DATED 30th August 2018

(1) NORTHAMPTONSHIRE COUNTY COUNCIL

- and -

(2) THE SECRETARY OF STATE FOR EDUCATION

- and -

(3) PRESTON HEDGE'S ACADEMY TRUST

DFE PRINCIPAL AGREEMENT

relating to

Parklands Primary School

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THIS PRINCIPAL AGREEMENT is made on 30th August 2018

BETWEEN:

(1) **NORTHAMPTONSHIRE COUNTY COUNCIL** whose principal premises are County Hall, Northampton, NN1 1DN (the **"Authority"**);

(2) **THE SECRETARY OF STATE FOR EDUCATION** whose registered office is at Sanctuary Buildings, Great Smith Street, London SW1P 3BT (**"DFE"**); and

(3) **PRESTON HEDEGE'S ACADEMY TRUST** whose registered office is at Preston Hedges Primary School, Wootton Hope Drive, Wootton, Northampton, NN4 6BU (Company Registration Number: 08282041 (**"Academy"**).

WHEREAS

A The Authority is a children's services authority with duties and powers to provide primary and secondary education under the Education Acts 1996-2005 and the School Standards and Framework Act 1998 and the Education and Inspections Act 2006.

B The Authority has entered into a PFI project agreement with Northampton Schools Limited on 22 December 2005 pursuant to its powers contained in section 2 of the Local Government Act 2000, section 14 of the Education Act 1996, section 22 of the School Standards and Framework Act 1998 and section 111 of the Local Government Act 1972 in order to enable investment in certain educational services and facilities for which it is responsible, including Parklands Primary School.

C The governing body and the parties have agreed that Parklands Primary School shall close and henceforth the Academy shall deliver educational services at the School as Parklands Primary School.

D The Authority and the Academy intend to enter into a School Agreement on or around the date of this Agreement. The Academy and the DFE have entered into a supplemental funding agreement dated on or around the date of this Agreement.

E The parties agree to the terms and conditions of this Agreement.

1. DEFINITIONS AND INTERPRETATION

1.1 Definitions

In this Agreement, unless the context otherwise requires, the following expressions shall have the following meanings:

"Academy Affordability Gap" means the portion of the Affordability Gap which is reasonably attributable to the Academy in respect of the School;

"Academy Contribution" means the sum payable by the Academy to the Authority, by way of contribution to the Unitary Charge pursuant to, and calculated in accordance with, the School Agreement;

"Academy Related Party" means:

(a) an officer, agent, representative, employee or contractor of the Academy acting in the course of his office or employment, including without limitation any director of the Academy;

(b) in relation to the Academy, any member of the local governing body of the Academy acting as such, or any teacher employed by the Academy at the Academy acting in the course of their employment;

(c) in relation to the Academy during the Required Period, any Pupil of the School, or any person visiting the School at the invitation (whether express or implied) of the Academy; and

(d) any contractors and their officers, employees and agents involved in the operation and/or maintenance of works or services at the Site procured by the Academy;

but excluding in each case the Authority, the Contractor, the DFE and any of their respective Related Parties;

"Affordability Gap" means the sum of money being the shortfall between: (i) the annual Unitary Charge (net of any deductions and any amounts payable by the Contractor under the Payment Mechanism) in a relevant Financial Year; and (ii) the aggregate of the amounts received by the Authority in a relevant Financial Year pursuant to:

(a) the Promissory Note;

(b) the School Agreement;

(c) the Project Agreement; and

(d) any agreements between the Authority and each of the PFI School relating to the Project;

as may be amended from time to time;

"Agreement" means this agreement, its schedules and any annexures hereto, as may be amended from time to time;

"Approved Suitable Substitute" has the meaning given to it in clause 15.2;

"Area" means the area within which the Authority is statutorily responsible for the provision of educational services;

"Articles" means the articles of association of the Academy (as may be amended from time to time);

"Authority Change" has the meaning given to it in the Project Agreement;

"Authority Related Party" means:

(a) an officer, agent, representative, employee or contractor of the Authority acting in the course of his office or employment; or

(b) any person visiting the School at the invitation (whether express or implied) of the Authority;

but excluding in each case the Academy, the Contractor, the DFE and any of their respective Related Parties;

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

"Contractor" Northampton Schools Limited Partnership (registered number LP010896) (acting by its general partner Northampton Schools Limited (registered number 05613429)) whose registered office is at 3 More London Riverside, London, SE1 2AQ and which is counterparty of the Authority to the Project Agreement;

"Contractor Change" has the meaning given to it in the Project Agreement;

"Contractor Related Party" has the meaning given to it in the Project Agreement;

"Contractor Termination Notice" has the meaning given in the Project Agreement;

"De Minimis Amount" means £10,000 (ten thousand pounds) per event or in the aggregate in any Financial Year;

"DFE Related Party" means an officer, employee, agent, representative, contractor or subcontractor (of any tier) of the DFE acting in the course of his office or employment or appointment (as appropriate) but excluding, in each case, the Authority, the Contractor, the Academy and any of their respective Related Parties;

"Dedicated Schools Grant" or **"DSG"** means the grant of that name paid to the Authority by the Department for Education under section 14 of the Education Act 2002 and shall include a reference to any successor grant(s) and/or similar funding arrangements, as may be adjusted in accordance with clause 9 and schedule 2;

"Direct Losses" means all damages, losses, liabilities, claims, actions, costs, expenses (including the cost of legal or professional services, legal costs being on an indemnity basis), to the extent that the Authority is obliged to pay such amounts to the Contractor under the Project Agreement;

"Earmarked Annual Grant" or **"EAG"** has the meaning given to it in the Funding Agreement and shall include a reference to any successor grant(s);

"Educational Services" has the meaning given to it in the Project Agreement;

"Excusing Cause" means the items listed in paragraphs 3.7.1 and 4.5.3 of schedule 6 to the Project Agreement;

"Financial Year" means the financial year of the Authority being each year commencing on 1 April (or as otherwise notified by the Authority);

"FM Services" means the facilities management services to be provided by the Contractor at the Site;

"Funders Direct Agreement" means the direct agreement dated 22 December 2005 made between (1) the Authority (2) the Contractor (3) Sumitomo Mitsui Banking Corporation Europe Limited;

"Funding Agreement" means together the Master Funding Agreement and the Supplemental Funding Agreement;

"General Annual Grant" or **"GAG"** has the meaning given in the Funding Agreement and shall include a reference to any successor grant(s);

"Guidance" means any applicable guidance or directions with which the parties are bound to comply;

"Information Protocol" means the information sharing protocol set out in schedule 1;

"Intervention Rights" means any rights of intervention which the DfE enjoys under the Articles and/or Funding Agreement;

"Lease" means the lease granted by the Authority to the Academy pursuant to the provisions of the Academies Act 2010;

"Legislation" means any one or more of the following:

(a) any Act of Parliament;

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

(c) any exercise of the Royal Prerogative; and

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

in each case in the United Kingdom;

"Local Authority" means a principal council (as defined in Section 270 of the Local Government Act 1972) or any body of government in England established as a successor to principal councils in relation to Educational Services;

"Master Funding Agreement" means the funding agreement between the DFE and the Academy dated 26 September 2016 and as may be subsequently amended from time to time;

"Normal Payment Matters" means:

(a) any failure of the Academy to pay the Academy Contribution when this is due and payable in accordance with the School Agreement;

(b) any failure of the Academy to make payments to the Authority of amounts due and payable pursuant to clause 17 of the School Agreement to the extent that these relate to payments due to the Contractor under the Project Agreement;

(c) any failure of the Academy to make payments due to the Authority of amounts due and payable under this Agreement or the School Agreement to the extent that these relate to payments due to the Contractor under the Project Agreement and to the extent that the DFE has provided funding to the Academy expressly in respect of such payments due to the Authority;

(d) any failure of the Academy:

(i) to make payments of amounts due and payable to the Authority pursuant to clauses 16.6 and 16.7 (Insurance) of the School Agreement; or

(ii) to make payments of amounts due and payable to the Authority pursuant to clause 18 (Benchmarking and Market Testing) of the School Agreement; and

(e) any other liability of the Academy due and payable under this Agreement or the School Agreement to the extent that these relate to payments due to the Contractor under the Project Agreement and which the DFE reasonably determines should be payable by the Academy to the Authority,

and **"Normal Payment Matter"** shall be construed appropriately;

"Payment Mechanism" means the mechanism regarding the payment of the Contractor under the Project Agreement as set out in clause 37 (Payment Provisions) and Schedule 6 (Payment Mechanism) of the Project Agreement;

"PFI Schools" means the schools to which the Project Agreement relates, excluding the School;

"Prescribed Rate" has the meaning given in the Project Agreement;

"Project" means the provision of serviced accommodation to the Authority in relation to the School by the Contractor as contemplated by the Project Agreement;

"Project Agreement" the agreement dated 22 December 2005 (as amended by an amending agreement dated 9 May 2008, the Project Agreement Deed of Variation and further variations dated 21 December 2012, 12 May 2014, 1 February 2017, 27 March 2017, 23 February 2018 and 28 March 2018) between the Authority and the Contractor relating to the provision of the Works and Services at various schools including the Existing School made under a Private Finance Initiative arrangement; (as may be amended from time to time);

"Project Agreement Termination Notice" has the meaning given to the term Termination Notice in the Project Agreement;

"Project Documents" means the Project Agreement and the Funders Direct Agreement;

"Promissory Note" means the promissory note issued to the Authority by the Department for Education dated 21 December 2005 relating to the Project Agreement;

"Related Party" means any Academy Related Party, Authority Related Party, DFE Related Party, Contractor Related Party (as the case may be);

"Relevant Assets" means:

(a) assets at any time transferred to the Academy by the Contractor and/or the Authority for nil consideration;

(b) assets, the acquisition of which by the Academy was wholly or mainly financed through grant payments made by the DFE to the Academy under the Supplemental Funding Agreement; and

(c) assets not falling within paragraphs (a) and (b) above and which the DFE and the Academy have agreed prior to the date of termination of the Supplemental Funding Agreement (in accordance with its terms), will be purchased by the DFE from the Academy on the terms set out in clause 6.5 of the Supplemental Funding Agreement;

provided that such assets are transferable as at the date of termination of the Supplemental Funding Agreement;

"Relevant Notice" means any notice issued under a Project Document which relates to the School (save any issued in accordance with the Payment Mechanism and which does not relate to an Excusing Cause) relating to:

(a) a breach of that Project Document;

(b) the occurrence of a Compensation Event, Relief Event or Force Majeure Event (each as defined in the Project Agreement) or an Excusing Cause; and/or

(c) the termination of that Project Document; or

(d) any other notice which (assessed reasonably) may relate to circumstances which are expected to have a material adverse effect on the Project;

"Representative" means the duly authorised representative of each party (as the case may be) appointed in accordance with clause 12;

"School" means the educational establishment, buildings and facilities located at the Site;

"School Agreement" means the school agreement entered into on or about the date hereof between (1) the Authority and (2) the Academy relating to the provision of facilities and services to the Academy;

"Site" means the area shown edged red on the site plans set out in schedule 5 of the School Agreement;

"Suitable Substitute" means a charitable company incorporated in England and Wales limited by guarantee whose objects include power to maintain an academy pursuant to section 1 of the Academies Act 2010, the governing body of a maintained school, or some other legal person not comprising an Unsuitable Third Party and proposed by the DFE as

having legal capacity, power, authority, competence and resources (including financial and educational resources) to become a party to and perform the obligations of the Academy under this Agreement, the School Agreement and the Lease;

"Supplemental Funding Agreement" means the supplemental funding agreement to be entered into by the DFE and the Academy on or around the date hereof and as may be subsequently amended from time to time;

"Term" means any term in each academic year for the School;

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

"Unitary Charge" means the unitary charge payable by the Authority to the Contractor in accordance with the Project Agreement; and

"Unsuitable Third Party" has the meaning given to it in the Project Agreement.

1.2 **Interpretation**

In this Agreement, except where the context otherwise requires:

1.2.1 capitalised terms used in this Agreement and defined in the Project Agreement shall (unless otherwise defined in this Agreement) have the same meanings in this Agreement;

1.2.2 the masculine includes the feminine and vice-versa;

1.2.3 the singular includes the plural and vice-versa;

1.2.4 a reference to any clause, subclause, paragraph, schedule, recital or annex is, except where expressly stated to the contrary, a reference to such clause, subclause, paragraph, schedule, recital or annex of and to this Agreement;

1.2.5 save where otherwise provided in this Agreement, any reference to this Agreement or to any other contract, agreement or document shall be to such contract, agreement or document as amended, varied, supplemented, novated or assigned;

1.2.6 any reference to any enactment, order, regulation or other similar instrument shall be construed as a reference to the enactment, order, regulation or instrument as amended, replaced, consolidated or re-enacted;

1.2.7 a reference to a person includes firms, partnerships and corporations and their successors and permitted assignees or transferees;

1.2.8 headings are for convenience of reference only;

1.2.9 words preceding "include", "includes", "including and "included" shall be construed without limitation by the words which follow those words;

1.2.10 any obligation on a party to do any act, matter or thing includes, unless expressly stated otherwise, an obligation to procure that it is done;

1.2.11 subject to any express provisions of this Agreement to the contrary, the obligations of any party are to be performed at that party's own cost and expense.

1.3 **Precedence**

In the event of any conflict between the provisions of this Agreement and the School Agreement, the provisions of this Agreement shall prevail.

1.4 **Schedules**

The schedules to this Agreement form part of this Agreement. In the event of any inconsistency between the provisions of the main body of this Agreement and the schedules, the main body shall take precedence.

2. ACKNOWLEDGEMENTS

2.1 The parties acknowledge that neither the Authority nor any of the PFI Schools should suffer, in connection with the Project Agreement, any adverse consequences arising out of the School's status as an academy rather than a school maintained by the Authority and that the aim of this Agreement is to avoid or, if that is not practicable, to mitigate any such effects. The parties agree that, in relation to schools other than the PFI Schools, clause 2.3 shall apply.

2.2 In particular, the parties acknowledge:

2.2.1 the statutory responsibility of the Authority to provide Educational Services;

2.2.2 that the Academy is obliged to pay the Academy Contribution to the Authority pursuant to the School Agreement;

2.2.3 that the Academy shall be granted the Lease in respect of the Site to enable it to run the School in accordance with the terms of the School Agreement; and

2.2.4 that the acts of Academy Related Parties shall become the responsibility of the Academy with effect from the date of the School Agreement.

2.3 Further, the DFE:

2.3.1 confirms that it shall maintain full revenue support to the Authority for the term of the Project Agreement in accordance with the terms of the Promissory Note; and

2.3.2 intends that schools, other than the PFI Schools, maintained by the Authority should not be adversely affected financially by the School's status as an academy rather than a school maintained by the Authority whether initially, on an on-going basis, or in the event of any future closure of the School.

3. COMMENCEMENT, DURATION AND EXPIRY

3.1 **The term of the Agreement**

This Agreement will commence on the date hereof, and will terminate or expire in accordance with clause 13.

3.2 Provisions surviving expiry:

3.2.1 Notwithstanding the expiry or termination of this Agreement, such expiry or termination shall be without prejudice to any accrued rights and obligations under this Agreement as at the date of expiry or termination.

3.2.2 Without limitation to clause 3.2.1, the expiry or termination of this Agreement shall not affect the continuing rights and obligations of the parties under the clauses in the table below and/or under any other provision of this Agreement which is expressed to survive expiry or termination or which is required to give effect to such expiry or termination or the consequences of such expiry or termination:

Clause/Schedule Reference	**Description**
0	Definitions and interpretation
2	Acknowledgements
3.2	Provisions surviving expiry
4	Normal Payment Matters
6	Authority obligations
7	Information protocol
11	General Assistance and Co-operation
14	DFE Comfort
15	Failure of the Academy
16	Assignment
17	Dispute Resolution
18	Miscellaneous

4. NORMAL PAYMENT MATTERS

4.1 The Academy shall, subject to clauses 4.3, 4.4, 4.5 and 4.9 to 4.12 (inclusive), be responsible for and shall release and indemnify the Authority from and against all liability for Direct Losses that arise out of or in connection with any Normal Payment Matters. No claim shall be made under this clause 4.1 unless the Authority has provided to the Academy a valid VAT invoice.

4.2 Not used

4.3 The Authority shall promptly upon becoming aware of any claims under clause 4.1 which it intends to pursue serve written notice on the Academy (with a copy provided to the DFE) of such claims (the "Academy Notification") and the Academy shall discharge any liability in full within five (5) Business Days of such notification or, if it disputes the Academy Notification, subject to clause 4.4, within five (5) Business Days following determination of such dispute.

4.4 If the Academy fails to pay any amount detailed in the Academy Notification within (five) 5 Business Days of the Academy Notification (regardless of whether or not the Academy has disputed the claim) the Authority shall promptly notify the DFE in writing (the "DFE Notification") and the DFE shall, subject to clauses 4.5, 4.6 and 4.8 to 4.14 (inclusive), pay any such claim to the Authority in full within twenty (20) Business Days of the DFE Notification unless such claim has previously been satisfied by the Academy. In the event that it is later agreed or determined that the Authority was not entitled to either the whole or any part of the amounts claimed (an "Illegitimate Claim"), DFE may set off any Illegitimate Claims from the DSG or from any other monies due to the Authority whether under this Agreement or otherwise.

4.5 Neither the Academy nor the DFE shall be responsible or be obliged to indemnify the Authority pursuant to this clause 4 to the extent that any Normal Payment Matters liabilities are caused by (i) the negligence or wilful misconduct of the Authority, the Contractor or any of their Related Parties or (ii) a breach by the Authority or any Authority Related Party of this Agreement, the School Agreement, the Project Documents and/or the Lease or (iii) any breach of the Project Agreement by the Contractor or a Contractor Related Party.

4.5A Clause 4.5 shall not apply to exclude any amounts which the Academy is obliged to reimburse the Authority under clause 4.3.1 of the School Agreement to the extent that such amounts fall within the definition of Normal Payment Matters and provided that the Authority acts reasonably and proportionately in pursuing the claim.

4.6 The DFE shall not be responsible or be obliged to indemnify the Authority pursuant to clause 4.4 to the extent that the Authority is in breach of its obligations under clause 6 to provide information that is relevant to such claim.

4.7 The DFE shall promptly give the Academy written notice of any steps taken by the Authority to enforce its rights pursuant to clause 4.4 including details of amounts which the DFE is proposing to pay to the Authority under clause 4.4.

4.8 The Authority and the Academy shall not settle or compromise any claim which may be fully or partially funded by the DFE pursuant to the terms of this Agreement without the prior written consent of the DFE (such consent not to be unreasonably withheld or delayed).

4.9 For the avoidance of doubt, the indemnities in clauses 4.1 and 4.4 shall not extend to any Direct Losses incurred by the Authority to the extent caused by any Authority Change or Contractor Change where the consent of the DFE is required pursuant to this Agreement and such consent has not been obtained.

4.10 Where any party (**"Indemnified Party"**) wishes to make a claim under this Agreement against the other (**"Indemnifying Party"**) whether in relation to a claim made against it by a third party (**"Third Party Claim"**) or otherwise, then:

4.10.1 any and all claims by the Indemnified Party shall be made in accordance with clause 4; and

4.10.2 the Indemnified Party shall give notice of the relevant claim as soon as reasonably practicable setting out full particulars of the claim; and

4.10.3 the Indemnifying Party shall, if it wishes to have conduct of any Third Party Claim, give reasonable security to the Indemnified Party for any cost or liability arising out of the conduct of the Third Party Claim by the Indemnifying Party.

4.11 Any liability under a claim made pursuant to any indemnity contained in this Agreement shall be reduced to the extent that the Indemnified Party recovers any sums under the terms of any insurance policy for the time being in place.

4.12 If the Academy or DFE shall have paid to the Authority any amount in respect of a claim under any indemnity contained in this Agreement and the Authority subsequently receives or recovers from a third party (including an insurer) a sum which is referable to such claim, the Authority shall forthwith repay to the Academy or, as the case may be, DFE the amount so received or recovered less the reasonable costs and expenses incurred in connection with such recovery up to the amount which has been paid by the Academy or DFE in respect of such claim.

4.13 Nothing in this clause 4 or elsewhere in this Agreement shall make the DFE liable or responsible to the Authority in respect of any failure by the Academy to make a payment due to the Authority under the School Agreement where and to the extent that such payment is not for the purpose of defraying the cost to the Authority of a sum paid or payable by the Authority to the Contractor under and in accordance with the terms of the Project Agreement (for the avoidance of doubt, any administration or other fee which may be imposed by the Authority on the Academy in relation to the relevant cost to the Authority under the Project Agreement shall not be counted as part of that cost under the Project Agreement when applying the provisions of this clause 4.13).

4.14 For the avoidance of doubt, the protections under the terms of this Agreement which are provided by the DFE to the Authority in relation to the performance by the Academy of certain obligations under this Agreement and/or the School Agreement do not apply in respect of any agreement (including, without limitation, any management or services agreement) between the Authority and the Academy which is separate to and not contained within this Agreement and the document which is:

4.14.1 titled "School Agreement";

4.14.2 entered into as a contract by the Authority and the Academy on or about the date of this Agreement; and

4.14.3 in the form approved by or on behalf of the DFE,

as such document may be amended, varied, changed, novated or assigned with the prior written consent of the DFE in accordance with the terms of this Agreement.

5. NOT USED

6. AUTHORITY OBLIGATIONS

The Authority shall:

6.1 not used;

6.2 provide the DFE with such information as it may reasonably require on a quarterly basis on the operation of the Project Agreement to the extent that it relates to the School;

6.3 inform the DFE promptly (providing such details as the DFE may reasonably require) on becoming aware of any breach or non-compliance by the Academy with its obligations under the School Agreement or this Agreement or where it is reasonably foreseeable to the Authority that any breach of or non-compliance with the School Agreement or this Agreement by the Academy shall occur;

6.4 forthwith inform the DFE whenever any Relevant Notice is served under any Project Document;

6.5 promptly inform the DFE of any proposed changes to the Project Documents or the School Agreement or any other relevant contract which may (assessed objectively) lead to additional potential liabilities for the Academy and/or the DFE under the terms of this Agreement which have a value equal to or greater than the De Minimis Amount taking into consideration all other changes in a Financial Year which have not previously been notified to DFE under this Clause 6.5;

6.6 promptly inform the DFE whenever it exercises any rights or remedies under the Project Documents in connection with a breach thereof by any of the counterparties and/or relating to poor performance of obligations under the Project Agreement by the Contractor (but not including the making of Payment Mechanism deductions) where these relate to the School or are relevant to the School Agreement and which have a value equal to or greater than the De Minimis Amount taking into consideration all other events in a Financial Year which have not previously been notified to DFE under this Clause 6.6;

6.7 exercise such rights or remedies that the Authority may have available to it under the Project Documents at the direction of the DFE in circumstances where the DFE considers (acting reasonably) that the exercise of the relevant right or remedy shall assist the DFE in mitigating its potential or actual exposure under this Agreement and the Authority may require payment of its reasonable costs in taking such action where, acting reasonably, it believes it is appropriate to do so given the nature of the action required by the DFE, the circumstances in which it is required and any other relevant factors;

6.8 promptly pay to the Academy any sums or monies recovered from the Contractor and which are properly due to the Academy under the School Agreement.

6.9 immediately notify the DFE and the Academy on receipt of a Project Agreement Termination Notice and any Contractor Termination Notice and provide all relevant information (including a copy of the relevant notice);

6.10 immediately notify the DFE and the Academy following confirmation from the Contractor that the breach giving rise to the Contractor Termination Notice has been remedied;

6.11 following receipt of a Contractor Termination Notice, where DFE notifies the Authority that it intends to exercise its Intervention Rights, the Authority shall immediately advise the DFE whether or not the breach has been remedied; and

6.12 promptly notify the DFE and the Academy of any breach of the Project Agreement which, if it was repeated or continued, could give rise to the right for the Contractor to serve a Contractor Termination Notice under the Project Agreement.

7. INFORMATION PROTOCOL

Each of the parties shall comply with the relevant obligations set out in the Information Protocol.

8. PROJECT DOCUMENTS AND SCHOOL AGREEMENT

8.1 Save as provided for in Clause 8.3, the Authority shall not agree to any amendment, variation, change, novation or assignment of any Project Document, or give any consent or approval under any Project Document, where the effect of such action shall on the balance of probabilities potentially expose the DFE to greater liabilities by operation of either clause 4.4 or clause 14.5 without the prior written consent of the DFE (not to be unreasonably withheld or delayed). In the event that such action be contemplated by the Authority, the Authority shall take into account the DFE's reasonable comments on any proposals or relevant documentation.

8.2 The Authority and the Academy shall not agree to any amendment, variation, change, novation or assignment of the School Agreement without the prior written consent of the DFE (not to be unreasonably withheld or delayed). In the event that such action be contemplated by the Authority and/or the Academy, such parties shall take into account the DFE's reasonable comments on any proposals or relevant documentation.

8.3 The Authority shall not be obliged to obtain the consent of the DFE pursuant to Clause 8.1 where the effect of such proposed action will cause an increase in the Academy's liabilities under the School Agreement of less than the De Minimis Amount taking into consideration all other actions in a Financial Year where the prior written consent of DFE has not previously been obtained under Clause 8.1.

9. FINANCIAL MATTERS

9.1 The DFE shall pay on an annual basis to the Authority the Dedicated Schools Grant adjusted as appropriate in accordance with schedule 2 and in accordance with the DFE's usual policies and procedures.

9.2 Where schedule 2 makes provision for the payment of the Academy Affordability Gap, the DFE shall pay to the Authority or the Academy (as the case may be) a sum equal to the Academy Affordability Gap.

9.3 Save as provided for in Clause 9.4, the Authority and the Academy shall not agree to any amendment to the basis for calculation of the Academy Contribution without the prior written consent of the DFE (not to be unreasonably withheld or delayed).

9.4 The Authority and the Academy shall not be obliged to obtain the consent of the DFE pursuant to Clause 9.3 where the effect of the amendment to the basis for calculation of the Academy Contribution does not increase or decrease the Academy Contribution by £10,000 (ten thousand pounds) or more whether by way of a single amendment or when calculated in aggregation in any Financial Year with all such other amendments where the prior written consent of the DFE has not previously been obtained.

10. INSURANCE ARRANGEMENTS

10.1 The parties shall use best endeavours to ensure that, from the date hereof the Academy is a named co-insured on any project-specific insurances that the Contractor may have taken out pursuant to the Project Agreement (with an appropriate waiver of subrogation).

10.2 The Academy shall not take any action or fail to take any reasonable action or (insofar as it is reasonably within its power) permit anything to occur in relation to it which would entitle any reasonable insurer to refuse to pay any claim under any policy taken out pursuant to the Project Documents.

10.3 The Academy shall take out and maintain insurances which:

10.3.1 cover the risk of physical loss and/or damage to the contents of the School (but this shall in no way extend to the taking out and maintenance of any insurance in respect of any risk covered by any insurance required to be taken out and maintained under the Project Documents); and

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

11. GENERAL ASSISTANCE AND COOPERATION

11.1 Subject to clause 11.2, each party undertakes to co-operate in good faith with the other parties to facilitate the proper performance of this Agreement and in particular each party shall:

11.1.1 use all reasonable endeavours to avoid unnecessary disputes and claims against the other parties;

11.1.2 not unnecessarily interfere with the rights of the other parties and their Related Parties, agents, representatives or subcontractors in performing their obligations under this Agreement or the School Agreement nor in any other way hinder or prevent such other party from performing those obligations; and

11.1.3 assist the other parties and their Related Parties in performing their obligations so far as is reasonably practicable.

11.2 Nothing in clause 11.1 shall:

11.2.1 interfere with the right of any party to lawfully arrange its affairs in whatever manner it considers fit in order to perform its obligations under this Agreement in the manner in which it considers to be the most effective and efficient;

11.2.2 oblige any party to incur any material additional cost or expense in excess of that required by its proper performance of its obligations under this Agreement;

11.2.3 relieve a party from any obligation under any indemnity contained in this Agreement or the School Agreement or from any obligation to pay any debt due or payable under this Agreement or the School Agreement; or

11.2.4 fetter the discretion of the parties in fulfilling their statutory functions.

12. REPRESENTATIVES

12.1 Each party shall from time to time appoint a Representative who shall be authorised to exercise the rights, functions and powers of the relevant appointing party under this Agreement and the identity of such Representative shall be notified to the other parties in writing.

12.2 Each Representative shall be entitled at any time by written notice to the other parties to appoint an alternate who shall for the purposes of this clause be regarded as the relevant Representative.

12.3 Each party shall be entitled to treat any act of a Representative as being expressly authorised by the relevant appointing party and shall not be required to determine whether any express authority has in fact been given.

13. TERMINATION

13.1 This Agreement shall terminate on the earlier of:

13.2 expiry or early termination of the Project Agreement; and

13.3 termination of the School Agreement.

14. DFE COMFORT

14.1 The Authority acknowledges that the DFE benefits from the Intervention Rights which it may exercise in respect of the Academy.

14.2 The DFE shall promptly notify the Authority upon exercising any of its Intervention Rights, providing details as may reasonably be required by the Authority. The DFE shall notify the Authority when the exercise of any Intervention Rights ceases.

14.3 In the event that the Academy is in material breach of the School Agreement with the consequence that such breach has placed the Authority in breach of the Project Documents, the Authority may request that the DFE:

14.3.1 exercise its Intervention Rights; and/or

14.3.2 take any other reasonable action to the extent that the DFE is permitted to do so (such action to be agreed between the DFE and the Authority, both parties acting reasonably); and/or

14.3.3 compensate the Authority for Direct Losses which the Authority has incurred as a result of such breach.

14.4 Following a request made by the Authority under clause 14.3, the DFE shall consult with the Authority in relation to the course of action which DFE proposes to take. The DFE shall act reasonably when considering any request made by the Authority. The DFE shall retain discretion whether to take the action requested by the Authority or whether to take another course of action, provided always that the DFE acts reasonably when exercising its discretion.

14.5 In the event that the DFE decides to compensate the Authority pursuant to clause 14.3.3, the DFE shall have the right to specify such conditions in relation to such compensation as it sees fit.

15. FAILURE OF THE ACADEMY

15.1 The DFE may, in circumstances where a final notice has been served on relevant parties terminating the Supplemental Funding Agreement (in accordance with the terms of the Supplemental Funding Agreement), propose to the Authority a Suitable Substitute to undertake the obligations and rights of the Academy under this Agreement, the School

Agreement and the Lease and, if proposed, the DFE shall provide the Authority with all information relating to such proposed Suitable Substitute as the Authority may reasonably require to determine whether the Suitable Substitute is able to comply with the obligations it is proposed to undertake.

15.2 The Authority shall within a reasonable period from receipt of all information provided in accordance with clause 15.1, notify the DFE whether it approves of such proposed Suitable Substitute (such approval not to be unreasonably withheld or delayed) (hereafter referred to as the **"Approved Suitable Substitute"**). If the Authority does not approve the proposed Suitable Substitute, either the Authority's decision shall be referred to the dispute resolution procedure under clause 17 or the DFE may propose an alternative Suitable Substitute and clauses 15.1 and 15.2 shall apply in respect of such alternative Suitable Substitute.

15.3 Where the Authority notifies the DFE of the Approved Suitable Substitute pursuant to clause 15.2, the parties shall undertake all necessary steps to cooperate to:

15.3.1 (if not already terminated) terminate the Supplemental Funding Agreement, and ensure that the Approved Suitable Substitute is offered funding on reasonably acceptable terms from the DFE for the operation of an academy at the Site;

15.3.2 novate this Agreement and the School Agreement to the Approved Suitable Substitute;

15.3.3 assign the Lease to the Approved Suitable Substitute as tenant pursuant to the terms of such Lease;

15.3.4 not prevent or frustrate the novation or assignment of any rights and/or liabilities to the Approved Suitable Substitute as envisaged by this clause 15.

15.4 Any transfer, novation and/or assignment pursuant to clause 15.3 shall become effective by a novation of this Agreement, the School Agreement and assignment of the Lease to the Approved Suitable Substitute whereupon the Academy shall be released from any obligations or liabilities under or in connection with this Agreement, the School Agreement and the Lease from that date and the Approved Suitable Substitute shall become liable for such obligations or liabilities.

15.5 Where:

15.5.1 the DFE notifies the Authority that, in circumstances which would permit the DFE to propose a Suitable Substitute, the DFE has chosen not to propose a Suitable Substitute to the Authority pursuant to clause 15.1, and the DFE has provided to the Authority all relevant details of such circumstances and reasons for it not proposing a Suitable Substitute; or

15.5.2 an Approved Suitable Substitute has not been appointed or agreed;

then, the DFE may serve written notice on the Authority that the Supplemental Funding Agreement shall terminate on a date which is not less than the later of:

15.5.3 one month after the date of receipt of such notice; and

15.5.4 the effective date of termination of the Supplemental Funding Agreement as set out in a notice issued pursuant to the terms of the Supplemental Funding Agreement.

15.6 The DFE shall procure that from the date the Authority receives notice under clause 15.5 until the date of termination of the Supplemental Funding Agreement, the Authority shall continue to receive the DSG and the Academy Contribution in accordance with the terms of this Agreement and the School Agreement.

15.7 Following the issue of a notice by the DFE that the Supplemental Funding Agreement will terminate, the parties shall co-operate fully to ensure the transfer of the responsibility for delivery of Educational Services to the Authority.

15.8 For the purpose of clause 15.3 and clause 15.7 above, the meaning of the term **"co-operate"** shall include the Academy:

15.8.1 liaising with the DFE, the Authority and/or any Approved Suitable Substitute, and providing reasonable assistance and advice concerning the responsibilities of the Academy under this Agreement, the Project Documents, the School Agreement and the Lease and their transfer to the Authority or the Approved Suitable Substitute (as relevant);

15.8.2 allowing any Approved Suitable Substitute access (at reasonable times and on reasonable notice) to the School, but not so as to interfere with or impede the provision of the FM Services and/or Educational Services at the School;

15.8.3 providing to the Authority and/or to any Approved Suitable Substitute (as appropriate, but subject to any commercial confidentiality reasons) all and any information concerning the rights, obligations, liabilities, activities and responsibilities of the Academy at and in relation to the School and/or FM Services delivered by the Academy, the Contractor as is reasonably required for the efficient transfer of rights, obligations, liabilities, activities and responsibilities from the Academy to the Authority or the Approved Suitable Substitute (as appropriate).

15.8.4 transferring its rights, title and interest in and to any Relevant Assets to the Authority immediately upon termination, or (where relevant) to the Approved Suitable Substitute with effect on and from the date the DFE and the Approved Suitable Substitute enter into a funding agreement.

15.9 Where the responsibility for the provision of the Educational Services at the School reverts to the Authority pursuant to clause 15.7, this Agreement and the School Agreement and the Lease shall terminate (subject to any provisions which are expressed to survive termination). The Authority shall at any time after receipt of notice of termination of the Supplemental Funding Agreement be permitted to apply to the DFE for revenue grant in respect of pupils at the School. The DFE shall (acting reasonably) consider the Authority's application for such funding and any such decision of the DFE shall not be unreasonably withheld or delayed.

16. ASSIGNMENT

16.1 Assignment by DFE

16.1.1 Subject to clause 16.1.2, the rights and obligations of DFE under this Agreement shall not be assigned, novated or otherwise transferred other than to any person (being a single entity) having the legal capacity, power and authority to become a party to and perform the obligations of DFE under this Agreement being a Minister of the Crown pursuant to an order under the Ministers of the Crown Act 1975.

16.1.2 Any assignment pursuant to clause 16.1.1 may only be to an assignee which has substantially the same responsibilities for education services.

16.2 Assignment by the Authority

16.2.1 Without prejudice to clause 8, and subject to clauses 16.2.2 and 16.2.3, the rights and obligations of the Authority under this Agreement, the School Agreement and the Lease shall not be assigned, novated or otherwise transferred (whether by virtue of any legislation or any scheme pursuant to any Legislation or otherwise) to any person other than to any public body (being a single entity) having the legal capacity, power and authority to become a party to and to perform the obligations of the Authority under this Agreement, the School Agreement and the Lease being:

16.2.1.1 a Minister of the Crown pursuant to an order under the Ministers of the Crown Act 1975; or

16.2.1.2 any Local Authority which has sufficient financial standing or financial resources to perform the obligations of the Authority under this Agreement, the School Agreement and the Lease.

16.2.2 Any assignment pursuant to clause 16.2.1 may only be to an assignee which has substantially the same responsibilities in the Area for Educational Services.

16.2.3 The Authority shall assign, novate or otherwise transfer its rights and/or obligations under this Agreement to any person to which the Authority assigns, novates or otherwise transfers its rights and/or obligations under the Project Agreement in accordance with clause 71.1 (Restriction on the Authority) of the Project Agreement.

16.3 Assignment by the Academy

The rights and obligations of the Academy under this Agreement, the School Agreement and the Lease may be novated or assigned in accordance with the terms of this Agreement and the School Agreement but not otherwise.

17. DISPUTE RESOLUTION

17.1 Disputes

Any dispute arising in relation to any aspect of this Agreement shall be resolved in accordance with this clause 17.

17.2 Consultation

If a dispute arises in relation to any aspect of this Agreement, the relevant parties to the dispute shall first consult in good faith in an attempt to come to an agreement in relation to the disputed matter.

17.3 Any dispute not capable of resolution by the parties to the dispute in accordance with the terms of clause 17.2 shall be escalated so that the matter is considered by senior representatives of the relevant parties.

17.4 If the dispute remains not capable of resolution following escalation pursuant to clause 17.3, it shall be settled as far as possible by mediation in accordance with the Centre for Effective Dispute Resolution ("**CEDR**") model mediation procedure.

17.5 No party to the dispute may commence any court proceedings/adjudication in relation to any dispute arising out of this Agreement until they have attempted to settle it by mediation, but any such mediation may be terminated by any party to the dispute at any time of such party wishing to commence court proceedings/adjudication.

17.6 The parties to the dispute will co-operate with any person appointed as mediator providing him with such information and other assistance as he shall require and such parties will pay his costs, as he shall determine.

17.7 Adjudication

If the relevant parties to the dispute fail to resolve the dispute through such consultation or mediation, any party to the dispute may refer the matter to an adjudicator selected in accordance with clause 17.8 (Identity of Adjudicator) ("**Adjudicator**").

17.8 Identity of Adjudicator

The Adjudicator nominated to consider a dispute referred to him shall be wholly independent of the relevant parties to the dispute and shall be selected in accordance with the following:

17.8.1 the nominee shall be an expert on matters of schools funding, being a qualified lawyer or accountant with not less than ten (10) years' experience in the field; and

17.8.2 if the relevant parties to the dispute are unable to agree on the identity of the Adjudicator, the President for the time being of the Chartered Institute of Arbitrators shall appoint such Adjudicator within twenty (20) Business Days of any application for such appointment by the relevant party.

17.9 Submission of arguments

Within five (5) Business Days of nomination in relation to a particular dispute, the Adjudicator shall require the parties in dispute to submit in writing their respective arguments. The Adjudicator shall, in his absolute discretion, consider whether a hearing is necessary in order to resolve the dispute.

17.10 Adjudicator's decision

In any event, the Adjudicator shall provide to both parties his written decision on the dispute, within twenty (20) Business Days of the Adjudicator's nomination to consider the relevant dispute (or such other period as the parties may agree after the reference) or thirty (30) Business Days from the date of reference if the party which referred the dispute agrees. The Adjudicator's decision shall not state any reasons for his decision. Unless and until revised, cancelled or varied by the English courts, the Adjudicator's decision shall be binding on all parties to the dispute who shall forthwith give effect to the decision.

17.11 Adjudicator's costs

The Adjudicator's costs of any reference shall be borne as the Adjudicator shall specify or, in default, equally by the parties to the dispute. Each party to the dispute shall bear its own costs arising out of the reference, including legal costs and the costs and expenses of any witnesses.

17.12 Adjudicator as expert

The Adjudicator shall be deemed not to be an arbitrator but shall render his decision as an expert, and the provisions of the Arbitration Act 1996 and the law relating to arbitration shall not apply to the Adjudicator or his determination or the procedure by which he reached his determination.

17.13 Adjudicator's powers

The Adjudicator shall act impartially and may take the initiative in ascertaining the facts and the law. The Adjudicator shall have the power to open up, review and revise any opinion, certificate, instruction, determination or decision of whatever nature given or made under this Agreement.

17.14 Confidentiality

All information, data or documentation disclosed or delivered by a party to the Adjudicator in consequence of or in connection with his appointment as Adjudicator shall be treated as confidential. The Adjudicator shall not, save as permitted by clause 18.2 (Confidentiality) or clause 18.3 (Freedom of Information), disclose to any person or company any such information, data or documentation and all such information, data or documentation shall remain the property of the party disclosing or delivering the same and all copies shall be returned to such party on completion of the Adjudicator's work.

17.15 Liability of Adjudicator

The Adjudicator is not liable for anything done or omitted in the discharge or purported discharge of his functions as Adjudicator unless the act or omission is in bad faith. Any employee or agent of the Adjudicator is similarly protected from liability.

17.16 Reference to the courts

If:

17.16.1 any party to the dispute is dissatisfied with or otherwise wishes to challenge the Adjudicator's decision made in accordance with clause 17.10 (Adjudicator's decision); or

17.16.2 all relevant parties agree,

then any party to the dispute may (within twenty (20) Business Days of receipt of the Adjudicator's decision), notify the other parties to the dispute of its intention to refer the dispute to the courts.

17.17 Parties' obligations

The parties shall continue to comply with, observe and perform all their obligations hereunder regardless of the nature of the dispute and notwithstanding the referral of the dispute for resolution under this clause 17 and shall give effect forthwith to every decision of the Adjudicator and the courts delivered under this clause 17.

18. MISCELLANEOUS

18.1 The Authority's statutory authority

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

18.2 Confidentiality

18.2.1 No party to this Agreement shall publish or cause to be published or communicate to any third party any matter relating to this Agreement except with the prior written consent of the other parties (such consent not to be unreasonably withheld or delayed).

18.2.2 Each party shall comply with their duties and responsibilities under the Data Protection Acts 1984 and 1998 in the performance of this Agreement and shall not unlawfully process or disclose information subject to those Acts.

18.3 Freedom of Information

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

18.4 Notices

18.4.1 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 DFE:	Director of Academies; Academies Group Department for Education Sanctuary Buildings Great Smith Street London SW1P 3BT Fax No. 020 7925 7352
If to the Authority:	Colin Barrett, Strategic Estates Manager, Northamptonshire County Council, One Angel Square, 4 Angel Street, Northampton NN1 1ED.

If to the Academy:	Headteacher, Parklands Primary School, Spinney Hill Road, Northampton, Northamptonshire, NN3 6DW (copied to the Business Manager, Preston Hedge's Academy Trust, c/o Preston Hedge's Primary School, Wootton Hope Drive, Wootton, Northampton, NN4 6BU)

18.4.2 Any party to this Agreement may change its nominated address or facsimile number by prior notice to the other parties.

18.4.3 Notices given by post shall be effective upon the earlier of (i) actual receipt, and (ii) five (5) Business Days after mailing. Notices delivered by hand shall be effective upon delivery. Notices given by facsimile shall be deemed to have been received where there is confirmation of uninterrupted transmission by a transmission report 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:

18.4.3.1 within two (2) hours after sending, if sent on a Business Day between the hours of 9.00am and 4.00pm; or

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

18.5 **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.

18.6 **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).

18.7 **No agency**

Nothing in this Agreement shall be construed as creating a partnership or as a contract of employment between any of the parties. Save as expressly provided otherwise in this Agreement, no party shall be, or be deemed to be, an agent of another party and shall not hold itself out as having authority or power to bind another party in any way.

18.8 **Entire agreement**

18.8.1 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.

18.8.2 Each of the parties acknowledges 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.

18.9 **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.

18.10 **Counterparts**

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

18.11 **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.

18.12 **No privity**

It is agreed for the purposes of the Contracts (Rights of Third Parties) Act 1999 that this Agreement is not intended to, and does not, give to any person who is not a party to this Agreement any rights to enforce any provisions contained in this Agreement except for any person to whom the benefit of this Agreement is assigned or transferred in accordance with the terms of this Agreement.

18.13 **Interest on late payment**

Save where otherwise specifically provided, where any payment or sum of money due from one party to another under any provision of this Agreement is not paid on or before the due date, it shall bear interest thereon at the Prescribed Rate from the due date (whether before or after any judgement) until actual payment.

18.14 **Mitigation**

The parties shall at all times take all reasonable steps to minimise and mitigate any loss for which they are entitled to bring a claim (including but not limited to any indemnity) 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.

18.15 **No double recovery**

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

18.16 **Further assurance**

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

18.17 **Governing law and jurisdiction**

18.17.1 This Agreement and any non-contractual obligation arising out of or in connection with it is subject to the laws of England and Wales.

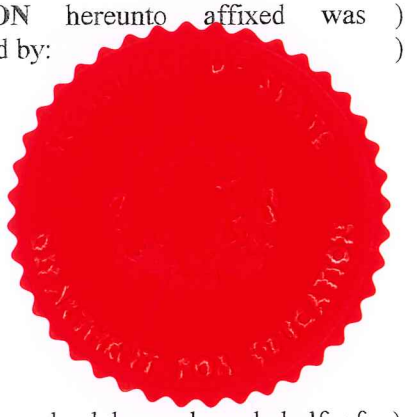
18.17.2 Subject to the provisions of clause 17 (Dispute Resolution), the parties agree that the courts of England and Wales shall have exclusive jurisdiction to hear and settle any action, suit, proceeding or dispute in connection with this Agreement and irrevocably submit to the jurisdiction of those courts.

IN WITNESS whereof the parties have executed this Agreement the day and year first above written

EXECUTED as a deed (but not delivered until the date hereof) by affixing the common seal of **NORTHAMPTONSHIRE COUNTY COUNCIL** in the presence of:)

Authorised Signatory

THE CORPORATE SEAL of the SECRETARY OF STATE FOR EDUCATION hereunto affixed was authenticated by:)



Authorised by the Secretary of State for Education

30th August 2018

SIGNED as a deed by and on behalf of **PRESTON HEDGE'S ACADEMY TRUST** acting by:)

Director

In the presence of:

Witness.....TRACEY COLES.....

Address..45 COLONIAL DRIVE.....
NORTHAMPTON NN4 0BL

Occupation.....TEACHER.....

SCHEDULE 1: INFORMATION PROTOCOL

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

2. The Authority shall provide to the DFE and the Academy (in each case solely in respect of matters affecting the Site and/or the School):

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

   2.2 on reasonable request, details of claims that the Authority is progressing under the Project Documents (irrespective of whether the claims are being made at the request of the Academy or the DFE) and which total an amount equal to or greater than the De Minimis taking into consideration all other claims in a Financial Year which have not previously been notified to DFE;

   2.3 a copy of any Relevant Notice;

   2.4 details of any matter exceeding the De Minimis (taking into consideration all other matters in a Financial Year which have not previously been notified to DFE) which may lead to an increase in the Academy Contribution including indexation, any benchmarking/market testing, any insurance costs review and any change in law; and

   2.5 such other information as the DFE or Academy may reasonably require.

3. The Authority shall provide to the Academy (in each case solely in respect of matters affecting the Site or the School):

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

   3.2 not used;

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

   3.4 quarterly (or more regularly by agreement of the parties) reports on instances of Authority Damage (as defined in the School Agreement), together with details of the costs associated with the same and the proposed or agreed responsibility for such costs;

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

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

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

3.8 details of any information given to the Authority by the Contractor under clause 5.2.1 of the Project Agreement;

3.9 details of any matter which may lead to an increase in the Academy Contribution including indexation, any benchmarking/market testing, any insurance costs review and any change in law; and

3.10 on reasonable request, details of claims that the Authority is progressing under the Project Documents (irrespective of whether the claims are being made at the request of the Academy).

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

5. The Academy shall provide to the Authority:

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

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

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

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

SCHEDULE 2: AFFORDABILITY GAP AND ADJUSTMENTS RELATING THERETO

Introduction

1. Any payments of sums equal to the Academy Affordability Gap payable by the DFE pursuant to clause 9 shall be calculated in accordance with this schedule 2.

Where the DSG *includes* pupils attending the School - recoupment model applies

2. Where the pupil number baseline of the Authority's allocation of DSG *includes* pupils attending the School (the "recoupment model"), the DSG will be calculated in accordance with the methodology that applies to all local authorities allocated DSG (but with recoupment applying), as determined by the Secretary of State, for the relevant Financial Year.

3. Where the Authority "delegates" the Academy Affordability Gap and such sum is accounted for within the relevant School budget share (and is therefore subject to recoupment), the DFE shall, subject to paragraph 8, pay to the Academy a sum equal to the Academy Affordability Gap as part of the General Annual Grant or Earmarked Annual Grant. The parties agree that the Academy shall promptly pay such sum to the Authority pursuant to the terms of the School Agreement.

4. The parties agree that the recoupment model for calculating DSG shall apply until such time as this practice ends or is amended.

Where the DSG *excludes* pupils attending the School - no recoupment model applies

5. Where the pupil number baseline of the Authority's allocation of DSG *excludes* pupils attending the School (the "no recoupment model"), the DSG will be calculated in accordance with the methodology that applies to all local authorities allocated DSG, as determined by the Secretary of State, for the relevant Financial Year, plus the Academy Affordability Gap as calculated by the Authority (in accordance with paragraph 8) for the Financial Year in question.

General

6. In any Financial Year where the School operated by the Academy is open for less than 12 months the value of the Academy Affordability Gap will be reduced commensurately.

7. The amounts payable under this schedule shall only be payable from the date of this Agreement.

8. The Authority shall act reasonably when undertaking calculations of the Affordability Gap and the Academy Affordability Gap, and shall on request provide in good faith all relevant information in its possession to the DFE necessary to calculate the DSG for the relevant Financial Year which, for the avoidance of doubt, shall include:

8.1 the projected Unitary Charge;

8.2 details of the Affordability Gap and how it is proposed to be apportioned to the School, if applicable;

8.3 the details of any sums received pursuant to the Promissory Note; and

8.4 the projected allocation of the DSG for each school which is the subject of the Project Agreement.

9. DFE shall provide at least one (1) months written notice to the Authority of the proposed date of grant of the DSG and shall provide to the Authority any information reasonably required by the Authority in connection with the DSG.

10. In this schedule, "Financial Year" means a period of 12 months commencing on 1 April provided that the first Financial Year shall be the period commencing on the date of opening of the School operated by the Academy and ending on the immediately following 31 March.