - b) write off any debts owed to it or offer to make any ex gratia payments;
 - c) make any sale or purchase of or otherwise dispose of freehold or leasehold property including entering into a contract to dispose of property or granting an option to acquire an interest in property; or
 - d) take up any leasehold or tenancy agreement for a term exceeding three years.
- 78A) Where the Company proposes to carry out any of the actions referred to in clauses 77 and/or 81 and/or where the proposed action relates to any land owned or leased by the Company or proposed to be owned or leased by the Company, the action proposed is deemed to be permitted by the Secretary of State and the Secretary of State's consent is deemed to be given pursuant to clause 77 where:
- a) the transaction value is below the value for the time being specified in the Academies Financial Handbook; or in a notice in writing issued by the Secretary of State to the Company and to the Trustees from time to time; or
 - b) the action proposed is the granting of any leasehold or tenancy agreement for a term of three years or less.

Notwithstanding that the consent of the Secretary of State is not required for such actions in the circumstances stated in sub-clauses a) and b) above, the prior written consent of the Trustees is required in respect of each such action. The Company shall apply to the Trustees in writing for consent at least 30 days before the consent is required and the Trustees retain an absolute discretion to give or refuse their consent and with or without such conditions as the Trustees shall see fit to impose.

- 78B) Where an action proposed requires the consent of the Secretary of State because the circumstances set out in clause 78A do not apply, or because it is an action referred to in clauses 84, 85, 87 and/or 88, the Secretary of State shall not give consent to any disposal, acquisition or grant of security or borrowing against or putting at risk of such land without first consulting the Trustees and having due regard to any representations made by them and wherever applicable shall comply with clause 40B but otherwise his consent shall not be unreasonably withheld or delayed.
- 79) Each discovered loss of an amount exceeding the amount for the time being specified by the Secretary of State and arising from suspected theft or fraud, shall be reported by the Company to the Secretary of State at the earliest opportunity.
- 80) It is the responsibility of the Company to ensure that each Academy balances its budget from Academy Financial Year to Academy Financial Year. For the avoidance of doubt, this does not prevent the Company from:
- a) subject to clause 73, carrying a surplus from one Academy Financial Year to the next; or
 - b) carrying forward from a previous Academy Financial Year or Academy Financial Years a sufficient surplus or sufficient cumulative surpluses on grants from the Secretary of State to meet an in-year deficit on such grants in a subsequent financial year; or
 - c) incurring an in-year deficit on funds from sources other than grants from the Secretary of State in any Academy Financial Year, provided it does not affect the Company's responsibility to ensure that the Company balances its overall budget from Academy Financial Year to Academy Financial Year.
- 80A) The Company shall abide by the requirements of and have regard to the Charity Commission's guidance to charities and charity trustees and in particular the Charity

Commission's guidance in Protecting Charities from Harm ('the compliance toolkit'). Any references in this document which require charity trustees to report to the Charity Commission should instead be interpreted as references to report to the Principal Regulator.

Borrowing Powers

- 81) The Company shall not borrow against or so as to put at risk property or assets funded (whether in whole or in part) by the Secretary of State except:
- a) as may be permitted by the Academies Financial Handbook (as may be amended from time to time) and only where such action is not contrary to any provisions in any applicable lease and only with the prior written consent of the Trustees; or
 - b) otherwise only with the specific approval of the Secretary of State given in response to a written application to him by the Company and given in accordance with clause 78B.

The Company shall not operate an overdraft except to cover irregularities in cash flow. Such an overdraft, and the maximum amount to be borrowed, shall require approval by the Company in General Meeting and in writing by the Secretary of State, and shall be subject to any conditions which the Secretary of State may reasonably impose.

- 82) The Company shall provide 30 days' notice to the Secretary of State of its intention to borrow, whether or not such borrowing requires the Secretary of State's approval under clause 81 above.

Disposal of Assets

- 83A) For the avoidance of any doubt, the following clauses 83 to 89 inclusive of this Agreement do not apply to any Property which is the subject matter of a lease or leases granted by the Trustees and in which the Company's interest is as a tenant. Such Property shall not be considered to be a capital asset for the purposes of clauses 83 to 89 inclusive of this Agreement and/or clause 6.5 of any relevant Supplemental Agreement and the terms of the relevant lease or leases shall take precedence over clauses 83 to 89 of this Agreement and/or clause 6.5 of any relevant Supplemental Agreement.

- 83) Where the Company acquires a capital asset for a nil consideration or at an under

value it shall be treated for the purpose of this Agreement as having incurred expenditure equal to the market value of those assets at the time that they were acquired. This provision shall not apply to an asset transferred to the Company at nil or nominal consideration and which was previously used for the purposes of an Academy or a school at the Property and/or were transferred from an LA, the value of which assets shall be disregarded.

- 84) The sale or disposal by other means, or reinvestment of proceeds from the disposal, of a capital asset by the Company shall require the consent both of the Trustees and of the Secretary of State, granted (or not as the case may be) in accordance with clauses 78A and 78B respectively, where:
- a) the Secretary of State paid capital grant in excess of the value for the time being specified by the Secretary of State for the asset; or
 - b) the asset was transferred to the Company from an LA for no or nominal consideration.
- 85) Furthermore, reinvestment of a percentage of the proceeds of disposal of a capital asset paid for with a capital grant from the Secretary of State shall require the consent of both the Trustees and of the Secretary of State, granted (or not as the case may be) in accordance with clauses 78A and 78B respectively, and reinvestment exceeding the value for the time being specified by the Secretary of State or with other special features will be subject to Parliamentary approval. The percentage of the proceeds for which consent is needed is the percentage of the initial price of the asset which was paid by capital grant from the Secretary of State.
- 86) This clause applies in the event, during the lifetime of this Agreement, of the disposal of a capital asset for which capital grant of any amount was paid by the Secretary of State, where the asset was acquired by the Company. In this event, the Company shall repay to the Secretary of State the same proportion of the proceeds of the disposal as equates with the proportion of the original cost met by the Secretary of State, unless the Secretary of State agrees to some or all of the proceeds being retained by the Company for its charitable purposes.
- 87) This clause applies in the event, during the lifetime of this Agreement, that the Trustees and the Secretary of State consent to the disposal of an asset which was transferred to the Company from a LA for no or nominal consideration. In this event the Trustees and the Secretary of State may give consent (or not as the case may

be), in accordance with clauses 78A and 78B respectively with such conditions as to the proceeds of the disposal as the Secretary of State may consider reasonable and taking into account the amount of the proceeds to be reinvested by the Company and/or paid to the LA. Subject always to clause 78B, the Secretary of State will also have regard to any representations made by the Company and/or the LA from which the asset was transferred before giving his consent under this clause.

- 88) Except with the consent of both the Trustees and the Secretary of State, the Company shall not dispose of assets funded (whether in whole or in part) by the Secretary of State for a consideration less than the best price that can reasonably be obtained, such consent not to be unreasonably withheld or delayed.
- 89) The Company shall provide 30 days' written notice to the Secretary of State and to the Trustees of its intention to dispose of assets for a consideration less than the best price that can reasonably be obtained, whether or not such disposal requires the Secretary of State's consent under clause 88 above.

TERMINATION

- 90) This Agreement shall commence on the date hereof and continue until terminated in accordance with clause 91 or until all Supplemental Agreements have terminated.
- 91) The Secretary of State may at any time by notice in writing to the Directors, copied to the Trustees and to the Diocesan Bishop terminate this Agreement and each of the Supplemental Agreements, such termination to take effect on the date stated in the notice, on the occurrence, or where in his reasonable opinion there is a serious risk of occurrence of any of the following events:-
- a) the Company calls a meeting of its creditors (whether formal or informal) or enters into any composition or arrangement (whether formal or informal) with its creditors; or
 - b) the Company proposes a voluntary arrangement within section 1 of the Insolvency Act 1986 (as amended); or
 - c) the Company is unable to pay its debts within the meaning of section 123 of the Insolvency Act 1986 provided that, for the purposes of this Clause, section 123 (1)(a) of the Insolvency Act 1986 shall have effect as if the amount of £10,000 was substituted for £750. The Company shall not be deemed unable to pay its debts for the purposes of this clause if any such demand as is mentioned in the said section is being contested in good faith by the Company; or

- d) the Company has a receiver and manager (with the exception of Receivers and Managers or Interim Managers appointed by the Charity Commission under the Charities Act 2011), administrator or administrative receiver appointed over all or any part of its undertakings, assets or income; or
 - e) any distraint, execution or other process is levied or enforced on any of the Company's property and is not paid out, withdrawn or discharged within fifteen Business Days; or
 - f) the Company has passed a resolution for its winding up; or
 - g) an order is made for the winding up or administration of the Company.
- 92) The Company shall notify the Secretary of State as soon as possible after receiving any petition which may result in an order for the winding up or administration of the Company and shall provide an explanation to the Secretary of State of the circumstances giving rise to the service of such a petition.
- 93) Number not used

Change of Control

- 93A) The Secretary of State may at any time, subject to clause 93C) below, terminate this Agreement forthwith by notice in writing to the Company and copied to the Trustees, such termination to take effect on the date stated in the notice in the event that there is a change:
- a) in the Control of the Company;
 - b) in the Control of a legal entity that Controls the Company.

Provided that where a person ('P') is a member or director of the body corporate (as a corporation sole or otherwise) by virtue of an office, no change of Control arises merely by P's successor becoming a member or director in P's place.

- 93B) The Company shall notify the Secretary of State in writing of any change or proposed change of Control within the meaning of clause 93A) above, as soon as reasonably practicable after it has become aware of any such change or proposed change of Control.
- 93C) When notifying the Secretary of State further to clause 93B), the Company may seek the Secretary of State's agreement that, if he is satisfied that the person assuming

Control is suitable, he will not in those circumstances exercise his right to terminate this Agreement further to clause 93A).

94) Number not used

GENERAL

Information

95) Without prejudice to any other provision of this Agreement, the Secretary of State acting reasonably may from time to time call for information on, inter alia, any **Mainstream Academy** relating to but not restricted to the following matters:

- a) curriculum;
- b) arrangements for the assessment of pupils;
- c) teaching staff including numbers, qualifications, experience, salaries, and teaching loads;
- d) class sizes;
- e) outreach work with other schools and the local community;
- f) operation of the admission criteria and over subscription arrangements for the Academy including numbers of applications for places and the number and characteristics of pupils accepted for admission – for Mainstream Academies only;
- g) numbers of pupils excluded (including permanent and fixed term exclusions);
- h) levels of authorised and unauthorised absence;
- i) charging and remissions policies and the operation of those policies;
- j) organisation, operation and building management;
- k) financial controls;
- l) compliance with the requirements of the Charity Commission's guidance to charities and charity trustees and in particular the Charity Commission's guidance in the Protecting Charities from Harm ('the compliance toolkit') and in CC9: Speaking Out, Campaigning and Political Activities by Charities, as amended from time to time; and

- m) membership and proceedings of the Company and/or an Academy Committee together with any other relevant information concerning the management or governance of an Academy which, subject to clause 99), is reasonably necessary for the Secretary of State to carry out his functions generally and in relation to this Agreement or the relevant Supplemental Agreement.
- 96) The Company shall make such information available to the Secretary of State, in such form and manner and at such times as may reasonably be required. The Secretary of State shall provide the Company with such information as it may reasonably require of him for the running of an Academy.

Access by the Secretary of State's Officers

- 97) The Company shall allow access to the premises of any Academy at any reasonable time to DfE officials. All records, files and reports relating to the running of the Company and each Academy shall be available to them at any reasonable time. The Company shall provide the Secretary of State in advance with papers relating to each Academy prepared for meetings of an Academy Committee, of the Company's directors and of the members of the Company. Two DfE officials shall be entitled to attend and to speak at all such meetings, but shall withdraw from any discussion of an Academy's or the Company's relationship with the Secretary of State or any discussion of bids for funding to the Secretary of State. The Company shall take any steps which are required to secure its compliance with the obligations imposed by this clause of this Agreement.
- 98) The Company shall ensure that:
- a) the agenda for every meeting of an Academy Committee and the Company's directors;
 - b) the draft minutes of every such meeting, if they have been approved by the person acting as chairman of that meeting;
 - c) the signed minutes of every such meeting; and
 - d) any report, document or other paper considered at any such meeting,
- are made available for inspection by any interested party at the relevant Academy and, as soon as is reasonably practicable, sent to the Secretary of State upon request.

- 99) There may be excluded from any item required to be made available for inspection by any interested party and to be sent to the Secretary of State by virtue of clause 98, any material relating to:
- a) a named teacher or other person employed, or proposed to be employed, at any Academy;
 - b) a named pupil at, or candidate for admission to, any Academy; and
 - c) any matter which, by reason of its nature, the Company is satisfied should remain confidential.

Notices

- 100) Any notice or communication given under or in connection with this Agreement:
- a) shall be in writing and in English;
 - b) shall be sent to the party for the attention of the contact and at the address listed in clause 100A);
 - c) shall be sent by a method listed in clause 100C); and
 - d) is deemed received as set out in clause 100C) if prepared and sent in accordance with this clause.

100A) The addresses and contacts for communications are:

Name	Position of Contact	Address
Secretary of State	Head of Academies Division	Department for Education, Sanctuary Buildings, Great Smith Street, London SW1P 3BT
The Company	Chairman of Directors	c/o Sacred Heart Catholic Primary School, Brays Lane, Coventry, West Midlands CV2 4DW
The Diocesan Bishop	The Archbishop of the Catholic Archdiocese of Birmingham	The Archbishop acting by his agent the Director of Education at the Diocesan Education Service, St Anne's House, 61 Coventry Road,

		Coleshill, Birmingham B46 3EA.
The Trustees	Trustees to the Archbishop or Bishop (as the case may be)	Cathedral House, St Chad's Queensway, Birmingham B4 6EU

- 100B) A party may change its details given in the table in clause 100A) by giving notice, the change taking effect for the party notified of the change at 9.00 am on the date five Business Days after deemed receipt of the notice.
- 100C) Any notice or other communication required to be given to a party under or in connection with this Agreement shall be delivered by hand or sent by pre-paid first-class post or other next working day delivery service. Any notice or communication shall be deemed to have been received if delivered by hand, on signature of a delivery receipt or at the time the notice is left at the address specified in clause 100A), or otherwise at 9.00 am on the second Business Day after posting.
- 100D) This clause does not apply to the service of any proceedings or other documents in any legal action. For the purposes of clause 100, "writing" shall not include e-mail.
- 101) The service by the Secretary of State of a notice of termination of a Supplemental Agreement shall not prejudice the ability of the Company (if it wishes to do so) during the notice period to admit pupils to the relevant Academy in accordance with the provisions of this Agreement and the relevant Supplemental Agreement and to receive GAG and EAG in respect of them.

Complaints

- 102) If a complaint is made about matters arising in whole or in part prior to the opening of any **Mainstream Academy** as referred to in clause 2.4 of the relevant Supplemental Agreement, and all or part of that complaint was being or had been investigated by the Local Government Ombudsman under Part III or the Local Government Act 1974 ('Part III') or that complaint in whole or in part could have been investigated under Part III had the school the Academy replaced remained a maintained school, the Company:
- a) will abide by the provisions of Part III as though the Academy were a maintained school;

- b) agrees that the Secretary of State shall have the power to investigate the matter complained of as if it had taken place after conversion;
- c) agrees to act in accordance with any recommendation from the Secretary of State as though that recommendation had been made under Part III and the Academy were a maintained school.

102A) Number not used

102B) If at the time of the opening of any **Mainstream Academy** the investigation of a complaint made to the governing body of the school that **Mainstream Academy** replaced (as referred to in clause 2.4 of the relevant Supplemental Agreement) has not yet been completed, the Company shall continue to investigate that complaint in accordance with the complaints procedures established by that governing body.

102C) If a complaint is made to the Company about matters arising in whole or in part during the 12 months prior to the opening of any **Mainstream Academy** (as referred to in clause 2.4 of the relevant Supplemental Agreement) the Company agrees to investigate that complaint as if the matter complained of had taken place after the opening of that **Mainstream Academy**.

102D) Number not used

102E) With regards to a **Mainstream Academy**, if the Secretary of State could have given an order and/or a direction under section 496 and/or section 497 of the Education Act 1996 to the governing body of the school the Academy replaced (as referred to in clause 2.4 of the relevant Supplemental Agreement) and that order and/or direction related to matters occurring within the 12 months immediately prior to conversion, the Company agrees:

- a) the Secretary of State may give orders and/or directions to the Company as though the Academy were a maintained school and sections 496 and 497 applied to the governing body of that maintained school;
- b) to act in accordance with any such order and/or direction from the Secretary of State.

General

103) This Agreement shall not be assignable by the Company.

103A) No delay, neglect or forbearance on the part of any party to this Agreement in

enforcing (in whole or in part) any provision of this Agreement or in exercising (in whole or in part) any right or remedy conferred on it by this Agreement shall be or be deemed to be a waiver of such provision or right or remedy or a waiver of any other provision or right or remedy or shall in any way prejudice any right or remedy of that party under this Agreement or shall amount to an election not to enforce such provision or exercise such right or remedy (including, for the avoidance of doubt, any right to terminate this Agreement). No single or partial exercise of such right or remedy shall preclude or restrict the further exercise of that or any other right or remedy.

- 104) The Secretary of State and the Company recognise the difficulties in catering in this Agreement and the Supplemental Agreements for all the circumstances which may arise in relation to the Academies and undertake in good faith to conduct such consultations as may from time to time be desirable in order to promote the interests of the Academies throughout the currency of this Agreement.
- 104A) Any term of this Agreement which confers a right or benefit on a LA, the Trustees and/or the Diocesan Bishop may be enforced by that party (or their successor) pursuant to the Contracts (Rights of Third Parties) Act 1999. Subject as aforesaid, this Agreement is not intended to confer any rights on any third party pursuant to the said Act.
- 105) Termination of this agreement, for any reason, shall not affect the accrued rights, remedies, obligations or liabilities of the parties existing at termination.
- 106) This deed may be executed in any number of counterparts, each of which when executed and delivered shall constitute a duplicate original, but all the counterparts shall together constitute the one agreement.
- 107) This Agreement and any dispute or claim arising out of or in connection with it or its subject matter or formation (including non-contractual disputes or claims) shall be governed by and construed in accordance with the law of England and Wales.
- 108) The parties irrevocably agree that the courts of England and Wales shall have exclusive jurisdiction to settle any dispute or claim that arises out of or in connection with this agreement or its subject matter or formation (including non-contractual disputes or claims).

This Agreement was executed as a Deed on

2015

Executed on behalf of THE ROMERO CATHOLIC ACADEMY by:

.....
Director

.....
Director/Secretary

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

.....
Duly Authorised