

DATED

2023

MEDWAY COUNCIL

And

XX ACADEMY TRUST

FUNDING AGREEMENT

THIS AGREEMENT is made this day of 2023

BETWEEN:

- (1) **MEDWAY COUNCIL** of Gun Wharf, Dock Road, Chatham, Kent ME4 4TR herein after called “**The Council**”; and.
- (2) **XX ACADEMY TRUST** whose principal office is at **ADDRESS** (“the Academy Trust”)

IT IS HEREBY AGREED THAT:

1. Background

- 1.1 The Council receives grant funding from central government for the purposes of providing sufficient school places. The Council prepares annually a review of the School Place Planning Strategy which outlines emerging need and proposals for ensuring that sufficient places are available to meet demand. The Academy Trust were consulted and agreed to provide some of the additional places in the area.
- 1.2 The Academy agrees to provide **XXX additional places** within the agreed funding.
- 1.3 The Council agrees to pass funding from the grant to the Academy trust to deliver the specified expansion.
- 1.4 The Academy Trust’s total costs of fulfilling the Project Objectives, as referenced in Schedule 1 are **xx (amount in words) (£amount in figures)**.
- 1.5 The Council agrees to provide **£xxx** from the **grant funding** to the Academy Trust in accordance with this Agreement to assist with the delivery of the Project Objectives. The Academy Trust has committed itself to meeting the Project Objectives
- 1.6 This Agreement sets out the terms and conditions upon which the Council will make the Funding available to the Academy Trust.
- 1.7 The provision of the Funding amounts to a conditional gift and is therefore not subject to VAT. If, at any time, it is held by the UK government to be subject to VAT, then the Academy Trust agrees and acknowledges that the Funding shall have included any and all applicable VAT. For the avoidance of doubt, the Council will not be reimbursing VAT paid or payable by the Academy Trust for goods or services procured by it for the delivery of the Project Objectives.
- 1.8 In this Agreement capitalised terms shall have the meaning prescribed to them in Clause 22.

2. The Project Objectives

- 2.1 The Academy Trust shall use the Funding solely to meet the Project Objectives in relation to the Project in accordance with this Agreement.

2.2 The Academy Trust hereby warrants that it has sufficient resources, including competent and qualified personnel, financial resources, premises and other resources as necessary, and will only instruct suitably qualified and competent professionals to meet the Project Objectives in accordance with this Agreement in all material respects.

2.3 The Academy Trust shall:

- (a) deliver the Project Objectives and complete the Project in accordance with this Agreement by no later than **dd/mm/yyyy**; and
- (b) where the meeting of Project Objectives consists of the achievement of:
 - (i) milestones, notify the Council in writing immediately upon becoming aware that any milestones are unlikely to be achieved fully in accordance with this Agreement: and
 - (ii) deliverables, notify the Council in writing immediately upon becoming aware that any deliverables are likely to exceed or are likely to be less than the relevant agreed number of deliverables set out in Schedule 1.

2A. Designated Capital Funding and Trust's Contribution

2A.1 The Academy Trust's statutory chief finance officer or other officer validly authorised to act on its behalf has certified that **amount in words (£amount in figures)** will be used solely as a contribution to capital expenditure incurred in relation to the Project Objectives such certification being made on the basis that the Academy Trust's determination of capital expenditure accords with all relevant and applicable laws and best practice, is estimated to deliver benefits that will accrue over a period of 15 years on average and on the basis that it will be recorded in the Trust's accounts in this manner.

2A.2 The Academy Trust shall ensure that the Funding received from the Council is spent exclusively in meeting the Project Objectives in accordance with the Funding Profile as contained in Schedule 2, and as may be amended in accordance with clause 2A.3. For the avoidance of doubt, and subject to clause 2A.3, the Council shall not make any payment of Funding in excess of the Funding Profile in Schedule 2 for either Financial Year **2022/23, 2023/24 or 2024/25**.

2A.4 If the Academy Trust needs amendments to the Project Objectives or the Funding Profile, requiring a change to the indicative allocations in Schedule 2, the Academy Trust will submit a Project Adjustment Request (PAR) to the Council. The Academy Trust will require approval by **Medway Council** for any alterations to the Project Objectives or the Funding Profile. A wide range of project changes, including but not limited to changes to spending profiles, delivery timelines, funded activities, outputs and outcomes may be requested through the PAR process. The requested changes will be categorised as either 'streamlined', representing minor changes to spending or delivery timelines, or 'standard', which will capture any other requested project changes. Requests by the Academy Trust to amend the Project Objectives or the Funding Profile via the Council, will be considered by **Medway Council**. There are no guarantees that such requests will be accommodated by **Medway Council**.

3. Duration of Agreement and Funding breakdown

This Agreement shall commence on the date at the head of this Agreement and, subject to the provisions for early termination set out in this Agreement, shall continue in force until the earlier of completion of the Project or **end date of project**.

4. Payment, Performance Monitoring and Repayment Arrangements

- 4.1 Subject to the Academy Trust complying with all of the terms of this Agreement and subject to clause 7 of this Agreement, the Council shall pay to the Academy Trust a sum not exceeding the Funding, such payments to be made in instalments within 30 days of receipt of:
- (a) a valid invoice for the agreed work milestone up to a maximum of the total amount;
 - (b) copies of all invoices actually paid by the Academy Trust in respect of the project objectives
 - (c) evidence of outputs in accordance with Schedule 1.
- 4.2 Monitoring and evidence of outputs in accordance with schedule 1 will be taken into consideration by Medway Council before making payment to the Academy Trust. **Medway Council** may make appropriate adjustments to payments or withhold payments where there are significant concerns over delivery. The Council will reflect payment adjustments or withheld payments made by **Medway Council**, to the Academy Trust and the Funding Profile will be amended accordingly.
- 4.3 For the avoidance of doubt the Funding is capital funding and the Academy Trust shall not be permitted to make claims for Funding in respect of revenue expenditure or any overspend nor shall the Council be responsible for or pay any such expenditure or overspend.
- 4.4 If the Council acting in good faith disputes all or any part of any invoice submitted under this clause 4, the Council shall notify the Academy Trust of the amount in dispute and the Academy Trust shall re-submit the invoice for the undisputed amount only, for payment. The Parties shall attempt to amicably resolve the dispute regarding the disputed amount. If the Parties are unable to reach agreement the Council shall be entitled to continue withholding the disputed amount and the matter shall be referred to the Dispute Resolution Procedure under Clause 19. Following resolution of the dispute, any amount agreed or determined to have been payable shall be paid forthwith by the Council to the Academy Trust.
- 4.5 The Academy Trust shall undertake and report to the Council on Project delivery monitoring and evaluation, evaluating the impacts and outcomes of the Project as follows:
- A) ongoing Project monitoring reports supplied to the Council including dashboard reports, along with working documents such as programme and progress against key milestones, risk registers, budget/spend.
- 4.6 Subject at all times to any obligation on the Academy Trust in relation to confidentiality, the Academy Trust shall also make all documents received from its

suppliers and sub-contractors available to the Council upon demand and use reasonable endeavours to procure access to such persons for the Council and/or its agents, contractors or servants at any time for inspection visits, audit and scrutiny of the involvement of such persons in or about the Project and their respective contributions to the Academy Trust's delivery of milestones and/or Project Outputs.

- 4.7 For the avoidance of doubt the Academy Trust hereby acknowledges that no further funding shall be provided in respect of such evaluation work and reporting under clause 4.5 and warrants that the Funding is sufficient in this regard.
- 4.8 In the event that the Academy Trust fails to make any clawback repayment(s) under this Agreement pursuant to clause 7, interest shall accrue on such sum(s) at the interest rate of three percent (3%) above the base rate of Bank of England from time to time on all sums due and payable under this Agreement from the due date until the date of actual payment (both before and after judgement as applicable). All such interest shall be calculated on the basis of the actual number of days elapsed, over a three hundred and sixty five (365) day year and compounded at monthly intervals. The parties agree that this provision constitutes a substantial remedy for late payment of any sum payable under the Agreement in accordance with section 8(2) of the Late Payment of Commercial Debts (Interest) Act 1998.

5. Ineligible Expenditure

- 5.1 Without prejudice to the obligation that the Academy Trust may only use the Funding for the purpose of meeting the Project Objectives under clause 1.4, the Academy Trust must not use the Funding for:
- a) activities or objectives not listed in Schedule 1;
 - b) recoverable input VAT incurred;
 - c) any liability arising out of the Academy Trust's negligence or breach of contract;
 - d) payments for unfair dismissal, constructive dismissal or redundancy to staff employed on fixed term contracts signed after June 1996, where this arises in respect of the expiry of that term without it being renewed; and/or
 - e) the payment of any Ombudsman's award or recommendation as regards compensation for maladministration.
- 5.2 The list in Clause 5.1 is not exhaustive and the Council will give the Academy Trust as much advanced notice as reasonably practicable of any other expenditure not listed in Clause 5.1 which is ineligible for Funding under the terms of this Agreement and various incorporated documents. The Academy Trust must consult the Council if there is any doubt as to whether particular costs are eligible.

6. Financial Accountability

- 6.1 The Academy Trust must ensure that the requirements set out in this Agreement, and in any clarification or guidance issued from time to time by the Council, are complied with. In particular the Academy Trust shall:

- a) agree in writing in advance with the Council any changes to any of the Project Objectives, milestones and/or Projects Outputs;
- b) establish, implement and utilise effective monitoring and financial systems, so that as a minimum the costs funded by the Funding can be clearly identified and the propriety and regularity of all payments and handling of the Funding are ensured;
- c) maintain an open book approach in relation to this Agreement to enable the Council to monitor, scrutinise and verify the accuracy of all payments made by the Council to the Academy Trust;
- d) on request of the Council, will provide to the Council an open book account of its payments made for the purposes of delivery of the Project, and/or any proposed such payments, setting out in full the details of each component of the costings;
- e) notify the Council of the monitoring and financial systems in place, and comply with the Council's reasonable requirements for these systems;
- f) notify the Council immediately if any financial irregularity in the use of the Funding is suspected, and indicate the steps being taken in response. Irregularity means any fraud or other impropriety, mismanagement or use of funds for any purposes other than those approved;
- g) notify the Council immediately if any other financial irregularity is suspected, and indicate the steps being taken in response;
- h) without prejudice to Clause 4.1, keep a record of all Expenditure Incurred together with full supporting evidence including (without limitation) copy invoices clearly showing Expenditure Incurred on the milestones and/or Project Outputs or in the absence of such invoices contract documents and transaction listings from the Academy Trust's finance management system (and certified as true and accurate records of such expenditure by the Academy Trust's chief financial officer) and additional funding received. All evidence of Expenditure Incurred such as original invoices, receipts, timesheets and other relevant documents must be kept for at least 6 years after the end date of the Project The Council and any person nominated by the Council has the right to audit any and all such evidence at any time during the 6 years after the end date of the Project on giving reasonable notice (whether in writing or verbally) and at any reasonable time to inspect any aspect of the Academy Trust's performance of the Project and the Academy Trust shall give all reasonable assistance to the Council or its nominee in conducting such inspection, including making available documents and staff for interview;
- i) make (complying always fully with the requirements of the Data Protection Act 1998 and the UK GDPR on the protection of natural persons with regard to the processing of personal data and on the free movement of such data, and all applicable regulations and any obligations in relation to confidentiality) all relevant data, information and documents available and provide access on reasonable notice and during normal office hours for:

- i) inspection visits and scrutiny of files by the Council or any other public body undertaking an audit function (whether by itself or its contractors, servants and/or agents); and
- ii) an external audit and review of the Project Objectives, milestones and/or Project Outputs and of financial appraisal and monitoring systems and cooperate fully with the Council and/or anyone acting on their behalf or any other public body undertaking an audit function (whether by itself or its contractors, servants and/or agents) in this regard; and
- j) retain and maintain data and systems required (in the reasonable opinion of the Council) for the verification of the delivery of Project Objectives, milestones and/or Project Outputs providing the Council with copies of and access to the same upon request; and
- k) notify the Council in writing of any change in the identity of the Academy Trust's Representative.

6.2 No Capital Asset should be sold, charged, loaned or otherwise disposed of by the Academy Trust or cease to be used for the purposes of the Project at any time during the period of 25 years from the date of this Agreement without the prior written consent of the Council which (if given) may be conditional on re-payment to the Council of the relevant part of the Funding and shall be subject to Clauses 6.4 below.

6.3 Where a Capital Asset which was either partly or wholly funded by the Funding is disposed of at any time during the period of 25 years from the date of this Agreement (subject always to the Council having consented to such a disposal being made) the Council may require the Academy Trust to reimburse the Council with the actual or estimated open market value of the Capital Asset at the time of disposal less any necessary sale expenses reasonably incurred or where the Capital Asset was partly funded by the Funding the Council may require the reimbursement of the percentage of the net sale value which represents the initial Funding contribution to the purchase.

6.4 Unless otherwise agreed by the Council all disposals of Capital Assets at any time during the period of 25 years from the date of this Agreement shall be at the best price reasonably obtainable based on an open market valuation evidenced in writing.

7. Breach of Conditions, Retention, Suspension, Withholding and Recovery of Funding

7.1 The Council may at its absolute discretion reduce, suspend or withhold Funding, or require all or part of the Funding to be repaid and, at its option, terminate this Agreement by giving written notice to the Academy Trust (with such termination to take effect either immediately or at the end of such notice period as the Council may stipulate), if:

- a) the Academy Trust fails to comply with Clause 2.1 and/or apply the Academy Trust's contribution to the Project Objectives milestones and/or Project Outputs;

- b) in the Council's reasonable opinion the Academy Trust fails to deliver or unsatisfactorily delivers the Project Objectives and Project Outputs in accordance with Schedule 1 and fails to remedy such failure to the reasonable satisfaction of the Council within 20 days of becoming aware of it or being notified in writing of such failure by the Council;
- c) there is a substantial change to the Project or the Project Objectives, milestones and/or Project Outputs which the Council has not approved and which has a material adverse effect on the delivery of the Project Objectives, or any attempt is made by the Academy Trust to transfer or assign any rights, interests or obligations created under this Agreement or substitute any person in respect of any such rights, interests or obligations, without the prior consent in writing of the Council;
- d) any information provided in the application for funding or in a claim for payment or in subsequent or supporting correspondence is found to be incorrect or incomplete to an extent which the Council reasonably considers to be material and which has a material adverse effect on the delivery of the Project Objectives;
- e) the Academy Trust fails to comply with any other term set out in this Agreement in a way which has a material adverse effect on the delivery of the Project Objectives or the Project Outputs and fails to remedy such failure within 20 days of becoming aware of it or being notified in writing of such failure by the Council ;
- f) any other circumstances significantly affect the Academy Trust's ability to deliver the Project and/or meet the Project Objectives, milestones and/or Project Outputs or result in or are in the reasonable opinion of the Council likely to lead to the Project and/or the meeting of the Project Objectives, milestones and/or Project Outputs as approved (and as may be amended in accordance with this Agreement from time to time) not being completed;
- g) insufficient measures are taken by the Academy Trust to investigate and resolve any financial irregularity or the Council reasonably concludes the Funding is misapplied; and/or
- h) the Academy Trust fails to provide the Council within a reasonable period following request with:
 - (i) copy invoices clearly showing expenditure incurred in meeting the Project Objectives or in the absence of such invoices contract documents and transaction listings from the Academy Trust's finance management system and certified as true and accurate records of such expenditure by the Academy Trust's chief financial officer; or
 - (ii) documentary evidence verifying (in the reasonable opinion of the Council) the delivery of the Project Objectives, milestones and/or Project Outputs; and/or
- i) the acts or omissions of the Academy Trust, (in the reasonable opinion of the Council) bring the Council into disrepute or adversely affect the reputation of the Council.

- 7.2 The Academy Trust shall notify the Council immediately and provide the Council with a full written explanation, if any of the circumstances in Clause 7.1(a)-(i) inclusive above arise.
- 7.3 If the Council becomes entitled to exercise its rights under Clause 7.1, it may nevertheless decide not to exercise those rights, or not to exercise them to the fullest extent possible, or to delay in exercising those rights. Any decision not to exercise the Council's rights under Clause 7.1, or to exercise them only partially or to delay in exercising them, may be made on conditions which will be notified to the Academy Trust provided always that any such decision by the Council shall not prevent the subsequent enforcement of any subsequent breach of that provision, and shall not be deemed to be a waiver of any subsequent breach of that or any other provisions.
- 7.4 The Council may at any time after **DDMYYYY**, terminate this Agreement by giving two calendar months' notice in writing to the Academy Trust if (and only if) it is specifically required to do so by specific reference to the Project and/or the Funding provided to the Academy Trust, under its MOU with **Medway Council**.
- 7.5 In the event that the Council exercises its right to terminate this Agreement under:
- a) Clause 7.1:
 - i) the relationship of the parties shall cease and any rights granted under or pursuant to this Agreement shall cease to have effect save as (and to the extent) expressly provided for in this Clause 7.5;
 - ii) any provision which expressly or by implication is intended to come into or remain in force on or after termination shall continue in full force and effect;
 - iii) the Academy Trust shall promptly return to the Council or dispose of in accordance with the Council's instructions all information, other data and documents and copies thereof disclosed or supplied to the Academy Trust by the Council pursuant to or in relation to this Agreement; and
 - iv) the Academy Trust shall repay to the Council upon demand such amounts of the Funding paid to the Academy Trust prior to termination as it deems appropriate including (without limitation) such sums of the Funding which are repayable by the Academy Trust under this Agreement;
 - b) Clause 7.4:
 - i) the provisions of Clause 7.5(a) (i) to (iii) shall apply; and
 - ii) the Council shall pay the Academy Trust a sum equivalent to the expenditure incurred by or on behalf of the Academy Trust on or before the date on which notice is served under clause 7.4 and for which it has yet to invoice the Council providing always that the Academy Trust provides the Council with an invoice for the same with all the supporting documentation required by the Council in accordance with Clause 4 of this Agreement.
- 7.6 Where the Council exercises its right to reduce, suspend or withhold Funding, or requires all or part of the Funding to be repaid pursuant to Clause 7.1, this figure will be re-calculated having regard to the Funding already paid in relation to the

outputs delivered at the date on which the Council notifies the Academy Trust of its exercise of its Clause 7.1 rights, provided always that the Council reserves the right to apply an alternative methodology to re-calculate the Funding amount concerned.

8. Procurement and Subsidy Control

- 8.1 All procurement of works, equipment, goods and services shall be conducted:
- (a) in compliance with all relevant law including the Public Contracts Regulations 2015 and in accordance with the Academy Trust's relevant contracting and/or procurement procedures and rules, which for the avoidance of doubt the Academy Trust hereby warrants are compliant with the aforementioned regulations and related best practice;
 - (b) in accordance with government best practice relating to procurement practices and procedures; and
- 8.2 In accepting and disbursing the Funding the Academy Trust shall comply with all applicable rules on subsidy control.
- 8.3 The Council may monitor the Academy Trust's compliance with the requirements of this Clause 8.

9. Publicity and Intellectual Property

- 9.1 The Academy Trust shall ensure that publicity is given to the Project and the fact that **Medway Council**, is financially supporting the Project, and is working with the Trust. In acknowledging the contribution made by the Council, the Academy Trust must comply with any guidance on publicity and/or branding provided by the Council from time to time shall be used wherever possible including (without limitation) on hoardings/construction signboards.
- 9.2 All publicity generated by the Academy Trust referring to the Council including (without limitation) all press and media releases must be approved in writing at least two weeks in advance of any release of publicity material (in any form) by the Council's Representative. The Academy Trust shall also ensure that any proposals for any launch or other related publicity activity are approved in writing by the Council at least one month before the date of such proposed launch or other related publicity activity and that members of the Council as appropriate will be invited to and may attend any such launch.
- 9.3 The Academy Trust shall ensure that it does not by its own actions or omissions, and shall use reasonable endeavours to procure that its contractors or agents do not, harm the Council's reputation or bring the Council into disrepute.
- 9.4 If any part of the Funding is used directly or indirectly to purchase or develop any Intellectual Property Rights then the Academy Trust shall take all necessary steps to protect such rights to the extent appropriate and hereby grants a perpetual, royalty-free licence to the Council to use the same for the purposes related to, and connected with, policies, initiatives and campaigns, and related to, or connected with, the Council's discharge of its statutory duties and powers.

10. Agency

- 10.1 The Academy Trust is not and shall in no circumstances hold itself out as being the agent or partner of the Council.
- 10.2 The Academy Trust is not and shall in no circumstances hold itself out as being authorised to enter into any contract on behalf of the Council, or in any other way to bind the Council, to the performance, variation, release or discharge of any obligation or power; or to make any statement on behalf of the Council (unless approved in writing in advance).
- 10.3 The employees of the Academy Trust are not, shall not hold themselves out to be, and shall not be held out by Academy the Trust as being, employees of the Council for any purpose whatsoever.

11. Amendment

The Academy Trust understands that amendments to this Agreement may be necessary in accordance with instructions and guidance issued by the Council. No amendment to this Agreement shall be effective unless it is in writing and signed by or on behalf of each of the parties hereto, but the Academy Trust shall comply with any formal procedures for amending agreements which the Council may have in place from time to time, and shall not unreasonably withhold or delay its consent to any amendment proposed by the Council where such amendment does not impose any unreasonable additional obligation or burden on the Academy Trust.

12 Review, Consultation and Reporting

- 12.1 In preparation for each of the Review Meetings (as that term is defined in Clause 12.2), the Academy Trust shall not less than 2 days before the date of the relevant Review Meeting submit to the Council a report detailing the Academy Trust's activities in relation to meeting the Project Objectives, milestones and/or Project Outputs.
- 12.2 The Academy Trust and the Council shall meet to review the progress of the Project and the meeting of the Project Objectives, milestones and/or Project Outputs ("Review Meeting") from time to time on a regular basis, at such times as agreed by the parties. Review Meetings will be organised by the Council.
- 12.3 The agenda for the Review Meeting (which shall be attended by the Academy Trust's Representative) shall be informed by the Academy Trust's claims for payment and Project Monitoring Forms and shall include but not be limited to:
 - a) the progress and delivery of the Project and Project Objectives, milestones and/or Project Outputs against the milestones, any risks which may have any cost, funding, programme delay or quality implications and/or which may affect the delivery of the Project Objectives, milestones and/or Project Outputs or any part thereof fully in accordance with this Agreement and the action the Academy Trust proposes to take to prevent and/or mitigate such risks adversely affecting the Academy Trust's ability to deliver the Project Objectives, milestones and/or Project Outputs;
 - b) the Academy Trust's proposals for publicising, branding and acknowledging the Council's funding of the Project; and

- c) any revisions that may be necessary to the Project Objectives, milestones and/or Project Outputs for whatever reason.

12.4 Any variations to this Agreement that appear to be necessary as a result of a Review Meeting shall be made in accordance with Clause 11.

12.5 In addition to the Review Meetings, throughout the term of this Agreement, the Academy Trust shall:

- a) cooperate fully with and provide the Council and its agents with all information and assistance that it reasonably requests from time to time including (without limitation) participating in and supporting the Council's evaluation of the Project;
- b) use reasonable endeavours to procure that its agents, servants and contractors cooperate fully with and provide the Council and its agents with all information and assistance that it reasonably requests from time to time including (without limitation) participating in and supporting the Council's evaluation of the Project;
- c) provide upon request such information and materials as the Council reasonably requests in relation to the Project;
- d) take all steps necessary to facilitate the Council conducting visits to the site(s) of funded activity as notified by the Council from time to time; and
- e) enable attendance at and provide reasonable notice and meeting papers for project team meetings by the Council or its nominee.

13. Compliance with Legislation and Policies

13.1 The Academy Trust shall ensure that it complies with all applicable law for the time being in force in England and Wales, and in particular:

- a) shall take all necessary steps to secure the health, safety and welfare of all persons involved in or attending the Project;
- b) shall ensure it complies and use reasonable endeavours to ensure that its suppliers and sub-contractors comply with the provisions of Bribery Act 2010 and any guidance issued by the Secretary of State under the same (whether or not so obliged expressly by that act or such guidance); and
- c) shall have in place appropriate equal opportunities and complaints policy/procedures and shall not unlawfully discriminate against any person.

13.2 The Academy Trust warrants that it has or will obtain the necessary permits, permissions, licences and all authorisations as are required (legislative or otherwise) to deliver the Project, including but not limited to Planning and Listed Building consent.

13.3 Without prejudice to and in addition to Clauses 13.1 and 13.2 the Academy Trust:

- (a) shall comply with all relevant enactments in force from time to time relating to discrimination in employment and the promotion of equal opportunities;

- (b) acknowledges that the Council is under a duty under section 149 of the Equality Act 2010 to demonstrate it has paid due regard to the need to:
 - (i) eliminate unlawful discrimination and harassment;
 - (ii) advance equality of opportunity between groups who share protected characteristics and those that do not, in particular, minimise disadvantage suffered by the equality groups; taking steps to meet the needs of equality groups that are different from the needs of others; encouraging equality groups to participate in public life or in any other activity (such as elected office or management positions) in which their participation is disproportionately low; and
 - (iii) foster good relations between people who share a protected characteristic and those that do not.

- (c) shall assist and co-operate with the Council where possible with the Council's compliance with its duties under the Equality Act 2010 including any amendment or re-enactment of section 1 or section 149, and any guidance, enactment, order, regulation or instrument made pursuant to these sections;

- (d) shall (before the commencement of the Project):
 - (i) undertake Disclosure and Barring Service checks in respect of all persons engaged in or about the Project (by the Academy Trust, any agent, sub-recipient of Funding, contractor or sub-contractor) where such persons shall be working with children or vulnerable persons or have access to personal data (as defined by the Data Protection Act 1998 and the UK GDPR on the protection of natural persons with regard to the processing of personal data and on the free movement of such data, as applicable) concerning such children and vulnerable persons in relation as part of the Project; and

 - (ii) have in place (and maintain throughout the continuance of the Project) appropriate child and vulnerable persons safeguarding policies, which must, for the avoidance of doubt meet any requirements of the Council's related policies in this place from time to time, including (without limitation) the Council's Child Policy and Protection Procedures; and

- (e) shall make reasonable efforts to utilise and adhere to the Council's Single Use Plastics policy.

14. Liability and Insurance

- 14.1 The Academy Trust shall be liable for and shall indemnify and keep indemnified the Council from and against any loss or damage incurred and any injury (including death) suffered and all actions, claims, costs, demands, proceedings, damages, charges and expenses whatsoever brought against the Council and arising in connection with the management (including financial management) and delivery of the Project to the extent that such loss, damage, injury (including death), actions, claims, costs, demands, proceedings, damages, charges and expenses are due to the negligence of the Academy Trust or the wilful default of

the Academy Trust in carrying out its obligations under this Agreement.

14.2 The Academy Trust shall ensure that at all material times it maintains in force policies of insurance with an insurance company of long-standing and good repute in respect of:

- a) public liability for a minimum amount of five million pounds sterling (£5,000,000.00) in respect of any one occurrence or a series of occurrences arising out of any one event;
- b) employers' liability including (without limitation) personal injury or death of any person arising under a contract of service with the Academy Trust and/or arising out of an incident occurring during the course of such person's employment in compliance with the Employer's Liability (Compulsory Insurance) Act 1969; such insurance cover shall be not less than [£10,000,000 (ten million pounds) in respect of any one incident ;
- c) professional indemnity: such insurance shall be not less than £10,000,000 (ten million pounds) in respect of any one incident; and
- d) such other insurance as may be required in order to fulfill the conditions of this Agreement.

14.3 The Academy Trust shall on the written request of the Council from time to time allow the Council to inspect and/or provide the Council with evidence that it has all necessary policies of insurance in place.

15. Data Protection, Freedom of Information, Confidentiality and Transparency

15.1 The Academy Trust shall ensure that at all times it complies with its obligations under this Agreement in such manner so as to comply with the Data Protection Act 1998 and the UK GDPR on the protection of natural persons with regard to the processing of personal data and on the free movement of such data and all applicable regulations including (without limitation) the maintenance of an appropriate registration with the Information Commissioner.

15.2 The Freedom of Information Act 2000 (FOIA) and the Environmental Information Regulations 2004 (EIR) gives a general right of access to information held by a public Council. Subject to any exemptions applicable, the Academy Trust shall co-operate fully with the Council as reasonably requested by the Council in respect of any request for information made to the Council in connection with this Agreement pursuant to the FOIA, EIR or other applicable legislation.

15.3 Subject to Clauses 15.2, 15.4 and/or 15.5 the parties shall keep confidential any information exchanged between the parties which either party has specified as confidential or which would be likely to prejudice the interests of either party commercially or otherwise.

15.4 The obligations under Clause 15.3 above shall not apply to:

- (a) information which at the time of disclosure is in the public domain;
- (b) information which is required to be disclosed by law (including the Parties' under the FOIA);
- (c) information which is disclosed with the consent of the disclosing party.

- 15.5 Both Parties acknowledge and agree that the Council:
- (a) is subject to the Transparency Commitment and accordingly, notwithstanding Clause 15.3 hereby gives their consent for the other Party to publish the Agreement Information to the general public; and
 - (b) may in its absolute discretion redact all or part of the Agreement Information prior to its publication. In so doing and in its absolute discretion the Council may take account of the exemptions/exceptions that would be available in relation to information requested under FOIA. The Council may in its absolute discretion consult with the Academy Trust regarding any redactions to the Agreement Information to be published pursuant to this Clause 15.5. The Council shall make the final decision regarding publication and/or redaction of the Agreement Information.
- 15.6 For the avoidance of doubt in the event that the Council consents to the Academy Trust's disposal or cessation of use in the Project of any Capital Asset (pursuant to Clause 6.2) the Academy Trust shall ensure all data collected used or in any way related to or connected with the Project is erased (so that it cannot be recovered there from) from the Capital Assets to which such consent relates.

16. Entire Agreement

This document sets out the entire agreement between the parties and supersedes all prior oral or written agreements, arrangements or understandings between them. The parties acknowledge that they are not relying on any representation, agreement, term or condition, which is not set out in this Agreement.

17. Force Majeure

- 17.1 Either party shall notify the other in writing of any Force Majeure Event as soon as it is aware of it.
- 17.2 Neither party shall be in breach of the Agreement by reason of any Force Majeure event. Each party shall bear their own costs arising as a consequence of the Force Majeure Event.

18. Governing law and jurisdiction

This agreement and any dispute or claim arising out of it 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. The parties irrevocably agree that the courts of England and Wales shall have exclusive jurisdiction to settle any dispute or claim that arises out of or in connection with this agreement or its subject matter or formation (including non-contractual disputes or claims).

19. Dispute Resolution

- 19.1 Any dispute arising in relation to any aspect of this Agreement shall be resolved in accordance with this clause 19.

- 19.2 In the event that a dispute arises in relation to this Agreement the Academy Trust's Representative and the Council's Representative shall in the first instance use their reasonable endeavours to resolve it. If that is unsuccessful the dispute shall be referred to the senior levels in both organisations and subsequently to Chief Executive Level if necessary.
- 19.3 If the Parties fail to reach agreement the dispute shall be referred to non-binding mediation in accordance with the rules of the Chartered Institute of Arbitrators Costs Controlled Procedure for the mediation of disputes. The mediation shall be non-binding unless agreement is reached and a document signed with contractual effect. The mediation shall take place within 6 weeks of a referral by either Party.

20. Contracts (Rights of Third Parties) Act 1999

A party who is not a party to this agreement shall not have any rights under the Contracts (Rights of Third Parties) Act 1999 to enforce any term of this agreement.

21. Severance

If any court or competent authority finds that any provision of this Agreement (or part of any provision) is invalid, illegal or unenforceable, that provision or part-provision shall, to the extent required, be deemed to be deleted, and the validity and enforceability of the other provisions of this agreement shall not be affected.

22. Definition of Terms

In this Agreement the following terms shall have the following meanings:

- 22.1 **“Agreement Information”** means (i) this Agreement in its entirety (including from time to time agreed changes to the Agreement) and (ii) data extracted from the claims made under this Agreement which shall consist of the Academy Trust's name, the expenditure account code, the expenditure account code description, the document number, the clearing date and the claim amount;
- 22.2 **“Council's Representative”** means any person nominated by the Council from time to time to be its representative for any matters relating to this Agreement.
- 22.3 **“Capital Asset”** means any item of equipment or other asset which has a purchase value of five thousand pounds sterling (£5,000.00) or more and which on the date of its purchase by the Academy Trust has a useful life of more than three (3) years and is purchased wholly or partly out of the Funding.
- 22.4 **“Expenditure Incurred”** means expenditure connected with the Project in respect of which the Academy Trust has received relevant goods and services, or in respect of which it has entered into contractual obligations, for which payment has been made or is due to be made.
- 22.5 **“Financial Year”** means the annual period from 1 April to 31 March.
- 22.6 **“FOIA”** has the meaning given to it in Clause 15.2.
- 22.7 **“Force Majeure”** means any of the following: riot, civil unrest, war, act of terrorism, threat or perceived threat of act of terrorism, fire, earthquake,

extraordinary storm, flood, abnormal weather conditions or other natural catastrophe or strikes, lock-outs or other industrial disputes to the extent that such event has materially affected the ability of the Party relying on the Force Majeure Event ("Affected Party") to perform its obligations in accordance with the terms of the Agreement but excluding any such event insofar as it arises from or is attributable to the willful act, omission or negligence of the Affected Party or the failure on the part of the Affected Party to take reasonable precautions to prevent such Force Majeure Event or its impact .

- 22.8 **"Funding Profile"** means the profile as set out in Schedule 2 to this Agreement
- 22.9 **"Funding"** means a sum of up **amount in words (£amount in figures)** to be paid to the Academy Trust by the Council in accordance with the terms and conditions of this Agreement.
- 22.10 **"Intellectual Property Rights"** means copyright, patents, registered and unregistered trade marks, registered and unregistered designs and all other industrial and intellectual property rights anywhere in the world whether registered or unregistered and including any applications for any of those rights
- 22.11 **"Project Outputs"** means (where applicable) any outputs to be met by the Academy Trust and as may be set out in the Annex to Schedule 1 and/or to any annexure thereto and any amendment thereto agreed between the parties in accordance with clauses 11 and 12, and to be carried out in accordance with the undertakings set out in Schedule 1.
- 22.12 **"Project"** means the **xx project**
- 22.13 **"Project Monitoring Form(s)"** means the form(s) to be completed and submitted to the Council by the Academy Trust under Clause 4.4 and which shall take the form of the template set out at Schedule 3.
- 22.14 **"Project Objectives"** means the objectives to be met by the Academy Trust as set out in Schedule 1, including (without limitation the deliverables) any amendment thereto agreed between the parties in accordance with clauses 11 and 12, and to be carried out in accordance with the undertakings set out in Schedule 1.
- 22.15 **"Quarter"** means the following periods in the relevant calendar year (i) 1 April to 30 June, (ii) 1 July to 30 September, (iii) 1 October to 31 December and (iv) 1 January to 31 March.
- 22.16 **"Review Meeting"** has the meaning given to it in Clause 12.2.
- 22.17 **"Schedule"** means a schedule to this Agreement which shall form part of this Agreement as if set out here.
- 22.18 **"Transparency Commitment"** means the Council's commitment to publishing its agreements, contracts, tender documents and data from invoices and claims received in accordance with the Local Government Transparency Code.
- 22.19 **"Academy Trust's Representative"** means the representative of the Academy Trust responsible for ensuring the effective delivery and management of the Project whom as at the date of the commencement of

this agreement is [ddmmyyyy]

22.20 “**UK GDPR**” means the definition given to it in section 3(10) (as supplemented by section 205(4)) of the Data Protection Act 2018;

23. A reference to any statute, enactment, order, regulation or other similar instrument shall be construed as a reference to the statute, enactment, order, regulation or instrument as amended or re-enacted by any subsequent statute, enactment, order, regulation or instrument and shall include all statutory instruments or orders made pursuant to it whether replaced before or after the date of execution of this Agreement.

IN WITNESS whereof the parties have executed this Contract as a Deed and it is delivered and takes effect on the date it is signed above.

THE COMMON SEAL of **MEDWAY COUNCIL**)
was affixed to this **DEED** in the)
presence of: -)

.....
Authorised Officer

Executed as a **DEED** by [])
By: -)

.....
Director/Partner/Trustee/Proprietor

.....
Director/Partner/Trustee/Secretary/ Proprietor

OR

.....
Witness

Name

.....
Address

.....
(Date)

Schedule 1

Project Objectives/Business Plan

Guidance on Annex A

**Schedule 2
Funding Profile¹**

2022/23	2023/24	2024/25	Total
£XX	£XX	£XX	£XX

¹ The figures contained in the funding profile above do not include the additional match funding of amount in words (amount in figures)

Schedule 3

Monitoring

1. The Council may monitor the performance of the Project and the Academy Trust shall co-operate, and shall use reasonable endeavours to procure that its contractors/sub-contractors shall co-operate with the Council in carrying out the monitoring referred to this Schedule at no additional charge to the Council.
2. The Academy Trust shall provide the management reports in the form and at the intervals set out in the Table 1: below:

Table 1: Reports

Type	Form and Contents	Frequency	Circulation list
Project reporting	Key indicators outlined in Schedule 1	Quarterly	Medway Council
Dashboards	Milestones, progress, risk registers, spend to date, spend forecast	Monthly	Council Officers Councillors
Budget Forecasting	Spend to date reporting and future spend profiling	Quarterly	Public

3. The Council's Authorised Officer and the Academy Trust's Representative and relevant Key Personnel shall meet in accordance with the details set out in Table 2 below and the Academy Trust shall, at each meeting, present whatever reports from Table 1 above are available:

Table 2: Meetings

Type	Quorum	Frequency	Agenda
Officer Project Board and Project update meetings with project team	5	Every two weeks or Monthly as agreed	Project update, next steps, key risks, spend to date, reporting

SCHEDULE 3
Annex A
Monitoring Report Template

**SCHEDULE 3
ANNEX B
DASHBOARD**