

DATED

200[]

(1) **[NAME OF LOCAL AUTHORITY]**

- and -

(2) **[NAME of ACADEMY COMPANY]**

**DESIGN AND BUILD CONTRACT
DEVELOPMENT AGREEMENT**

July 2008

BUILDING SCHOOLS FOR THE FUTURE

Development Agreement and Model Lease

Development Agreement

This is the BSF standard form Development Agreement the intention of which is to minimise the time and costs of dealing with contractual and legal matters relating to the delivery of Academies under BSF by providing a robust contractual structure. This version of the Development Agreement contains changes that have arisen out of experience, feedback from interested parties and good practice developed on Academies through the National Framework route or BSF LEP route to date and has been reviewed and approved by Her Majesty's Revenue and Customs (HMRC) for use on Academy projects.

As part of the interaction with the HMRC, the stakeholders who will be signatories to the Development Agreement should be aware that the construction of the drafting is such as to reflect the principles that HMRC have provided to ensure that Local Authorities who procure the construction of the Academy buildings can recover VAT on construction costs through the operation of s33 of the 1994 VAT Act. PfS discourages any derogations from this standard form; square brackets are provided for the insertion of any local project specific data or circumstance.

The Model Lease

The form of Model Lease has also been revised to reflect experience, feedback from interested parties and good practice developed on Academy projects to date and has been reviewed and accepted by HMRC. PfS notes the nature of feedback received in respect of the Model Lease and the decision is taken to classify the Model Lease as a recommended form. For the avoidance of doubt, PfS' advice remains that stakeholders should use the Model Lease unamended given HMRC acceptance of the document and also not to cause delay to projects. In the event the stakeholders choose to make changes to the recommended form, then the following shall apply:

1. The stakeholder seeking the change shall be responsible for all legal costs arising from the changes made, including any legal costs that may be incurred by PfS;
2. The stakeholders shall be fully responsible for seeking and obtaining HMRC consent to drafting changes to the recommended form;
3. With regard to timing implications for projects where changes are made to the recommended form Model Lease by stakeholders, the following will apply;
 - (a) At Outline Business Case (OBC) submission, stakeholders will be required to confirm that they have received written HMRC acceptance of the amended form of Lease – such written HMRC confirmed should be evidenced within the OBC. Stakeholders are advised that delays are likely to the OBC approval and hence the project if this confirmation and evidence is not provided within the OBC. In the event that parties are unable to produce such evidence of HMRC acceptance, OBC will only be approved if the project stakeholders provide written binding commitment to use the recommended form unamended for the project;
 - (b) At Final Business Case (FBC) submission, stakeholders will be required to confirm that there have been no further changes to the form of Model Lease

agreed with HMRC at OBC stage and that the form of Model Lease agreed at OBC is ready for execution. In the event that there have been further changes, then evidence of acceptance of these further changes by HMRC must be provided at FBC. In the event that such evidence is not provided, then stakeholders will be required to utilise the form of Model Lease agreed at OBC for which HMRC approval was obtained.

Please note that for projects that have progressed beyond the OBC stage at 04 July 2008, such projects will be required to use the Model Lease unamended in order to avoid a delay in the procurement process.

Use of the Documents

Upon publication, PfS require this revised set of Development Agreement and Model Lease to be used for all projects.

Please note that the standard form Development Agreement and recommended form Model lease is not a replacement for independent legal advice and stakeholders should ensure that they take appropriate legal advice when utilising these documents PfS and its advisers accept no liability whatsoever for any expense liability loss claim or proceedings arising from reliance placed upon the standard form Development Agreement or the recommended form Model Lease.

INTRODUCTION TO THIS DOCUMENT

This Development Agreement has been developed to enable the procurement within a BSF local programme or under the Partnerships for Schools National Contractor Framework of an Academy on behalf of an Academy Company ("the Academy") established by its sponsors. It is assumed that the Academy will enter into a Funding Agreement with the Secretary of State. The Development Agreement will enable a Local Authority ("the Authority") to facilitate delivery of new and/or modernised school facilities designed to meet the requirements of the Academy. The Agreement has been developed in conjunction with the Department for Children Schools and Families (DCSF) who are aware of the terms of the Agreement and related lease.

DCSF will in addition to agreeing funding arrangements with the Academy agree arrangements for the financing of design and construction works with the Authority in whose area the Academy facilities are to be located. The Secretary of State has committed to providing (subject to successful completion of the business case approval procedure) the capital cost of the scheme to the extent that these fall within an agreed funding envelope. The Agreement anticipates a voluntary transfer of land from the Authority to the Academy in the form of 125 year lease at a peppercorn (in other words nominal) rent. This approach is anticipated by paragraph 2(4)(a) of Schedule 35A Part 1 to the Education Act 1996 as substituted by the Education Act 2002.

APPROACH TAKEN WHERE THERE IS A LEP¹

The Agreement assumes that the Authority will, in exercise of its powers under education law and its general power under Section 2 of the Local Government Act 2000 procure the completion of the design and construction works under a BSF standard form D&B Contract.² This approach will enable the Local Authority to hold the procurement relationship with the LEP thereby ensuring consistency in the delivery of education facilities to the requirement of the Strategic Partnering Agreement. The contracting parties to the D&B Contract will accordingly be the Authority and the LEP.

In order for the LEP to deliver the requirements for the Academy the LEP will in turn enter into a Building Contract with its identified Building Contractor.³

APPROACH WHERE THE NATIONAL CONTRACTOR'S FRAMEWORK IS ADOPTED

The Development Agreement also reflects circumstances where a Building Schools for the Future programme has yet to be established but a Local Authority desires to facilitate the establishment of an Academy within its area.

In this case the Authority will be able to take advantage of the call-off arrangements under the National Contractor's Framework. More information on this approach can be provided by Partnerships for Schools.

In this case the Authority will of course be contracting directly with a Building Contractor selected to undertake the design, development and construction of the Scheme.

¹ A LEP is a Local Education Partnership established as a public private joint venture company under the Building Schools for the Future Programme.

² This is available from Partnerships for Schools including the versions developed for the National Contractor's Framework.

³ The Authority should ensure that, to the extent they are not already picked up, the Academy-related drafting and alternatives in the Framework D&B Contract are included in the D&B Contract procured through the LEP.

ROLE OF THE DEVELOPMENT AGREEMENT

In entering into this Agreement the Academy will be confirming its intention to establish the Academy facilities and will provide a basis upon which the Authority can in turn enter into contractual arrangements through the D&B Contract for the delivery of the new and/or modernised facilities.

The Development Agreement provides a basis upon which the Academy participates in the process of design finalisation, is consulted by the Authority in relation to construction and commissioning matters and more generally and has its interests recognised in terms that the Authority will in turn take into account within its relationship with the party to whom it has awarded the D&B Contract.

As noted earlier the Authority's involvement in the project will typically also involve the making available of land to be utilised for the purpose of the Academy facilities. The Agreement envisages that a lease (within a 125 year term) will be agreed between the Authority and the Academy and that lease will be granted subsequent to the entering into of the Development Agreement (see further below).

The Agreement also envisages the novation of the D&B Contract to the Academy at a date immediately following completion of the Defects Liability Period (defined in the D&B Contract as 12 months following practical completion). The advantage of novation is that the Academy then has a direct relationship with the D&B Contractor relevant for the purpose of enforcing Intellectual Property Rights and Latent Defects. This approach also allows the Authority to drop out of the contractual chain which in the long-term is regarded as an appropriate approach.

It may be that at the time of novation particular arrangements have to be agreed between the Academy and the Local Authority relating to the ongoing management of the Building Contractor's performance although this is unlikely in view of the delay in novation taking place until the end of the Defects Liability Period. The Academy and the Local Authority would have the option to agree to defer novation until a subsequent date or alternatively enter into a side agreement between themselves as to how any outstanding matters are to be managed as between these parties.

PARTIES TO THE AGREEMENT

These are the Authority and the Academy.

Note that the term "Contractor" is adopted to refer to either the LEP or the selected National Framework Contractor.

OBJECTIVES OF THE AGREEMENT

The Development Agreement provides for the Local Authority to enter in turn into the D&B Contract relating to the design, construction and commissioning of Academy facilities – whether new build or modernised. The Agreement does not make provision for ICT or FM Services.

It should be noted that the Academy will have had the opportunity to input to design in relation to its ICT Infrastructure requirements. Academies are encouraged to specify their requirements at as early a stage as possible in order to have the full benefit of this opportunity.

In relation to ICT it should be noted that a Governing Body Agreement has been developed for use with Voluntary Aided Schools reflecting the participation of the Voluntary Aided School in ICT arrangements and the contractual provisions of that agreement relating to ICT could be adopted between a Local Authority and an Academy.

Utilising funding provided by the Secretary of State the Authority is in a position to meet (with certain exceptions such as off-site highway works which may not be funded through the Academies programme) the capital costs under the D&B Contract with the LEP or selected National Framework Contractor.

For the Authority to do so however it will wish to be confident that the Academy will ultimately assume responsibility for the outcome of the building works and the Agreement accordingly enables the Authority to novate its interest in the D&B Contract to the Academy at the point in time when the management of the project as a building project ceases.

The terms of the Development Agreement reflect the terms & conditions of the D&B Contract. There are particular obligations assumed by the Authority which it will wish to have the acknowledgement of the Academy to the terms of and its commitment to support the Authority in its contractual relationship with the provider of the Academy facilities. These terms are reflected in the Agreement.

More specifically there are matters where the Authority is likely to involve the Academy in determining outcomes, including in relation to reviewable design data and Variations to the Works. This objective is enabled through providing consultation rights within the constraints of what will frequently be a challenging timetable if delay in the construction programme is to be avoided.

The Development Agreement requires the Academy not to obstruct the performance of the D&B Contract and in the event that Compensation Events⁴ or Relief Events⁵ arise there is a regime to enable the Academy to be involved in dealing with the issues on a consultative basis. There is recognition of the possibility that the Academy or an Academy Related Party is the actual cause of the Compensation Event and not the Local Authority. Note for the purpose of the Design & Build Contracts that the Academy and Academy Related Parties are to be regarded as Authority Related Parties meaning that where the Authority has committed to doing or not doing a particular action and to securing that its related parties act in the same way the Academy and Academy Related Parties⁶ will be captured within that commitment. Under the terms of the Agreement the Academy owes the Local Authority an equivalent obligation.

Whilst Schedule 1 deals with a number of the practical issues associated with implementation of the Works under the D&B Contract there are a few matters that are sufficiently significant from the Academy perspective to warrant specific treatment within the main body of the Agreement. These matters are described in more detail below:-

⁴ Compensation Events are typically events or circumstances in which a Building Contractor would claim additional time to complete the Works and/or financial compensation where there has been for example interference with its ability to manage the construction programme as anticipated in its original proposals

⁵ Relief Events are typically insured events – the financial consequences of the event occurring can be managed through insurances held by one of the parties with insurers called upon to reimburse loss that would otherwise have fallen to be met by one of the parties to the D&B Contract

⁶ Academy Related Parties are those individuals and entities for which the Academy is required to take responsibility for under this agreement – actions of a related party are deemed to be actions of the Academy. Similar principles apply in relation to the local authority..

1. Rights of Exclusion

In drafting the Agreement regard has been had to the fact that in a limited number of cases an Academy may be developed as an existing school modernisation project. This will bring building contractor personnel into close conduct with the school, its staff and pupils and with this in mind provision is made in the Agreement to provide for a right on the part of the Academy to request the exclusion of an undesirable person from involvement with the works and presence on the construction site or within an existing school.

The approach taken is to allow the Academy to provide information to the Authority based upon which the Authority would then be required under the terms of the Agreement to form an opinion as it is entitled to do under the D&B Contract as to whether the identified individual should be subject to exclusion or removal from the areas the Contractor is entitled to have access to. Where the Authority forms the necessary opinion and requires the exclusion or removal the consequences will be:-

- 1.1 The LEP or the D&B Contractor (under the framework arrangements) will be obliged to secure removal of the individual from the site and exclude from readmission as necessary.
- 1.2 If any claim arises against the Local Authority in consequence of that action the Academy is required to support the Authority in defending the claim.
- 1.3 In the event that the defence is unsuccessful or the Academy fails to provide information to the Authority to support a defence the Academy must indemnify the Authority for the financial consequences.

2. Decant Protocol

The provisions of the D&B Contract ensure that there is an agreed arrangement for decant existing between the Authority and the LEP or the National Framework Contractor. The Academy will not be a direct party to that protocol and therefore the Authority will need to establish background arrangements with the Academy that reflects in turn the protocol.

As the protocol will need to be developed on a project specific basis no provision has been made within the Agreement defining the obligations of the parties and the way in which consultation will occur in relation to changes to the protocol. These matters should be established on a project specific basis having regard to such matters as the construction programme, phasing and use of temporary accommodation.

Consideration should also be given in relation to the provision of ICT within the Academy facilities and any decanting arrangements that should be provided for.

3. Provision of information to allow for maintenance of the facilities

The D&B Contract requires the Contractor to provide information relevant to the subsequent maintenance of the Academy facilities. The requirements in the D&B Contract are quite explicit and the Academy will look to the Authority to enforce this right in relation to the provision of the relevant information and draft programmes.

The Authority will have a vested interest in ensuring that it does enforce the provision and secures for the benefit of the Academy the necessary information as the Authority will not wish to be seen in any way as a guarantor of performance of the

building contractor or the LEP but rather a manager of the outcome of the construction works for the benefit of the Academy.

4. The D&B Contract provides for collateral warranties to be provided for the direct benefit of the Academy. The precise warranties to be provided will be project specific but the warranties will be in terms that have been developed for the National Contractor Framework and the Building Schools for the Future Programme ensuring that the collaterals secure appropriate direct rights of action on the part of the Academy in the event that issues arise.

5. Novation and Termination

As noted earlier the D&B Contract will be novated to the Academy at an appropriate point in time. The Development Agreement provides for this action to be taken at the instigation of either the Authority or the Academy and the D&B Contractor is contractually obliged through the D&B Contract to agree to novation.

The Agreement is intended to terminate at the time of novation of the D&B Contract but the parties may wish to take legal advice at that time relating to any outstanding matters under the D&B Contract which require continuing management following novation.

6. Liquidated Damages

The Academy should be aware that the Local Authority does not guarantee the completion of building works or any phase of building works by a specific date since under the D&B Contract there are a limited number of circumstances in which the Contractor can claim additional time. An example would be the occurrence of a Compensation Event or a Relief Event.

The Contractor will however be committed to completing works or any phase of works by a contractually agreed date and arrangements can be implemented to provide for liquidated damages or to cover provision of alternative accommodation in the event that there is delay.

The Local Authority through terms within the Development Agreement is encouraged so far as appropriate to pass on the benefit of any financial compensation damages or alternative accommodation arrangements to the Academy but this will entail a careful assessment by the Academy prior to both the Agreement and the D&B Contract being entered into of its own likely contractual position in the event that there is delay in completion and the Academy being placed in a position to take up occupation of the buildings. Particular consideration should be given to any contractual arrangements the Academy proposes to enter into with third parties who may plan to start performing the delivery of services to the Academy on a contractually agreed date – it is in aspects like that where liquidated damages may become appropriate. Advice should always be taken on this matter on a project specific basis.

PROPERTY INTERESTS – LICENCE AND LEASE ARRANGEMENTS

The Development Agreement incorporates an agreement for lease. This provides that the long lease, the agreed form of the which is annexed to the Agreement, will be granted by the Authority to the Academy on the “Completion Date”, which is the day following the date of expiry of the defects liability period, (as described in the D&B Contract). The Agreement sets out various provisions relating to the grant of the long lease, title and other matters to which

the Academy will be taking subject, at the time of the grant of the long lease. The long lease will authorise the occupation by the Academy of the refurbished buildings or new build for 125 years, subject to the covenants and conditions as set out in the long lease.

The Development Agreement also incorporates provisions for the granting of a non-exclusive occupational licence by the Authority to the Academy prior to the grant of the long lease. The basis of the occupation pursuant to this licence is set at schedule 4 to the Agreement. The purpose of the licence is to permit the Academy in certain circumstances to occupy the building (whether existing or new build) prior to the grant of the long lease, during either the development works and/or defects liability period.

The timing of the grant of the occupational licence under the terms of the Agreement will be dependent upon whether the development works being carried out comprise: refurbishment of existing buildings; new build on a site where there are existing buildings which can be occupied during the works; or new build on a new site (where the Academy is to open in the new build). We explain below the timing of the grant of the occupational licence, and also the requirement for a short term lease to be granted in certain circumstances:

REFURBISHMENT OF EXISTING BUILDINGS

Where existing buildings are to be refurbished for long term occupation by the Academy, the Academy will be permitted to enter into occupation of the existing buildings pursuant to the occupational licence on exchange of the Development Agreement. The Academy will continue to occupy the existing buildings pursuant to this licence until the expiry of the defects liability period for the refurbishment works, whereupon the long lease will be granted, and the licence will automatically determine.

In the event that the Academy needs to take up accelerated occupation, i.e. take up occupation prior to exchange of the Agreement, it will be permitted to do so pursuant to a short term lease. This is a separate document which will authorise the occupation by the Academy of the buildings for a length of term to be agreed between the Local Authority and the Academy, prior to exchange of the Agreement. This lease will be in a form to be agreed between the Local Authority and Academy and will include a break clause which provides that the short term lease will immediately determine on exchange of the Agreement, whereupon the Academy's continuing occupation will be authorised by the occupational licence in the Agreement, as described above.

Note that it is anticipated that the Academy will be funded to meet building maintenance costs (likely to be limited in extent since the school occupied will have become redundant) during the period of occupation and repairing/maintenance responsibilities under the lease will need to reflect this.

NEW BUILD WITH INTERIM OCCUPATION OF EXISTING BUILDINGS

Upon practical completion of the new build, the Academy will be permitted to take up occupation of the new build pursuant to the occupational licence set out in the Development Agreement. It will continue to occupy under the terms of the licence until the expiry of the defects liability period, whereupon the long lease will be granted.

Prior to completion of the new build, the Academy will be permitted to occupy existing buildings. If a new build is to be undertaken then the School to be occupied pending completion of the build is referred to in this Agreement as either an "Existing School" (where the school is situated at the site at which the new build is to be undertaken) or a ("Relevant School") (where the school is located elsewhere). This occupation will be authorised pursuant to the short term lease arrangement described above, and not under the

Development Agreement. This is because the Academy can occupy existing buildings which are not affected by any construction works, and therefore their occupation can be distinct from any works being carried out on the new build. Occupation pursuant to the short term lease will therefore continue until the Academy is able to move into the practically complete new build. The short term lease will contain a break clause which provides that the short term lease will immediately determine on practical completion of the new build works, whereupon the Academy's continuing occupation will be authorised by the occupational licence in the Agreement, as described above

In the case of accelerated occupation, the Academy will be permitted to take up occupation of existing buildings prior to exchange of the Development Agreement, again pursuant to a short term lease. This means that in relation to accelerated occupation for new build, the Academy will occupy the existing buildings pursuant to the short term lease prior to exchange of the Agreement, after exchange of the Agreement and until such time as the new build has been practically completed. The Academy will then move into the new build and occupy pursuant to the licence until expiry of the defects liability period and grant of long lease.

NEW BUILD

This scenario applies where the Academy opens in the new build. In this case, occupation by the Academy of the new build will be permitted on practical completion pursuant to the occupational licence set out in the Agreement. Occupation will continue until completion of the defects liability period, whereupon the licence will automatically determine on the grant of the long lease.

SUMMARY

By way of summary, there are three property documents which authorise occupation by the Academy at various stages. Both the short term lease and the long lease are to be excluded from the Landlord and Tenant Act 1954 which means that the Academy will not obtain security of tenure during its occupation at any time. The occupational licence granted pursuant to the Agreement is a non-exclusive licence to ensure that the Academy does not obtain any security of tenure during this period of occupation.

STATUS OF THE DOCUMENT

This document should be regarded as a standard form document. PfS will advise Local Authorities of arrangements for securing project specific derogations from its terms. Local Authorities are in particular advised that its terms (and in particular the terms of the related property occupation arrangements set out at Schedules 4-7) have been settled in consultation with HM Revenue and Customs in relation to the treatment of transactions effected under this Agreement for VAT purposes.

Authorities are strongly discouraged from seeking to negotiate amendments with the Academy which could impact upon the VAT treatment of the arrangements provided for in this Agreement.

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THIS AGREEMENT is made the day of 200[]

BETWEEN:

- (1) **[NAME OF LOCAL AUTHORITY]** of **[ADDRESS OF LOCAL AUTHORITY]** (the "Authority"); and
- (2) **[INCORPORATED NAME]** registered as a Company in England and Wales under registered number [●] and having its registered office at [●] (the "Academy").

BACKGROUND

- (A) The Academy is a company registered in England and Wales having liability limited by guarantee and with inter alia, power to enter into contracts.
- (B) The Academy has entered into a Funding Agreement with the Secretary of State⁷.
- (C) The New Buildings are to be in an area in respect of which the Authority has responsibility for education services and has duties to secure necessary capacity and to promote high standards in education.
- (D) [On [●] the Authority procured the publication of a Contract Notice in the Official Journal of the European Union under reference [●] the purpose of which was to procure in conjunction with Partnerships for Schools Limited ("PfS") and certain other bodies a Local Education Partnership joint venture company (the "LEP")]. [On 29 March 2006 PfS procured the publication of a Contract Notice in the Official Journal of the European Union under reference 2006-S-063418 the purpose of which was to procure for the benefit of various parties a framework arrangement whereby selected building contractors would be appointed to a framework.]
- (E) Following work undertaken by the Authority and the Contractor [new] [refurbished and/or modernised] facilities for the Academy are to be procured under a Design and Build Contract ("D&B Contract") arrangement and the Academy is agreeable to this.
- (F) The Authority has finalised the terms and conditions of a D&B Contract which the Authority is now willing to enter into pursuant to the powers available to the Authority to do so subject to the Academy agreeing to enter into the terms and conditions of this Agreement.
- (G) The Authority considers it expedient that the New Buildings be constructed on land available for this purpose. The Authority will grant a lease to the Academy, the terms and conditions of which are set out in Schedule 7. [Recite any interim accommodation arrangements].
- (H) In order to secure the most effective practicable arrangement for the integration of information and communications technology (ICT) equipment and services the Authority is in a position to facilitate through the operation of the D&B Contract infrastructure provision to meet the requirements of the Academy. ICT hardware is procured separately by the Academy outside the provisions of the D&B Contract and is not, as a result, part of the obligations under this Agreement.
- (I) [The Academy is entitled to participate in a managed service arrangement to support its ICT requirements and the Parties accordingly propose to enter into a separate agreement to give effect to that arrangement]⁸

⁷ It is assumed that the Funding Agreement will have effect before this Agreement.

(J) [The Academy is entitled to participate in a facilities management service arrangement to support its life cycle and other building maintenance requirements and the Parties accordingly propose to enter into a separate agreement to give effect to that arrangement]⁹

NOW IT IS HEREBY AGREED as follows:

PRELIMINARY

1 DEFINITIONS AND INTERPRETATION

1.1 In this Agreement the following terms shall unless otherwise expressly stated have the definitions set against the relevant term:

"1954 Act"		the Landlord and Tenant Act 1954;
"Academy Policies"		those policies of the Academy that are subsisting at the date of this Agreement and which are expressly referred to in the Authority's Requirements;
"Academy Party"	Related	(i) a director, (including the [Head Teacher] [Principal]) officer, agent or employee of the Academy; and (ii) any person visiting the Property at the invitation (whether express or implied) of the Academy and over whom the Academy is able to exercise control but excluding the Authority, any Authority Related Party, the Contractor, and any Contractor Related Party and any member of the Contractor's Supply Chain;
"Academy Representative"		the representative appointed by the Academy pursuant to Sub-Clause 5.2 of this Agreement;
"Agreed Form"		any document in a form agreed between the Parties a copy of which is appended to this Agreement for the purpose of identification;
"Agreement"		means this agreement including its Schedules
"Authority Party"	Related	for the purpose of this Agreement means:- (i) a member, officer, agent or employee of the Authority

⁸ Include where a managed service arrangement is to be taken. This is likely to be the case where a LEP is in place, since the default position under BSF is that the Academy will take its ICT maintenance from the LEP.

⁹ Include where a facilities management service is to be taken.

	(ii)	a contractor or sub-contractor (of any tier) of the Authority and any of their officers, servants or agents except for the Contractor, any Contractor Related Party and any member of the Contractor's Supply Chain;
	(iii)	any person visiting the Property at the invitation (whether express or implied) of the Authority and over whom the Authority is able to exercise control but excluding the Academy and any Academy Related Party;
"Authority's Representative"		the representative appointed by the Authority pursuant to Sub-Clause 5.1 of this Agreement;
"Authority's Requirements"		has the meaning given in the D&B Contract;
"Business Day"		a day (other than a Saturday or Sunday) on which banks are open for domestic business in the City of London;
"Certificate of Completion of Making Good Defects"		has the meaning given in the D&B Contract;
"Compensation Event"		has the meaning given in the D&B Contract;
"Competent Authority"		a local authority or other body exercising statutory powers or duties;
"Completion Certificate"		has the meaning given in the D&B Contract;
"Completion Date(s)"		has the meaning given in the D&B Contract;
"Contractor"		the counterparty to the Authority from time to time under the D&B Contract;
"Contractor's Proposals"		[has the meaning given in the D&B Contract] [means the "LEP's Proposals" as defined in the D&B Contract] ¹⁰ ;
"Contractor Related Party"		[has the meaning given in the D&B Contract] [means any person who under the terms of the D&B Contract is a "LEP Related Party"] ¹¹ ;
"Contractor Representative"		the person identified [as such] [as the "LEP Representative"] under the D&B Contract ¹² ;

¹⁰ The first definition is for use where this Agreement is used with the Framework D&B Contract and the second definition is for use if this Agreement is used with the BSF D&B Contract.

¹¹ The first definition is for use where this Agreement is used with the Framework D&B Contract and the second definition is for use if this Agreement is used with the BSF D&B Contract.

“Contractor’s Chain”	Supply	[has the meaning given in the D&B Contract] [means the “LEP’s Supply Chain” as defined in the D&B Contract] ¹³ ;
“D&B Contract”		the contract in the Agreed Form appended to this Agreement between the Authority and the Contractor or any replacement contract in the Agreed Form between the Authority and a replacement Contractor or with the guarantor of the contract in the event of step in by the guarantor (as such contract(s) may be amended from time to time by the parties thereto); ¹⁴
“Date or Dates for Completion”	for	has the meaning given in the D&B Contract;
“Decant Protocol”		the decant protocol set out in Part 3 of Schedule 1;
“Defects Period”	Liability	has the meaning given in the D&B Contract;
“Direct Losses”		all damage, losses, liabilities, claims, actions, costs, expenses (including the cost of legal or professional services, legal costs being on an agent/client, client paying basis), proceedings, demands and charges whether arising under statute, contract or at common law which are not Indirect Losses;
["Existing School"]		the buildings and other facilities comprising a school which is located within the Property and which is subject to or is to become subject to statutory closure procedures and for which the New Buildings are to become a replacement education establishment; ¹⁵]
“Extended Date”		means:- i) for the purposes of Sub-Clause 18.1 the date 14 months following the date the certificate referred to in the said Sub-Clause 18.1 should have been issued pursuant to Clause [21.4]

¹² The wording in the first set of square brackets is for use where this Agreement is used with the Framework D&B Contract and the wording in the second set of brackets is for use if this Agreement is used with the BSF D&B Contract.

¹³ The first definition is for use where this Agreement is used with the Framework D&B Contract and the second definition is for use if this Agreement is used with the BSF D&B Contract.

¹⁴ It is intended that the D&B Contract will be entered into simultaneously with the Development Agreement.

¹⁵ This assumes an existing state maintained school that is located in part of the Property and which is either to be refurbished or replaced by new facilities to be constructed on the Property and which is subject to closure. The definition can be further developed to meet particular scheme circumstances.

[22.4]¹⁶ of the D&B Contract;

- ii) for the purposes of Sub-Clause 18.2 the date 14 months following the date of the [last]¹⁷ Certificate of Completion of Making Good Defects as provided for in the D&B Contract

"Force Majeure Event"

the occurrence, after the date of this Agreement of:-

- (i) war, civil war, armed conflict or terrorism; or
- (ii) nuclear, chemical or biological contamination unless the source or cause of the contamination is as a result of any act of the Academy or a director, officer agent or employee of the Academy; or
- (iii) pressure waves caused by devices travelling at supersonic speeds;

which directly causes either Party to be unable to comply with all or a material part of its obligations under this Agreement;

"Funding Agreement"

- (i) an agreement pursuant to Section 482 of the Education Act 1996 (as amended) dated [●] made between (1) the Secretary of State for Children Schools and Families and [name of Academy Trust]; and
- (ii) any replacement or renewal of such agreement between the same parties and in substantially the same form and
- (iii) any replacement agreement made between the Tenant and the Secretary of State for Children Schools and Families (or the successor government body which assumes his functions for funding educational organisations of the Tenant's kind) and which provides funding for the Tenant in relation (amongst other things) to the

¹⁶ The first clause reference is for use where this Agreement is used with the Framework D&B Contract and the second is for use if this Agreement is used with the BSF D&B Contract.

¹⁷ See footnote to clause 25.1. If novation occur before the last Certificate of Making Good Defects, this clause should reflect the Certificate which is referred to in clause 25.1

performance of the Tenant's obligations under this Agreement;

"Governing Body"	the Board of Directors of the Academy;
"Indirect Losses"	means loss of profits, loss of use, loss of production, loss of business, loss of business opportunity, or any claim for consequential loss or for indirect loss of any nature but excluding any losses under any subcontracts which are not of themselves Indirect Losses
"Lease"	a Lease in the form that is set out in Schedule 7 to this Agreement;
["New Buildings"	has the meaning given in the D&B Contract;]
"Novation"	the arrangements under which the Authority the Contractor and the Academy agree to substitute the Academy as counterparty to the Contractor in substitution for the Authority under the terms and conditions of the D&B Contract;
"Occupation Date"	[the Date of this Agreement] [the date upon which the Authority permits or first permits the Academy to occupy the whole or part of the Property by notice in writing served pursuant to Sub-Clause 15.3]
"Occupational Licence"	the licence relating to the whole or part of the Property between the Authority and the Academy authorising occupation of the whole or part of the Property in the form set out in Schedule 4 to this Agreement;
"Part 1 Standard Conditions"	the conditions in Part 1 of the Standard Commercial Property Conditions (Second Edition) and "Condition" means any one of them;
"Parties"	the Authority and the Academy and "Party" shall be construed accordingly;
"Project Data"	has the meaning given in the D&B Contract;
"Property"	the land more particularly described in the plan attached at Annex 3 edged in [red]; ¹⁸
"Relevant School"	means [insert here the name of any School which for this definition to be adopted will be at a location separate from that at which the

¹⁸ This will be the land to be included in the Lease, which may differ from the "Site", which relates to the areas on which the Works are to be carried out under the D&B Contract.

	Works are to be executed] that is subject to or is to become subject to statutory closure procedures and for which the New Buildings are to become a replacement education establishment;
"Relief Event"	has the meaning given in the D&B Contract;
"Sites"	has the meaning given in the D&B Contract;
"Statutory Requirement"	any act of Parliament, Statutory Instrument, regulation, bye-law, requirement of a competent authority, statutory body, common law or regulation, directive or mandatory requirement of the European Union;
"Term Commencement Date"	the date immediately following the date of the Certificate of Completion of Making Good Defects or where more than one the [last] of such Certificates ¹⁹ ;
"Title Documents"	the deeds and documents listed in Schedule 6 Part 2;
"Undertaker"	any authority body or person authorised to supply services for electricity water gas sewerage telecommunications, television or data transmission for the public;
"Variation"	a Variation as defined in the D&B Contract [and any variation set out in a LEP's Notice of Variation (as defined in the D&B Contract)]
"Works"	has the meaning provided for in the D&B Contract.

1.2 Interpretation

In this Agreement unless the context otherwise requires:

- 1.2.1 except where expressly provided otherwise capitalised terms defined in the D&B Contract have the same meaning in this Agreement;
- 1.2.2 headings and sub-headings are for ease of reference only and shall not be taken into account in the interpretation or construction of this Agreement;
- 1.2.3 all references to Clauses and Schedules are references to the Clauses of and the Schedules to this Agreement unless otherwise stated;
- 1.2.4 the Schedules form part of this Agreement;

¹⁹ See footnote to clause 25.1 regarding timing of novation. If novation occurs before the last Certificate of Making Good Defects, the Term Commencement Date should also be amended.

- 1.2.5 all references to agreements, documents or other instruments include (subject to all relevant approvals) a reference to that agreement, document or other instrument as amended, supplemented, substituted, novated or assigned from time to time;
- 1.2.6 all references to any statutory provision shall include references to any statute or statutory provisions which amends, extends, consolidates or replaces the same or which has been amended, extended, consolidated or replaced by the same and shall include any orders, regulations, codes of practice, instruments or other subordinate legislation made under the relevant statute or statutory provision;
- 1.2.7 words importing the singular include the plural and vice versa;
- 1.2.8 words importing a gender include all genders;
- 1.2.9 “person” includes an individual, partnership, firm, trust, body corporate, government, governmental body, authority, agency or unincorporated body of persons or association; and
- 1.2.10 the words “include” and “including” are to be construed without limitation;

2 COMMENCEMENT DURATION AND CONDITIONS PRECEDENT

- 2.1 This Agreement shall come into force on the date that the D&B Contract becomes effective²⁰ and shall subject to Sub-Clause 2.2 and to Clause 30 terminate on the earliest of:-
- 2.1.1 the termination of the D&B Contract (howsoever this arises); or
- 2.1.2 the date upon which any termination of this Agreement occurs pursuant to Clause 24; or
- 2.1.3 the date upon which Novation has effect pursuant to Clause 25 of this Agreement.
- 2.2 The termination of this Agreement howsoever arising shall be (subject to Clause 30) without prejudice to the rights, duties and liabilities of any Party hereto accrued prior to termination. The clauses of this Agreement which expressly or by implication have effect after termination will continue to be enforceable notwithstanding termination.

3 PURPOSE OF THIS AGREEMENT

- 3.1 The Academy acknowledges that the Authority will enter into arrangements with the Contractor for the purpose of fulfilling its obligations under this Agreement and that the Contractor is entitled to sub-contract its obligations there under.
- 3.2 In consideration of the obligations of the Academy owed to the Authority within this Agreement the Authority undertakes that subject to the terms and conditions of this Agreement:

²⁰ It is intended that the two documents will be entered into simultaneously.

- 3.2.1 it shall use reasonable endeavours to procure that the Contractor performs its obligations under the D&B Contract in accordance with its terms. Notwithstanding this obligation the Authority does not guarantee the proper performance of the Contractor's obligations; and
- 3.2.2 in its monitoring of the performance by the Contractor of the D&B Contract it shall have regard (so far as reasonable and practicable to do so) to any matter that the Academy acting reasonably considers should be enforced against the Contractor pursuant to the D&B Contract.
- 3.3 Where the Academy serves notice upon the Authority ("an Academy Notice") of any circumstances which the Academy requires to be dealt with through the exclusion of any person from the Property and/or any [Existing School][Relevant School] as provided for under Sub-Clauses 2.3.2, 2.4.3 or 2.5 of the D&B Contract the Authority shall as soon as practicable form an opinion as provided for under the terms of the D&B Contract and where it then becomes so entitled to require an exclusion or removal from the Property and/or any [Existing School] [Relevant School] of the relevant person in accordance with Sub-Clauses 2.3.2, 2.4.3 or 2.5 of the D&B Contract will, take appropriate action in accordance with its rights under the D&B Contract as soon as reasonably practicable.
- 3.4 Where the Academy requires the exclusion from the Property and/or any [Existing School] [Relevant School] of any person as provided in the foregoing provisions the Academy shall indemnify the Authority and keep the Authority indemnified against all costs, expenses, claims and other expenditure incurred by and/or awarded against the Authority arising from defence of such claim and/or from any other consequences of such event constituting a Compensation Event the provisions of Clause 13 of this Agreement applying to the extent such circumstances constitute a Compensation Event .

4 ACKNOWLEDGEMENT AND UNDERTAKINGS

- 4.1 The Academy acknowledges that the Authority will in procuring the carrying out of the D&B Contract follow procedures and take certain actions required under the terms of the D&B Contract. On this basis, the Authority will incur in certain circumstances costs in exercising its rights and performing its obligations under the terms of and otherwise in connection with the D&B Contract.
- 4.2 The Authority and the Academy agree that:
- 4.2.1 the Academy shall promptly notify the Authority of any relevant matter of non-compliance in the performance of the D&B Contract by or on behalf of the Contractor that has come to the Academy's attention and shall provide to the Authority such evidence of non-compliance as is in the possession of the Academy;
- 4.2.2 subject to the proviso to this Sub-Clause 4.2.2 and to the Authority so far as is reasonably practicable consulting with the Academy within a reasonable period and having regard to the Academy's reasonable proposals (so far as reasonable and practicable to do so) in respect of any consent, approval or authorisation required to be given to the Contractor pursuant to the D&B Contract, the Authority shall be entitled to give such consent, approval or authorisation regarding any matter whether or not the Academy has been consulted or has given

its prior consent approval or authorisation to such matter PROVIDED THAT the provisions of Clause 9 of this Agreement shall have effect in relation to Reviewable Design Data and the provisions of Clause 12 of this Agreement shall have effect in relation to Variations;

4.2.3 without prejudice to Sub-Clause 4.2.2 and without in any way obliging the Authority to act only upon the giving of such consent, approval or confirmation the Academy will use all reasonable endeavours to ensure that the Academy Representative gives any response requested of it in respect of any matter upon which the Authority seeks to consult with the Academy within the timescales notified to the Academy by the Authority in such a request, such timescales to be given having regard to the timescales within which the Authority is required to act in responding to the Contractor concerning the relevant matter.

4.3 The Authority confirms that it has directed or will direct the Contractor to deliver and procure [and, in the case only of the Independent Certifier, the Authority will procure]²¹ the delivery of warranties on or before the Completion Date in favour of the Academy as follows:-

Organisation from whom warranty is required	Relevant form of Warranty ²²
[Where there is a LEP the Contractor or any sub-contractor appointed by the LEP to carry out [part of] the Works] [Where a framework is in place the Contractor]	Substantially in the form set out at Schedule 12 of the D&B Contract
[Name of Contractor's Supply Chain members]	Substantially in the form set out at Schedule 12 of the D&B Contract
[Individual members of the Professional Team]	Substantially in the form set out at Schedule 12 of the D&B Contract
[The Independent Certifier] ²³	[Substantially in the form set out at Schedule 14 of the D&B Contract]
Any party required to give a warranty under clause [26.2] [27.2] ²⁴ of the D&B Contract and not named above	Substantially in the form set out at Schedule 12 of the D&B Contract

4.4 The Academy acknowledges that the performance of this Agreement by the Authority may from time to time be affected by the enforcement by the Contractor of its rights under the D&B Contract and in particular in consequence of the outcome of any decision where a matter is referred to the Dispute Resolution Procedure under the D&B Contract and the Academy agrees that the Authority shall not be in default

²¹ This is only relevant where this Agreement is used with the BSF form of D&B Contract. Even then, it will only be relevant where the D&B Contract actually provides for a certifier to be employed.

²² Standard forms of warranty are provided with the D&B Contract, which will be entered into at the same time as this Agreement. Attention is drawn to Completion Requirement 13 in Schedule 8 of the D&B Contract.

²³ This is only relevant where this Agreement is used with the BSF form of D&B Contract. Even then, it will only be relevant where the D&B Contract actually provides for a certifier to be employed.

²⁴ The first clause reference is for use where this Agreement is used with the Framework D&B Contract and the second is for use if this Agreement is used with the BSF D&B Contract.

under this Agreement where the performance of the Authority under this Agreement is affected in any way by the outcome of the operation of the Dispute Resolution Procedure under the D&B Contract.

5 REPRESENTATIVES

- 5.1 With effect from the signing of this Agreement the Authority's Representative shall be [●] who has been appointed to exercise, subject to sub-Clause 5.3, the functions and powers of the Authority in relation to the performance of this Agreement. The Authority shall be entitled from time to time to amend the identity of its appointed representative by giving prior notice in writing to the Academy.
- 5.2 With effect from the signing of this Agreement the Academy's Representative shall be [●] who has been appointed to exercise, subject to sub-Clause 5.3, the functions of the Academy in relation to this Agreement. The Academy shall be entitled from time to time to amend the identity of its appointed representative by giving prior notice in writing to the Authority.
- 5.3 Neither the Authority's Representative nor the Academy's Representative shall be entitled to serve notice on the other Party to terminate this Agreement²⁵.

6 ACADEMY OBLIGATIONS

- 6.1 In consideration of the undertakings entered into by the Authority under the terms and conditions of this Agreement, the Academy agrees that it shall perform the obligations imposed upon the Academy in accordance with the terms of this Agreement including without prejudice to the generality of the foregoing the obligations set out in Part 1 of Schedule 1 with a view to facilitating the performance of the D&B Contract in accordance with its terms. The Academy acknowledges that it is for the purpose of the D&B Contract an Authority Related Party.²⁶
- 6.2 In entering into the undertakings set out or referred to at Sub-Clause 6.1 above, the Academy confirms that it is satisfied with the terms and conditions of the D&B Contract in the form appended to this Agreement at Annex 1 being aware that such approval is material to the decision of the Authority to enter into the D&B Contract with the Contractor.
- 6.3 The Academy acknowledges that the Authority is obliged to ensure that the Contractor has rights of access, permission to be present on Site and/or at the [Existing School] [Relevant School] and rights of egress from the Property and/or the [Existing School] [Relevant School] together with other rights as provided for in the D&B Contract and in particular within the Contractor's Proposals and subject always to the Academy's Policy relating to access as set out in Schedule 2.²⁷
- 6.4 The Academy undertakes to the Authority that it shall at all times ensure that no act or omission of the Academy or an Academy Related Party shall cause the Authority to be in breach of the Authority's obligations under the D&B Contract and without prejudice to the generality of the foregoing the Academy shall not take any action or commit any omission which may cause the occurrence of a Compensation Event or a

²⁵ This may be extended to limit the representatives' ability to act on other matters under the Agreement.

²⁶ Note that the Framework form of D&B Contract includes the Academy within the definition of Authority Related Party. The BSF form currently does not, and where the Academy is to be delivered through the LEP, the Authority should ensure that the definition of Authority Related Party in the D&B Contract is amended to include limb 4 of the Framework definition ("an officer, agent or employee of an Academy Trust acting in the course of his office, employment or appointment (as appropriate)").

²⁷ See footnote to Schedule 2.

Relief Event. The Academy acknowledges that any breach of this undertaking may cause the occurrence of a Compensation Event whereupon the provisions of Sub-Clause 19.4 shall have effect.

- 6.5 The Academy undertakes to the Authority that it shall not wilfully impede the Contractor in the performance of its obligations always provided that such obligation is without prejudice to the right of the Academy to claim as between itself and the Authority that any actual interference with the Contractor's performance of the D&B Contract arises from the interactive nature of the relationship between the Academy and the Authority. The Academy acknowledges that any breach of this undertaking may cause the occurrence of a Compensation Event whereupon the provisions of Sub-Clause 19.4 shall have effect.
- 6.6 The Academy shall be entitled in any action or proceedings by the Authority in connection with this Agreement to rely on any right in defence of liability available to the Authority in the D&B Contract and to raise an equivalent right in defence of liability (save for set off and counter-claim) as would be available in connection with a similar cause of action by the Contractor against the Authority pursuant to the D&B Contract

7 AUTHORITY OBLIGATIONS

In consideration of the undertakings given by the Academy pursuant to Clause 6 of this Agreement, the Authority hereby undertakes to:-

- 7.1 enter into the D&B Contract upon the signing of this Agreement;
- 7.2 use reasonable endeavours to require the Contractor to complete the Works to enable the Completion Certificate to be issued by the Date or Dates for Completion (as defined in the D&B Contract);
- 7.3 perform the obligations of the Authority under this Agreement including without prejudice to the generality of the foregoing the obligations specified in Part 2 of Schedule 1.

8 CONSENTS, PLANNING APPROVALS AND FIRE PRECAUTIONS

- 8.1 The Academy agrees that it shall co-operate with the Authority and with the Contractor in the due and proper operation of the provisions of Sub-Clause 5.6 of the D&B Contract and in particular shall make such information available to the Authority as may be relevant to the Contractor's proper performance of its obligations under the said Sub-Clause from time to time to facilitate the due and proper operation of that Sub-Clause and which is in the possession of the Academy or is reasonable for it to obtain.
- 8.2 The Parties acknowledge that the Contractor has an obligation to maintain an up to date fire folder in accordance with Government Guidance referring to the Regulatory Reform (Fire Safety) Order 2005 SI 1541. The obligations of the Contractor are without prejudice to the generality of that obligation specified in Sub-Clause 5.7 of the D&B Contract.
- 8.3 The Authority shall ensure that the Academy's Representative shall so far as reasonably practicable be duly informed of matters relevant to the operation of Sub-Clauses 5.6 and 5.7 of the D & B Contract.

9 REVIEW PROCEDURE

- 9.1 Under the terms of the D&B Contract the Contractor is required to further develop and finalise the design and specification of the Works on a basis that entitles the Authority to review such data which is designated in the D&B Contract as Reviewable Design Data. The Authority agrees that it shall promptly provide copies of the Reviewable Design Data to and consult with the Academy prior to giving any consent or approval required pursuant to the rights available to the Authority in accordance with Clause 6.4 to 6.6 of the D&B Contract.
- 9.2 The Academy acknowledges and agrees that the Authority is entitled to authorise the Contractor to proceed with the finalisation of the design and the implementation of the Works. The Authority shall use reasonable endeavours to consult with the Academy within the timescales required for a response under the D&B Contract however the Authority shall be entitled to proceed with the finalisation of the design and its incorporation within the Works without prior agreement or authorisation from the Academy.

10 DESIGN DATABASE

- 10.1 The Authority shall use all reasonable endeavours to procure for the Academy access to any design database referred to under Sub-Clause 6.6 of the D&B Contract which is referable to the subject matter of the D&B Contract and in respect of which electronic access is available remotely. The Academy undertakes to use such rights of access on a basis that enables the Authority to fully comply with its obligations under the D&B Contract regarding restrictions concerning the use of the database.
- 10.2 In the event that the Academy shall be unable to access the design database remotely on an electronic basis the Authority undertakes to use its reasonable endeavours to procure access to information comprised within the database on the alternative basis contemplated by sub-Clause 6.6 of the D&B Contract.

11 CONSTRUCTION PROGRAMME AND DECANTING

- 11.1 The Academy acknowledges that the Authority shall be a party to the Decant Protocol in respect of the [Existing School] [Relevant School]. The Academy undertakes to the Authority to notify the Authority that it is satisfied with the terms and conditions of the Decant Protocol and that it shall take all steps reasonably required of it at its own expense to facilitate the Authority's due compliance with its obligations pursuant to Sub-Clause 10.6 of the D&B Contract.
- 11.2 The Authority undertakes to keep the Academy duly informed of progress with the Works with particular regard to the decant obligations and any alterations which may be required from time to time in respect of the Decant Protocol.
- 11.3 The Academy shall co-operate with the Authority in respect of the terms and conditions of the Decant Protocol and shall not wilfully impede the Authority from compliance with its obligations.

12 VARIATIONS²⁸

12.1 The Authority shall promptly consult with the Academy prior to the agreement of any Variation which may arise in respect of the Works and shall take reasonable account of the reasonable comments of the Academy raised during such consultation. Notwithstanding the foregoing the Authority shall subject to clause 12.3 be entitled to proceed with any Variation without prior agreement or authorisation from the Academy and accordingly the following provisions shall apply in respect of any request made by the Authority or the Contractor that the Works be varied:

12.1.1 the Authority may from time to time propose and seek to agree with the Contractor Variations to the Works in such terms as the Authority considers appropriate for any reason;

12.1.2 the Academy recognises that the Contractor may propose Variations to the Works for any reason; and

in any such circumstance the Authority shall operate the provisions of the D&B Contract concerning Variations on such basis as the Authority considers appropriate but will use reasonable endeavours to consult with the Academy within the timescales required for a response under the D&B Contract.

12.2 Without prejudice to the generality of this Clause 12 and subject always to Sub-Clause 4.2 the Authority shall use reasonable endeavours to consult with the Academy within the timescales required for a response under the D&B Contract so as to ensure the efficient operation of the Variation procedure in accordance with Clause 15 of the D&B Contract

12.3 The Authority shall not permit a Variation which would have the effect of reducing any of the gross floor areas referred to in the schedule of accommodation forming part of the Authority's Requirements.

13 COMPENSATION EVENTS AND RELIEF EVENTS

13.1 If:

13.1.1 either Party has reason to believe that circumstances constituting a claim that a Compensation Event has arisen whether the same is also a breach of this Agreement²⁹ or otherwise or that a Relief Event³⁰ has arisen (each as defined in the D&B Contract); or

13.1.2 the Authority is notified by the Contractor that circumstances constituting a Compensation Event whether the same is also a breach of this Agreement or otherwise or that a Relief Event has or may have arisen under the D&B Contract]³¹,

then the Parties to this Agreement shall meet promptly to consider the circumstances that give rise to the claim or potential claim that there has been or may have been a

²⁸ Note that Variations have a specific meaning under the D&B Contract and relate to changes to the Authority's Requirements. In many circumstances a more informal approach to modification of design work and other specification material will be possible.

²⁹ Compensation Events are typically fault based events which entitle the LEP to require various appropriate remedies and/or relief for the Building Contractor from obligations under the Building Contract

³⁰ Relief events are typically insured incidents where the Contractor will be relieved of risk of termination and may be given extra time to complete.

³¹ Option where there is no LEP

Compensation Event or Relief Event and shall meet frequently thereafter to review information received from the Contractor in connection with the circumstances that give rise to any claim made by the Contractor with a view to considering the evidence provided. Notwithstanding the foregoing the Authority shall be entitled to agree with the Contractor in its sole discretion that a Compensation Event or Relief Event has arisen.

- 13.2 Without prejudice to the generality of the foregoing and to the provisions of Clause 26, the Authority shall be entitled at its sole discretion to agree to any proposals made by the Contractor that would lead to the mitigation of any losses that arise, the prompt reinstatement of any parts of the Works that may have been damaged or destroyed and to any proposals for any extension of time that may be forthcoming from the Contractor and which may result in the Works not being completed within the programme previously established by the Contractor and to make any payment or settle any claim arising from a Compensation Event in each case consulting with the Academy so far as is reasonably practicable and advising the Academy of the outcome.
- 13.3 In the event that a claim is made by the Contractor to which Sub-Clause 13.1 applies the Authority shall take due account of all information provided by the Academy where the Academy may be in whole or in part responsible for the circumstances that give rise to the Compensation Event and the Authority shall use all reasonable endeavours to resist such claim and to require mitigation of the claim where it ought reasonably to do so but otherwise shall be entitled to act in its sole discretion in its negotiations with the Contractor regarding any claim that the Contractor makes under the terms of the D&B Contract.

14 GRANT OF LEASE AND RELATED PROVISIONS

14.1 Incorporation of Standard Conditions

The Part 1 Standard Conditions (as varied by Schedule 5) are incorporated into this Agreement in so far as they are not varied or excluded by or inconsistent with other terms of this Agreement and all references to the sale and purchase will be to the grant and taking of the Lease.

14.2 Agreement for Grant of Lease

- 14.2.1 The Authority shall grant and the Academy shall take the Lease;
- 14.2.2 The term of the Lease will be 125 years commencing on the Term Commencement Date;³²
- 14.2.3 The liability to pay the principal rent and other payments due under the Lease commences on the [Term Commencement Date];
- 14.2.4 The Academy shall not require the Authority to grant a Lease to any person other than the Academy.

14.3 Registration Procedures

- 14.3.1 If the Academy applies to register notice of this Agreement at the Land Registry:

³² Date will be the day following the date of expiry of the defects liability period as specified in the D&B Contract.

- 14.3.1.1 the Academy shall make any application for a unilateral notice rather than for an agreed notice and shall not produce the original or a copy of this Agreement and any annexes to the Land Registry; and
 - 14.3.1.2 the Authority agrees not to make or support any application to the Land Registry to cancel any such registration during the subsistence of this Agreement.
 - 14.3.2 The Academy shall immediately after completion of the Lease use reasonable endeavours to procure the cancellation of any entry notice or caution against first registration or restriction made under the Land Charges Act 1972 or the Land Registration Act 2002 in respect of this Agreement.
- 14.4 Completion
- The grant of the Lease shall take place on the Term Commencement Date.³³
- 14.5 Possession
- 14.5.1 The Lease shall be granted with vacant possession save as specified in the Lease and in this Agreement;
 - 14.5.2 The grant of the Lease does not demise the property or any equipment of any Undertaker at the Property.
- 14.6 Title
- 14.6.1 Title to the Authority's interest in the Property [is registered at the Land Registry as detailed in Part 1 of Schedule 6] or [shall commence as in the document described in Part 1 of Schedule 6].
 - 14.6.2 The Authority will not be obliged to deduce further title to the Property other than that deduced as at the date of this Agreement.
- 14.7 Matters which affect the Property
- 14.7.1 The Property is let subject to and where appropriate with the benefit of:
 - 14.7.1.1 matters contained or referred to in:
 - 14.7.1.1.1 any title superior to the Lease; and
 - 14.7.1.1.2 the Title Documents [save for the Legal Charges [●]]
 - 14.7.1.2 [matters contained or referred to in the entries at the Property and Charges Registers of Title Number [●] subsisting at [time and date]]; and
 - 14.7.1.3 (in addition to the matters referred to in Condition 3.1.2):

³³ Date will be the day following the date of expiry of the defects liability period as specified in the D&B Contract.

- 14.7.1.3.1 all matters registerable by any Competent Authority pursuant to statute;
- 14.7.1.3.2 all requirements, demands, notices, orders or proposals whether or not subject to confirmation of any Competent Authority;
- 14.7.1.3.3 all notices served by the owner or occupier of any adjoining or neighbouring Property;
- 14.7.1.3.4 all agreements of any Competent Authority;
- 14.7.1.3.5 (in the case of registered land)all those entries listed in schedule 3 to the Land Registration Act 2002 and (in the case of unregistered land) all those interests listed in schedule 1 to that Act and any interest which fall within section 11 (4) (c) of that Act (including in the case of both registered and unregistered land all those interests inserted into those schedules by schedule 12 to that Act); and
- 14.7.1.3.6 any matters of which the Academy may already have actual knowledge:

so far as they relate to the Property and are enforceable at completion.
- 14.7.2 The Academy shall not make or raise any objection or requisition in respect of any matter referred to in Sub-Clauses 14.6.1 and 14.7.1;
- 14.7.3 The Academy (or the Academy's conveyancer) has been supplied with [copies of the entries in the registered titles to the Property] [a copy of the Title Documents before the date of this Agreement] and the Academy will be deemed to take the Lease with full title and the matters contained or referred to in the documents supplied and shall not raise or make any requisitions or objections in relation to such matters.
- 14.7.4 The Lease may be an underlease or a sub-underlease and the Academy accepts the position and shall raise no requisition or objection in relation to the same and shall raise no objection of the covenants in the Lease to not correspond with the tenant's covenants in any superior lease.

15 OCCUPATION PENDING GRANT OF LEASE³⁴

³⁴ For the purpose of the Occupation Date the Occupational Licence will be granted as follows:

1. **Refurbishment of Existing Buildings:**

The Academy will take up occupation of the existing building pursuant to the Occupational Licence on the date of exchange of the Development Agreement. The Academy will continue to occupy under the Occupational Licence until expiry of the Defects Liability Period. The Licence will come to an end automatically on the grant of the Long Lease.

Any occupation of the existing building prior to exchange of the Development Agreement will have authorised by a Short Term Lease. The Short Term Lease will determine on the date of exchange of the Development Agreement, pursuant to the break clause set out in the Short Term Lease.

2. **New Build (with Existing Buildings):**

- 15.1 The Academy will be allowed into occupation of the whole or part of the Property³⁵ from and including the Occupation Date.
- 15.2 For so long as the Authority is under an obligation to grant the Lease but such obligation has not been satisfied the Academy has the right from time to time to occupy all or parts of the Property pursuant to the Occupational Licence and the Authority hereby grants licence to the Academy in the form set out in Schedule 4.
- 15.3 The entitlement of the Academy to occupy any part of the Property shall arise [on the date of this Agreement]³⁶ [subject to clause 15.4, on the Business Day following the Completion Date (as defined in the D&B Contract) referred to in the written notice by the Authority issued pursuant to this Sub-Clause 15.3 and which notice confirms that part or parts of the Property which the Academy shall thereupon be allowed to occupy pursuant to the Occupational Licence]. The Authority shall issue a notice under this Sub-Clause 15.3 not less than 2 Business Days prior to the date on which it is notified under the D&B Contract that the Completion Date (as defined in the D&B Contract) in relation to a part or parts of the Property is due to occur. Where relevant the Authority shall issue one or more further notices pursuant to this Sub-Clause 15.3 authorising the Academy to take up occupation of further parts of the Property³⁷ as further provided at paragraph 9 of Schedule 4.
- 15.4 If the Authority issues a notice under clause 15.3 prior to the Completion Date (as defined in the D&B Contract) and the Completion Date does not occur on the expected date, the Authority may issue a further notice ("Counter Notice") no later than the date on which the notice under clause 15.3 authorises occupation under the Occupational Licence. The Counter Notice shall state that the Completion Date has not occurred and shall withdraw and nullify the authority for the Academy to occupy under the Occupational Licence as referred to in the relevant notice under clause 15.3.³⁸

The Academy will be permitted to take up occupation of the new building pursuant to the Occupational Licence following practical completion of the new build works. The Licence will continue for the period of the Defects Liability Period. Following expiry of the Defects Liability Period the Licence will automatically determine on the grant of the Long Lease.

Where, prior to exchange of the Development Agreement and subsequently prior to practical completion of the new build works, the Academy is in occupation of existing buildings, it will be permitted to occupy these existing buildings pursuant to a Short Term Lease. The Short Term Lease will determine upon practical completion of the new build works (whereupon the Academy will take up occupation of the new building under the Occupational Licence). The determination of the Short Term Lease will be in accordance with the break clause set out in the Short Term Lease.

3. New Build:

The Academy will take up occupation pursuant to the Occupational Licence of the new build on practical completion of the new build works. The Licence will continue for the period of the defects liability period. The Licence will come to an end automatically at the end of the defects liability period upon grant of the Long Lease.

³⁵ Access may be provided to part only in consequence of continued construction works eg demolition of an existing school and reinstatement works. This provision should in such circumstances be subject to project specific amendment referring as appropriate to plans of the Property indicating arrangements for phased occupation.

³⁶ Where the Academy is in occupation prior to exchange of this Agreement the short term lease will determine pursuant to the break provisions in that lease, and the Occupational Licence will come into immediate effect on the date of this Agreement without the requirement for notice to be served.

³⁷ This reflects the fact that there may be phased completion of new build e.g. where a part of the site that is included within the Property includes an old school that is to be demolished subsequent to completion of the new build.

³⁸ It is desirable that there is no gap between the Completion Date in relation to the Works and the date on which the Academy takes occupation of the Property under the Occupational Licence. However, until the Completion Date has occurred, the parties cannot be sure that occupation can be given. Under clause 15.3 the Authority may issue a notice of the date which is targeted for completion of the

16 AGREEMENT TO EXCLUDE SECTIONS 24 – 28 OF THE 1954 ACT

- 16.1 The Authority and the Academy agree pursuant to Section 38(A)(i) of the 1954 Act that the provisions of Sections 24 – 28 (inclusive) of the Act are excluded in relation to the tenancy to be created by the Lease.
- 16.2 The Academy confirms that:
- 16.2.1 the Authority has served on the Academy a notice (the Notice”) applicable to the tenancy to be created by the Lease on [●] in accordance with Section 38(A)(iii)(a) of the 1954 Act; and
 - 16.2.2 the Academy or a person duly authorised by the Academy made a declaration or a statutory declaration in relation to the Notice on [●] in accordance with the requirements of Section 38(A) (iii)(b) of the 1954 Act before the Academy became contractually bound to enter into the Lease.

17 INTELLECTUAL PROPERTY

- 17.1 The Authority agrees with the Academy that it shall in so far as it is lawfully able to do so make available at no cost to the Academy by way of a non-assignable (other than with the benefit of this Agreement) irrevocable sub-licence of all Project Data to which the Academy reasonably requires access and rights to use. To the extent required by the Academy the Authority undertakes at no cost to the Academy to use reasonable endeavours to exercise its rights under the D&B Contract to procure that the Contractor shall obtain all necessary licences, permissions and consents necessary for it to make the Project Data available to the Academy on terms that shall following the Authority having obtained licence of the rights be deemed to be the same terms as are expressly set out in the D&B Contract for the benefit of the Academy and which are therefore accordingly from the relevant time of grant to the Authority deemed to be rights available to the Academy to use for Approved Purposes (as defined in the D&B Contract).
- 17.2 The Authority hereby grants to the Academy free of charge by way of irrevocable sub-licence rights to use all Intellectual Property Rights which are or which become rights in respect of which the Authority has licence under Sub-Clause [27.2] [29.2]³⁹ of the D&B Contract for Approved Purposes only
- 17.3 Where any Intellectual Property Rights to which the Academy reasonably requires access are not vested in the Contractor the Authority undertakes to the Academy that upon request from the Academy the Authority shall so far as practicable exercise its rights pursuant to Sub-Clause [27.2.2] [29.2.2]⁴⁰ of the D&B Contract to procure the due and effective grant of a licence in favour of the Authority whereupon the rights so licensed shall be deemed to be sub-licensed to the Academy in accordance with the provisions of this Sub-Clause 17.3

works, so that occupation is immediate if that date is met. If it is not, the Authority can “revoke” the notice by a counter notice under clause 15.4 not later than the day on which the Occupational Licence was due to take effect.

³⁹ The first clause reference is for use where this Agreement is used with the Framework D&B Contract and the second is for use if this Agreement is used with the BSF D&B Contract.

⁴⁰ The first clause reference is for use where this Agreement is used with the Framework D&B Contract and the second is for use if this Agreement is used with the BSF D&B Contract.

- 17.4 The Academy undertake to the Authority that it shall exercise such rights available to it pursuant to this Clause solely for the Approved Purposes and in all other respects in a manner which does not cause the Authority to be in breach of the D&B Contract.
- 17.5 To the extent that any of the rights to which this Clause applies are generated by or maintained on a computer or similar system the Authority undertakes to the Academy that it shall use all reasonable endeavours to procure the availability of rights of access to such data including the use of any application software required for the proper interpretation of the data concerned utilising the rights available to the Authority pursuant to Sub-Clause [27.4] [29.4]⁴¹ of the D&B Contract to procure such rights of access.
- 17.6 Where a claim is made or proceedings brought against the Authority under the provisions of the D&B Contract and which arises out of any infringement of any Intellectual Property Rights, or because the use of any materials, plant, machinery or equipment in connection with the Works infringes any rights in or to any Intellectual Property Rights of a third party then, if such infringement has arisen out of the use of any Intellectual Property Rights by or on behalf of the Academy otherwise than in accordance with this Agreement and otherwise than as a result of a breach of this Clause 17 by the Authority then the Academy shall indemnify the Authority at all times from and against all Direct Losses and Indirect Losses arising as a result of such claims and proceedings.

18 FAILURE TO ACHIEVE COMPLETION

If:-

- 18.1 pursuant to Clause [21.4] [22.4]⁴² of the D&B Contract the [Authority's Representative/Independent Certifier]⁴³ (appointed under the D&B Contract) has not issued a Completion Certificate (or where more than one such certificate is required in respect of the Works (disregarding any certificates that are to be issued subsequent to the Academy taking up occupation of all or part of the Property) the last of such certificates) by the Extended Date or prior to that date either Party serves notice on the other Party that in its reasonable opinion there are circumstances in existence which are such as to make it impracticable to achieve the issue of the relevant certificate on or prior to the Extended Date and the Parties thereupon reach agreement on such opinion or following reference of the matter to dispute resolution pursuant to Clause 26 such a conclusion is determined; or
- 18.2 for any reason Novation of the D&B Contract has not had effect by the Extended Date or prior to that date either Party serves notice on the other Party that in its reasonable opinion there are circumstances in existence which are such as to make it impracticable to achieve Novation on or prior to the Extended Date and the Parties thereupon reach agreement on such opinion or following reference of the matter to dispute resolution pursuant to Clause 26 such a conclusion is determined;

then the Parties shall thereupon meet as soon as practicable to consider the circumstances that have arisen and seek to agree such actions as should be taken in the circumstances

⁴¹ The first clause reference is for use where this Agreement is used with the Framework D&B Contract and the second is for use if this Agreement is used with the BSF D&B Contract.

⁴² The first clause reference is for use where this Agreement is used with the Framework D&B Contract and the second is for use if this Agreement is used with the BSF D&B Contract.

⁴³ The reference to Independent Certifier will only be relevant if the BSF D&B Contract is being used, and then only if an Independent Certifier is to be appointed under it.

and (if appropriate) the basis upon which this Agreement should remain in existence and any variations to the terms and conditions which when agreed in writing shall thereupon govern the performance of this Agreement.

19 INDEMNITY

19.1 The Authority shall subject to Sub-Clause 19.2 be responsible for and shall release and indemnify the Academy on demand from and against all liability for Direct Losses arising from:

- 19.1.1 death and/or personal injury;
- 19.1.2 loss of or damage to property (including property belonging to the Academy or for which it is responsible);
- 19.1.3 third party actions, claims and/or demands including costs, charges and expenses (including legal expenses on an indemnity basis) arising as a result thereof brought against the Academy or any Academy Related Party;

which may arise out or in consequence of:

- 19.1.4 the carrying out of the Works by the Contractor or any Contractor Related Party or the performance or non-performance by the Contractor of its obligations under the D&B Contract;
- 19.1.5 [the presence of the Authority, any Authority Related Party or the Contractor or any Contractor Related Party at the Property or at a Relevant School];
- 19.1.6 the performance or non performance of this Agreement by the Authority.

19.2 The Authority shall not be responsible for or be obliged to indemnify the Academy:

- 19.2.1 for any matter referred to in Sub-Clause 19.1 that arises as a direct result of the Authority acting on any written instruction issued by the Academy
- 19.2.2 for any injury, loss, damage, cost and expense caused by the negligence or wilful misconduct of the Academy or any Academy Related Party (other than to the extent such negligence or wilful misconduct would not have occurred but for the breach by the Authority of its obligations under this Agreement) or by the breach by the Academy of its obligations under this Agreement
- 19.2.3 where the claim arises from any matter concerning the carrying out of the Works by the Contractor or any Contractor Related Party or the performance or non-performance by the Contractor of its obligations under the D&B Contract or the presence of the Contractor or any Contractor Related Party at the Property [or at a Relevant School] to the extent that (whether pursuant to clause 49 or otherwise) the Authority having used all reasonable endeavours to do so is unable to claim indemnity or (notwithstanding being so entitled to claim) and

having used its reasonable endeavours is unsuccessful in claiming indemnity from the D&B Contractor

- 19.3 The Academy shall indemnify and keep the Authority indemnified at all times from and against liability for Direct Losses arising from:
- 19.3.1 any claim for or in respect of death and/or personal injury of any employee of or person engaged by the Authority or any Authority Related Party or the Contractor or a Contractor Related Party;
 - 19.3.2 any physical loss or damage to the Contractor's or a Contractor Related Party's assets or to the Authority's assets (which for the purposes of this indemnity shall include the assets comprised within the Works);
 - 19.3.3 any breach of statutory duty for which the Authority is liable;
 - 19.3.4 any third party actions, claims and/or demands including costs, charges and expenses (including legal expenses on an indemnity basis) arising in consequence thereof brought against the Authority or an Authority Related Party or the Contractor or a Contractor Related Party;

which may arise out of or in consequence of the performance or non performance of this Agreement by the Academy or any negligent or wilful act or omission of the Academy which in each case is a breach of the Academy's obligations under this Agreement other than to the extent that such performance or non-performance or negligent or wilful misconduct would not have occurred but for a breach by the Authority of its obligations under this Agreement.

- 19.4 The Academy further agrees that (to the extent not already provided for under the provisions of Sub-Clause 19.3) any breach by the Academy of its obligations under this Agreement which results in the occurrence of a Compensation Event shall be the responsibility of the Academy and accordingly the Academy shall indemnify and keep the Authority indemnified (subject to the Authority's duty to secure the mitigation of any loss arising) against any Direct Losses incurred by the Authority or on behalf of the Authority by reason of the occurrence of a Compensation Event for which the Academy is responsible under the provisions of this Agreement other than to the extent that such Compensation Event would not have occurred but for a breach by the Authority of its obligations under the D&B Contract. For the avoidance of doubt the indemnity in this clause 19.4 applies to the liabilities of the Authority under the Agreed Form of the D&B Contract and shall not apply to any increase in such liabilities arising from a variation of the terms of the D&B Contract which materially increases the Authority's liabilities under the D&B Contract.
- 19.5 The Academy shall have no liability to the Authority pursuant to this Agreement including this Clause 19 to the extent that any Direct Losses or Indirect Losses are covered by insurance pursuant to this Agreement, the D&B Contract or any other contract to which the Authority is a party and are recovered under such insurance, or are recovered pursuant to any other contract to which the Authority is a party.

20 INFORMATION REGARDING THE WORKS

- 20.1 The Academy acknowledges that the D&B Contract requires the Authority to provide to the Contractor from time to time information and documents to facilitate

performance of the D&B Contract by the Contractor. The Academy agrees that it shall upon reasonable request and within a reasonable time stated in the request (which timescale will be considered reasonable, without prejudice to other reasons, where it is required in order to comply with timescales placed on the Authority under the D&B Contract and where the request has been made as soon as reasonably practicable by the Authority) provide such information, documents and any records in the possession of the Academy and which the Academy is lawfully entitled to disclose that is reasonably required by the Authority to facilitate the effective operation of the D&B Contract or to satisfy any obligation upon the Authority pursuant to the terms of the D&B Contract.

- 20.2 The Authority agrees that it shall promptly provide to the Academy upon request being made of it by the Academy copies or originals of all information in its possession which has been provided by the Contractor pursuant to its performance of the D&B Contract including without prejudice to the generality of the foregoing information to be provided pursuant to Sub-Clause 18.3 and Clause 20 of the D&B Contract where in all such cases the information is reasonably required by the Academy.⁴⁴
- 20.3 The Authority shall allow the Academy's Representative or an alternative representative of the Academy to attend all site meetings pursuant to the D&B Contract as an observer and shall give the Academy reasonable prior notice of such meetings and a copy of any proposed agenda as well as minutes of such meetings. The Authority shall take reasonable account of the reasonable comments of the Academy raised with the Authority following such meetings.

21 REMEDIES FOR DELAYED COMPLETION

ALTERNATIVE A⁴⁵

- 21.1 If a Completion Certificate has not been issued in accordance with Sub-Clause [21.4] [22.4]⁴⁶ of the D&B Contract in respect of the Works or the relevant part of the Works by the relevant Date or Dates for Completion, the Academy acknowledges that the Authority is entitled to and will where the Academy so requests issue a notice or notices in writing to the Contractor to that effect. In the event of a revised Date or Dates for Completion being fixed after the issuing of any such notice, such fixing shall cancel the relevant earlier notice and the Academy shall be entitled to require the issue of and the Authority may on its own instigation issue such further notices in writing under Sub-Clause [23.1] [24.1]⁴⁷ of the D&B Contract as may be necessary.
- 21.2 Provided a notice or notices has or have been issued under Sub-Clause [23.1] [24.1]⁴⁸ of the D&B Contract (and has or have not been cancelled), and subject to Sub-Clause 21.3 of this Agreement, the Authority shall indemnify the Academy on demand by way of liquidated damages reflecting the losses of the Academy in respect of the non issue of the relevant Completion Certificate by the required date

⁴⁴ The Authority should give consideration to requiring the Contractor to supply information that is likely to be required by the Academy in duplicate and the Academy is advised to inform the Authority as soon as possible within the process of the information which it is likely to require. It is anticipated that this will primarily be in relation to the progress of the Works. Note that the Academy is an Authority Related Party and is therefore permitted to attend meetings under the terms of the D&B Contract.

⁴⁵ Drafting here should reflect the approach taken in the D&B Contract.

⁴⁶ The first clause reference is for use where this Agreement is used with the Framework D&B Contract and the second is for use if this Agreement is used with the BSF D&B Contract.

⁴⁷ The first clause reference is for use where this Agreement is used with the Framework D&B Contract and the second is for use if this Agreement is used with the BSF D&B Contract.

⁴⁸ The first clause reference is for use where this Agreement is used with the Framework D&B Contract and the second is for use if this Agreement is used with the BSF D&B Contract.

by reference to the relevant rate or rates stated in Sub-Clause 21.5 of this Agreement, in respect of each day that elapses after the relevant Date for Completion up to and including the relevant Completion Date and such debt shall be payable by the Authority within 5 Business Days of receipt of the relevant sum from the Contractor.

- 21.3 If a later Date for Completion is fixed pursuant to Sub-Clause [23.1] [24.1]⁴⁹ of the D&B Contract and, prior to such fixing, the Authority has met a liability to pay liquidated damages in respect of the late completion of the Works or the relevant part of the Works based on a previously applicable Date for Completion which is earlier than that newly fixed, the Academy shall on demand from the Authority within 30 calendar days repay any amount properly repaid by the Authority to the Contractor.
- 21.4 The Authority and the Academy agree and intend that the liquidated damages amounts which the Authority may become liable to pay pursuant to this Clause 21 are not a penalty but rather a genuine pre-estimate of the loss which the Academy will suffer as a result of a delay in the achievement of the relevant Completion Date after the relevant Date for Completion.
- 21.5 The rate of liquidated damages referred to in Sub-Clause 21.2 shall be⁵⁰:

[Relevant School]/ part of the Works	Rate of liquidated damages per day or part of a day
	£
	£
	£
	£
	£
	£
	£
	£
	£
	£

PROVISION OF TEMPORARY ACCOMMODATION IN THE EVENT OF LATE COMPLETION

ALTERNATIVE B

- 21.1 If a Completion Certificate has not been issued in accordance with Sub-Clause [21.4] [22.4]⁵¹ of the D&B Contract in respect of the Works or the relevant part of the

⁴⁹ The first clause reference is for use where this Agreement is used with the Framework D&B Contract and the second is for use if this Agreement is used with the BSF D&B Contract.

⁵⁰ Calculation to be fixed by reference to provisions of the D&B Contract.

Works by the relevant Date or Dates for Completion, the Authority is entitled to and will where the Academy so requests issue a notice or notices in writing to the Contractor to that effect. In the event of a revised Date or Dates for Completion being fixed after the issuing of such a notice, such fixing shall cancel the relevant earlier notice and the Academy shall be entitled to require the issue of and the Authority may on its own instigation issue such further notices in writing under Sub-Clause [23.1] [24.1]⁵² of the D&B Contract as may be necessary.

- 21.2 Provided a notice or notices has or have been issued under Sub-Clause [21.3] [22.3]⁵³ of the D&B Contract (and has or have not been cancelled), and subject to Sub-Clause 23.3 of this Agreement, the Academy acknowledges that the Contractor has obligations to supply, at its own cost, portacabins or other temporary accommodation within the curtilage of the [Existing School][Relevant School] which meets the Authority's Requirements and can be used without interfering with the provision of education to pupils at the [Existing School][Relevant School] to allow the relevant School to accommodate all increases in pupil numbers at the [Existing School][Relevant School] or to accommodate all pupils at the [Existing School][Relevant School] for whom accommodation is not available at the School prior to the Completion Date and the Academy further acknowledges that the Authority is entitled to grant a licence to the Contractor (and the Academy agrees, subject to being consulted on the location of any temporary accommodation within the Property, not to object to such licence) in respect of any required area within the [Existing School] [Relevant School]) for the purpose of the Contractor's compliance with Sub-Clause [21] [22]⁵⁴ of the D&B Contract.
- 21.3 If a later Date for Completion is fixed as referred to in Sub-Clause 21.1 and, prior to such fixing, the Contractor has provided portacabins or other temporary accommodation in accordance with Sub-Clause [23.3] [24.3]⁵⁵ of the D&B Contract in respect of late completion of the Works or which is earlier than that newly fixed, the Academy acknowledges that the Authority shall be obliged to refund to the Contractor following the Completion Date of the Works or the relevant part of the Works the cost of the provision of the portacabins or other temporary accommodation for the period from the earlier fixed Date for Completion until the newly fixed Date for Completion to the extent that any refund is in consequence of the occurrence of a Compensation Event for which the Academy is liable under this Agreement (save to the extent that the Academy has already indemnified the Authority pursuant to a provision elsewhere in this Agreement).
- 21.4 Where it is agreed between the Authority and the Contractor that the provision of portacabins or other temporary accommodation in accordance with Sub-Clause [23.2] [24.2]⁵⁶ of the D&B Contract is not possible or practical, the Authority shall following consultation with the Academy elect pursuant to the D&B Contract as to

⁵¹ The first clause reference is for use where this Agreement is used with the Framework D&B Contract and the second is for use if this Agreement is used with the BSF D&B Contract.

⁵² The first clause reference is for use where this Agreement is used with the Framework D&B Contract and the second is for use if this Agreement is used with the BSF D&B Contract.

⁵³ The first clause reference is for use where this Agreement is used with the Framework D&B Contract and the second is for use if this Agreement is used with the BSF D&B Contract.

⁵⁴ The first clause reference is for use where this Agreement is used with the Framework D&B Contract and the second is for use if this Agreement is used with the BSF D&B Contract.

⁵⁵ The first clause reference is for use where this Agreement is used with the Framework D&B Contract and the second is for use if this Agreement is used with the BSF D&B Contract.

⁵⁶ The first clause reference is for use where this Agreement is used with the Framework D&B Contract and the second is for use if this Agreement is used with the BSF D&B Contract.

whether it shall seek to apply the provisions of either Sub-Sub-Clause [23.4.1] [24.4.1] or Sub-Sub-Clause [23.4.2] [24.4.2]⁵⁷ of the D&B Contract (notifying the Academy promptly of its decision) so as to secure accommodation for use by the Academy for the provision of Educational Services (as defined in the D&B Contract) and such accommodation shall be made available at a location within []⁵⁸ miles of the relevant Existing School upon terms reasonably required by the Authority always provided that where the requirement to revise any Date for Completion is in consequence of the occurrence of a Compensation Event for which the Academy is under this Agreement responsible the Academy shall indemnify the Authority in respect of such costs and expenses liabilities and other outgoings as the Authority has incurred under clause [23.3] 24.3⁵⁹ of the D&B Contract in providing or procuring the provision of the alternative accommodation.

22 CONSULTATION AND LIAISON

22.1 Each of the Authority and the Academy shall ensure that in the case of the Authority the Authority's Representative and in the case of the Academy, the Academy's Representative shall consult and regularly liaise with each other in relation to all matters relating to the performance of the D&B Contract and in particular each Party will:

22.1.1 use all reasonable endeavours to avoid unnecessary disputes and claims against the other Party to this Agreement nor interfere with the rights of any other Party and its servants, agents, representatives, contractors or subcontractors (of any tier) in performing its obligations under this Agreement nor in anyway hinder or prevent such other Party or its servants, agents, representatives or subcontractors (of any tier)) on its behalf from performing those obligations; and

22.1.2 assist the other Party (and their servants, agents, representatives or subcontractors (of any tier) in performing its obligations under this Agreement so far as is reasonably practicable.

22.2 Nothing in this Clause 22 shall:

22.2.1 interfere with the right of each Party to arrange its affairs in whatever manner it considers fit in order to perform its obligations under this Agreement and in the manner in which it consider to be the most effective and efficient;

22.2.2 oblige any Party to incur any additional cost or expense or suffer any [loss of profit] in excess of that required by its proper performance of its obligations under this Agreement;

22.2.3 relieve a Party from any obligation under any indemnity contained in this Agreement or from any obligation to pay any debt due or payable under such documents;

⁵⁷ The first clause reference is for use where this Agreement is used with the Framework D&B Contract and the second is for use if this Agreement is used with the BSF D&B Contract.

⁵⁸ This should reflect the area referred to in clause 23.4.2/24.4.2 of the D&B Contract.

⁵⁹ The first clause reference is for use where this Agreement is used with the Framework D&B Contract and the second is for use if this Agreement is used with the BSF D&B Contract.

- 22.2.4 fetter in any manner the discretion of the Authority or the Academy in performing their respective statutory duties;
- 22.2.5 oblige the Academy to perform the Authority's obligations under this Agreement or under the D&B Contract; or
- 22.2.6 oblige either party to waive any entitlement it may have in connection with this Agreement.

23 MISCELLANEOUS

23.1 Force Majeure Event

No party shall be entitled to bring a claim for a breach of obligations under this agreement by the other party or incur any liability to the other party for any losses or damages incurred by that other party to the extent that a Force Majeure Event occurs and the relevant Party is prevented from carrying out its obligations by that Force Majeure Event. Neither Party to this Agreement shall be entitled to any compensation or other payment from the other Party by reason of the occurrence of an event of Force Majeure.

23.2 Agency and Local Authority Statutory Authority

Nothing in this Agreement shall be construed as a fetter or restriction on the exercise of the Authority's planning or highway function nor, without prejudice to the Academy's rights and remedies under this Agreement on the exercise of any other statutory function by or on behalf of the Authority.

23.3 Change in parties to this Agreement

The rights and obligations of either Party under this Agreement shall not be assigned, novated or otherwise transferred other than:

23.3.1 If by the Academy upon terms agreed in writing by the Secretary of State for Children Schools and Families (or the successor government body which assumes his functions for funding educational organisations of the Tenant's kind).

23.3.2 In the case of the Authority to any body which is also to become a party to the D&B Contract and to become the owner of the Authority's interest in the Property (or the ability to procure the grant of the Lease), such body to have the capacity, power and authority to become a party to this Agreement and to perform the obligations of the Authority under this Agreement being:

23.3.2.1 a Minister of the Crown;

23.3.2.2 any Local Authority which has sufficient financial standing or financial resources to perform the obligations of the Authority under this Agreement and the D&B Contract;

23.3.2.3 any other public body or public or private registered company or other body corporate whose obligations under this Agreement are unconditionally guaranteed by the Authority or a Minister of the Crown

having the legal capacity, power and authority to perform the obligations under the guarantee.

23.4 Notification of a Change in Party

Where a party (being so entitled) assigns novates or otherwise transfers its interest in this Agreement (a "Relevant Event") it shall prior to such assignment, novation or other transfer having effect notify the other party of the Relevant Event providing reasonable detail of the action undertaken and the identity of the person to whom such assignment, novation or other transfer has been made to.

23.5 Amendments

This Agreement may not be varied except by an agreement in writing signed by duly authorised representatives of all the Parties to this Agreement.

23.6 Waiver

Any relaxation, forbearance, indulgence or delay (together "**indulgence**") of any Party in exercising any right shall not be construed as a waiver of the right and shall not affect the ability of that Party subsequently to exercise that right or to pursue any remedy, nor shall any indulgence constitute a waiver of any other right (whether against that Party or any other person).

23.7 No agency

23.7.1 Nothing in this Agreement shall be construed as creating a partnership between the Authority and the Academy.

23.7.2 Save as expressly provided otherwise in this Agreement, neither Party shall be, or be deemed to be, an agent of the other and neither Party shall hold itself out as having authority or power to bind the other Party in any way.

23.8 Entire Agreement

23.8.1 Except where expressly provided otherwise in this Agreement, this Agreement constitutes the entire agreement between the Parties in connection with its subject matter and supersedes all prior representations, communications, negotiations and understandings concerning the subject matter of this Agreement.

23.8.2 Each of the Parties acknowledge that it does not enter into this Agreement on the basis of and does not rely, and has not relied, upon any statement or representation (whether negligent or innocent) or warranty or other provision (in any case whether oral, written, express or implied) made or agreed to by any person (whether a Party to this Agreement or not) except those expressly repeated or referred to in this Agreement and the only remedy or remedies available in respect of any misrepresentation or untrue statement made to it shall be any remedy available under this Agreement.

23.9 Severability

If any provision of this Agreement shall be declared invalid, unenforceable or illegal by the courts of any jurisdiction to which it is subject, such provision may be severed

and such invalidity, unenforceability or illegality shall not prejudice or affect the validity, enforceability or legality of the remaining provisions of this Agreement.

23.10 Counterparts

This Agreement may be executed in one or more counterparts. Any single counterpart or a set of counterparts executed, in either case, by both Parties shall constitute a full original of this Agreement for all purposes.

23.11 Costs and expenses

Each Party shall be responsible for paying its own costs and expenses incurred in connection with the negotiation, preparation and execution of this Agreement.

23.12 Mitigation

The Authority and the Academy shall at all times take all reasonable steps to minimise and mitigate any loss for which the relevant Party is entitled to bring a claim against the other Party pursuant to this Agreement and to take all reasonable steps to minimise and mitigate any effects or circumstances and/or events adversely affecting the performance of their obligations under this Agreement which would otherwise entitle that Party to relief and/or to claim compensation hereunder.

23.13 Further assurance

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

23.14 Governing law and jurisdiction

23.14.1 This Agreement shall be considered as a contract made in England and Wales and shall be subject to the laws of England and Wales.

23.14.2 Without prejudice to the Parties first complying with clause 26, the Parties agree that the courts of England and Wales shall have exclusive jurisdiction to hear and settle any action, suit, proceeding or dispute in connection with this Agreement and the Parties irrevocably agree to submit to the jurisdiction of those courts.

23.15 Confidentiality

The Parties agree to comply with the obligations set out at Schedule 3 to this Agreement.

24 TERMINATION

24.1 If either Party commits a material breach of this Agreement (“Defaulting Party”) the other Party (“Terminating Party”) may give to the Defaulting Party a notice specifying the breach (“Specified Breach”) and requiring it to be remedied. Within 20 Business Days (or as agreed otherwise by the Parties) of such notice the Parties shall meet with a view to agreeing a course of action to resolve the Specified Default. If the Specified Default continues for 20 Business Days after such meeting, the Terminating Party may by 5 Business Days notice in writing to the Defaulting Party terminate this Agreement if the Specified Default has not been remedied by the expiry of such notice.

24.2 Consultation

In the event that any circumstances arise which cause the Authority to give consideration to the termination of the D&B Contract the Authority undertakes to consult with the Academy wherever practicable prior to the exercise of any right that it may have to so terminate as soon as reasonably practicable.

24.3 Authority Exercise of Right to Terminate

Notwithstanding Sub-Clause 24.2 the Academy acknowledges that the Authority shall be entitled to exercise any right available to it to terminate the D&B Contract and any such termination shall not constitute a breach of this Agreement or give rise to other claims or right of indemnity against the Authority whether arising under this Agreement in tort or on any other basis. The Authority will notify the Academy if the Authority is entitled and intending to terminate the D&B Contract.

24.4 Termination on Authority Default

The Academy acknowledges that the rights of the Contractor to terminate exists in the event that the Authority defaults under the D&B Contract. If the Contractor threatens such termination the Parties to this Agreement shall consult promptly with a view to taking such action as is appropriate particularly having regard to the rights available to the Authority to remedy any breach that has arisen.

24.5 Contractor Default

In the event that any Party to this Agreement becomes aware of a breach of the D&B Contract which would constitute a default on the part of the Contractor the Parties shall consult promptly with a view to agreeing what action should be taken, which action shall at all times be taken by the Authority in its sole discretion.

25 D&B CONTRACT NOVATION

25.1 Right to Require Novation

The Parties agree that this Agreement is entered into on a basis that following the issue of the Certificate of Completion of Making Good Defects (or where under the D&B Contract there is more than one such Certificate provided for the [last] of such Certificates)⁶⁰ it is the intention of the Parties that subject to Sub-Clause 25.3 the Academy assumes full responsibility for the due and proper execution of the D&B Contract and gains the benefit of the D&B Contract in so far as benefits are to be derived from it. Accordingly the Authority undertakes to the Academy to promptly enter into the Deed of Novation in the form set out at Schedule 8 to this Agreement upon demand by the Academy provided that the Authority is entitled at the time such demand is made to procure due compliance by the Contractor with the same obligation under the D&B Contract.

⁶⁰ There may be circumstances in which there is phasing of the construction works, and the parties wish to agree that the D&B Contract is novated before the last Certificate of Making Good Defects is issued (for example where landscaping or planting is to happen potentially several months after the building is otherwise complete). Thought needs to be given to the agreed trigger point for novation and clause 25 (and if necessary the novation provisions in the D&B Contract) amended accordingly.

25.2 Obligation to Accept Novation

Subject to Clause 25.3, it is further agreed between the Parties that the Academy shall not resist any requirement on the part of the Authority that it accepts the benefit and the burden of the D&B Contract by Novation and accordingly the Academy undertakes that it shall promptly enter into the Deed of Novation upon demand made by the Authority at any time following the date of the [last] Certificate of Completion of Making Good Defects in the event that the provisions of Sub-Clause 25.1 have not first been applied by notice served by the Academy upon the Authority.

25.3 The Novation of the D&B Contract shall not be completed by the Authority and the Academy prior to:

25.3.1 the Authority delivering a statement in writing confirming to the Academy that as at [the date of the [last] Certificate of Completion of Making Good Defects] [the date of payment of any sums due to the Contractor under clause 16.11 of the D&B Contract]⁶¹ either:

25.3.1.1 the Authority is not aware of any claims made by the Contractor in respect of any Variation to the Works the liability for which has not been discharged by the Authority and the Authority is not aware (having made all reasonable enquiry) that there is any other liability actual contingent or prospective which may arise and become the liability of the Academy under the D&B Contract; or

25.3.1.2 if the statement cannot be given in the terms anticipated at Sub-Clause 25.3.1.1 the details of any claims that have been made or which it is contemplated will be made by the Contractor and the Parties have agreed in writing the manner in which such liabilities (actual or contingent) are to be satisfied and where relevant managed.

25.4 The Authority undertakes to indemnify the Academy and keep the Academy indemnified against all costs losses and expenses incurred whether directly or indirectly and which arise from any misrepresentation, failure to disclose or error in disclosure of any matter by the Authority pursuant to Sub-Clause 25.3 or arising from an incorrect statement given by the Authority pursuant to Sub-Clause 25.3.1.1 or arising from any actual breach by the Authority of its obligations under the D&B Contract prior to the completion of the Novation and this indemnity shall continue in effect notwithstanding termination of this Agreement.

26 DISPUTE RESOLUTION

Any disputes between the Parties shall be resolved by a person nominated by or on behalf of the Secretary of State for Children Schools and Families (or the successor government body which assumes his functions for funding educational organisations of the Tenant's kind) or if pursuant to Sub-Clause 23.3 the Secretary of State for Children Schools and Families (or the successor government body which assumes his functions for funding educational organisations of the Tenant's kind) or any other Minister of the Crown becomes a party to this Agreement such dispute shall be referred on the application of either party to the Centre for Effective Dispute Resolution (CEDR Solve).

⁶¹ As referred to in the previous footnote, the parties may wish to agree that novation occurs prior to the last Certificate of Making Good Defects. Where there is only one such Certificate, it may be preferable to use the second alternative, which ensures that the Authority can give a statement under clause 25.3.1(a) that there are no outstanding liabilities.

27 INTEREST ON LATE PAYMENT

If either Party is late in making any payment due to the other Party in accordance with this Agreement the relevant Party shall pay interest on the amounts of the late payments at the rate of [interest rate to be inserted by reference to the same provision in the D&B Contract]⁶² from the final date of payment of that amount until the date upon which the relevant payment is received by the other Party.

28 THIRD PARTY RIGHTS

28.1 Entitlement of Third Parties

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

28.2 Exclusion of Contracts (Rights of Third Parties) Act 1999.

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

29 NOTICES

29.1 Form of Notice

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

If to the Authority [Address]

Fax No: •

If to the Academy⁶³ [Address]

Fax No: •

29.2 Communication with representatives

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

If to the Authority's Representative [Address]

Fax No: •

⁶² See Schedule 9 of the D&B Contract which sets the applicable rate under the D&B Contract.

**If to the Academy's [Address]
Representative**

Fax No: •

29.3 Change of Address

Either Party to this Agreement (or their respective representatives) may change its nominated address or facsimile number by prior notice to the other Party.

29.4 Service

29.4.1 Notices given by post shall be effective upon the earlier of actual receipt and five Business Days after mailing.

29.4.2 Notices delivered by hand shall be effective upon delivery.

29.4.3 Notices given by facsimile shall be deemed to have been received where there is confirmation of uninterrupted transmission following receipt by the recipient of a transmission report within the timescales set out in Sub-Clause 29.4.3.1 or 29.4.3.2 as appropriate and where there has been no telephonic communication by the recipient to the senders (to be confirmed in writing) that the facsimile has not been received in legible form:

29.4.3.1 within two hours after sending, if sent on a Business Day between the hours of 9.00 am and 4.00 pm; or

29.4.3.2 by 11.00 am on the next following Business Day, if sent after 4.00 pm, on a Business Day but before 9.00 am on that next following Business Day.

30 ACCRUED RIGHTS

The Parties agree that this Agreement shall be continued if and to the extent that at any time it becomes apparent to either Party (who shall be required to serve notice in writing upon the other party that such circumstances exist) to the effect that any of the relevant Party's or the other Party's obligations or rights accrued in respect of this Agreement will not have been carried out or completed prior to the Novation of the D&B Contract, subject to the condition that any continuing accrued rights in respect of a matter in which the Authority would have rights against the Contractor were the D&B Contract to be in full force and effect at the relevant time shall only be enforceable by the Academy to the extent that those rights continue to be enforceable by the Authority under the D&B Contract.

31 CO-OPERATION WITH AUDITORS/OMBUDSMAN

The Academy shall co-operate fully and in a timely manner with any request from time to time of any auditor (whether internal or external) of the Authority or the Ombudsman to provide documents, or to procure the provision of documents, relating to the Works, and to provide, or to procure the provision of, any oral or written explanation relating to the same which is not already in the control of the Authority or which cannot be obtained from the Contractor and which is in the possession or control of the Academy.

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

SCHEDULE 1

**OBLIGATIONS OF THE PARTIES ASSOCIATED WITH PERFORMANCE OF THE D&B
CONTRACT BY THE AUTHORITY**

Part I

Obligations of the Academy

1. Without prejudice to any other provisions of this Agreement having general effect the Academy agrees that it shall:
 - 1.1 comply with any Decant Protocol;
 - 1.2 where appropriate organise induction with the Contractor as provided for under the D&B Contract;
 - 1.3 provide information in the Academy's possession requested by the Authority to support the development of the Contractor's risk assessment;
 - 1.4 attend inspections of the Works where organised by the Authority – the Authority having given due notice of the intended dates of such inspections as early as practicable;
 - 1.5 comply with all health and safety requirements as required of the Authority pursuant to Sub-Clause 13.5 of the D&B Contract as if the Academy were itself a party to the D&B Contract; and
 - 1.6 in the event that the Academy has not developed its own policies covering the same matter and secured the agreement of the Authority to their recognition in the proper performance of the D&B Contract to adopt the policies of the Authority as expressly referred to in the Authority's Requirements within the D&B Contract.
 - 1.7 [provide information in relation to the ICT hardware for the New Building procured by the Academy ("ICT Hardware") requested by the Authority within the reasonable time periods requested by the Authority and deal within the reasonable time periods requested by the Authority with any variations or clarifications as may be required by the Contractor from time to time to enable the Contractor to finalise the requirements for and the design and installation of ICT infrastructure procured under the D&B Contract ("ICT Infrastructure") and the Academy shall not be entitled to object to the ICT Infrastructure and its interface with the ICT Hardware on the basis of the information which has been provided under this paragraph;]⁶⁴

⁶⁴ ICT infrastructure (cabling etc) is generally installed by the D&B Contractor under the D&B Contract. ICT hardware, such as servers and PCs, is generally procured and installed by the Academy. The Academy needs to be required to provide the interface information necessary to facilitate the installation of the infrastructure. This may vary from project to project and should be considered specifically for each situation.

Part 2

Obligations of the Authority

1. Without prejudice to any other provisions of this Agreement having general effect and the performance of the D&B Contract, the Authority agrees that it shall:
 - 1.1 use reasonable endeavours to ensure that the Contractor performs the D&B Contract in accordance with its terms having due regard in particular to:
 - 1.1.1 compliance with the Construction Programme;
 - 1.1.2 ensuring that Contractor exercises its rights under its [non-exclusive]⁶⁵ licence to access and/or egress the [Existing School][Relevant School] and following the Academy taking up occupation the Property in a manner that is calculated so as to minimise disruption in the provision of Educational Services within the building;
 - 1.1.3 due compliance with any action that the Academy requires to be taken pursuant to Sub-Clause [10.4] of the D&B Contract.⁶⁶
 - 1.1.4 compliance with the requirement set out at Sub-Clause 5.1.2 of the D&B Contract;
 - 1.1.5 provisions relating to materials to be used in the Works;
 - 1.1.6 the standards of personnel and supervision committed to by the Contractor;
 - 1.1.7 the security and safe operation of the Site or the [Existing School][Relevant School];
 - 1.1.8 adequacy of retaining and supporting walls in relation to boundaries and existing buildings;
 - 1.1.9 compliance with the Works Stipulations referred to at Sub-Clause [5.4] of the D&B Contract;
 - 1.1.10 the prohibitions regarding storage of materials and vehicle parking;
 - 1.1.11 the conditions of vehicles leaving the Site;
 - 1.1.12 procuring compliance with the Academy Policies in so far as relevant to the execution of the Works; and
 - 1.1.13 compliance with the data back up obligations under Sub-Clause 29.5 of the D&B Contract,
 - 1.2 the Authority will use reasonable endeavours to procure due compliance by the Contractor with the obligations upon the Contractor to procure the existence of

⁶⁵ Under the Framework D&B Contract the Contractor has an exclusive licence, and this reference would need to be amended to delete "non-".

⁶⁶ To be included where Stop Notice drafting has been adopted as provided for in the BSF forms of D&B Contract.

insurances and shall in particular procure that such insurances comply with the other provisions of Sub-Clause 25.3 of the D&B Contract;

- 1.3 the Authority will give due notice to the Academy of the intended dates of inspections of the Works where organised by the Authority as early as practicable;
- 1.4 liaise promptly with and provide all information provided by the Contractor to the Academy in connection with the procedure at Clause 2.4 of the D&B Contract;
- 1.5 to include within any Schedule of Defects issued to the Contractor in accordance with Clause [22] [23]⁶⁷ of the D&B Contract all Defects notified to the Authority by the Academy or the Academy's Representative no later than the expiry of the [relevant] Defects Liability Period relating to the part of such Works within which the Defects have been found.

⁶⁷ The first clause reference is for use where this Agreement is used with the Framework D&B Contract and the second is for use if this Agreement is used with the BSF D&B Contract.

Part 3
Decant Protocol⁶⁸

⁶⁸ The Decant Protocol in the D&B Contract is between the D&B Contractor and the Authority and therefore not binding on the Academy by reference. The protocol should be restated here but so that the obligations of the Authority to the D&B Contractor are obligations of the Academy to the Authority.

SCHEDULE 2

ACADEMY POLICIES

[Insert here any policies that exist at the time the contract is entered into and which the D&B Contractor:

- has notice of; and
- has agreed to the incorporation of within the Authority's Requirements.⁶⁹

⁶⁹ The Academy and the Authority should agree an access policy for the period during which the Academy will have occupation under Schedule 4, setting out the terms on which the D&B Contractor will be able to exercise its rights of access under the D&B Contract. The Authority is advised to ensure that the D&B Contractor has sight of the policy during the procurement process and that the policy is inserted in Schedule 1 of the D&B Contract (Authority Requirements). The Authority should be aware that if the D&B Contractor is denied access by the Academy, for example to deal with a defect, this could be a Compensation Event under the D&B Contract.

SCHEDULE 3

CONFIDENTIAL INFORMATION AND FREEDOM OF INFORMATION

1 Confidentiality

- 1.1 In this Schedule Confidential Information means all information of a confidential nature relating to one Party which is supplied by or on behalf of that Party (whether before or after the date of this Agreement) either in writing, orally or in any other form, directly or indirectly from or pursuant to discussions with that Party (the Disclosing Party) or which is obtained through observations made by the Party receiving the information ("Receiving Party") and the information concerned arises from or relates to the performance of this Agreement or from any other matter arising in connection with the Agreement or any other agreement referred to in this Agreement. Confidential Information also includes all analysis, compilations, studies and other documents whether prepared by or on behalf of a party which contain or otherwise reflect or derive from such information. Nothing in this Agreement shall restrict the disclosure of information held by any party which is a Public Authority beyond the restrictions permitted by the Freedom of Information Act 2000.
- 1.2 The Receiving Party shall hold in confidence any Confidential Information provided that the provisions of this Clause shall not restrict a Receiving Party from passing such information to its professional advisors to the extent necessary to enable it to perform (or to cause to be performed) or to enforce its rights or obligations under this Agreement and provided further that the Academy may subject to obtaining appropriate confidentiality restrictions, pass to the Department for Children Schools and Families (DCSF) and Partnerships for Schools (PfS) and professional advisors such documents and other information as are reasonably required by the DCSF and PfS in connection with the monitoring of the performance by the Academy its obligations under the Funding Agreement or otherwise in accordance with the statutory duties of the Department.
- 1.3 The obligation to maintain the confidentiality of the Confidential Information does not apply to Confidential Information:
- 1.3.1 which the Disclosing Party confirms in writing is not required to be treated as Confidential Information;
 - 1.3.2 which is or comes into the public domain otherwise than through any disclosure prohibited by this Agreement;
 - 1.3.3 to the extent required to be disclosed pursuant to any provision of this Agreement or required to be disclosed to the Audit Commission;
 - 1.3.4 which is disclosed to enable a determination to be made under Clause 26 (*Dispute Resolution Procedure*);
 - 1.3.5 the disclosure of which is required by any Law (including any order of a court of competent jurisdiction), any Parliamentary obligation or the rules of any stock exchange or governmental or regulatory authority having the force of law;
 - 1.3.6 disclosed information by the Authority to any other department, office or agency of the Government or the Academy;

- 1.3.7 disclosed for the purpose of the examination and certification of the Authority's or the Academy's accounts; or
- 1.3.8 any examination pursuant to the Local Government Act 1999 of the economy, efficiency and effectiveness with which the Authority has performed its functions.
- 1.4 Unless otherwise required by any Law or any regulatory or governmental authority neither Party shall make or permit or procure to be made any public announcement or disclosure (whether for publication in the press, the radio, television screen or any other medium) of any Confidential Information.
- 1.5 The Authority shall be free to disclose the terms of this Agreement and other documents relevant to this Agreement to any government department and the parties agree that the Authority shall be free to use and disclose such information on such terms and in such manner as any government department sees fit.
- 1.6 The Authority shall notify the Academy in writing not less than ten (10) Business Days prior to any intended disclosure of the terms of any of the documents referred to in sub-paragraph 1.5 to any Relevant Government Department. The Academy shall notify the Authority in writing of any terms of such documents (the "**Sensitive Information**") that the Academy objects to being disclosed within five (5) Business Days of any such notification by the Authority (failing which the Academy shall be deemed to have notified the Authority that it has no objection to any such disclosure). Without prejudice to the Authority's right to disclose the Sensitive Information pursuant to sub-paragraph 1.5, the Authority shall consult with the Academy following receipt of a notification from the Academy that it objects to disclosure of such Sensitive Information with a view to agreeing whether or not part or all of the Sensitive Information can be removed from the information to be disclosed.
- 1.7 Without prejudice to the foregoing provisions of this paragraph 1 the Parties agree, throughout the term of this Agreement, to offer all reasonable co-operation and assistance to PfS for the purpose of the collection and use of data by PfS in connection with the performance of projects.

2 Freedom of Information

- 2.1 The Academy acknowledges that the Authority is subject to the requirements of the FOIA and the Environmental Information Regulations and shall facilitate the Authority's compliance with its Information disclosure requirements pursuant to the same in the manner provided for in paragraph 2.1 to 2.2.2 (inclusive). For the purpose of paragraphs 2.1 to 2.2.2 (inclusive) only Information has the meaning given under Section 84 of the FOIA.
- 2.2 Where the Authority receives a Request for Information in relation to Information that the Academy is holding on its behalf the Authority shall transfer to the Academy such Request for Information that it receives as soon as practicable and in any event within two Business Days of receiving a Request for Information and the Academy shall:
 - 2.2.1 provide the Authority with a copy of all such Information in the form that the Authority requires within five Business Days (or such other period as the Authority may specify) of the Authority's request; and

- 2.2.2 provide all necessary assistance as reasonably requested by the Authority in connection with any such Information, to enable the Authority to respond to a Request for Information within the time for compliance set out in section 10 of the FOIA or Regulation 5 of the Environmental Regulations.
- 2.3 The Authority shall be responsible for determining at its absolute discretion:
 - 2.3.1 whether the Information is exempt from disclosure under the FOIA and the Environmental Information Regulations;
 - 2.3.2 whether the Information is to be disclosed in response to a Request for Information,and in no event shall the Academy respond directly to a Request for Information unless expressly authorised to do so by the Authority.
- 2.4 The Academy acknowledges that the Authority may, acting in accordance with the Department of Constitutional Affairs' Code of Practice on the Discharge of Functions of Public Authorities under Part I of the FOIA, be obliged under the FOIA, or the Environmental Information Regulations to disclose Information:
 - 2.4.1 without consulting with the Academy; or
 - 2.4.2 following consultation with the Academy and having taken their views into account.
- 2.5 The Academy shall ensure that all Information held on behalf of the Authority is retained for disclosure and shall permit the Authority to inspect such Information as requested from time to time.
- 2.6 The Academy shall transfer to the Authority any Request for Information received by the Academy as soon as practicable and in any event within two Business Days of receiving it.
- 2.7 The Academy acknowledges that any lists provided by it listing or outlining Confidential Information, are of indicative value only and that the Authority may nevertheless be obliged to disclose Confidential Information in accordance with paragraph 2.4 above.
- 2.8 The Academy is also subject to disclosure obligations and accordingly the provisions of this paragraph 2.8 shall apply in like effect to the Academy as it applies to the Authority and vice versa.

SCHEDULE 4

OCCUPATIONAL LICENCE⁷⁰

1. Further to the provisions of Clause 15 of this Agreement and in connection with the Authority's obligations and the Academy's obligations under this Agreement the Authority hereby grants licence to the Academy to enter on to the [Property] [that part of the Property showed edged [] on plan [] attached at Annex []] ("the Licensed Property") under the terms specified in this Schedule.
2. The Academy will be allowed into occupation of the Licensed Property by way of licence only and this Agreement shall not operate to demise the Licensed Property or any part of it to the Academy and no relationship of landlord and tenant will exist between the Authority and the Academy and the occupation by the Academy will be at its sole risk.
3. This Occupational Licence will commence on the Occupation Date and will continue until terminated under the terms of this Schedule notwithstanding termination of this Agreement under Clause 2.1.1.⁷¹
4. The Academy will be entitled to occupy and use the Licensed Property for the purpose authorised by the Lease.
5. Until the grant of the Lease in accordance with the provisions of this Agreement:
 - 5.1 The Academy will not be entitled to any estate right or interests in the Licensed Property either as completed or in the course of construction or any materials;
 - 5.2 The parties will observe and perform the same obligations as are to be imposed by the covenants on their respective parts and the conditions to be contained in the Lease as they become applicable to the Licensed Property and insofar (and only insofar) as they are not inconsistent with nor contradictory to the terms and provisions of this Licence;
6. For the purpose of this Occupational Licence the Academy shall be responsible for compliance with the obligations of the Lease in relation to repair and condition other than the remedying of any defects in the Licensed Property which are the obligation of the Contractor under the D&B Contract to remedy. In complying with the obligations relating to repair and condition the Academy shall not do or omit to do anything which would entitle the Contractor to treat itself as discharged from its obligations under the D&B Contract or which invalidate or adversely affect the enforceability of the warranties from those referred to in Clause 4.3 given or to be given under the D&B Contract. Where the Academy fails to comply with its obligations under this paragraph the Authority shall be permitted to carry out such works and recover the cost of doing so from the Academy.
7. This Occupational Licence is personal to the Academy and the Academy may not assign it or allow anyone else into occupation save as permitted under the terms of the Agreement.
8. The Academy agrees not to enter into exclusive possession⁷² of the Licensed Property and acknowledges that this Licence is subject always to:

⁷⁰ See footnote at clause 15. Note that the licence provisions in this Schedule 4 only come into effect at the time provided for in Clause 15 of the Agreement

⁷¹ The Academy may already be in occupation at the point the D&B Contract terminates and this Agreement terminate under Clause 2.1.1. The Parties may want to continue with the occupation whilst a new D&B Contract is registered.

- 8.1 the rights of the Authority for itself and those expressed or implicitly authorised to be present as the Authority shall require in its entire discretion; and
 - 8.2 the right conferred upon the Contractor for itself and Contractor related parties to be present for the purpose of the due and proper execution of the D&B Contract.
 - 8.3 [state here any other rights such as of an ICT or FM Provider].
 - 8.4 the rights set out at paragraph 9 below.
9. ⁷³[In order to permit the Authority or its contractor to carry out works of refurbishment pursuant to the due and proper execution of the D & B Contract the Authority can serve written notice on the Academy giving it [] Business Days notice to vacate the Licensed Property and move its possessions equipment and chattels to alternative parts of the Property. Such notice shall include a plan showing the revised part or parts of the Property which the Academy is permitted to occupy pursuant to this Occupational Licence (the "Revised Licensed Property"). For the avoidance of doubt the provisions and obligations contained in this Occupational Licence shall apply to the Revised Licensed Property from and including the date upon which the Academy takes up occupation of the Revised Licensed Property. It is further agreed and acknowledged that the Authority can from time to time further vary the part or parts of the Property which the Academy is permitted to occupy in accordance with the provisions of this paragraph which shall apply mutatis mutandis.]
10. The Occupational Licence shall cease and be determined immediately on the first to occur of:-
- 10.1 the grant of the Lease by the Authority to the Academy; or
 - 10.2 the completion of an alternative development agreement between the Parties following termination of this Agreement under Clause 2.1.1; or
 - 10.3 the completion of a lease between the Parties (other than the Lease) in relation to the Property; or
 - 10.4 agreement in writing between the Parties to terminate the Occupational Licence.

⁷² The Authority should ensure that one of the reserved rights within the definition of Ancillary Rights in the D&B Contract is the right of the Academy to operate at the Property under the terms of this Schedule after practical completion. The rights to operate under this Schedule should be noted as part of the Authority Requirements within the D&B Contract as an Academy Policy.

⁷³ This will only apply to where the Academy is occupying an existing building which is in the course of refurbishment and they need to move to other areas of the Building in order to allow refurbishment of parts to be carried out. Delete paragraph 9 where there is no refurbishment.

SCHEDULE 5

VARIATIONS TO PART 1 STANDARD CONDITIONS INCORPORATED INTO THIS AGREEMENT

Standard Condition	Variation
1.1.3(b)	Add: "or if reasonable evidence is produced that the Site would be released from all such mortgages" after "freed of all mortgages".
1.3.3	Delete 1.3.3 (a) and (b) and substitute: "by fax but is not validly given or sent if it is sent by e-mail".
1.4	Does not apply.
3.1.2(c)	Delete and substitute: "those of which the seller does not have actual knowledge".
3.1.3	Does not apply.
3.2.1	Delete: "unless the seller is building or converting it".
3.3	Does not apply.
6.4.1	Delete "further than it may be able to do from information in its possession".
6.4.2	Does not apply.
6.6.2	Does not apply.
7.1	Does not apply.
8.3.5	Delete "according to the best estimate available" and replace with "by the seller".
8.4	Add: "(d) any other sum which the parties agree under the terms of the contract should be paid or allowed on completion".
8.7	Add at the end: "Money due by direct credit is to be paid in pounds sterling".
9.1.3	Add at the end: "but the buyer is not entitled to rescind where he knew about the error or omission".
9.2	Add: "(d) this does not prejudice the seller's accrued claims against the buyer."
9.3	Does not apply.
10.2.4	Does not apply.
10.3	Does not apply.

SCHEDULE 6

Part 1- Title

Registered Title No(s): [●] or [Insert description of unregistered root of Title Documents]

Part 2 – Other Title Documents

Date	Document	Parties

SCHEDULE 7

LEASE

Dated _____ **200[]**

(1) **[LOCAL AUTHORITY]**

- and -

(2) **[ACADEMY TRUST]**

LEASE

Property: **[●]**

Term: **125 years**

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LAND REGISTRY REQUIRED WORDING FOR PRESCRIBED CLAUSES LEASE⁷⁴

LR1. Date of lease: 200[]

[Use following format e.g. 26 June 2006]

LR2. Title number(s): **LR2.1 Landlord's title number(s):**

[_____]

[Insert title number(s) out of which this lease is granted] OR

[None]

LR2.2 Other title number(s):

[_____]

[Insert existing title number(s) (except for those specified in LR2.1) against which entries of matters referred to in LR9, LR10, LR11 and LR13 are to be made] OR

[None]

LR3. Parties to this lease:

[Give full names, addresses and company's registered number, if any, of each of the parties. For Scottish companies use a SC prefix and for limited liability partnerships use an OC prefix. For foreign companies give territory in which incorporated]

Landlord:

[_____] [whose registered office is at] [of] [_____] (Company Registration Number: [_____])

Tenant:

[_____] [whose registered office is at] [of] [_____] (Company Registration Number: [_____])

Surety:⁷⁵

[_____] [whose registered office is at] [of] [_____] (Company Registration Number: [_____])

⁷⁴ The provisions that follow designated with LR reference numbers are clauses prescribed by the Land Registry, which must be inserted at the beginning of the lease. These cannot be amended/deleted, save in relation to site specific information which will be inserted at the time of negotiation of the lease. Where terms and expressions are not relevant to the body of the lease the word "None" will be inserted in the space underneath.

⁷⁵ This will not apply

[Other parties:]

[Specify capacity of each party, e.g. management company OR delete]

LR4. Property:

(referred to in the remainder of this lease as the "Property")

Please see the definition of "Property" in clause 1.1

LR5. Prescribed statements etc:

[None]

OR

[LR5.1] [LR5.1 Statements prescribed under rules 179 (dispositions in favour of a charity), 180 (dispositions by a charity) or 196 (leases under the Leasehold Reform, Housing and Urban Development Act 1993) of the Land Registration Rules 2003:

[If this lease includes a statement falling within LR5.1, insert here the relevant statement or refer to the clause, schedule or paragraph of a schedule in this lease which contains the statement. See [PRESCRIBED STATEMENTS LRR 2003] for the wording of these statements]]

[LR5.2] [This lease is made under, or by reference to, provisions of:

Leasehold Reform Act 1967

Housing Act 1985

Housing Act 1988

Housing Act 1996]

[Omit or delete those Acts which do not apply to this lease]

LR6. Term for which the Property is leased:

(referred to in the remainder of this lease as the "Term")

[Include only the appropriate statement from the following options

NOTE: The information you provide, or refer to, here will be used as part of the particulars to identify the lease under rule 6 of the Land Registration Rules 2003]

[From and including [_____]]

To _____ and _____ including
[_____]]

OR

[The term is as follows: [[number of years]
from _____ and _____ including
[_____]]

LR7. Premium:⁷⁶

[None]

OR

[[_____]
(£[_____]) plus VAT of
[_____]
(£[_____])]] pounds
pounds

**LR8. Prohibitions or
restrictions on
disposing of this
lease:**

[Include whichever of the two statements is
appropriate. Almost inevitably the first option
will apply. Do not set out here the wording of
the provision]

[This lease contains a provision that prohibits
or restricts dispositions]

OR

[This lease does not contain a provision that
prohibits or restricts dispositions]

**LR9. Rights of acquisition
etc:**

LR9.1 Tenant's contractual rights to renew this
lease, to acquire the reversion or another
lease of the Property, or to acquire an interest
in other land:

[None]

OR

[The right(s) referred to in [clause [_____] of]
[[paragraph [_____] of] schedule [_____] to] this
lease]

LR9.2 Tenant's covenant to (or offer to) surrender
this lease:

[None]

OR

⁷⁶ This will not apply

[The covenant referred to in [clause [] of] [[paragraph [] of] schedule [] to] this lease]

LR9.3 Landlord's contractual rights to acquire this lease:

[e.g. right of pre-emption]

[None]

OR

[The right(s) referred to in [clause [] of] [[paragraph [] of] schedule [] to] this lease]

LR10. Restrictive covenants given in this lease by the Landlord in respect of land other than the Property:

[None]

OR

[The restrictive covenant(s) contained in [clause [] of] [[paragraph [] of] schedule [] to] this lease]

LR11. Easements:

LR11.1 Easements granted by this lease for the benefit of the Property:

[The easement(s) set out in [●] to this lease]

OR

[None]

LR11.2 Easements granted or reserved by this lease over the Property for the benefit of other property

[The easement(s) set out in [●] to this lease]

OR

[None]

LR12. Estate rentcharge burdening the Property:

[This only applies to rentcharges created by this lease]

[None]

OR

[The rentcharge set out in [clause [_____] of] [[paragraph [_____] of] schedule [_____] to] this lease]

LR13. Application for standard form of restriction:

[None]

OR

[Set out the full text of the standard form of restriction and the title against which it is to be entered. If you wish to apply for more than one standard form of restriction use this clause to apply for each of them, state who is applying against which title and set out the full text of the restriction you are applying for. Standard forms of restriction are set out in schedule 4 to the Land Registration Rules 2003. N.B. Do not use if the restriction is not in standard form; complete form RX1 instead]

[The Parties to this lease apply to enter the following standard form of restriction [against the title of the Property] or [against title number [_____]]]:

[_____
_____]

LR14. Declaration of trust where there is more than one person comprising the Tenant:

[If the Tenant is one person or body]

[Not applicable]

OR

[If the Tenant is more than one person, complete by deleting all inapplicable alternative statements]

[The Tenant is more than one person. They are to hold the Property on trust for themselves as joint tenants]

OR

[The Tenant is more than one person. They are to hold the Property on trust for themselves as tenants in common in equal shares]

OR

[The Tenant is more than one person. They are to hold the Property on trust [complete as necessary]]

THIS LEASE is made the day of 200[]

BETWEEN:

- (1) [LOCAL AUTHORITY] of [●] ("the **Landlord**")
- (2) [ACADEMY TRUST] (Company No [] (Charity No []) whose registered office is at [●] ("the **Tenant**")

NOW IT IS HEREBY AGREED as follows:-

PART A: PRELIMINARY

1. Definitions and Interpretation

1.1 In this Lease unless the context otherwise requires the following words and expressions shall have the following meanings:

"Amenities" drainage water gas electricity telephone and any other services or amenities of like nature;

"Conduits" gutters gullies pipes sewers drains watercourses channels ducts flues wires aerials cables mains cisterns tanks and all other conducting media together with all meters and other apparatus used in connection with them;

"Environment Acts" the Environmental Protection Act 1990 the Environment Act 1995 the Water Resources Act 1991 the Water Industry Act 1991 and any other Law or Laws of a similar nature in force at any time during the Term;

"Fixtures and Fittings" and all fixtures and fittings in or upon the Property to include plant and machinery lifts boilers central heating air conditioning lighting plumbing sanitary and sprinkler systems [hardware and cabling of computer systems] and any other apparatus from time to time in or upon the Property;

"Funding Agreement" (a) an agreement pursuant to Section 482 of the Education Act 1996 (as amended) dated [●] made between (1) the Secretary of State for Children Schools and Families and (2) [name of Academy Trust] [supplemental to a Master Funding Agreement made between the same parties]⁷⁷; and
(b) any replacement or renewal of such agreement between the same parties and in substantially the

⁷⁷ These words are only relevant where the Authority and the Academy Trust have an existing Master Funding Agreement in place.

same form; and

- (c) any replacement agreement made between the Tenant and the Secretary of State for Children Schools and Families (or the successor government body which assumes his functions for funding educational organisations of the Tenant's kind) and which provides funding for the Tenant in relation to the operation of educational services at the Property;

"Insured Risks"

fire lightning explosion earthquake storm tempest flood subsidence landslip heave impact terrorism bursting or overflowing of water tanks and pipes earthquake damage by aircraft and other aerial devices or articles dropped therefrom riot and civil commotion labour disturbance and malicious damage and such other risks as the Tenant insures against from time to time Subject in all cases to any exclusions or limitations as may from time to time be imposed by the insurers or underwriters Provided that if in respect of any period of time the Tenant is unable to effect insurance against any one or more of such risks or upon terms or at a premium which the Tenant considers reasonable then during such period such risk or risks are deemed to be excluded from the definition of **"Insured Risks"**;

"Interest"

interest at the rate of [●] per cent per annum above [●] Bank plc Base Rate for the time being in force (both before and after any judgment) such interest to be compounded with rests on the usual quarter days or if such Base Rate ceases to be published then at the rate of 1 per cent per annum above the rate at which the Landlord could reasonably borrow from time to time;

"Landlord's Property"

land and buildings including the Property [registered at the Land Registry under Title Number [●]] [comprised in the documents set out at Schedule 4];

"Law"

any statute or any order instrument or regulation made under it or any notice or order issued by a government department the legislative making institutions of the European Union minister or local public regulatory or other authority;

"Lease"

this Lease as varied from time to time together with any other deed document or agreement at any time during the Term amending supplemental or collateral to it;

"Outgoings"

all present and future rates taxes duties charges assessments impositions and outgoing whatsoever (whether parliamentary local or of any other description including capital or non-recurring and including any novel expenses);

"Plan"	the plan ⁷⁸ annexed to this Lease;
"Planning Acts"	the Town and Country Planning Act 1990 the Planning (Listed Buildings and Conservation Areas) Act 1990 the Planning (Hazardous Substances) Act 1990 the Planning (Consequential Provisions) Act 1990 the Planning and Compensation Act 1991 the Planning and Compulsory Purchase Act 2004 and any other Law or Laws of a similar nature in force at any time during the Term;
"Premises Acts"	the Occupiers' Liability Act 1957 the Factories Act 1961 the Offices Shops and Railway Premises Act 1963 the Fire Precautions Act 1971 the Defective Premises Act 1972 the Health and Safety at Work etc. Act 1974 the Occupiers' Liability Act 1984 and any other Law or Laws regulating the safety of premises and those occupying or visiting the same in force at any time during the Term;
"President"	the President of the Institution of Chartered Surveyors;
"Property"	the property described in [Part 1] Schedule 1;
"Reinstatement Value"	the full cost of reinstating the Property including:- <ul style="list-style-type: none"> (a) temporarily making the Property safe and protecting any adjoining structures; (b) debris removal demolition and site clearance; (c) obtaining planning and any other requisite consents or approvals; (d) complying with the requirements of any Law; (e) architects' surveyors' and other fees incurred by the Tenant in relation to the reinstatement; (f) all construction costs; (g) any VAT chargeable on any of the reinstatement costs (save where the Tenant is able to recover such VAT as an input in relation to supplies made by the Tenant);
"Rent"	a peppercorn;
["Retained Land"	the adjoining land of the Landlord described in Part 2 Schedule 1;] ⁷⁹
"Secretary of State"	the Secretary of State for Children Schools and Families or such other Minister of the Crown who is a successor to such person and who is party to the Funding Agreement

⁷⁸ Project specific amendment will be required to refer to numbered plan or plans

⁷⁹ Delete if not applicable.

	with the Academy at the relevant time;
"Term"	125 years from and including the Term Commencement Date;
"Term Commencement Date"	[●]; ⁸⁰
"Termination Date"	the date of expiration or sooner determination of the Term;
"the 1954 Act"	the Landlord and Tenant Act 1954;
"the 1995 Act"	the Landlord and Tenant (Covenants) Act 1995;
"VAT"	Value Added Tax or any equivalent tax which may at any time during the Term be imposed in substitution for it or in addition to it and all references to rents or other sums payable by the Tenant are exclusive of VAT.

1.2 In interpreting this Lease:-

- 1.2.1 references to Clauses pages and Schedules are to Clauses and pages of and Schedules to this Lease unless stated otherwise;
- 1.2.2 the expression "Landlord" includes the person for the time being entitled to the immediate possession of the Property on the expiry of the Term;
- 1.2.3 the expression "Tenant" includes the person in whom for the time being the Tenant's interest under this Lease is vested;
- 1.2.4 where reference is made to a statute this includes all prior and subsequent enactments amendments and modifications relating to that statute and any subordinate legislation made under such statute;
- 1.2.5 references to a "person" include any individual firm unincorporated association or body corporate and words importing the singular number include the plural number and vice versa and words importing one gender include all genders;
- 1.2.6 if the Tenant is or are at any time more than one person any reference to the Tenant is deemed to refer to each such person and any obligation on the part of the Tenant takes effect as a joint and several obligation;
- 1.2.7 any covenant by the Tenant not to carry out any action is to be construed as if it is (where appropriate) additionally a covenant by the Tenant not to permit or suffer such action to be done;

⁸⁰ It is envisaged that the lease will be granted following expiry of the Defects Liability Period provided for in the D&B Contract.

- 1.2.8 the words "include" and "including" are to be construed without limitation and in construing this Lease the ejusdem generis principle does not apply and general words are not to be given a restrictive meaning because they are followed by particular examples intended to be embraced by the general words;
- 1.2.9 a reference to an act or omission of the Tenant includes an act or omission of any undertenant and any other person deriving title under the Tenant and includes an act or omission of their respective employees and visitors and anyone at the Landlord's Property with the express or implied authority of any one or more of them;
- 1.2.10 a reference to the Property includes any part of it except where the word is used in Clause 3.12;
- 1.2.11 a reference to the end of the Term or to the Termination Date is to the end of the Term however it terminates;
- 1.2.12 a consent of the Landlord shall be valid if it is either:
- (a) given in writing and signed by a person duly authorised on behalf of the Landlord; or
 - (b) (if required by the Landlord after any request for consent from the Tenant but prior to consent being given) it is by deed; and
- if a consent is not by deed it will not affect the Landlord's ability to require that any other consent should be by deed;
- 1.2.13 any notice given to the Landlord shall not be valid unless it is in writing;
- 1.2.14 the Landlord is entitled to withhold its consent where it requires the corresponding consent of any mortgagee or superior landlord of the Property until it obtains that consent (and the Landlord shall use all reasonable endeavours to obtain such consent and shall ensure that any charges or superior leases created after the date of this Lease shall contain obligations on the mortgagee or superior landlord not unreasonably to withhold or delay consent in circumstances where the Landlord's consent cannot be unreasonably withheld or delayed under this Lease);
- 1.2.15 a right of the Landlord or anyone else to have access to or entry upon the Property extends to any superior landlord and any mortgagee of the Landlord's Property and to anyone authorised by the Landlord or any superior landlord or mortgagee and includes a right of entry with workmen equipment and materials;
- 1.2.16 pursuant to the Perpetuities and Accumulations Act 1964 the perpetuity period applicable to this Lease is eighty (80) years from the Term Commencement Date and whenever a future interest is granted it shall vest within that period and if it does not it will be void for remoteness;
- 1.2.17 the table of contents and headings to Clauses paragraphs and Schedules do not affect the construction of this Lease;

- 1.2.18 a right granted by the Landlord is granted in common with all other persons entitled to it and/or authorised by the Landlord to exercise it;
- 1.2.19 a right excepted or reserved to the Landlord is also reserved to any other person entitled to it and/or authorised by the Landlord;
- 1.2.20 where the Landlord is entitled to enter the Property on giving notice it is also entitled to enter without notice in emergency and may break and enter if it considers it necessary;
- 1.2.21 nothing entitles the Tenant to enforce any obligation given by anyone to the Landlord;
- 1.2.22 any person undertaking any obligation under or by virtue of this Lease which is a 'landlord covenant' for the purposes of the 1995 Act does so only in respect of the period of time during which the immediate reversion to this Lease is vested in such person and not further or otherwise;
- 1.2.23 any works (whether of repair decoration alteration or otherwise) that the Tenant is permitted or obliged to carry out in accordance with this Lease shall be carried out in accordance with good modern practice;
- 1.2.24 a provision of this Lease which is void or unenforceable shall be severed from all other provisions of this Lease and the remaining provisions shall continue to have effect;
- 1.2.25 if a provision of this Lease extends beyond the limitations set by any Law or rule of law but if it were not so extended would remain unaffected by the Law or rule of law the provision is deemed to be varied so as not to extend beyond the limitations;
- 1.2.26 if any matter is referred to arbitration pursuant to this Lease:
- (a) it is to be conducted in accordance with the Arbitration Act 1996; and
 - (b) the arbitrator has no power:
 - (i) to order rectification setting aside or cancellation of this Lease;
 - (ii) to direct that the recoverable costs of the arbitration or any parts of the arbitral proceedings will be limited to a specific amount;
 - (iii) where there are provisions in this Lease for the payment of interest at a specified rate to award interest whether in addition to or in substitution for such interest provisions;
- 1.2.27 if any matter in this Lease is to be determined by an arbitrator:
- (a) he is to be appointed by agreement between the Landlord and the Tenant or at the request and option of either of them is to be nominated by the President;

- (b) if he dies delays or declines to act the President may on the application of either the Landlord or the Tenant discharge him and appoint another to act in his place in the same capacity; and
- (c) if either the Landlord or the Tenant pays his fees and expenses it may recover the proportion (if any) the other party was obliged to pay from that other party as a debt recoverable on demand;

1.2.28 wherever and to the extent that any provision of this Lease would or might contravene the provisions of section 25 of the 1995 Act then:-

- (a) such provision is to take effect only in so far as it may do so without contravening section 25 of the 1995 Act (and where such provision extends beyond the limits permitted by section 25 of the 1995 Act that provision is to be varied so as not to extend beyond those limits); and
- (b) where such provision is incapable of having any effect without contravening section 25 of the 1995 Act this Lease is to be construed and interpreted as if such provision were deleted; and
- (c) the legality validity and enforceability of any of the remaining provisions of this Lease is not in any way to be affected or impaired as a result.

2. Demise Rents and Other Payments

2.1 The Landlord demises the Property to the Tenant for the Term (subject to the provisions for earlier termination contained in this Lease) the Tenant paying therefor by way of rent throughout the Term without any deduction counterclaim or set off (whether legal or equitable) of any nature whatsoever:-

2.1.1 the Rent (if demanded);

2.1.2 all other sums (including VAT) due under this Lease from the Tenant to the Landlord.

2.2 The Property is demised:-⁸¹

2.2.1 [together with the rights specified in Schedule 2;]

2.2.2 [excepting and reserving to the Landlord and all others now entitled (or who may become entitled) and all others authorised by them (to include any adjoining or neighbouring owners or occupiers) as specified in Schedule 3; and]

2.2.3 subject to and with the benefit of the matters contained or referred to in the documents listed in Schedule 4.⁸²

⁸¹ Rights and reservations will only apply if the Landlord retains land or owns adjoining land over which rights are required.

⁸² There may be some matters (such as the right to receive overage from land sold off in the past) the benefit of which is not intended to pass to the Tenant and these matters should be specifically excluded if they are within any of the documents listed in Schedule 4.

3. Tenant's Covenant

The Tenant covenants with the Landlord as follows:-

3.1 Rent and Payments

To pay the Rent and all other sums reserved as rent by this Lease at the times and in the manner at and in which they are reserved in this Lease.

3.2 Outgoings

3.2.1 Promptly to pay the Outgoings which are now or may during the Term be payable in respect of the Property or its owner or occupier except any payment occasioned by any disposition of or dealing with the ownership of any estate or interest expectant in reversion on the Term [provided always that if any Outgoings are payable in respect of the Retained Land as well as the Property without apportionment to pay a fair and proper proportion of the same to be conclusively determined by the Landlord acting reasonably;]

3.2.2 To pay for all Amenities exclusively used by or available to the Property (including all standing charges);

3.2.3 To observe and perform all present and future regulations and requirements of the authorities or companies supplying or providing the Amenities.

3.3 Repair and Upkeep

3.3.1 At all times during the Term to keep the Property (including for the avoidance of doubt all buildings structures landscaping and other erections) in a state of good and substantial repair and condition and decoration and to renew and replace the same in so far as shall be necessary in order to comply with the obligation to keep the Property in good and substantial repair provided that the Tenant shall not be in breach of this covenant if and for so long as disrepair arises due to damage caused to the Property by any of the Insured Risks and the Tenant is diligently pursuing its insurance claim and reinstating such damage;

3.3.2 To keep the Property clean and tidy;

3.3.3 To notify the Landlord in writing immediately if any structural damage occurs to the Property.

3.4 Access of Landlord and Notice to Repair

To permit the Landlord and all persons authorised by the Landlord (with or without equipment) upon reasonable prior notice to the Tenant (but at any time without notice in case of emergency) to enter the Property as follows:-

3.4.1 in the final 3 years of the Term in order to take inventories of any Fixtures and Fittings to be yielded up at the end of the Term;

3.4.2 at reasonable intervals during the Term in order to view and examine the state of repair and condition of the Property and to give to the Tenant or the Tenant's agent or leave on the Property notice in writing to the Tenant of all

breaches of any of the tenant covenants in this Lease relating to the condition or repair of the Property ("Repair Notice") and the Tenant covenants (subject to having obtained any necessary consents to any required works, which the Tenant shall use all reasonable endeavours to obtain as soon as possible) to repair and make good the Property according to such notice and the covenants in that behalf contained in this Lease within the following time periods:-

- (a) where (b) and (c) below do not apply or where the state of repair is causing a breach of health and safety or other legislation or is causing structural damage ("Safety Breach"), the works shall be commenced within the period of 56 days after the service of the Repair Notice and shall be completed diligently thereafter;
- (b) where there is no Safety Breach, if the Tenant does not immediately have the funds to carry out such works but could complete the works within a reasonable period without requiring further funding under the Funding Agreement it shall demonstrate this to the Landlord by providing to the Landlord within 56 days of the service of the Repair Notice:
 - (i) a statement of the maintenance budget for the Property (included within the funding already received under the Funding Agreement) and the sums expended that financial year to date on the repair and maintenance of the Property ("Funding Statement"); and
 - (ii) a programme of works setting out a reasonable time period for the works to be carried out taking into account the nature of the disrepair and the funds available;

and the works shall be commenced and carried out within the periods set out in the programme of works referred to at (ii) above;

- (c) where there is no Safety Breach and where the Tenant cannot demonstrate that it can carry out the works within a reasonable time under (b) above but requires to make an application ("Funding Application") to the Secretary of State for funding under the Funding Agreement in order to carry out such works, the relevant section of works shall be commenced as soon as reasonably practicable after the payment of the funding instalment relating to that section of works under the programme of works agreed pursuant to the Funding Application ("Works Programme"), and all works shall be completed within a reasonable period following the last payment under the Works Programme;

and if the Tenant fails satisfactorily to comply with such notice in accordance with (a) (b) or (c) above the Landlord and all persons authorised by the Landlord are entitled at any time without notice (but without prejudice to the right of re-entry contained in this Lease) to enter the Property with all necessary equipment to repair and make good the Property in accordance with the covenants and provisions contained in this Lease and the expense of such repairs together with all reasonable legal and surveyors' fees properly

incurred in connection with this sub-clause must be repaid by the Tenant to the Landlord upon demand and on a full indemnity basis as a contractual debt;

- 3.4.3 where the Tenant has served notice on the Landlord pursuant to Clause 3.3.3 of the occurrence of structural damage to the Property then to permit the Landlord to enter onto the Property to view and examine the state of repair and condition of the Property;
- 3.4.4 at any time during the Term to view the Property in connection with any dealing or proposed dealing (by way of sale mortgage or otherwise) with the Landlord's reversionary interest in the Property;
- 3.4.5 (in circumstances only where the Landlord may have a liability under Law or under this Lease) to carry out such tests inspections and surveys as the Landlord reasonably requires;
- 3.4.6 at any time during the Term to fix and retain without interference upon any suitable part or parts of the Property one or more notice boards for reletting (but in the case of reletting only within six months before the Termination Date) or selling at any time the Landlord's reversionary interest in the Property;
- 3.4.7 at any time during the Term to exercise any rights reserved by this Lease and to comply with any obligations of the Landlord (whether arising under this Lease or otherwise);
- 3.4.8 at reasonable intervals during the Term in order to determine whether the Tenant has complied with all its obligations in this Lease (save that, for the avoidance of doubt, the Landlord shall not be entitled to inspect the financial records of the Tenant);

Provided that any exercise of the above rights by the Landlord does not constitute an action for forfeiture by the Landlord or evidence an intention to accept or effect the surrender of the Term and provided further that the exercise of the above rights by the Landlord shall not be in such a manner as materially to restrict or interrupt the operation of the school on the Property by the Tenant, shall cause as little damage as reasonably practicable and shall (save in relation to emergency access) be in accordance with the reasonable requirements of the Tenant in relation to the security of the Property and the health and safety of the students and others at the Property, and the Landlord shall make good any damage caused to the Property as soon as reasonably practicable.

3.5 Alterations and Additions

- 3.5.1 Not to commit any act of waste;
- 3.5.2 Not to erect any buildings or other structures on the Property nor make any structural or external alterations additions or variations to any structures for the time being on the Property without the Landlord's prior written consent (such consent not to be unreasonably withheld or delayed) save that the Landlord can only refuse such consent if:-

- (a) such erection alteration addition or variation will adversely affect the Landlord's statutory obligations as a landlord or as a local authority; and/or
- (b) such erection alteration addition or variation will have an adverse effect on the structural integrity of any structures on the Property or any part or parts of any structures on the Property; and/or
- (c) such erection alteration addition or variation will adversely affect the value of the Landlord's reversionary interest in the Property;⁸³

3.5.3 As part of the application to the Landlord for its consent pursuant to Clause 3.5.2 the Tenant shall:-

- (a) submit to the Landlord adequate plans and specifications describing the proposed erection alteration addition or variation and shall consult with the Landlord on the proposed erection alteration addition or variation and shall take into account any representations that the Landlord may reasonably make in relation to the matters referred to at Clause 3.5.2 (a) (b) and (c);
- (b) make any necessary variations or alterations to the plans and specifications in accordance with the reasonable representations of the Landlord pursuant to sub-clause (a) above;
- (c) covenant with the Landlord as to the execution and (if it is agreed between the parties before the works are carried out that they will be reinstated at the determination of the Term) the reinstatement of any of the works as the Landlord may reasonably require;

3.5.4 In relation to any works permitted pursuant to Clauses 3.5.2 and 3.5.3 above to carry out all such works only in accordance with such plans and specifications as have been provided to and approved by the Landlord in writing or as have been subsequently varied in accordance with any representations of the Landlord;

3.5.5 After commencing any works of erection alteration addition or variation as permitted pursuant to Clauses 3.5.2 and 3.5.3 above to complete such works as soon as reasonably practicable and in any event no later than by the end of the Term;

3.5.6 To carry out any works permitted by this Lease in a good and workmanlike manner as soon as reasonably practicable with good quality materials strictly in accordance with all relevant British Standards including codes of practice and the requirements and regulations of all utility companies affected by such works and so that any easements rights privileges or liberties which third parties enjoy in over or under the Property are not interfered with and that no nuisance is caused to the Landlord [or any occupiers of any part or parts of the Retained Land].

⁸³ If alterations are to be funded by the Tenant out of its own monies, rather than under the Funding Agreement, thought will need to be given in the licence for alterations as to how clause 5.1.3 (ownership of insurance proceeds on non-reinstatement) may need to be amended.

3.5.7 Not to carry out any erection alteration addition or variation which hinders access to a Conduit.

3.6 Signs and Advertisements

3.6.1 To notify the Landlord of the affixing or display on the boundaries of the Property or on the outside of the buildings on the Property of any sign (which expression includes any signboard advertisement hoarding fascia poster placard bill notice or other notification) other than signs which:

- (a) are required by law to be affixed or displayed; or
- (b) do not require planning permission; or
- (c) are necessary or usual for the authorised use of the Property;

3.6.2 To display and maintain upon the Property notices required in relation to the Premises Acts and the Environment Acts.

3.7 Statutory Obligations

3.7.1 To comply with all Laws (including the Premises Acts) affecting the Property the physical condition or the user of them or the use of any Fixtures and Fittings in them;

3.7.2 As soon as reasonably practicable to give written notice to the Landlord of anything arising or being in the Property which may endanger or adversely affect health or safety and which might give rise to a duty of care imposed by common law or statute on the Landlord in favour of the Tenant or any other person;

3.7.3 The Tenant shall comply with its obligations, requirements and duties under the Construction (Design and Management) Regulations 2007 ("CDM Regulations") in relation to any works carried out at the Property, including all requirements in relation to the provision and maintenance of a health and safety file for the Property, which the Tenant shall maintain and shall give to the Landlord on the Termination Date;

3.7.4 The Tenant shall elect to be treated as the only client as defined under the CDM Regulations in respect of any works carried out at the Property pursuant to Regulation 8 of the CDM Regulations;

3.7.5 The Tenant shall supply all information to the Landlord that the Landlord reasonably requires from time to time to comply with the Landlord's obligations under the CDM Regulations.

3.8 Yield Up

On the Termination Date quietly to yield up the Property to the Landlord with vacant possession (subject only to any lease granted to a statutory undertaker) in accordance with the proper performance of the Tenant's covenants contained in this Lease and with all refuse and (unless the Landlord notifies the Tenant to the contrary prior to the Termination Date) all Tenant's fixtures and fittings lettering and signs put up by the Tenant duly removed.

3.9 Use

3.9.1 Not to carry on upon the Property any noisy noxious offensive or dangerous trade or occupation provided that the proper use of the Property for the purposes permitted by clause 3.9.3 shall not be a breach of this Clause;

3.9.2 Not to use the Property for any illegal or immoral purpose;

3.9.3 Without prejudice to the preceding covenants in this Clause not to use the Property otherwise than:

(a) for the purposes of the provision of educational services by the Tenant (as set out in any charitable objects of and in accordance with the memorandum and articles of association of the [Academy Trust] from time to time); [and

(b) for community, fundraising and recreational purposes which are ancillary to the use permitted under Clause 3.9.3 (a).]⁸⁴

3.10 Planning and Environmental Matters

3.10.1 To provide to the Landlord copies of any plans specifications applications consents and permissions relating to applications under the Planning Acts and to deal with any queries that the Landlord acting reasonably may raise;

3.10.2 So often as occasion requires to obtain all consents and permissions required to authorise the use from time to time of the Property and the carrying out of any development (within the meaning of the Planning Acts) on the Property;

3.10.3 To pay and satisfy any charges that may hereafter be imposed under the Planning Acts in respect of the carrying out or maintenance of any such development;

3.10.4 To give written notice to the Landlord of the granting or refusal of any planning permission within twenty days after its receipt by the Tenant;

3.10.5 If the Tenant receives any compensation because of any restriction placed upon the use of the Property under or by virtue of the Planning Acts then if this Lease is determined by surrender or re-entry immediately to make such provision as is just and equitable for the Landlord to receive due benefit from such compensation.

3.11 Notices

As soon as reasonably practicable following receipt to provide to the Landlord a copy of any communication or notice which may give rise to a liability on the part of the Landlord or which may adversely affect the value or nature of the Landlord's interest in the Property.

⁸⁴ It is likely that the items in (b) would be within the charitable objects referred to in (a). However, this additional wording has been inserted as an optional clause for discussion between the parties on a case by case basis.

3.12 Dealings

- 3.12.1 Not to part with or share the possession or occupation of the whole or any part or parts of the Property Provided that the Tenant may share occupation of part of the Property with a body or individual providing services or facilities which are ancillary to and within the uses referred to in clause 3.9.3 where no relationship of landlord and tenant arises as a result of such occupation;
- 3.12.2 Not to hold the Property or any part or parts of the Property or this Lease on trust for another;
- 3.12.3 Subject to sub-clause 3.12.4 not to assign or transfer any part or parts or the whole of the Property;
- 3.12.4 The Tenant is permitted to assign or transfer the whole of the Property to a successor charitable or public body where the Secretary of State has given approval in writing to such an assignment or transfer;
- 3.12.5 [Not to underlet any part or parts or the whole of the Property] [Not to underlet the whole of the Property and not to underlet any part or parts of the Property for a term (including any option to renew) in excess of [●] years]⁸⁵;
- 3.12.6 Not to charge the whole or any part or parts of the Property [without the Landlord's written consent].

3.13 Rights of Light and Encroachments

Not to obstruct any windows or lights belonging to the Property nor to permit any encroachment upon the Property which might be or become a detriment to the Landlord and in case any encroachment is made or attempted to be made to give immediate notice of it to the Landlord.

3.14 Indemnity

- 3.14.1 To keep the Landlord indemnified against all actions proceedings costs claims demands and expenses in respect of any liability or alleged liability in respect of any injury to or the death of any person (however the same may be caused) damage to any property moveable or immovable Laws (including the Premises Acts the Planning Acts and the Environment Acts) the infringement disturbance or destruction of any right easement or privilege and every other liability arising directly or indirectly out of any defect in or the condition or use of the Property or anything done or omitted to be done on them or any breach of the Tenant's obligations in this Lease;
- 3.14.2 To notify the Landlord in writing immediately upon any of the events or matters referred to in sub-clause 3.14.1 occurring or arising.

⁸⁵ The question of limiting underlettings will be project-specific. If the Parties agree that no underletting is permitted, the first alternative is appropriate. It is likely that, as a minimum, underlettings for community purposes will be permitted and the second alternative may be appropriate to limit the length of such underlettings. Limitation of the purpose of underlettings (e.g to underlettings of part for community use) may be appropriate.

3.15 Costs

To pay to the Landlord on demand all reasonable and proper costs charges and expenses (including legal costs and surveyors' fees and other professional fees and any charges and/or commission payable to a bailiff) losses and liabilities which may be incurred by the Landlord:-

- 3.15.1 in connection with the preparation and service of any notice (including any schedule of dilapidations) served under this Lease relating to the repair or condition of the Property whether during the Term or within [●] months after the Termination Date;
- 3.15.2 in connection with any application by the Tenant for any licence approval permission or consent required under the terms of this Lease whether or not the application is withdrawn or the licence approval permission or consent is refused (save where refused unreasonably contrary to the terms of this Lease) or is granted (save where granted subject to conditions declared by a court of competent jurisdiction to be unreasonable);
- 3.15.3 in or in contemplation of claiming or recovering any arrears of Rent or rents or in connection with or arising out of any breach by the Tenant of any of the Tenant's obligations hereunder whether or not the Landlord proves such matters by proceedings in any Court.

3.16 VAT

- 3.16.1 To pay VAT upon the Rent and upon any other sums payable by the Tenant under this Lease and in relation to any other supply of goods or services (within the meaning of section 5 and schedule 4 of the Value Added Tax Act 1994) made by the Landlord to the Tenant under this Lease so far as such tax is from time to time properly chargeable upon the same and in relation to taxable supplies made by the Landlord to the Tenant the Landlord must deliver to the Tenant a VAT invoice addressed to the Tenant;
- 3.16.2 Where the Tenant has agreed to reimburse or indemnify the Landlord in respect of any payment made by the Landlord under the terms of or in connection with this Lease also to reimburse any VAT paid by the Landlord on such payment unless the VAT is actually recovered by the Landlord as an input in relation to supplies to the Landlord.

3.17 Interest on Arrears

If any sums from time to time payable by the Tenant to the Landlord under this Lease are not paid to the Landlord within [●] days of the date when such sums became due (whether demanded or not) or are tendered to the Landlord but the Landlord reasonably refuses to accept them so as to preserve any rights the Landlord has to pay to the Landlord (without prejudice to any other right remedy or power available to the Landlord) interest on such sums (both before and after any judgement) from the date when such sums first became due until the date of actual payment inclusive of both dates at the Interest Rate.

3.18 Landlord's Property

To observe and perform the matters contained or referred to in the documents listed in Schedule 4 relating to the Landlord's Property so far as they are still subsisting and capable of taking effect and relate to the Property and to keep the Landlord indemnified against all actions proceedings costs claims demands and expenses relating to them.

4. Landlord's Covenants

The Landlord covenants with the Tenant:-

4.1 Quiet Enjoyment

That the Tenant may peaceably and quietly hold and enjoy the Property during the Term without any interruption or disturbance by the Landlord or any person rightfully claiming through or under the Landlord.

5. Insurance

5.1 The Tenant covenants with the Landlord:-

5.1.1 to keep the Property insured with a reputable insurance office against loss or damage by the Insured Risks in the sum the Tenant is advised represents the Reinstatement Value of the Property from time to time;

5.1.2 to pay the premiums for insurance promptly as they become due and maintain in force the policies of insurance on the Property;

5.1.3 following the incidence of damage to or destruction of the Property and subject to receipt of all necessary consents licences permissions and the like to apply the proceeds of the policy of the insurance received for those purposes in rebuilding and reinstating the Property (provided that this covenant should be satisfied if the Tenant provides premises not necessarily identical to the Property as the same existing prior to such damage or destruction occurring) as soon as may be reasonably practicable provided that in case it shall be impossible or impracticable to reinstate the Property in accordance with the provisions of this Clause 5 within 3 years of the date of damage or destruction occurring either party may serve written notice on the other to terminate this Lease and upon service of such notice this Lease shall immediately cease and determine but without prejudice to the rights of either party against the other in respect of any prior breach of any obligation contained in this Lease and any monies received under the said policy of insurance whether before or after the termination of this Lease shall be paid by the Tenant on receipt to the Landlord and shall as between the Landlord and the Tenant belong to the Landlord absolutely;⁸⁶

5.1.4 to produce to the Landlord a copy of the insurance policy whenever reasonably requested and the receipt for the last or other evidence of renewal and up to date details of the amount of cover (but no more often than once in any period of 12 months in both cases);

⁸⁶ Note that insurance monies belong to the Landlord as the initial monies for the building are provided by DCSF, not the Academy Trust. If the Academy Trust is paying for any buildings, or does so in the future, the parties should agree equitable provisions for a split of the insurance proceeds in the event of non-reinstatement.

5.1.5 not to knowingly do anything whereby any policy of insurance relating to the Property may become void or voidable.

5.2 The Tenant further covenants with the Landlord to insure against liability in respect of property owners' and third party risks.

6. Provisos

6.1 Re-Entry

Where there occurs a breach by the Tenant of Clause 3.9 and/or 5.1.2 of this Lease and the Landlord has served written notice specifying such breach and the remedial action required by the Tenant and if within a reasonable period (taking account of the breach complained of) the Tenant has not taken steps to remedy such breach or the Tenant is dissolved or struck off or removed from the Register of Companies or otherwise ceases to exist then it is lawful for the Landlord or any person authorised by the Landlord at any time afterwards to re-enter upon the Property or any part of it in the name of the whole and thereupon the Term absolutely determines without prejudice to any right of action of the Landlord in respect of any breach of the Tenant's obligations contained in this Lease.

6.2 Landlord's Rights on Forfeiture

The Landlord's right to forfeit this Lease is not affected by any acceptance of or demand for rent or any action which would affirm this Lease by the Landlord with knowledge of a breach of any of the Tenant's covenants contained in this Lease and the Tenant is not in any proceedings for forfeiture or otherwise entitled to rely upon any such acceptance demand or affirmation as aforesaid as a defence provided that this provision only applies to any acceptance of or demand for rent or affirmation of this Lease made during such period as may in all the circumstances be reasonable for enabling the Landlord to conduct negotiations with the Tenant for remedying the breach.

6.3 Service of Notices

Section 196 of the Law of Property Act 1925 as amended by the Recorded Delivery Service Act 1962 applies to all notices which may require to be served under the terms of this Lease except that section 196 is deemed to be amended as follows:-

6.3.1 the final words of section 196(4) "and that service be delivered" are deleted and there is substituted "and that service is deemed to have been made on the third working day after the registered letter has been posted" and "working day" means any day from Monday to Friday (inclusive) other than Christmas Day Good Friday and any statutory or bank holiday;

6.3.2 any notice or document is also sufficiently served if sent by telephonic facsimile transmission to the party to be served and that service is deemed to be made on the day of transmission if transmitted before 4.00 pm on a working day but otherwise on the next following working day;

6.3.3 if the party to whom any notice to be served consists of more than one person the service of notice upon one of such persons constitutes service upon all of them;

6.3.4 any notice to be given by a party may be given by that party's solicitor or agent and when addressed to a party is not rendered invalid by reason of that party having died become insolvent or changed name whether or not the party serving notice is aware of the fact.

6.4 [Exclusion of S.62 L.P.A.

The operation of section 62 of the Law of Property Act 1925 is excluded from this Lease and the only rights granted to the Tenant are those expressly set out in this Lease and the Tenant is not by virtue of this Lease deemed to have acquired or be entitled by any means whatsoever (other than express grant) to any easement from or over the Retained Land or affecting any other land or premises now or at any time after the date of this Lease belonging to the Landlord and not comprised in this Lease.]⁸⁷

6.5 Governance

6.5.1 This Lease is governed by English law.

6.5.2 The parties submit to the exclusive jurisdiction of the High Court of Justice in England.

6.6 Agreement to Exclude Sections 24 to 28 of the 1954 Act

6.6.1 The Landlord and the Tenant agree pursuant to section 38A(1) of the 1954 Act that the provisions of sections 24 to 28 (inclusive) of the 1954 Act are excluded in relation to the tenancy created by this Lease.

6.6.2 The Tenant confirms that:

(a) the Landlord served on the Tenant a notice (the "**Notice**") applicable to the tenancy created by this Lease on [] in accordance with section 38A(3)(a) of the 1954 Act; and

(b) the Tenant or a person duly authorised by the Tenant made a declaration or a statutory declaration in relation to the Notice on [] in accordance with the requirements of section 38A(3)(b) of the 1954 Act;

before the Tenant entered into this Lease or (if earlier) became contractually bound to do so.

6.7 Termination

6.7.1 This Lease shall automatically determine on the termination of the Funding Agreement in circumstances where there is no other Funding Agreement in existence.

6.7.2 The Academy shall give written notice to the Authority as soon as possible after becoming aware that the Funding Agreement may be liable to termination, including where a notice terminating the Funding Agreement is

⁸⁷ Delete where there is no Retained Land of the Landlord.

served on the Academy, and the notice served on the Authority shall specify the date (or likely date) of termination of the Funding Agreements.

6.7.3 The Academy shall give written notice to the Authority at the same time as the Academy serves any notice terminating the Funding Agreement and such notice shall specify the date (or likely date) of termination of the Funding Agreement.

6.7.4 On the termination of this Lease under Clause 6.7.1 everything contained in the Lease ceases and determines but without prejudice to any claim by either party against the other in respect of any antecedent breach of any obligation contained in the Lease.

7. Landlord's Powers

7.1 The Landlord enters into this Lease pursuant to its powers under sections 111 120 122 and 123 of the Local Government Act 1972 the Education Act 1996 Section 2 of the Local Government Act 2000 and all other powers so enabling and warrants that it has full power to enter into this Lease and to perform all obligations on its part herein contained.

7.2 Nothing in this Lease shall fetter the Landlord in the proper performance of its statutory functions.

8. New Tenancy

This Lease is a new tenancy for the purposes of the 1995 Act.

9. Contracts (Rights of Third Parties) Act

A person who is not a party to this Lease has no right under the Contracts (Rights of Third Parties) Act 1999 to enforce any term of this Lease but this does not affect any right or remedy of a third party which exists or is available apart from that Act.

10. Charity

The Property will as a result of this Lease be held by [**Academy Trust**] a non-exempt charity and the restrictions on dispositions imposed by section 36 of the Charities Act 1993 will apply to the Property (subject to section 36(9) of that Act).

EXECUTED AS A DEED by the parties on the date which first appears in this Lease.

SIGNATURE PAGE

EXECUTED (but not delivered until the date hereof) AS A DEED by affixing the Common Seal of **[Local Education Authority]** in the presence of:-

.....
Authorised Signature)
.....
(Date)

EXECUTED (but not delivered until the date hereof) AS A DEED by affixing the Common Seal of **[Academy Trust]** in the presence of:-

.....
Director
.....
Secretary
.....
(Date)

SCHEDULE 1

Part 1 – The Property

ALL THAT land and buildings known as [●] shown edged red on the Plan and include the following so far as the same may exist at any time during the Term:-

- (a) all Conduits exclusively serving such premises; and
- (b) all Fixtures and Fittings (save for those that belong to the Tenant).

[Part 2 – The Retained Land

The land and premises shown edged blue on the Plan and any land now or in the future in the ownership of the Landlord at adjacent or near the Property.]⁸⁸

⁸⁸ Only applicable where land is being retained by Landlord.

SCHEDULE 2

Rights Granted⁸⁹

1. Access

The right for the Tenant and the Tenant's employees agents and visitors in common with the Landlord and all others from time to time so entitled to pass and repass with or without vehicles over and along the roadway at the Retained Land shown coloured [●] on the Plan for the purpose of obtaining access to and egress from the Property but not for any other purpose whatsoever.

2. Services

The right in common with the Landlord and all others from time to time so entitled and with the prior written consent of the Landlord (such consent not to be unreasonably withheld or delayed save as provided below) for the Tenant to connect into (in so far as there are no connections) and to pass Amenities to and from the Property through Conduits now or at any time during the Term laid in under or upon the Retained Land **PROVIDED** that the Landlord has the right at any time or times during the Term:-

- 2.1 to refuse consent for the Tenant to connect into any Conduits if in the reasonable opinion of the Landlord the Conduits are insufficient to bear the extra load which would be likely to result from the proposed connection by the Tenant; and
- 2.2 to divert or vary the positions of the Conduits upon giving reasonable prior notice to the Tenant (except in case of emergency) (which interruption the Landlord must however seek to minimise so far as is reasonably possible).

3. Support

A right of support and protection to the Property from the Retained Land.

4. Car Parking

In common with the Landlord and all others from time to time entitled the [exclusive] right for the Tenant the Tenant's employees agents licensees and visitors to use the [●] car parking spaces numbered [●] within the area shown coloured [●] on the Plan (or any alternative spaces/area no less materially convenient to the Tenant which the Landlord may from time to time in writing specify) for the parking of not more than [●] motor cars but not for any other purpose whatsoever and only within the designated spaces.

5. Access to Retained Land

The right upon giving reasonable prior written notice (except in case of emergency) to the Landlord and all others from time to time so entitled to enter only so far as is strictly necessary upon the Retained Land for the purpose of inspecting and executing repairs to or on the Property subject to the Tenant:-

- 5.1 causing as little damage disturbance or inconvenience as possible to the Landlord and all others from time to time so entitled; and

⁸⁹ This Schedule is only applicable if Landlord is retaining land or has other land over which rights need to be granted. Further rights may need to be considered on a site specific basis.

5.2 making good as soon as reasonably practicable to the reasonable satisfaction of the Landlord and to all others from time to time so entitled all damage caused by the exercise of this right.

SCHEDULE 3

Rights Excepted and Reserved⁹⁰

1. Services

The right to connect into and pass Amenities to and from the Retained Land and any other adjoining or neighbouring property of the Landlord in and through Conduits now or at any time during the Term laid in or upon the Property together with the right to enter upon the Property upon giving reasonable prior notice to the Tenant (except in case of emergency) in order to lay inspect cleanse renew and maintain the Conduits the person exercising such right causing as little damage disturbance or inconvenience as possible to the Tenant or the business being carried on upon the Property and making good as soon as reasonably practicable any damage occasioned to the Property by the exercise of this right to the reasonable satisfaction of the Tenant.

2. Access to Property

The right upon giving reasonable prior notice to the Tenant (except in case of emergency) to enter upon the Property for the purposes of:-

2.1 inspecting and executing repairs additions alterations and other works to or on the Retained Land or to any Conduits within the Property; and

2.2 the exercise of the rights powers privileges and permissions conferred or granted under the covenants and provisions of this Lease;

the person exercising such right causing as little damage disturbance or inconvenience as reasonably possible to the operation of the school on the Property and making good as soon as reasonably practicable to the Tenant's reasonable satisfaction any damage to the Property caused by the exercise of this right.]

⁹⁰ This Schedule is only applicable where the Landlord is retaining land and requires rights over the Property. Further reservations may need to be considered on a site specific basis.

SCHEDULE 4

Landlord's Property

Details of title of Landlord's Property.⁹¹

⁹¹ This may be the whole of the Property or the Property and additional land belonging to the Landlord. This Schedule should list all documents to which the Lease is subject on a site specific basis including, for example, pre-existing easements, aerial leases and substation leases.

SCHEDULE 8

DEED OF NOVATION

Dated

200

[LOCAL AUTHORITY] (1)

[ACADEMY] (2)

[CONTRACTOR] (3)

NOVATION OF BUILDING CONTRACT
(Local Authority to [Academy])
relating to [school]

Date of this Deed [] 200[]

(1) [Local Authority]* of []

(2) [Academy]* of []

(3) Contractor (CRN []) whose registered office is at []

WHEREAS

- (A) The [Local Authority] and the Contractor have entered into a contract (Building Contract) under which the Contractor agreed to design and to construct [*insert details*] (“the School”).
- (B) The [Local Authority] has transferred or agreed to transfer its interest in (or granted or agreed to grant a subordinate interest in) the School to the [Academy].
- (C) The parties have agreed to novate the Building Contract to the [Academy] on the terms set out below.

IT IS AGREED

1 Novation of Building Contract

The Building Contract is hereby novated from the [Local Authority] and the Contractor to the [Academy] and the Contractor.

2 Release of [Local Authority]

The [Local Authority] shall no longer owe any duty or obligation to the Contractor under or in respect of the Building Contract whether by virtue of its terms or by virtue of any breach or otherwise.

3 Release of Contractor

The Contractor shall no longer owe any duty or obligation to the [Local Authority] under or in respect of the Building Contract whether by virtue of its terms or by virtue of any breach or otherwise.

4 Binding of Contractor to [Academy]

4.1 The Contractor binds itself to the [Academy] in the terms of the Building Contract as if the [Academy] were and always had been named in the Building Contract in place of the [Local Authority].

4.2 The Contractor warrants to the [Academy] that prior to the date of this Deed it has performed and that it will continue to perform its duties and obligations as required by and in accordance with the terms of the Building Contract.

4.3 The [Academy] shall not be precluded from recovering any losses incurred by the [Academy] resulting from any breach of clause 4.2 by reason that (if it be the case) the acts or omissions causing such breach occurred before this Deed took effect, or that the [Local Authority] will not incur or has not or would not have incurred any such losses.

5 Binding of [Academy] to Contractor

The [Academy] binds itself to the Contractor in the terms of the Building Contract as if the [Academy] were and always had been named in the Building Contract in place of the [Local Authority] and as if all acts and omissions of the [Local Authority] (including any wrongful acts or omissions) under and in respect of the Building Contract were the acts and omissions of the [Academy].

6 Vesting of remedies in [Academy]

All rights of action and remedies vested in the [Local Authority] against the Contractor under and in respect of the Building Contract shall hereupon vest in the [Academy].

7 Vesting of remedies against [Academy]

All rights of action and remedies vested in the Contractor against the [Local Authority] under and in respect of the Building Contract shall hereinafter lie against the [Academy].

8 Affirmation of Building Contract

Subject to the terms of this Deed the Building Contract shall remain in full force and effect.

9 Governing Law and Interpretation

9.1 The law of this Deed is English law and the English courts shall have jurisdiction with regard to all matters arising therefrom.

9.2 The Memorandum is part of this Deed and definitions in the Memorandum or the Recitals hereto shall apply to this Deed.

9.3 Clause headings in this Deed shall be of no effect.

Executed as a deed by the parties or their duly authorised representatives [on] [but not delivered until] the date of this Deed.

IN WITNESS of which this document is executed as a Deed and is delivered on the date first

EXECUTED AS A DEED by the *[[Local Authority]]*
acting by two authorised signatories:

Authorised Signatory

Authorised Signatory

EXECUTED AS A DEED by the *[[Academy]]*
acting by two authorised signatories:

Authorised Signatory

Authorised Signatory

EXECUTED AS A DEED by *[Contractor]* by the
Signature of a director and the secretary or of two
Directors of the company:

Director

Print Name

Director/Secretary

Print Name

ANNEX 1

D&B CONTRACT

ANNEX 2

COLLATERAL WARRANTIES

ANNEX 3
PLANS