



Department
for Education

Mainstream academy and free school: supplemental funding agreement

September 2015

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SUMMARY SHEET

Information about the Academy:

Name of Academy Trust	The Charter Schools Educational Trust
Company number	7338707
Date of Master Funding Agreement	The same date as this agreement
Name of academy	The Charter School East Dulwich
Opening date	12 September 2016
Type of academy (indicate whether academy or free school)	Free School
Religious designation	None
Wholly or partly selective	N/A
Name of predecessor school (where applicable)	N/A
Capacity number	1,680
Age range	11-18
Number of sixth form places	480
Number of boarding places	None
SEN unit / Resource provision	N/A
Land arrangements (Version 1-7 or other)	Other
Address and title number of Land	East Dulwich Hospital, East Dulwich Grove, London, SE22 8PT

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

Clause No.	Descriptor	Applied	Not used
1.I	Only applies to free schools and new provision academies	X	
2.A.1	Clause applies where an academy was previously a VC or foundation school designated with a religious character		X
2.C, 2.D	Only applies where the academy has an SEN unit		X
2.E	Only applies where there was a predecessor independent school		X
2.G	Clause does not apply to free schools (unless there was a predecessor independent school), or new provision academies		X
2.M	Clause applies only to academies and free schools designated with a religious character		X
2.N	Clause applies only to academies that were formerly wholly selective grammar schools		X
2.O	Clause applies only to academies that were formerly partially selective grammar schools		X
2.T	Clause applies to free schools and new provision academies designated with a religious character		X
2.W	Clause only applies where the academy is designated with a religious character		X
2.X	Clause only applies where the academy has not been designated with a religious character	X	
2.Y	Clause applies where an academy was previously a VC school or foundation school designated with a religious character		X
2.Yc)	Sub-clause applies if the academy is designated with a denominational religious character – CE etc. rather than 'Christian'		X

Clause No.	Descriptor	Applied	Not used
3.A – 3.F	Option 1 applies to converter and sponsored academies: if used delete option 2		X
3.A – 3.F	Option 2 applies to free schools and new provision academies: if used delete option 1	X	
3.H	Clause relating to Start-up only applies in some cases (does not apply to academy converters)	X	
3.J	Clause only applies to full sponsored and intermediate sponsored academies with approved Academy Action Plans		X
3.K	Clause does not apply to free schools (unless there was a predecessor independent school), or new provision academies		X
5.G.1	Clause applies only to a boarding academy/free school.		X
5.I	Clause only applies to sponsored academies		X
5.K	Clause applies to free schools and may be applied to new provision academies	X	
5.L	Clause applies to free schools and may be applied to new provision academies	X	
5.M	Clause applies to free schools and may be applied to new provision academies	X	
5.N	Clause applies to free schools and may be applied to new provision academies	X	
5.O	Clause applies to free schools and may be applied to new provision academies	X	
6.H	Clause only applies to schools which are designated with a Church of England or Roman Catholic character		X

Please identify any other variations from the model that apply to this academy (e.g. clauses relating to PFI, or any required because the multi academy trust includes academies designated with different religious characters, or a

mixture of those designated with a religious character, and those which are not):

Additional clauses will be supplied by your project lead if needed.

Descriptor	Clause No.	Applied	Not used

1. ESTABLISHING THE ACADEMY

1.A This Agreement made between the Secretary of State for Education and The Charter Schools Educational Trust is supplemental to the master funding agreement made between the same parties and dated on the same date as this Agreement (the “**Master Agreement**”).

Definitions and interpretation

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

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

“The **Academy**” means The Charter School East Dulwich.

“**Coasting**” has the meaning given in regulations made under section 60B of the Education and Inspections Act 2006.

“**Heads of Terms**” means the heads of terms for a lease of the Temporary Site made between Secretary of State for the Department of Communities and Local Government and the Academy Trust in respect of the Temporary Site, dated 18 February 2016, and contained in Annex 2 to this Agreement.

“**PAN**” shall have the meaning given to that term in the Codes (as defined below)

“**Permanent Site**” means the land comprising approximately 3.71 acres of land at East Dulwich Hospital, East Dulwich Grove, Dulwich, SE22 8PT, currently registered under title number TGL146739.

“**SEN**” means Special Educational Needs and the expressions “**special educational needs**” and “**special educational provision**” have the meaning set out in sections 20(1) and 21(2) of the Children and Families Act 2014.

“**Start-Up Period**” means up to 5 Academy Financial Years and covers the period up

to and including the first Academy Financial Year in which all age groups are present at the Academy (that is, all the pupil cohorts relevant to the age range of the Academy will have some pupils present).

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

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

“Temporary Site” means part of the property formerly known as Lewisham Southwark College, Camberwell Campus, Southampton Way, London, SE5 7EW (as specified in the Heads of Terms)

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

The Academy

- 1.F The Academy is a Free School as defined in clause 1.4 of the Master Agreement.
- 1.G The Academy Trust will establish and maintain the Academy in accordance with the Master Agreement and this Agreement.
- 1.H The Academy Trust will open the Academy on 12 September 2016.
- 1.I The Academy Trust must ensure that so far as is reasonably practicable and consistent with clause 2.X of this Agreement and the Equality Act 2010, the policies and practices adopted by the Academy (in particular regarding curriculum, uniform and school food) enable pupils of all faiths and none to play a full part in the life of the Academy, and do not disadvantage pupils or parents of any faith or none. For the avoidance of doubt, this requirement applies irrespective of the proportion of pupils of any faiths or none currently attending or predicted to join the school.

2. RUNNING OF THE ACADEMY

Teachers and staff

2.A Subject to clause 2.4 of the Master Agreement, 7.A of this Agreement and section 67 of the Children and Families Act 2014, the Academy Trust may, in accordance with any relevant Guidance, employ anyone it believes is suitably qualified or is otherwise eligible to plan and prepare lessons and courses for pupils, teach pupils, and assess and report on pupils' development, progress and attainment.

2.A.1 Not used.

Pupils

2.B The planned capacity of the Academy is 1680 in the age range 11 to 18, including a sixth form of 480 places. The Academy will be an all ability inclusive school. For the first two Academy Financial Years in which the Academy accepts pupils, the PAN for the Academy must not exceed 120 pupils.

SEN unit

2.C **Not used.**

2.D **Not used.**

2.E **Not used.**

Admissions

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

- 2.G **Not used.**
- 2.H The Academy Trust must participate in the local Fair Access Protocol. The Academy Trust must participate in the coordinated admission arrangements operated by the LA in whose area the Academy is situated. If the Academy is a free school, the Academy Trust is not required to participate in coordination for its first intake of pupils.
- 2.I The Academy Trust may determine admission arrangements (subject to consultation in line with the Codes) that give priority for admission to children attracting the Pupil Premium, including the service premium (the “pupil premium admission criterion”), but not above looked-after children and previously looked-after children.
- 2.J Where the Academy Trust applies the pupil premium admission criterion, it must provide information in its admission arrangements about eligibility for the premiums.
- 2.K For the purposes of applying the pupil premium admission criterion only, sections 1.9(f) and 2.4(a) of the School Admissions Code do not apply insofar as they prevent admission authorities from giving priority to children according to the financial or occupational status of parents or using supplementary forms that ask for:
- a) any personal details about their financial status; or
 - b) whether parents are serving in the UK armed forces or were serving in the UK armed forces, and are exercising parental care and responsibility for the child in question.
- 2.L The Secretary of State may:
- a) direct the Academy Trust to admit a named pupil to the Academy:
 - i. following an application from an LA including complying with a school attendance order as defined in section 437 of the Education Act 1996. Before doing so the Secretary of State will

consult the Academy Trust; or

- ii. where in relation to a specific child or children the Academy Trust has failed to act in accordance with the Codes or this Agreement or has otherwise acted unlawfully; or
- b) direct the Academy Trust to amend its admission arrangements where they do not comply with the Codes or this Agreement, or are otherwise unlawful.

2.M **Not used.**

2.N **Not used.**

2.O **Not used.**

2.P The Academy Trust must ensure that parents and 'relevant children' (as described in the **Codes**) have the right to appeal to an Independent Appeal Panel if they are dissatisfied with an admission decision of the Academy Trust. The arrangements for appeals must comply with the Codes as they apply to foundation and voluntary aided schools. The determination of the appeal panel is binding on all parties.

2.Q Subject to clause 2.R, the meaning of "**relevant area**" for the purposes of consultation requirements in relation to admission arrangements is that determined by the relevant LA for maintained schools in the area in accordance with the Education (Relevant Areas for Consultation on Admission Arrangements) Regulations 1999.

2.R If the Academy does not consider the relevant area determined by the LA for the maintained schools in the area to be appropriate, it must apply to the Secretary of State by 1 August before the academic year in question for a determination of the appropriate relevant area for the Academy, setting out the reasons for this view. The Secretary of State will consult the Academy Trust and the LA in whose area the Academy is situated in reaching a decision.

2.S The Office of the Schools Adjudicator (“**OSA**”) will consider objections to the Academy’s admission arrangements (except objections against the agreed variations from the Codes specified at clause 2.K, over which it has no jurisdiction). The Academy Trust must therefore make it clear, when determining the Academy’s admission arrangements, that objections should be submitted to the OSA. The OSA’s determination of an objection is binding on the Academy and the Academy Trust must make appropriate changes to its admission arrangements as quickly as possible.

2.T **Not used.**

Curriculum

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

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

2.W **Not used.**

2.X Subject to clause 2.V, **where the academy has not been designated with a religious character** (in accordance with section 124B of the School Standards and Framework Act 1998 or further to section 6(8) of the Academies Act 2010):

- a) provision must be made for religious education to be given to all pupils at the Academy in accordance with the requirements for agreed syllabuses in section 375(3) of the Education Act 1996 and paragraph 2(5) of Schedule 19 to the School Standards and Framework Act 1998;
- b) the Academy must comply with section 70(1) of, and Schedule 20 to, the School Standards and Framework Act 1998 as if it were a

community, foundation or voluntary school which does not have a religious character, except that paragraph 4 of that Schedule does not apply. The Academy may apply to the Secretary of State for consent to be relieved of the requirement imposed by paragraph 3(2) of that Schedule.

2.Y **Not used.**

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

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

3. **GRANT FUNDING**

Calculation of GAG

3.A Subject to clause 3.C, the basis of the pupil number count for the purposes of determining GAG for an Academy Financial Year will be the Academy Trust's most recent estimate provided in accordance with clause 3.B.

3.B The Secretary of State will, in advance of each Academy Financial Year for the Academy, request that the Academy Trust provides an estimate of the number of pupils on roll in the following September for the purposes of determining GAG for an Academy Financial Year. The Academy Trust must provide the requested estimate to the Secretary of State as soon as reasonably practicable.

- 3.C In the Academy Financial Year which immediately follows the Academy Financial Year in which all planned year groups will be present at the Academy (that is, all the pupil cohorts relevant to the age range of the Academy will have some pupils present), the basis of the pupil number count for the purpose of determining GAG will no longer be the estimate provided in accordance with clause 3.B, but in that and all following Academy Financial Years will be determined in accordance with clause 3.F.
- 3.D For any Academy Financial Year in which GAG for the Academy has been calculated in accordance with clauses 3.A and 3.B, an adjustment may be made to the following Academy Financial Year's formula funding element of GAG for the Academy to recognise any variation from that estimate. The Secretary of State may for this purpose use the Census for the relevant month (determined at the Secretary of State's discretion) for the Academy Financial Year in question as a means of determining pupil numbers. The additional or clawed-back grant will be only the amount relevant to the number of pupils above or below that estimate.
- 3.E **Not used.**
- 3.F For Academy Financial Years which immediately follow the Academy Financial Year in which all planned year groups will be present at the Academy, the basis of the pupil count for determining GAG will be:
- a) for pupils in Year 11 and below, the Schools Census which is used to fund maintained schools for the financial year overlapping with the Academy Financial Year in question; and
 - b) for pupils in Year 12 and above, the formula which is in use at the time for maintained schools
- 3.G The Secretary of State may, at his discretion, adjust the basis of the pupil count to take account of any diseconomies of scale which may affect the Academy if it is operating below the planned capacity in clause 2.B. If such an adjustment is made in any Academy Financial Year, this will not change the basis of the pupil count for calculating the following Academy Financial Year's

GAG. If the Secretary of State has indicated that additional grant may be payable in such circumstances, the Academy Trust will bid for this additional grant based on need and providing appropriate supporting evidence. The Secretary of State may accept or refuse the bid at his discretion.

3.H The Secretary of State may pay a further element of GAG to the Academy Trust during the Start-Up Period or during the period when year groups are present who have transferred from the Predecessor School, in order to allow the Academy to:

- a) purchase a basic stock of teaching and learning materials (including library books, text books, software, stationery, science equipment and equipment for physical education) and other consumable materials; and
- b) meet the costs associated with the recruitment and induction of additional staff.

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

3.I The Secretary of State recognises that if a Termination Notice or a Termination Warning Notice is served, or the Master Agreement is otherwise terminated, the intake of new pupils during the notice period may decline and therefore payments based on the number of pupils attending the Academy may be insufficient to meet the Academy's needs. In these circumstances the Secretary of State may pay a larger GAG in the notice period, to enable the Academy to operate effectively.

Other relevant funding

3.J **Not used.**

3.K **Not used.**

Carrying forward of funds

3.L Any additional grant made in accordance with clause 3.I, for a period after the Secretary of State has served a Termination Notice or a Termination Warning Notice under this Agreement, or otherwise terminates the Master Agreement, may be carried forward without limitation or deduction until the circumstances set out in clause 3.I cease to apply or the Academy closes.

4. LAND

4.A **Temporary Site.** If the Academy Trust has not entered into a lease for the Temporary Site materially in accordance with the Heads of Terms by 31 May 2016 the Secretary of State may:

- a) serve a Termination Warning Notice; or
- b) serve a Termination Notice.

4.B If the Academy Trust enters into such a lease for the Temporary Site, the Academy Trust and the Secretary of State acknowledge and agree that it will be necessary to vary this Agreement.

4.C The Academy Trust must enter into to a deed of variation to this Agreement in relation to the lease for the Temporary Site in a form specified by the Secretary of State within 30 days' of receipt of written notice by the Secretary of State of such requirement, otherwise the Secretary of State may:

- a) serve a Termination Warning Notice; or
- b) serve a Termination Notice.

4.D **Permanent Site.** If the Academy Trust has not entered into an agreement with the Secretary of State for Communities and Local Government and the London Borough of Southwark by 31 July 2018 providing for (i) the construction of premises for the purposes of the Academy on the Permanent Site and (ii) the granting of a lease of the Permanent Site to the Academy Trust, the Secretary of State may:

- a) serve a Termination Warning Notice; or
 - b) serve a Termination Notice.
- 4.E If the Academy Trust has not acquired a lease of the Permanent Site by 31 July 2022 the Secretary of State may:
- c) serve a Termination Warning Notice; or
 - d) serve a Termination Notice.
- 4.F Before the Academy Trust acquires a legal interest in the Permanent Site, the Academy Trust and the Secretary of State acknowledge and agree that it will be necessary to vary this Agreement.
- 4.G The Academy Trust must enter into to a deed of variation to this Agreement in relation to the Academy Trust's acquisition of a legal interest in the Permanent Site in a form specified by the Secretary of State within 30 days' of receipt of written notice by the Secretary of State of such requirement, otherwise the Secretary of State may:
- a) serve a Termination Warning Notice; or
 - b) serve a Termination Notice.

5. TERMINATION

Termination by either party

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

Termination Warning Notice

- 5.B The Secretary of State may serve a Termination Warning Notice where he considers that:
- a) the Academy Trust has breached the provisions of this Agreement or

the Master Agreement; or

- b) the standards of performance of pupils at the Academy are unacceptably low; or
- c) there has been a serious breakdown in the way the Academy is managed or governed; or
- d) the safety of pupils or staff is threatened, including due to breakdown of discipline; or
- e) the Academy has not improved sufficiently following the service of a Coasting Notice.

5.B.1 The Secretary of State will serve a Coasting Notice where the Academy is found to be coasting. A Coasting Notice will specify:

- a) that the Academy Trust must submit a plan to the Secretary of State setting out the actions to be taken to improve the school sufficiently; and
- b) the date by which the plan must be submitted.

5.C A Termination Warning Notice will specify:

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

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

5.E If the Secretary of State considers that the Academy Trust has not responded

to the Termination Warning Notice as specified under clause 5.C(c), or has not completed the action required in the Termination Warning Notice as specified under clauses 5.C(a) and (b) (and any further action specified under clause 5.D) he may serve a Termination Notice.

Termination by the Secretary of State after inspection

5.F If the Chief Inspector gives notice to the Academy Trust that:

- a) special measures are required to be taken in relation to the Academy;
or
- b) the Academy requires significant improvement

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

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

5.G.1 **Not used.**

5.H If the Secretary of State has served a Termination Warning Notice under clause 5.F and:

- a) has not received any representations from the Academy Trust by the date specified in the notice; or
- b) having considered the representations made by the Academy Trust remains satisfied that this Agreement should be terminated;

he may serve a Termination Notice.

5.I **Not used.**

Termination by the Secretary of State

5.J If the Secretary of State has determined that the Academy will be removed from the Register of Independent Schools and no appeal against that

determination is pending, he may serve a Termination Notice.

- 5.K If at any time before the Academy opens, the total number of prospective pupils who have accepted offers of places to attend the Academy in April 2016 is less than 110, the Secretary of State may:
- a) require the Academy Trust not to open the Academy until 110 prospective pupils have accepted offers of places to attend the Academy; or
 - b) serve a Termination Notice.
- 5.L If at any time after the Academy has opened, the Secretary of State considers that the Academy is not financially viable because of low pupil numbers, then he may:
- c) serve a Termination Warning Notice; or
 - d) serve a Termination Notice.
- 5.M If both parties agree that the Academy is not financially viable because of low pupil numbers, they may jointly terminate this Agreement after agreeing the precise terms of termination.
- 5.N If full planning permission (including where relevant listed building consent) in respect of the Permanent Site has not been obtained by July 2017, the Secretary of State may serve a Termination Notice.
- 5.O If at any time before the Academy opening date, the Secretary of State considers that:
- a) the Academy would, on opening, provide an unacceptably low standard of education; or
 - b) the safety of pupils or staff at the Academy would, on opening, be threatened; or
 - c) the staff employed at the Academy are unsuitable; or

- d) there is a serious breakdown in the way the Academy Trust is being managed or governed; or
- e) the buildings and other structures on the Temporary Site or Permanent Site (as applicable) are unsuitable or the Academy Trust has not obtained Building Regulations approval,

he may either:

- A. require the Academy Trust:
 - i. not to open the Academy; or
 - ii. not to admit pupils of a particular age range, to be determined by the Secretary of State; or
 - iii. not to use any building or other structure on the Temporary Site or Permanent Site (as applicable),

until each relevant matter in paragraphs (a) to (e) above has been resolved to the Secretary of State's satisfaction; or

- B. serve a Termination Notice.

Funding and admission during notice period

5.P If the Secretary of State serves a Termination Notice under clause 5.A, the Academy Trust may continue during the notice period to admit pupils to the Academy, and to receive GAG and EAG, in accordance with this Agreement.

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

Notice of intention to terminate by Academy Trust

5.R The Secretary of State will, before the start of each Academy Financial Year,

provide the Academy Trust with a final funding allocation indicating the level of GAG and EAG to be provided in the next Academy Financial Year (the “**Funding Allocation**”).

5.S If the Academy Trust is of the opinion that, after receipt of the Funding Allocation for the next Academy Financial Year (the “**Critical Year**”) and after taking into account all other resources likely to be available to the Academy, including other funds that are likely to be available to the Academy from other academies operated by the Academy Trust (“**All Other Resources**”), it is likely that the cost of running the Academy during the Critical Year would cause the Academy Trust to become insolvent (and for this reason only) then the Academy Trust may give written notice of its intention to terminate this Agreement at the end of the Critical Year.

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

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

- c) a detailed budget of income and expenditure for the Academy during the Critical Year (the “**Projected Budget**”).
- 5.U Both parties will use their best endeavours to agree whether or not the cost of running the Academy during the Critical Year would cause the Academy Trust to become insolvent. Both parties recognise that they will need to engage in a constructive dialogue at the time about how best to provide education for the pupils at the Academy and use their best endeavours to agree a practical solution to the problem.
- 5.V If no agreement is reached by 30 April (or another date if agreed between the parties) as to whether the cost of running the Academy during the Critical Year would cause the Academy Trust to become insolvent, then that question will be referred to an independent expert (the “**Expert**”) for resolution. The Expert’s determination will be final and binding on both parties. The Expert will be requested to specify in his determination the amount of the shortfall in funding (the “**Shortfall**”).
- 5.W The Expert will be an insolvency practitioner with significant professional experience of educational institutions or academies. If the parties fail to agree upon the appointment of the Expert then the Expert will be appointed by the President of the Institute of Chartered Accountants in England and Wales. The Expert’s fees will be borne equally between the parties.
- 5.X The Expert will be required in reaching his determination to take account of advice from an educational specialist who is professionally familiar with the issues arising from the budget management of schools. If the parties fail to agree upon the appointment of the educational specialist then the educational specialist will be appointed by the Chairman of the Specialist Schools and Academies Trust (or any successor or equivalent body). The educational specialist’s fees will be borne equally between the parties.
- 5.Y If the Expert determines that the cost of running the Academy during the Critical Year would cause the Academy Trust to become insolvent, and the Secretary of State will not have agreed to provide sufficient additional funding to cover the Shortfall, then the Academy Trust will be entitled to terminate this

Agreement, by notice expiring on 31 August of the Critical Year. Any such notice will be given within 21 days after (a) the Expert's determination will have been given to the parties or (b), if later, the Secretary of State will have given written notice of his refusal to provide sufficient additional funding for the Academy to cover the Shortfall.

Effect of termination

- 5.Z If this Agreement is terminated, the Academy will cease to be an Academy within the meaning of sections 1 and 1A of the Academies Act 2010.
- 5.AA Subject to clauses 5.BB and 5.CC, if the Secretary of State terminates this Agreement under clause 5.A, he will indemnify the Academy Trust. If the Secretary of State terminates this Agreement otherwise than under clause 5.A, he may at his discretion indemnify or compensate the Academy Trust.
- 5.BB The amount of any such indemnity or compensation will be determined by the Secretary of State, having regard to representations made to him by the Academy Trust, and will be paid as and when the Secretary of State considers appropriate.
- 5.CC The categories of expenditure incurred by the Academy Trust in consequence of termination, for which the Secretary of State may indemnify the Academy Trust under clauses 5.AA, may include:
- a) staff compensation and redundancy payments;
 - b) compensation payments in respect of broken contracts;
 - c) expenses of disposing of assets or adapting them for other purposes;
 - d) legal and other professional fees; and
 - e) dissolution expenses.
- 5.DD If this Agreement is terminated, and the Academy Trust owns capital assets which have been partly or wholly funded by HM Government, the Academy Trust must, as soon as possible after the termination date:

- a) transfer a proportion of those capital assets, equal to the proportion of the original financial contribution made by HM Government, to a nominee of the Secretary of State to use for educational purposes; or
- b) if the Secretary of State directs that a transfer under clause 5.DD(a) is not required, pay to the Secretary of State at the termination date (or, by agreement with the Secretary of State, at the date of their subsequent disposal) a sum equivalent to the proportion of the original financial contribution made by HM Government.

5.EE The Secretary of State may:

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

6. OTHER CONTRACTUAL ARRANGEMENTS

Annexes

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

The Master Agreement

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

General

6.C The Academy Trust cannot assign this Agreement.

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

or any other right or remedy.

- 6.E Termination of this Agreement will not affect the accrued rights, remedies, obligations or liabilities of the parties existing at termination.
- 6.F This Agreement may be executed in any number of counterparts, each of which when executed and delivered shall constitute a duplicate original, but all of which will together constitute the same agreement.
- 6.G This Agreement and any dispute or claim arising out of or in connection with it or its subject matter or formation (including non-contractual disputes or claims) shall be governed by and construed in accordance with the law of England and Wales, and submitted to the exclusive jurisdiction of the courts of England and Wales.
- 6.H **Not used.**

This Agreement was executed as a Deed on 10 March 2016 DATE

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

..... and

E.A. B...

Director

Director

or

A. B...

Company Secretary

or

S. Varcoe

Witness

Name: SHALENE VARCOE

Address: 90 THE CHARTER SCHOOL
RED POST HILL
LONDON
SE24 9JH

The Corporate Seal of

THE SECRETARY OF STATE FOR EDUCATION

affixed to this deed is authenticated by:

A. B...

Duly Authorised



ANNEX 1

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

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

“**EHC plan**” means an Education, Health and Care plan made under sections 37(2) of the Children and Families Act 2014.

7.A Except as set out in clause 8 below, the Children and Families Act 2014 imposes duties directly on Academies in respect of pupils with special educational needs, including the admission of pupils with EHC plans. If an Academy Trust considers that a LA should not have named the Academy in an EHC plan, it may ask the Secretary of State to determine whether the LA has acted unreasonably, and to make an order directing the LA to reconsider. The Secretary of State’s determination will be final, subject to any right of appeal which a parent of the child may have to the First Tier Tribunal (Special Educational Needs and Disability) or the Upper Tribunal Administrative Appeals Chamber.

7.B Not used.

7.C Not used.

7.D Not used.

8. ADMISSION OF PUPILS WITH SEN AND DISABILITIES

8.A The Academy Trust must for each of its Academies, subject to its right of appeal to the Secretary of State, admit all pupils with a statement of SEN naming the Academy.

8.B Where an LA proposes to name one of the Academies in a statement of SEN, it must give the Academy Trust written notice of this, stating why it considers that Academy to be suitable for the pupil in question. Within 15 days of receipt of the LA’s notice, the Academy Trust must consent to being named, except

where admitting the child would be incompatible with the provision of efficient education for other children, and no reasonable steps could secure compatibility. In deciding whether a child's inclusion would be incompatible with the efficient education of other children or the efficient use of resources, the Academy Trust must have regard to the relevant Guidance issued to maintained schools.

- 8.C If the Academy Trust decides that admitting the child would be incompatible with the provision of efficient education or the efficient use of resources, it must, within the 15 days, notify the LA in writing, giving its reasons for its decision.
- 8.D The Academy Trust must then seek to establish from the LA whether or not it agrees with this determination. If the LA does not agree with the Academy Trust's response, and names the Academy in the child's statement of SEN, the Academy Trust must admit the child to the school as specified in the statement or otherwise by the LA.
- 8.E If in such case, the Academy Trust considers that the LA should not have named the Academy in the statement, it may ask the Secretary of State to determine whether the LA has acted unreasonably, and to make an order directing the LA to reconsider. The Secretary of State's determination will be final, subject only to any right of appeal which a parent of the child may have to the First-tier Tribunal (Special Educational Needs and Disability) or the Upper Tribunal Administrative Appeals Chamber.
- 8.F If a parent of a child for whom the LA maintains a statement appeals to the First-tier Tribunal (Special Educational Needs and Disability), either for or against the naming of the Academy in the child's statement, then the Tribunal's decision will be binding, even if it is different from that of the Secretary of State.
- 8.G Where it has been finally determined that the Academy be named in a child's statement of SEN, the Academy Trust must admit the child to the Academy, notwithstanding any other admissions requirements in this Agreement.

8.H Clauses 8.A to 8.G only apply insofar as the relevant provisions of the Children and Families Act 2014 relating to SEN and disability do not apply to Academies and Free Schools.

ANNEX 2

Date: 23/02/16 FINAL

DCLG HEADS OF TERMS: LEASEHOLD ACQUISITION

The Charter School (FSO423)

(2 YEAR LEASE AT PEPPERCORN WITHOUT PREMIUM)

Note: Although these heads of terms are not intended to be legally binding, once agreed, they will be distributed within the Department for Education and will inform the production of a number of documents between the school and the Secretary of State. It will therefore not be possible to agree variations to the commercial terms set out below once the heads of terms are agreed between the parties. In addition, a number of the provisions relate to policy requirements of the Department. Any derogation from the heads of terms would be considered on a case by case basis and the terms of other transactions would not necessarily be relevant.

- | | |
|--------------------------------|--|
| 1. Landlord | Secretary of State for the Department of Communities and Local Government

c/o Education Funding Agency
4 th Floor
Sanctuary Buildings
Great Smith Street
London
SW1 3BT |
| 2. Landlord's Agent | Not applicable |
| 3. Landlord's Solicitor | Trowers & Hamlins LLP of 3 Bunhill Row
London EC1Y 8YZ (marked for the attention of Sangita Unadkat sunadkat@trowers.com)] |

- 4. Tenant** The Charter School East Dulwich
The Charter School Educational Trust
Red Post Hill
London
SE24 9JH
Company no. 07338707
- 5. Tenant's Agent** Not applicable
- 6. Tenant's Solicitor** Bond Dickinson LLP of Camden House,
Prince's Wharf, Teesdale, Stockton on Tees
TS17 6QY (marked for the attention of Barbara
Painter) barbara.painter@bonddickinson.com
- 7. Property** Lease of Part of the property formerly known
as Lewisham Southwark College, Camberwell
Campus, Southampton Way, London, SE5
7EW
- A floor plan is attached showing the demised
areas edged in red and the retained land
edged green.
- 8. Assignments,
Underleases
and Sharing
Possession** 8.1 Assignment, Underletting
- Assignment and underletting of the lease is
prohibited.
- 8.2 Sharing

The Tenant can without consent being obtained under the provisions of the lease share occupation of the Property with another Academy school trust or proposed proprietor of an Academy school trust or with anybody or organisation providing services or facilities which are within the permitted use provided that:

8.2.1 no relationship of landlord and tenant is created;

8.2.2 the Tenant has obtained the necessary consent from the Secretary of State under the terms of the Funding Agreement.

Other than as set out above, sharing of occupation by the Tenant is not permitted.

9. Tenant's Rights

9.1 Any specific rights required in relation to the Property which may need to be provided for in the lease as identified and agreed between the parties as necessary following completion of due diligence.

9.2 The Tenant will have the right to use the space coloured blue on the attached site plan provided that its use does not restrict the works to be carried out by the landlord on the site. The landlord will reserve the right to ask that this space is vacated with 48

hours notice provided.

**10. Landlord's
Rights
Reserved**

To be agreed between the parties as required, but may include any required rights of entry, shared use and connections into service media.

The tenant will comply with the landlords reasonable requests to vacate parts of the property and allow for contractors to enter the property for carrying out minor refurbishment works, providing it can be managed alongside the running of the school and 48 hours notice is given.

11. Term

The lease will commence on 1st April 2016 and expire on 31st August 2018.

The lease will exclude the security of tenure provisions of Part II of the Landlord and Tenant Act 1954.

12. Rent

The rent under the lease will be one peppercorn per annum.

13. Premium

Not applicable.

14. Repair

The Tenant's repair covenant will be limited by reference to a full photographic and descriptive schedule of condition. Damage by insured risks

will be excepted.

15. Alterations

The Tenant can make internal non-structural alterations to the Property without the landlord's prior written consent

The Tenant will carry out minor refurbishment works to the Property – scheduled to take place between April – July 2016.

The Tenant can erect signs on the outside of the Property or that would be visible from the outside of the Property with the landlord's prior written consent, which cannot be unreasonably withheld or delayed.

16. Services and Service Charge

If separate metering for utility services cannot be installed, then the Tenant will pay a service charge. The amount will be calculated as a fair proportion of the total service expenditure.

17. Charging

The Tenant cannot charge the Property.

18. Early Access

The Landlord will permit the Tenant to access the site prior to exchange of contracts and/or following exchange of contracts for the purposes of undertaking preparatory/enabling works, and/or undertaking survey work, and/or undertaking asbestos removal work.

19. Insurance

The Tenant shall insure the Property from completion by becoming a member of the Risk Protection Arrangement.

20. Completion Completion will take place as soon as possible

21. Conditions Precedent for Completion N/A

23. Costs Each party is responsible for its own legal and professional costs in connection with this transaction.

24. Use The Property can be used for the provision of educational services and community, fund raising and recreational purposes ancillary to educational use and such other uses in part or whole for which the Landlord provides consent (not to be unreasonably withheld or delayed).

25. Contamination The lease will contain an exclusion of liability in favour of the Tenant in respect of environmental legislation.

26. Landlord's Works The Landlord will be carrying out construction works within the remainder of the Building (comprising the Property) during this tenancy and will cause minimum interference to the Tenant's use of the Property as reasonably possible.

The contractors carry out the construction work will share the vehicular access to the

site with the tenant (As marked on the attached site plan).

The pedestrian access to the site marked on the attached site plan will be exclusively for the tenant's use.

Property Floor Plan



Promap
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Department
for Education

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