



Department  
for Education

# **Mainstream academy and free school: supplemental funding agreement**

**July 2014**

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## SUMMARY SHEET

### Information about the Academy:

|  |   |
|--|---|
| <b>Name of Academy Trust</b>                                     | The Rivers C of E Multi Academy Trust   |
| <b>Company number</b>  | 09199371  |
| <b>Date of Master Funding Agreement</b>                          | 30/09/2014  |
| <b>Name of Academy</b>   | Cutnall Green CofE First  |
| <b>Opening date</b>  | 1 October 2014  |
| <b>Type of Academy (indicate whether academy or free school)</b> | Mainstream Academy  |
| <b>Religious designation</b>                                     | Church of England   |
| <b>Wholly or partly selective</b>                                | N/A   |
| <b>Name of predecessor school (where applicable)</b>             | Cutnall Green CofE First  |
| <b>Capacity number</b>   | 100   |
| <b>Age range</b>   | 5-9   |
| <b>Number of sixth form places</b>                               | N/A   |
| <b>SEN unit / Resource provision</b>                             | N/A   |
| <b>Land arrangements (Version 1-7 or other)</b>                  | 2,3   |
| <b>Address and title number of Land</b>                          | Cutnall Green CofE First, School Lane,<br>Cutnall Green, Droitwich, Worcestershire,<br>WR9 0PH<br><br>Title Number- WR99160 |

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

| Clause No. | Descriptor  | Applied | Not used |
|------------|---|---------|----------|
| 1.I        | Only applies to free schools and new provision academies  |         | x        |
| 2.A.1      | Clause applies where an academy was previously a VC or foundation school designated with a religious character        |         | x        |
| 2.C, 2.D   | Only applies where the academy has an SEN unit  |         | x        |
| 2.E        | Only applies where there was a predecessor independent school   |         | x        |
| 2.EA       | Only applies where the academy provides early years provision   | x       |          |
| 2.G        | Clause does not apply to free schools (unless there was a predecessor independent school), or new provision academies | x       |          |
| 2.M        | Clause applies only to academies and free schools designated with a religious character                               | x       |          |
| 2.N        | Clause applies only to academies that were formerly wholly selective grammar schools                                  |         | x        |
| 2.O        | Clause applies only to academies that were formerly partially selective grammar schools                               |         | x        |
| 2.T        | Clause applies to free schools and new provision academies designated with a religious character                      |         | x        |
| 2.W        | Clause only applies where the academy is designated with a religious character  | x       |          |
| 2.X        | Clause only applies where the academy has not been designated with a religious character                              |         | x        |
| 2.Y        | Clause applies where an academy was previously a VC school or foundation school designated with a religious character |         | x        |

| Clause No. | Descriptor  | Applied | Not used       |
|------------|---|---------|----------------|
| 2.Yc)      | Sub-clause applies if the academy is designated with a denominational religious character – CE etc. rather than ‘Christian’ |         | x              |
| 3.A – 3.F  | Option 1 applies to converter and sponsored academies: if used delete option 2  | x       |                |
| 3.A – 3.F  | Option 2 applies to free schools and new provision academies: if used delete option 1                                       |         | x<br>(deleted) |
| 3.G        | Clause relating to Start-up only applies in some cases (does not apply to academy converters)                               |         | x              |
| 3.I        | Clause only applies to full sponsored and intermediate sponsored academies with approved Academy Action Plans               |         | x              |
| 3.J        | Clause does not apply to free schools (unless there was a predecessor independent school), or new provision academies       | x       |                |
| 5.I        | Clause only applies to sponsored academies  |         | x              |
| 5.K        | Clause applies to free schools and may be applied to new provision academies  |         | x              |
| 5.L        | Clause applies to free schools and may be applied to new provision academies  |         | x              |
| 5.M        | Clause applies to free schools and may be applied to new provision academies  |         | x              |
| 5.N        | Clause applies to free schools and may be applied to new provision academies  |         | x              |
| 5.O        | Clause applies to free schools and may be applied to new provision academies  |         | x              |
| 6.H        | Clause only applies to schools which are designated with a Church of England or Roman Catholic character                    | x       |                |

## 1. ESTABLISHING THE ACADEMY

- 1.A This Agreement made between the Secretary of State for Education and The Rivers C of E Multi Academy Trust is supplemental to the master funding agreement made between the same parties and dated 30/09/2014 2014 (the "**Master Agreement**").

### Definitions and interpretation

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

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

"The **Academy**" means Cutnall Green CofE First.

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

(a) attend the Academy;

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

(c) in respect of whom the Academy Trust may otherwise charge a fee under clause 12(f),

shall be excluded from the definition.

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

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

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

### **The Academy**

- 1.F The Academy is a Mainstream Academy as defined in clause 1.4 of the Master Agreement.
- 1.G The Academy Trust will establish and maintain the Academy in accordance with the Master Agreement and this Agreement.
- 1.H The Academy Trust will open the Academy on 1 October 2014.
- 1.I Not used.

## **2. RUNNING OF THE ACADEMY**

### **Teachers and staff**

- 2.A Subject to clause 2.4 of the Master Agreement and 7.A of this Agreement (if used), the Academy Trust may, in accordance with any relevant Guidance, employ anyone it believes is suitably qualified or is otherwise eligible to plan and prepare lessons and courses for pupils, teach pupils, and assess and report on pupils' development, progress and attainment.
- 2.A.1 Not used.

### **Pupils**

- 2.B The planned capacity of the Academy is 100 in the age range 5-9. The Academy will be an all ability inclusive school.

### **SEN unit**

- 2.C Not used.

2.D Not used.

### **Charging**

2.E Not used. There must be no charge for admission to or attendance at the Academy and subject to clause 2.EA the Academy will only charge pupils where the law allows maintained schools to charge.

2.EA The Academy Trust may charge registered pupils at the Academy for Early Years Provision provided in excess of the provision funded by the LA in accordance with its duty under section 7 of the Childcare Act 2006.

### **Admissions**

2.F Subject to clauses 2.K– 2.L the Academy Trust will act in accordance with, and will ensure that its Independent Appeal Panel is trained to act in accordance with, the School Admissions Code and School Admission Appeals Code published by the DfE (the “Codes”) and all relevant admissions law as they apply to foundation and voluntary aided schools, and with equalities law. Reference in the Codes or legislation to “admission authorities” will be deemed to be references to the Academy Trust.

2.G Pupils on roll in a Predecessor School which was a maintained or independent school will transfer automatically to the Academy on opening. All children already offered a place at that Predecessor School must be admitted to the Academy.

2.H The Academy Trust must participate in the local Fair Access Protocol. The Academy Trust must participate in the coordinated admission arrangements operated by the LA in whose area the Academy is situated. If the Academy is a free school, the Academy Trust is not required to participate in coordination for its first intake of pupils.

2.I The Academy Trust may determine admission arrangements (subject to consultation in line with the Codes) that give priority for admission to children attracting the Pupil Premium, including the service premium (the “pupil

premium admission criterion”), but not above looked-after children and previously looked-after children.

- 2.J Where the Academy Trust applies the pupil premium admission criterion, it must provide information in its admission arrangements about eligibility for the premiums.
- 2.K For the purposes of applying the pupil premium admission criterion only, sections 1.9(f) and 2.4(a) of the School Admissions Code do not apply insofar as they prevent admission authorities from giving priority to children according to the financial or occupational status of parents or using supplementary forms that ask for:
- a) any personal details about their financial status; or
  - b) whether parents are serving in the armed forces (of any nation), stationed in England, and exercising parental care and responsibility for the child in question.
- 2.L The Secretary of State may:
- a) direct the Academy Trust to admit a named pupil to the Academy:
    - i. following an application from an LA including complying with a school attendance order as defined in section 437 of the Education Act 1996. Before doing so the Secretary of State will consult the Academy Trust; or
    - ii. where in relation to a specific child or children the Academy Trust has failed to act in accordance with the Codes or this Agreement or has otherwise acted unlawfully; or
  - b) direct the Academy Trust to amend its admission arrangements where they do not comply with the Codes or this Agreement, or are otherwise unlawful.

- 2.M The Academy is an academy designated with a Church of England religious character. The relevant religious authority (i.e. the diocese, or foundation faith body) is The Worcester Diocesan Academies Trust
- 2.N Not used.
- 2.O Not used.
- 2.P The Academy Trust must ensure that parents and ‘relevant children’ (as described in the **Codes**) have the right to appeal to an Independent Appeal Panel if they are dissatisfied with an admission decision of the Academy Trust. The arrangements for appeals must comply with the Codes as they apply to foundation and voluntary aided schools. The determination of the appeal panel is binding on all parties.
- 2.Q Subject to clause 2.R, the meaning of “**relevant area**” for the purposes of consultation requirements in relation to admission arrangements is that determined by the relevant LA for maintained schools in the area in accordance with the Education (Relevant Areas for Consultation on Admission Arrangements) Regulations 1999.
- 2.R If the Academy does not consider the relevant area determined by the LA for the maintained schools in the area to be appropriate, it must apply to the Secretary of State by 1 August before the academic year in question for a determination of the appropriate relevant area for the Academy, setting out the reasons for this view. The Secretary of State will consult the Academy Trust and the LA in whose area the Academy is situated in reaching a decision.
- 2.S The Office of the Schools Adjudicator (“**OSA**”) will consider objections to the Academy’s admission arrangements (except objections against the agreed variations from the Codes specified at clause 2.K, over which it has no jurisdiction). The Academy Trust must therefore make it clear, when determining the Academy’s admission arrangements, that objections should be submitted to the OSA. The OSA’s determination of an objection is binding

on the Academy and the Academy Trust must make appropriate changes to its admission arrangements as quickly as possible.

2.T Not used.

## Curriculum

2.U The Academy Trust must provide for the teaching of religious education and a daily act of collective worship at the Academy.

2.V The Academy Trust must comply with section 71(1)-(6) and (8) of the School Standards and Framework Act 1998 as if the Academy were a community, foundation or voluntary school, and as if references to “religious education” and “religious worship” in that section were references to the religious education and religious worship provided by the Academy in accordance with clause 2.W..

2.W Subject to clause 2.V, **where the Academy is designated with a religious character** (in accordance with section 124B of the School Standards and Framework Act 1998 or further to section 6(8) of the Academies Act 2010):

- a) provision must be made for religious education to be given to all pupils at the Academy in accordance with the tenets of the Academy’s specified religion or religious denomination. This is subject to paragraph 4 of Schedule 19 to the School Standards and Framework Act 1998, which applies as if the Academy were a voluntary aided school with a religious character;
- b) the Academy Trust must comply with section 70(1) of, and Schedule 20 to, the School Standards and Framework Act 1998 as if the Academy were a foundation school with a religious character or a voluntary school, and as if references to “the required collective worship” were references to collective worship in accordance with the tenets and practices of the Academy’s specified religion or religious denomination;
- c) the Academy Trust must ensure that the quality of religious education given to pupils at the Academy and the contents of the Academy’s

collective worship given in accordance with the tenets and practices of its specific religion or religious denomination are inspected. The inspection must be conducted by a person chosen by the Academy Trust, and the Academy Trust must ensure that the inspection complies with the statutory provisions and regulations which would apply if the Academy were a foundation or voluntary school designated as having a religious character.

2.X Not used.

2.Y Not used.

2.Z The Academy Trust must have regard to any Guidance, further to section 403 of the Education Act 1996, on sex and relationship education to ensure that children at the Academy are protected from inappropriate teaching materials and that they learn the nature of marriage and its importance for family life and for bringing up children. The Academy Trust must also have regard to the requirements in section 405 of the Education Act 1996, as if the Academy were a maintained school.

2.AA The Academy Trust must prevent political indoctrination, and secure the balanced treatment of political issues, in line with the requirements for maintained schools set out in the Education Act 1996, and have regard to any Guidance.

### 3. **GRANT FUNDING**

#### **Calculation of GAG**

3A-3D. Not used.

3.E The Secretary of State will calculate GAG based on the pupil count at the Academy. In order to calculate GAG for the Academy Financial Year in which the Academy opens, the pupil count will be determined on the same basis as that used by the relevant LA for determining the budget of the maintained Predecessor School.

- 3.F For Academy Financial Years after that referred to in clause 3.E, the basis of the pupil count for determining GAG will be:
- a) for pupils in Year 11 and below, the Schools Census which is used to fund maintained schools for the financial year overlapping with the Academy Financial Year in question; and
  - b) for pupils in Year 12 and above, the formula which is in use at the time for maintained schools.
- 3.G Grants paid by the Secretary of State (be they GAG, EAG or Capital Grant) shall not be used by the Academy Trust for Early Years Provision for which the Academy Trust is entitled to make a charge under clause 2.EA).
- 3.H The Secretary of State recognises that if he serves a Termination Notice or a Termination Warning Notice, or otherwise terminates the Master Agreement, the intake of new pupils during the notice period may decline and therefore payments based on the number of pupils attending the Academy may be insufficient to meet the Academy's needs. In these circumstances the Secretary of State may pay a larger GAG in the notice period, to enable the Academy to operate effectively.

### **Other relevant funding**

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

### **Carrying forward of funds**

- 3.K Any additional grant made in accordance with clause 3.H, for a period after the Secretary of State has served a Termination Notice or a Termination Warning

Notice under this Agreement, or otherwise terminates the Master Agreement, may be carried forward without limitation or deduction until the circumstances set out in clause 3.H cease to apply or the Academy closes.

#### 4. **LAND**

“**Land**” means the land at Cutnall Green CofE First, School Lane, Cutnall Green, Droitwich, Worcestershire, WR9 0PH, being part of the land registered with title number WR99160 and demised by the Lease.

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

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

#### **Restrictions on Land transfer**

4.A The Academy Trust must:

- a) within 28 days after signing this Agreement, apply to the Land Registry using Form RX1 for the following restriction (the “**Restriction**”) to be entered in the proprietorship register for the Land:

*No disposition of the registered estate by the proprietor of the registered estate is to be registered without a written consent signed by the Secretary of State for Education, of Sanctuary Buildings, Great Smith Street, London SW1P 3BT;*

- b) take any further steps reasonably required to ensure that the Restriction is entered on the proprietorship register;
- c) promptly confirm to the Secretary of State when the Restriction has been registered;

- d) if it has not registered the Restriction, permit the Secretary of State to do so in its place; and
- e) not, without the Secretary of State's consent, apply to disapply, modify, cancel or remove the Restriction, whether by itself, a holding company, a subsidiary company, or a receiver, administrator or liquidator acting in the name of the Academy Trust.

### **Obligations of the Academy Trust**

- 4.B The Academy Trust must keep the Land clean and tidy and make good any damage or deterioration to the Land. The Academy Trust must not do anything to lessen the value or marketability of the Land without the Secretary of State's consent.
- 4.C The Academy Trust must comply with the Lease and promptly enforce its rights against the Landlord.
- 4.D The Academy Trust must not, without the Secretary of State's consent:
  - a) terminate, vary, surrender, renew, dispose of or agree any revised rent under the Lease;
  - b) grant any consent or licence; or
  - c) create or allow any encumbrance; or
  - d) part with or share possession or occupation; or
  - e) enter into any onerous or restrictive obligations,in respect of all or part of the Land.

### **Option**

- 4.E The Academy Trust grants and the Secretary of State accepts an option (the "**Option**") to acquire all or part of the Land at nil consideration. The Secretary of State may exercise the Option in writing on termination of this Agreement. If the Option is exercised, completion will take place 28 days after the exercise

date in accordance with the Law Society's Standard Conditions of Sale for Commercial Property in force at that date.

### **Option Notice**

#### 4.F The Academy Trust:

- a) must, within 14 days after acquiring the Land or, if later, after signing this Agreement, apply to the Land Registry on Form AN1 (including a copy of this Agreement) for a notice of the Option (the "**Option Notice**") to be entered in the register, taking any further steps required to have the Option Notice registered and promptly confirming to the Secretary of State when this has been done;
- b) if it has not registered the Option Notice, agrees that the Secretary of State may apply to register it using Form UN1;
- c) must not, without the Secretary of State's consent, apply to disapply, modify or remove the Option Notice, whether by itself, a holding company, a subsidiary company, or a receiver, administrator or liquidator acting in the name of the Academy Trust, and
- d) must, in the case of previously unregistered land, within 14 days after acquiring the Land or, if later, after signing this Agreement, apply to register a Class C(iv) land charge in the Land Charges Registry, and send the Secretary of State a copy of the relevant entry within 7 days after the registration has been completed. If the Secretary of State considers that the Academy Trust has not complied with this clause, he may apply to secure the registration.

### **Property Notices**

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

- a) send a copy of it to the Secretary of State within 14 days, stating how the Academy Trust intends to respond to it;

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

### **Breach of Lease**

- 4.H If the Academy Trust is, or if it is reasonably foreseeable that it will be, in material breach of the Lease, the Academy Trust must immediately give written notice to the Secretary of State stating what the breach is and what action the Academy Trust has taken or proposes to take to remedy it, including timescales where appropriate.
- 4.I After notifying the Secretary of State under clause 4.H, the Academy Trust must:
- a) promptly give the Secretary of State all the information he asks for about the breach;
  - b) allow the Secretary of State to take all necessary action, with or instead of the Academy Trust, to remedy or prevent the breach, and
  - c) use its best endeavours to help the Secretary of State to remedy or prevent the breach.
- 4.J The parties' rights and obligations in respect of the Land are set out in the Church Supplemental Agreement or private lease dated and made between (1) the Secretary of State; (2) the Academy Trust; (3) The Rector and Church Wardens for the time being of the Ecclesiastical Parish of Elmley Lovatt; and (4) The Worcester Diocesan Academies Trust. For the purposes of this clause, Land has the meaning given in the Church Supplemental Agreement or private lease.

## **5. TERMINATION**

### **Termination by either party**

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

### **Termination Warning Notice**

5.B The Secretary of State may serve a Termination Warning Notice where he considers that:

- a) the Academy Trust has breached the provisions of this Agreement or the Master Agreement; or
- b) the standards of performance of pupils at the Academy are unacceptably low; or
- c) there has been a serious breakdown in the way the Academy is managed or governed; or
- d) the safety of pupils or staff is threatened, including due to breakdown of discipline.

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

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

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

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

### **Termination by the Secretary of State after inspection**

- 5.F If the Chief Inspector gives notice to the Academy Trust that:
- a) special measures are required to be taken in relation to the Academy;  
or
  - b) the Academy requires significant improvement

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

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

- 5.H If the Secretary of State has served a Termination Warning Notice under clause 5.F and:
- a) has not received any representations from the Academy Trust by the date specified in the notice; or
  - b) having considered the representations made by the Academy Trust remains satisfied that this Agreement should be terminated;

he may serve a Termination Notice.

- 5.I Not used.

### **Termination by the Secretary of State**

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

### **Funding and admission during notice period**

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

### **Notice of intention to terminate by Academy Trust**

- 5.R The Secretary of State will, before the start of each Academy Financial Year, provide the Academy Trust with a final funding allocation indicating the level of GAG and EAG to be provided in the next Academy Financial Year (the “**Funding Allocation**”).
- 5.S If the Academy Trust is of the opinion that, after receipt of the Funding Allocation for the next Academy Financial Year (the “**Critical Year**”) and after taking into account all other resources likely to be available to the Academy, including other funds that are likely to be available to the Academy from other

academies operated by the Academy Trust (“**All Other Resources**”), it is likely that the cost of running the Academy during the Critical Year would cause the Academy Trust to become insolvent (and for this reason only) then the Academy Trust may give written notice of its intention to terminate this Agreement at the end of the then current Academy Financial Year.

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

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

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

pupils at the Academy and use their best endeavours to agree a practical solution to the problem.

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

## **Effect of termination**

- 5.Z If this Agreement is terminated, the Academy will cease to be an academy within the meaning of sections 1 and 1A of the Academies Act 2010.
- 5.AA Subject to clauses 5.BB and 5.CC, if the Secretary of State terminates this Agreement under clause 5.A, he will indemnify the Academy Trust. If the Secretary of State terminates this Agreement otherwise than under clause 5.A, he may at his discretion indemnify or compensate the Academy Trust.
- 5.BB The amount of any such indemnity or compensation will be determined by the Secretary of State, having regard to representations made to him by the Academy Trust, and will be paid as and when the Secretary of State considers appropriate.
- 5.CC The categories of expenditure incurred by the Academy Trust in consequence of termination, for which the Secretary of State may indemnify the Academy Trust under clauses 5.AA, may include:
- a) staff compensation and redundancy payments;
  - b) compensation payments in respect of broken contracts;
  - c) expenses of disposing of assets or adapting them for other purposes;
  - d) legal and other professional fees; and
  - e) dissolution expenses.
- 5.DD If this Agreement is terminated, and the Academy Trust owns capital assets which have been partly or wholly funded by HM Government, the Academy Trust must, as soon as possible after the termination date:
- a) transfer a proportion of those capital assets, equal to the proportion of the original financial contribution made by HM Government, to a nominee of the Secretary of State to use for educational purposes; or
  - b) if the Secretary of State directs that a transfer under clause 5.DD(a) is not required, pay to the Secretary of State at the termination date (or,

by agreement with the Secretary of State, at the date of their subsequent disposal) a sum equivalent to the proportion of the original financial contribution made by HM Government..

5.EE The Secretary of State may:

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

## **6. OTHER CONTRACTUAL ARRANGEMENTS**

### **Annexes**

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

### **The Master Agreement**

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

### **General**

6.C The Academy Trust cannot assign this Agreement.

6.D Failure to exercise, or a delay in exercising, any right or remedy of the Secretary of State under this Agreement (including the right to terminate this Agreement), or a single or partial exercise of such a right or remedy, is not a waiver of, and does not prevent or restrict any initial or further exercise of, that or any other right or remedy.

6.E Termination of this Agreement will not affect the accrued rights, remedies, obligations or liabilities of the parties existing at termination.

- 6.F This Agreement may be executed in any number of counterparts, each of which when executed and delivered shall constitute a duplicate original, but all of which will together constitute the same agreement.
- 6.G This Agreement and any dispute or claim arising out of or in connection with it or its subject matter or formation (including non-contractual disputes or claims) shall be governed by and construed in accordance with the law of England and Wales, and submitted to the exclusive jurisdiction of the courts of England and Wales.
- 6.H The Secretary of State agrees that this Agreement shall be interpreted in a way which is compatible with the provisions of clauses 20A-F (if used) and 23A-H of the Church Supplemental Agreement dated and made between (1) the Secretary of State; (2) the Academy Trust; (3) The Rector and Church Wardens for the time being of the Ecclesiastical Parish of Elmley Lovatt; and (4) The Worcester Diocesan Academies Trust.

This Agreement was executed as a Deed on

30 September 2014

Executed on behalf of the **Academy Trust** by:

  
.....

and

  
.....

**Director**

**Director**

The Corporate Seal of

**THE SECRETARY OF STATE FOR EDUCATION**

affixed to this deed is authenticated by:



  
.....

**Duly Authorised**

## ANNEXES

### 7. PUPILS WITH SPECIAL EDUCATION NEEDS (SEN) AND DISABILITIES

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

- 7.A Clause 2.A does not apply to anyone whom the Academy Trust appoints as the Special Educational Needs Co-ordinator under section 317(3A) of the Education Act 1996, who must instead meet the requirements in Regulation 3 of the Education (Special Educational Needs Co-ordinators) (England) Regulations 2008 .
- 7.B The Academy Trust must comply with all the duties imposed on maintained schools, with regard to pupils with SEN and disabilities, in:
- a) Part 4 of the Education Act 1996;
  - b) The Education (Special Educational Needs) (Information) Regulations 1999;
  - c) The Education (Special Educational Needs Co-ordinators) (England) (Amendment) Regulations 2008.
- 7.C Where a child who has SEN is being educated in an Academy run by the Academy Trust, those concerned with making special educational provision for the child must secure that the child engages in the activities of the school together with children who do not have SEN, as far as is reasonably practicable and is compatible with:
- a) the child receiving the special educational provision which his learning difficulty calls for;
  - b) the provision of efficient education for the children with whom he will be educated; and
  - c) the efficient use of resources.

- 7.D The Academy Trust must ensure that its Academies' websites include details of the implementation of their policies for pupils with SEN; the arrangements for the admission of disabled pupils; the steps taken to prevent disabled pupils from being treated less favourably than other pupils; and the facilities provided to assist access to that Academy by disabled pupils (disability as being defined for the purposes of the Equality Act 2010).

## **8. ADMISSION OF PUPILS WITH SEN AND DISABILITIES**

- 8.A The Academy Trust must for each of its Academies, subject to its right of appeal to the Secretary of State, admit all pupils with a statement of SEN naming the Academy.
- 8.B Where an LA proposes to name one of the Academies in a statement of SEN, it must give the Academy Trust written notice of this, stating why it considers that Academy to be suitable for the pupil in question. Within 15 days of receipt of the LA's notice, the Academy Trust must consent to being named, except where admitting the child would be incompatible with the provision of efficient education for other children, and no reasonable steps could secure compatibility. In deciding whether a child's inclusion would be incompatible with the efficient education of other children or the efficient use of resources, the Academy Trust must have regard to the relevant Guidance issued to maintained schools.
- 8.C If the Academy Trust decides that admitting the child would be incompatible with the provision of efficient education or the efficient use of resources, it must, within the 15 days, notify the LA in writing, giving its reasons for its decision.
- 8.D The Academy Trust must then seek to establish from the LA whether or not it agrees with this determination. If the LA does not agree with the Academy Trust's response, and names the Academy in the child's statement of SEN, the Academy Trust must admit the child to the school as specified in the statement or otherwise by the LA.

- 8.E If in such case, the Academy Trust considers that the LA should not have named the Academy in the statement, it may ask the Secretary of State to determine whether the LA has acted unreasonably, and to make an order directing the LA to reconsider. The Secretary of State's determination will be final, subject only to any right of appeal which a parent of the child may have to the First-tier Tribunal (Special Educational Needs and Disability).
- 8.F If a parent of a child for whom the LA maintains a statement appeals to the First-tier Tribunal (Special Educational Needs and Disability), either for or against the naming of the Academy in the child's statement, then the Tribunal's decision will be binding, even if it is different from that of the Secretary of State.
- 8.G Where it has been determined that the Academy be named in a child's statement of SEN, the Academy Trust must admit the child to the Academy, notwithstanding any other admissions requirements in this Agreement.
- 8.H Clauses 7.A to 8.H only apply insofar as the relevant provisions of the Children & Families Act 2014 relating to SEN and disability do not apply to Academies and Free Schools.



Department  
for Education

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## DEED OF VARIATION TO THE SUPPLEMENTAL FUNDING AGREEMENT

THIS DEED is made the 4 day of August 2017

### BETWEEN

- 1) The Secretary of State for Education (the "**Secretary of State**"); and
- 2) The Rivers CofE Multi Academy Trust, (the "**Company**") [a charitable company incorporated in England and Wales with registered number 09199371, together, the "**Parties**".

### INTRODUCTION

- A. The Parties entered into a funding agreement dated on or about 30 September 2014 (the "**Funding Agreement**") relating to the establishment, maintenance and funding of an Academy school known as Cutnall Green CofE Primary School in accordance with the Supplemental Funding Agreement.
- B. The Parties now wish to vary and amend certain terms and conditions of the Funding Agreement in accordance with the terms of this Deed.
- C. This Deed is supplemental to the Funding Agreement.

### 1. INTERPRETATION

- 1.1 Words, expressions and interpretations used in this Deed shall, unless the context expressly requires otherwise, have the meaning given to them in, and shall be interpreted in accordance with, the Funding Agreement.

### 2. VARIATION OF THE SUPPLEMENTAL FUNDING AGREEMENT

- 2.1 The Parties agree that with effect from the date of this Deed the Supplemental Funding Agreement shall be amended as follows:

In Summary Sheet on page 4 [information about the Academy] of the Supplemental Funding Agreement shall be deleted and replaced with:

"Name of predecessor school; Cutnall Green CofE Primary"  
"Capacity Number: 208 of which 26 are pre-school places"  
"Age Range: 3-11"

The wording of clause 1.C on page 7 ("The Academy" means Cutnall Green CofE First") of the Supplemental Funding Agreement shall be deleted and replaced with:

"The Academy" means Cutnall Green CofE Primary"

The wording of clause 2.B of the Supplemental Funding Agreement shall be deleted and replaced with:

"The planned capacity of the Academy is 208 in the age range 3-11 of which 26 are pre-school places. The Academy will be an all ability inclusive school."

On page 15, the wording of clause 4's first paragraph of the Supplemental Funding Agreement, shall be deleted and replaced with:

"**Land**" means the land at Cutnall Green CofE Primary, School Lane, Cutnall Green, Droitwich, Worcestershire, WR9 0PH, being part of the land registered with title number WR99160 and demised by the Lease."

2.2 Except as varied by this Deed, the Funding Agreement shall remain in full force and effect.

**3. Governing law and jurisdiction**

3.1 This Deed, and any disputes or claims arising out of or in connection with it, its subject matter or formation (including non-contractual disputes or claims), shall be governed by and construed in accordance with English law.

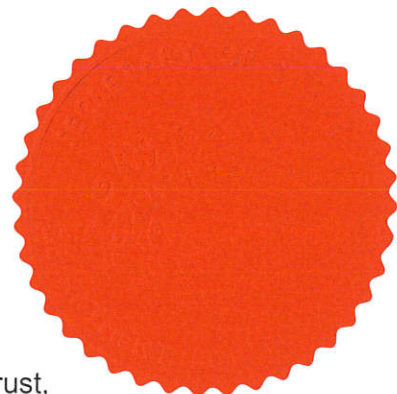
3.2 The parties irrevocably agree that the English courts have exclusive jurisdiction to settle any dispute or claim that arises out of or in connection with this Deed or its subject matter or formation (including non-contractual disputes or claims).

**4. Counterparts**

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


**IN WITNESS** whereof this Deed has been executed by the parties hereto and is intended to be and is hereby delivered on the date first above written.


**EXECUTED** as a deed by affixing the corporate seal of the **Secretary of State for Education** authenticated by:- )  
)  
)




  
.....  
Duly authorised by the Secretary of State for Education

**EXECUTED** as a deed by The Rivers CofE Multi Academy Trust, acting by:

  
.....  
**Director** E FLETCHER

  
.....  
**Director/Secretary** S TAYLOR  
COMPANY SECRETARY

In the presence of:

W Sign   
|

T  
N  
E  
S  
S

Name JENNA POLFE

Address 25 BARNS CROFT WAY, DROTHWICK, WYR OBA

Occupation OFFICE MANAGER