

**DATED**

**1<sup>ST</sup> JUNE 2021**

**AGREEMENT FOR THE PROVISION OF GRANT FUNDING RELATING TO  
SCHOOLS CAPITAL BUILDING PROGRAMME**

**BETWEEN**

**MAYOR AND BURGESSES OF THE LONDON BOROUGH OF HAVERING**

**AND**

**HARRIS ACADEMY TRUST**

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### SCHEDULES

SCHEDULE 1 THE PROJECT

SCHEDULE 2 PAYMENT

SCHEDULE 3 CONTRACT DOCUMENTATION AND PLANS

THIS DEED is dated 1<sup>st</sup> June 2021

### PARTIES

- (1) **MAYOR AND BURGESSES OF THE LONDON BOROUGH OF HAVERING**  
of Havering Town Hall Main Road Romford RM1 3BB (**Funder**)

**1.1. Harris Federation, 4th Floor Norfolk House, Wellesley Road, Croydon,  
CR0 1LH (Recipient)**

**1.2. Company number 06228587**

Background

- (A) The Funder has agreed to pay the Grant to the Recipient to assist it in carrying out the Project.
- (B) This Agreement sets out the terms and conditions on which the Grant is made by the Funder to the Recipient.
- (C) These terms and conditions are intended to ensure that the Grant is used for the purpose for which it is awarded.
- (D) The Funder is providing the Grant pursuant to its powers which prescribes:
- i. the Funder is a Local Education Authority within the meaning of Section 12 of The Education Act 1996 and has a general responsibility for education under Sections 13 and 14 of the Act. Such obligations include under Section 16 the provision and maintenance of primary and secondary education establishments and Nurseries under Section 17; and
  - ii. section 137(3)(a) of the Local Government Act 1972 (the **LGA**) which provides that 'a local authority may incur expenditure on contributions to any of the following funds, that is to say (a) the funds of any charitable body in furtherance of its work in the United Kingdom; and (c) section 111 of the LGA which states 'a local authority shall have power to do any thing (whether or not involving the expenditure, borrowing or lending of money or the acquisition or disposal of any property or rights) which is calculated to facilitate, or is conducive or incidental to the discharge of any of their functions for the implementation of the Project. The expenditure and activities which are to be supported by the Grant Funding in relation to the Project are set out in Schedules 1, 2 and 3.
- (E) The Grant is ring fenced funding for the purposes of meeting new school places as part of Basic Need Capital Funding and will not be used by the Recipient for any other purpose unconnected to the Project for which the Grant has been approved by the Funder.

**AGREED TERMS**

## 1. DEFINITIONS

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

**Approved Purposes:** means the activities and the expenditure set out in Schedules 1 and 3 respectively to this Agreement

**Bribery Act:** the Bribery Act 2010 and any subordinate legislation made under that Act from time to time together with any guidance or codes of practice issued by the relevant government department concerning the legislation.

**Commencement Date:** 1st June 2021

**Completion Date:** 1<sup>st</sup> June 2023

**Data Protection Legislation:** means the Data Protection Act 2018, the UK GDPR and any replacement legislation coming into effect from time to time including (without limitation) the UK GDPR, together with any codes of practice or other guidance issued by any competent regulatory authority.

**Event of Default** - shall mean one of the events listed in clause 8.3;

**Governing Body:** the governing body of the Recipient including its directors or trustees.

**Grant:** the sum of **£850,000** to be paid to the Recipient in accordance with this Agreement as set out in schedule 2.

**Grant Period:** the period for which the Grant is awarded starting on the Commencement Date and ending Completion Date.

**Intellectual Property Rights:** all patents, copyrights and design rights (whether registered or not) and all applications for any of the foregoing and all rights of confidence and Know-How however arising for their full term and any renewals and extensions.

**Know-How:** information, data, know-how or experience whether patentable or not and including but not limited to any technical and commercial information relating to research, design, development, manufacture, use or sale.

**Prohibited Act:** means:

- (a) Offering, giving or agreeing to give to any servant of the Funder any gift or consideration of any kind as an inducement or reward for:
  - (i) doing or not doing (or for having done or not having done) any act in relation to the obtaining or performance of this Agreement or any other contract with the Funder; or
  - (ii) showing or not showing favour or disfavour to any person in relation to this Agreement or any other contract with the Funder; or
- (b) entering into this Agreement or any other contract with the Funder where a commission has been paid or has been agreed to be paid by the Recipient or on its behalf, or to its knowledge, unless before the relevant contract is entered into particulars of any such commission and of the terms and conditions of

any such contract for the payment thereof have been disclosed in writing to the Funder;

- (c) Committing any offence:
  - (i) under the Bribery Act;
  - (ii) under legislation creating offences in respect of fraudulent acts; or
  - (iii) at common law in respect of fraudulent acts in relation to this Agreement or any other contract with the Funder; or
- (d) defrauding or attempting to defraud or conspiring to defraud the Funder.

**Project:** the project described in Schedule 1 with approved Contract and documents at Schedule 3.

**Project Manager:** the individual who has been nominated to represent the Funder for the purposes of this Agreement.

**UK GDPR:** has the meaning given to it in section 3(10) (as supplemented by section 205(4)) of the Data Protection Act 2018

## 2. PURPOSE OF GRANT

- 2.1 The Recipient shall use the Grant only for the delivery of the Project and in accordance with the terms and conditions set out in this Agreement. The Grant shall not be used for any other purpose without the prior written agreement of the Funder.
- 2.2 The Recipient shall not make any significant change to the Project without the Funder's prior written agreement.
- 2.3 Where the Recipient intends to apply to a third party for other funding for the Project, it will notify the Funder in advance of its intention to do so and, where such funding is obtained, it will provide the Funder with details of the amount and purpose of that funding. The Recipient agrees and accepts that it shall not apply for duplicate funding in respect of any part of the Project or any related administration costs that the Funder is funding in full under this Agreement without prior Agreement of the Funder.
- 2.4 Where duplicate funding as per clause 2.3 is sourced, then that amount will be returned to the Funder as unrequired duplicate funding in relation to this Project. Such duplicate funding cannot be retained for alternative use or significant expansion of the project without the Funder's specific written agreement.

### **3. PAYMENT OF GRANT**

- 3.1 Subject to clause 1.2 the Funder shall pay the Grant to the Recipient in appropriate instalments, based on an agreed schedule supported by appropriate project milestones. The funding will be released in a manner to ensure that the project can be completed without creating undue cash flow difficulties but will be based on completion of agreed elements at each stage in accordance with Schedule 2.
- 3.2 No Grant shall be paid unless and until the Funder is satisfied that such payment will be used for proper expenditure in the delivery of the Project.
- 3.3 The amount of the Grant shall not be increased in the event of any overspend by the Recipient in its delivery of the Project save for any reasonable expenditure the Recipient has appropriate documentation to support which arise in connection to the Project and which must be provided to the Funder to exercise their discretion in allocating any further Grant.
- 3.4 The Grant shall be paid into a bank account in the name of the Recipient which must be an ordinary business bank account.
- 3.5 The Recipient shall not transfer any part of the Grant to bank accounts which are not ordinary business accounts within the clearing bank system, without the prior written consent of the Funder.
- 3.6 The Recipient shall promptly repay to the Funder any money incorrectly paid to it either as a result of an administrative error or otherwise. This includes (without limitation) situations where either an incorrect sum of money has been paid or where Grant monies have been paid in error before all conditions attaching to the Grant have been complied with by the Recipient.

### **4. USE OF GRANT**

- 4.1 The Grant shall be used by the Recipient for the delivery of the Project in accordance with the agreed budget set out in Schedule 2.
- 4.2 The Recipient shall not use the Grant to:
- (a) make any payment to members of its Governing Body;
  - (b) purchase buildings or land; or
  - (c) pay for any expenditure commitments of the Recipient entered into before the Commencement Date save for those properly attributed to the Project,

unless this has been approved in writing by the Funder.

- 4.3 The Recipient shall not spend any part of the Grant on the delivery of the Project after the Grant Period.
- 4.4 Should any part of the Grant remain unspent at the end of the Grant Period, the Recipient shall ensure that any unspent monies are returned to the Funder.
- 4.5 Any liabilities arising at the end of the Project including any redundancy liabilities for staff employed by the Recipient to deliver the building Project must be managed and paid for by the Recipient using other resources of the Recipient. There will be no additional funding available from the Funder for this purpose.

## **5. ACCOUNTS AND RECORDS**

- 5.1 The Grant shall be shown in the Recipient's accounts as a restricted fund and shall not be included under general funds.
- 5.2 The Recipient shall keep separate, accurate and up-to-date accounts and records of the receipt and expenditure of the Grant monies received by it.
- 5.3 The Recipient shall keep all invoices, receipts, and accounts and any other relevant documents relating to the expenditure of the Grant for a period of at least six years following receipt of any Grant monies to which they relate. The Funder shall have the right to review, at the Funder's reasonable request, the Recipient's accounts and records that relate to the expenditure of the Grant and shall have the right to take copies of such accounts and records.
- 5.4 The Recipient shall provide the Funder with a copy of its annual accounts within six months (or such lesser period as the Funder may reasonably require) of the end of the relevant financial year in respect of each year in which the Grant is paid.
- 5.5 The Recipient shall comply and facilitate the Funder's compliance with all statutory requirements as regards accounts, audit or examination of accounts, annual reports and annual returns applicable to itself and the Funder.

## **6. MONITORING AND REPORTING**

- 6.1 The Recipient shall closely monitor the delivery and success of the Project throughout the Grant Period to ensure that the aims and objectives of the Project are being met and that this Agreement is being adhered to.
- 6.2 The Recipient shall provide the Funder with a financial report and an operational report on its use of the Grant and delivery of the Project every quarter and in such formats as the Funder may reasonably require. The Recipient shall provide the

Funder with each report within three months of the last day of the quarter to which it relates.

- 6.3 Where the Recipient has obtained funding from a third party for its delivery of part of the Project, the Recipient shall include the amount of such funding in its financial reports together with details of what that funding has been used for.
- 6.4 Along with its first quarterly financial report, the Recipient shall provide the Funder with a risk register and insurance review in the format provided by the Funder. The Recipient shall address the health and safety of its staff in the risk register.
- 6.5 The Recipient shall on request provide the Funder with such further information, explanations and documents as the Funder may reasonably require in order for it to establish that the Grant has been used properly in accordance with this Agreement.
- 6.6 The Recipient shall permit any person authorised by the Funder such reasonable access to its employees, agents, premises, facilities and records, for the purpose of discussing, monitoring and evaluating the Recipient's fulfilment of the conditions of this Agreement and shall, if so required, provide appropriate oral or written explanations from them.
- 6.7 The Recipient shall permit any person authorised by the Funder for the purpose to visit the Recipient once every [period to be agreed and will vary from project to project] to monitor the delivery of the Project. Where, in its reasonable opinion, the Funder considers that additional visits are necessary to monitor the Project, it shall be entitled to authorise any person to make such visits on its behalf.
- 6.8 The Recipient shall provide the Funder with a final report on completion of the Grant Period which shall confirm whether the Project has been successfully and properly completed.

## **7. PROCUREMENT**

- 7.1 Each party (the "**Procuring Party**") shall comply with all applicable procurement legislation and any implementing measures, any other applicable legislation and both parties' internal procurement rules in connection with the procurement of any assets, works or services required in relation to the Project.



7.2 The Procuring Party shall promptly provide to the other party such information as the other may reasonably request to demonstrate compliance with this clause 7.

**8. BREACH OF THE GRANT CONDITIONS, AUTHORITY CLAWBACK POWERS AND TERMINATION**

8.1 If the Recipient expends any part of the Grant Funding other than in accordance with this Agreement the Funder reserves the right to claw back that part of the Grant Funding. The Funder may however decide in its absolute discretion not to ask the Recipient to repay such part the Grant Funding.

8.2 Each party will notify the other party if:

- (a) an Event of Default occurs, whether or not within that party's control; or
- (b) any event occurs which has a reasonable likelihood of becoming an Event of Default,

as soon as reasonably practicable after that party becomes aware of the same.

8.3 The Funder may terminate this Agreement and stop any future instalments of the Grant Funding if any of the following Events of Default occurs where the Recipient:

- (a) no longer operates, or is declared insolvent or placed into receivership or liquidation;
- (b) has given the Funder fraudulent, materially incorrect or materially misleading information;
- (c) acted negligently in any significant matter or fraudulently;
- (d) knowingly withhold material information that is relevant to the Project or to this Agreement;
- (e) fails to expend the Grant Funding or to comply with any term of this Agreement, except where such failure is the result of a breach by the Funder of the terms of this Agreement; or
- (f) its employees or agents act illegally or negligently during the Grant Funding Period, which the Funder reasonably believes is likely to have a materially adverse effect on the Recipient's ability to fulfil its obligations under this Agreement;
- (g) Fails to provide outcomes in accordance with this Agreement;
- (h) no longer meets Ofsted "satisfactory" rating in respect of the Outcome; and

8.4 The Funder has agreed to invest in the construction of an Alternative Resource Provision ("ARP") at the Recipient School to accommodate 20 additional pupils. This investment is to allow this construction work to be undertaken at the

Academy School. Should the Recipient wish for any reason to reduce the PAN pupil admission numbers for the facility or cease to provide the service within the ARP for reasons within its control within the period specified below a percentage of the total Grant shall be repaid to the Funder as follows:

Termination	% of Grant repayable to the Funder
- Within 1 year	- 100%
- Within 2 years	- 80%
- Within 3 years	- 60%
- Within 4 years	- 40%
- Within 5 years	- 20%
- After 5 years	- 0%

- 8.5 The Recipient will be responsible for the maintenance and running costs associated with any new build. These costs will be met by the Academy or funds as may be provided by the Education Finance Authority for this purpose.

## **9. BUILDING MAINTENANCE**

- 9.1 As this is a new build procured and managed by the Recipient Academy the Parties do not anticipate that there should be any major maintenance issues in the first 10 years.
- 9.2 The Recipient is procuring, managing and administering the building project and shall also ensure that the building meets all of the design requirements indicated in Schedule 1. This will include appropriate snagging and correction of any defects at the end of the initial 1 year defects period. Any defects from the new build shall be dealt with properly and in a timely manner.
- 9.3 The Recipient shall notify the EFA once ownership/leasehold of the building transfers to the Recipient, for maintenance requirements to be suitably adjusted. Maintenance funds within delegated budgets are determined by the DfE based on the Schools Capacity Return (SCap); it will be the Recipient's responsibility to

inform the DfE that they have increased their teaching space and procure any necessary funding independently from the Funder. For the avoidance of doubt, there will be no additional building maintenance payments from the Funder.

## **10. ACKNOWLEDGMENT AND PUBLICITY**

- 10.1 The Recipient shall acknowledge the Grant in its annual report and accounts, including an acknowledgement of the Funder as the source of the Grant.
- 10.2 The Recipient shall not publish any material referring to the Project or the Funder without the prior written agreement of the Funder. The Recipient shall acknowledge the support of the Funder in any materials that refer to the Project and in any written or spoken public presentations about the Project. Such acknowledgements (where appropriate or as requested by the Funder) shall include the Funder's name and logo (or any future name or logo adopted by the Funder) using the templates provided by the Funder from time to time.
- 10.3 In using the Funder's name and logo, the Recipient shall comply with all reasonable branding guidelines issued by the Funder from time to time.
- 10.4 The Recipient agrees to participate in and co-operate with promotional activities relating to the Project that may be instigated and/or organised by the Funder.
- 10.5 The Funder may acknowledge the Recipient's involvement in the Project as appropriate without prior notice.
- 10.6 The Recipient shall comply with all reasonable requests from the Funder to facilitate visits, provide reports, statistics, photographs and case studies that will assist the Funder in its promotional and fundraising activities relating to the Project.

## **11. INTELLECTUAL PROPERTY RIGHTS**

- 11.1 The Funder and the Recipient agree that all rights, title and interest in or to any information, data, reports, documents, procedures, forecasts, technology, Know-How and any other Intellectual Property Rights whatsoever owned by either the Funder or the Recipient before the Commencement Date or developed by either party during the Grant Period, shall remain the property of that party.
- 11.2 Where the Funder has provided the Recipient with any of its Intellectual Property Rights for use in connection with the Project (including without limitation its name and logo), the Recipient shall, on termination of this Agreement, cease to use such

Intellectual Property Rights immediately and shall either return or destroy such Intellectual Property as requested by the Funder.

## **12. CONFIDENTIALITY**

- 12.1 Subject to clause 13 (Freedom of Information), each party shall during the term of this Agreement and thereafter keep secret and confidential all Intellectual Property Rights or Know-How or other business, technical or commercial information disclosed to it as a result of the Agreement and shall not disclose the same to any person save to the extent necessary to perform its obligations in accordance with the terms of this Agreement or save as expressly authorised in writing by the other party.
- 12.2 The obligation of confidentiality contained in this clause shall not apply or shall cease to apply to any Intellectual Property Rights, Know-How or other business, technical or commercial information which:
- (a) at the time of its disclosure by the disclosing party is already in the public domain or which subsequently enters the public domain other than by breach of the terms of this Agreement by the receiving party;
  - (b) is already known to the receiving party as evidenced by written records at the time of its disclosure by the disclosing party and was not otherwise acquired by the receiving party from the disclosing party under any obligations of confidence; or
  - (c) is at any time after the date of this Agreement acquired by the receiving party from a third party having the right to disclose the same to the receiving party without breach of the obligations owed by that party to the disclosing party.

## **13. FREEDOM OF INFORMATION**

- 13.1 The Recipient acknowledges that the Funder is subject to the requirements of the Freedom of Information Act 2000 (**FOIA**) and the Environmental Information Regulations 2004 (**EIRs**).
- 13.2 The Recipient shall:
- (a) provide all necessary assistance and cooperation as reasonably requested by the Funder to enable the Funder to comply with its obligations under the FOIA and EIRs;
  - (b) transfer to the Funder all requests for information relating to this agreement that it receives as soon as practicable and in any event within 2 working days of receipt;
  - (c) provide the Funder with a copy of all information belonging to the Funder requested in the request for information which is in its possession or control

in the form that the Funder requires within 5 working days (or such other period as the Funder may reasonably specify) of the Funder's request for such information; and

- (d) not respond directly to a request for information unless authorised in writing to do so by the Funder.

- 13.3 The Recipient acknowledges that the Funder may be required under the FOIA and EIRs to disclose information without consulting or obtaining consent from the Recipient. The Funder shall take reasonable steps to notify the Recipient of a request for information (in accordance with the Secretary of State's section 45 Code of Practice on the Discharge of the Functions of Public Authorities under Part 1 of the FOIA) to the extent that it is permissible and reasonably practical for it to do so but (notwithstanding any other provision in this agreement) the Funder shall be responsible for determining in its absolute discretion whether any information is exempt from disclosure in accordance with the FOIA and/or the EIRs.

#### **14. DATA PROTECTION**

- 14.1 The Recipient shall (and shall procure that any of its staff involved in connection with the activities under the Agreement shall) comply with any notification requirements under the Data Protection Legislation and both Parties will duly observe all their obligations under the DPA, which arise in connection with the Agreement.

##### Anti-discrimination

- 14.1 The Recipient shall not unlawfully discriminate within the meaning and scope of any law, enactment, order, or regulation relating to discrimination (whether in race, gender, religion, disability, sexual orientation, age or otherwise) in employment.
- 14.2 The Recipient shall take all reasonable steps to secure the observance of clause 14.1 by all servants, employees or agents of the Recipient and all suppliers and sub-contractors engaged on the Project.

#### **15. HUMAN RIGHTS**

- 15.1 The Recipient shall (and shall use its reasonable endeavours to procure that its staff shall) at all times comply with the provisions of the Human Rights Act 1998 in the performance of this Agreement as if the Recipient were a public body (as defined in the Human Rights Act 1998).

- 15.2 The Recipient shall undertake, or refrain from undertaking, such acts as the Funder requests so as to enable the Funder to comply with its obligations under the Human Rights Act 1998.

## **16. LIMITATION OF LIABILITY**

- 16.1 The Funder accepts no liability for any consequences, whether direct or indirect, that may arise from the Recipient running the Project or from the use of the Grant.

The Recipient shall indemnify and hold harmless the Funder, its employees, agents, officers or sub-contractors with respect to all claims, demands, actions, costs, expenses, losses, damages and all other liabilities arising from or incurred by reason of the actions and/or omissions of the Recipient in relation to the Project, the non-fulfilment of obligations of the Recipient under this Agreement or its obligations to third parties.

- 16.2 The Funder accepts no liability for any consequences, whether direct or indirect, that may arise from withdrawal of the Grant where there is a breach of this Agreement by the Recipient or the continuance of the Grant may be a breach in law.

- 16.3 Subject to clause 16.1, the Funder's liability under this Agreement is limited to the payment of the Grant.

## **17. WARRANTIES**

The Recipient warrants, undertakes and agrees that:

- (a) it has all necessary resources and expertise to deliver the Project (assuming due receipt of the Grant);
- (b) it has not committed, nor shall it commit, any Prohibited Act;
- (c) it shall at all times comply with all relevant legislation and all applicable codes of practice and other similar codes or recommendations, and shall notify the Funder immediately of any significant departure from such legislation, codes or recommendations;
- (d) it shall comply with the requirements of the Health and Safety at Work etc. Act 1974 and any other acts, orders, regulations and codes of practice relating to health and safety, which may apply to employees and other persons working on the Project;
- (e) it has and shall keep in place adequate procedures for dealing with any conflicts of interest;
- (f) it has and shall keep in place systems to deal with the prevention of fraud and/or administrative malfunction;

- (g) all financial and other information concerning the Recipient which has been disclosed to the Funder is to the best of its knowledge and belief, true and accurate;
- (h) it is not subject to any contractual or other restriction imposed by its own or any other organisation's rules or regulations or otherwise which may prevent or materially impede it from meeting its obligations in connection with the Grant;
- (i) it is not aware of anything in its own affairs, which it has not disclosed to the Funder or any of the Funder's advisers, which might reasonably have influenced the decision of the Funder to make the Grant on the terms contained in this Agreement; and
- (j) since the date of its last accounts there has been no material change in its financial position or prospects.

## **18. INSURANCE**

18.1 The Recipient shall effect and maintain with a reputable insurance company a policy or policies in respect of all risks which may be incurred by the Recipient, arising out of the Recipient's performance of the Agreement, including death or personal injury, loss of or damage to property or any other loss (the **Required Insurances**).

18.2 The Required Insurances referred to above include (but are not limited to):

- (a) public liability insurance with a limit of indemnity of not less than ten million pounds (£10,000,000) in relation to any one claim or series of claims arising from the Project; and
- (b) employer's liability insurance with a limit of indemnity of not less than five million pounds (£5,000,000) in relation to any one claim or series of claims arising from the Project.

The Recipient shall (on request) supply to the Funder a copy of such insurance policies and evidence that the relevant premiums have been paid.

## **19. DURATION**

19.1 Except where otherwise specified, the terms of this Agreement shall apply from the date of this Agreement until the contractual defects period or for so long as any Grant monies remain unspent by the Recipient, whichever is longer.

19.2 Any obligations under this Agreement that remains unfulfilled following the expiry or termination of the Agreement shall survive such expiry or termination and continue in full force and effect until they have been fulfilled.

**20. TERMINATION**

The Funder may terminate this Agreement and any Grant payments on giving the Recipient three months' written notice, up to the point that a binding contract has been signed with a contractor for the delivery of the project, should it be required to do so by financial restraints or for any other reason.

**21. ASSIGNMENT**

The Recipient may not, without the prior written consent of the Funder, assign, transfer, sub-contract, or in any other way make over to any third party the benefit and/or the burden of this Agreement or transfer or pay to any other person any part of the Grant, except as contemplated as part of the Project.

**22. WAIVER**

No failure or delay by either party to exercise any right or remedy under this Agreement shall be construed as a waiver of any other right or remedy.

**23. NOTICES**

24.1 Any notice to be given under this Agreement shall be in writing and may be served by personal delivery, first class recorded or, subject to clause 24.2, e-mail to the address of the relevant Party, or such other address as that Party may from time to time notify to the other Party in accordance with this clause.

24.2 Notices served as above shall be deemed served on the Working Day of delivery provided delivery is before 5.00pm on a Working Day. Otherwise delivery shall be deemed to occur on the next Working Day. An email shall be deemed delivered when sent unless an error message is received.

**24. DISPUTE RESOLUTION**

25.1 The Parties shall attempt in good faith to negotiate a settlement to any dispute between them arising out of or in connection with this Agreement within 30 days of either Party notifying the other of the dispute such efforts shall involve the escalation of the dispute to the finance director (or equivalent) of each Party.

25.2 Nothing in this dispute resolution procedure shall prevent the Parties from seeking from any court of the competent jurisdiction an interim order restraining the other Party from doing any act or compelling the other Party to do any act.

25.3 If the dispute cannot be resolved by the Parties pursuant to this clause the dispute shall be referred to mediation pursuant to the procedure set out in below unless (a) the Funder considers that the dispute is not suitable for resolution by mediation; or (b) the Recipient does not agree to mediation.



- 25.4 The performance of the Agreement shall not be suspended, cease or be delayed by the reference of a dispute to mediation and the Recipient (or employee, agent, supplier or sub-contractor) shall comply fully with the requirements of the Agreement at all times.
- 25.5 The procedure for mediation and consequential provisions relating to mediation are as follows:
- (a) a neutral adviser or mediator (“the Mediator”) shall be chosen by agreement between the Parties or, if they are unable to agree upon a Mediator within 14 days after a request by one Party to the other or if the Mediator agreed upon is unable or unwilling to act, either Party shall within 14 days from the date of the proposal to appoint a Mediator or within 14 days of notice to either Party that he is unable or unwilling to act, apply to the Centre for Effective Dispute Resolution (“CEDR”) to appoint a Mediator.
  - (b) The Parties shall within 14 days of the appointment of the Mediator meet with him in order to agree a programme for the exchange of all relevant information and the structure to be adopted for negotiations to be held. If considered appropriate, the Parties may at any stage seek assistance from CEDR to provide guidance on a suitable procedure.
  - (c) Unless otherwise agreed, all negotiations connected with the dispute and any settlement agreement relating to it shall be conducted in confidence and without prejudice to the rights of the Parties in any future proceedings.
  - (d) If the Parties reach agreement on the resolution of the dispute, the agreement shall be reduced to writing and shall be binding on the Parties once it is signed by their duly authorised representatives.
  - (e) Failing agreement, either of the Parties may invite the Mediator to provide a non-binding but informative opinion in writing. Such an opinion shall be provided on a without prejudice basis and shall not be used in evidence in any proceedings relating to the Agreement without the prior written consent of both Parties.
  - (f) If the Parties fail to reach agreement in the structured negotiations within 60 days of the Mediator being appointed, or such longer period as may be agreed by the Parties, then any dispute or difference between them may be referred to the Courts unless the dispute is referred to arbitration pursuant to the procedures set out in Clause 25.6
- 25.6 Subject to Clause 25.2, the Parties shall not institute court proceedings until the procedures set out in Clauses 25.3 and 25.5 have been completed save that:
- (a) the Funder may at any time before court proceedings are commenced, serve a notice on the Recipient requiring the dispute to be referred to and resolved by arbitration in accordance with the provisions of Clause 25.7.
  - (b) if the Recipient intends to commence court proceedings, it shall serve written notice on the Funder of its intentions and the Funder shall have 21 days following receipt of such notice to serve a reply on the Recipient requiring the dispute to be referred to and resolved by arbitration in accordance with the provisions of Clause 25.7.
  - (c) the Recipient may request by notice in writing to the Funder that any dispute be referred and resolved by arbitration in accordance with the provisions of Clause 25.7, to which the Funder may in its discretion consent as it sees fit.

- 25.7 In the event that any arbitration proceedings are commenced pursuant to Clause 25.6, the following provisions shall apply:
- (a) the arbitration shall be governed by the provisions of the Arbitration Act 1996;
  - (b) the Funder shall give a written notice of arbitration to the Recipient (“the Arbitration Notice”) stating:
    - i that the dispute is referred to arbitration; and
    - ii providing details of the issues to be resolved;
    - iii the London Court of International Arbitration (“LCIA”) procedural rules in force at the date that the dispute was referred to arbitration in accordance with Clause 25.7 shall be applied and are deemed to be incorporated by reference to this Agreement and the decision of the arbitrator shall be binding on the Parties in the absence of any material failure to comply with such rules;
  - (c) the tribunal shall consist of a sole arbitrator to be agreed by the Parties;
  - (d) if the Parties fail to agree the appointment of the arbitrator within 10 days of the Arbitration Notice being issued by the Funder under Clause; or
  - (e) if the person appointed is unable or unwilling to act, the arbitrator shall be appointed by the LCIA;
  - (f) the arbitration proceedings shall take place in London and in the English language; and
  - (g) the arbitration proceedings shall be governed by, and interpretations made in accordance with, English law.

**25. NO PARTNERSHIP OR AGENCY**

This Agreement shall not create any partnership or joint venture between the Funder and the Recipient, nor any relationship of principal and agent, nor authorise any party to make or enter into any commitments for or on behalf of the other party.

**26. JOINT AND SEVERAL LIABILITY**

Where the Recipient is not a company nor an incorporated entity with a distinct legal personality of its own, the individuals who enter into and sign this Agreement on behalf of the Recipient shall be jointly and severally liable for the Recipient's obligations and liabilities arising under this Agreement.

**27. CONTRACTS (RIGHTS OF THIRD PARTIES) ACT 1999**

This Agreement does not and is not intended to confer any contractual benefit on any person pursuant to the terms of the Contracts (Rights of Third Parties) Act 1999.

**28. GOVERNING LAW**

This Agreement shall be governed by and construed in accordance with the law of England and the parties irrevocably submit to the exclusive jurisdiction of the English courts.

This Agreement is executed by the Parties as a Deed and is delivered and takes effect on the date stated at the beginning of it.

**THE COMMON SEAL OF  
THE MAYOR AND BURGESSES  
OF THE LONDON BOROUGH OF  
HAVERING** is hereto affixed in the  
presence of:

Authorised Signatory

**THE COMMON SEAL  
OF [HARRIS ACADEMY TRUST]**  
was hereto affixed in the presence of:

Director Signature

Director Signature

Print Name of Director

Print Name of Director

## **Schedule 1 The Project**

## **Schedule 1. The Project**

### **2. The Project**

- 2.1. Harris Academy will provide a purpose built ARP alternate resource provision facility at Harris Academy Lambs Lane South, Rainham RM13 The building will be a new permanent building provided in accordance with the requirements described below.
- 2.2. The new building, and the process of Siting, Designing, Procuring and Delivering and Commissioning the project, shall be wholly the responsibility of Harris Academy and its appointed consultants and contractors
- 2.3. The building location and facilities to be provided should subject to planning approval and comply with those detailed and agreed by the Local Authority in the feasibility document produced by the Harris Academy consultant AMR dated MAY 2020. Any deviation from this proposal would need formal written agreement from the Local Authority.
- 2.4. The new building will meet and comply with:
  - 2.4.1. all of the current Planning and Building Control requirements

#### **Planning**

The Academy or its Representative/Contractor will be responsible for obtaining Detailed Planning Consents where appropriate, for compliance with all associated statutory processes and for payment of all fees and charges in connection, although a portion of the grant can be used for these purposes. It is also the Contractor's responsibility to comply with any Conditions or Reserved Matters attached to the Consent. Where there are Conditions which can only be satisfied by the Local Authority, these can be detailed in the Scheme Contract by way of a Schedule. Conditions may also relate to traffic, vehicular access, noise control, and other environmental matters. Although the Local Authority will deal with any planning applications, no special treatment will be accorded this project by planning officers, or by relevant Committees of the Local Authority in deciding upon planning matters. The Local Authority can give no guarantee of approval.

#### **Building Regulations**

The Contractor shall comply with all current Building Regulations in respect of new school construction and refurbishment and remodelling works to existing buildings, and must also still meet the terms of all the DfE Constructional Standards 1997 and as amended (2001). The Constructional Standards override the current Building Regulations on Ramps Steps and Handrails (sections F, K & M). It is the Contractor's responsibility to make payment of the appropriate fees and to ensure that the work is carried out in compliance with the Regulations and Standards and that written approval is received.

2.4.2. The requirements of DfE Building Bulletin (BB) 104; Health and Safety Legislation, Construction Design and Management Legislation, and all other legislation relevant to the provision of a new building

2.4.3. All current legislation in relation to the installation of mechanical and electrical services.

2.5. The project will be funded by a grant of £850,000 From the London Borough of Havering (the Local Authority). This grant is finite and includes all necessary fees and anticipated costs, and includes for purchase and installation of any fixed furniture and ICT. The Academy agrees to complete the building within this fixed budget. Any costs incurred over and above the grant amount will be borne by the Recipient and funded by other resources available to the Recipient, subject to terms and conditions of that funding.

### **3. Local Authority's Representative**

*3.1. Gary Moreland. Education Asset Management Manager*

### **4. Existing Buildings on or Adjacent to the Site**

4.1. The Contractor is deemed to have made due allowance for any effect that existing buildings or structures on or adjacent to the site have on his design and the Works.

### **5. Specialist surveys required for design development**

5.1. The Academy shall procure all specialist surveys needed for the development of design and construction in order for the design and construction to comply with all statutory requirements as well as the Local Authority Requirements.

### **6. Existing Mains / Services**

6.1. The Contractor shall contact the relevant statutory authorities and ascertain the extent and positions of all existing services and drains running over and under the site and immediately adjacent to it in order that the design and construction can be developed without detriment to the functioning of such services and drains.

### **7. CDM Regulations**

7.1. The Academy shall undertake the role of Client under the Construction (Design and Management) Regulations 2007 and shall allocate resources to enable it to comply with the requirements and prohibitions imposed on it by or under the relevant statutory provisions. It is understood that Project Management Services (as described in the CDM legislation) is being undertaken by persons as appointed by school.

## **8. Other Consents**

8.1. The Academy or their Representative/Contractor is responsible for obtaining all other statutory consents required for any aspect of the works and for compliance with all relevant legislation, covenants, easements or other rights affecting the site. The Contractor shall also be responsible for negotiating any further covenants, easements or other rights that may be required on any of the Sites, for example for statutory undertakers. The Contractor shall consult with the Local Authority relating to the granting of such rights and shall reimburse the Local Authority for its reasonable costs and expenses in connection with such issues.

### **Statutory Compliances - General**

8.2. The Academy or their Representative/Contractor shall, throughout the project, conform to all current Statutes, Statutory Instruments and Amendments, and notwithstanding the above, all statutory minimum requirements must be met for all schools.

8.3. A copy of the approved JCT contract or other with contractors' proposals, employers requirements, and approved plans will be provided to the Local Authority prior to start.



## **Schedule 2**

### **Payment Schedule**

#### **1. Grant Payment Process and Principles – General Rules**

1.1. The grant payment will be paid in instalments based on the following principles:

1.1.1. Payments up to £200,000 total will be paid in a single lump sum at the beginning of the project on demonstration of a signed contract with a contractor for the works to be undertaken. An appropriate programme will be required demonstrating that the works will be completed within the agreed timeframe. In some circumstances, an advance of funds can be agreed to support project development and design fees.

1.1.2. Payments of between £200,001 and £500,000 total will usually be paid in three instalments of one third of the grant amount; **The first instalment** will be paid at the beginning of the project on demonstration of a signed contract with a contractor for the works to be undertaken. An appropriate programme will be required demonstrating that the works will be completed within the agreed timeframe. **The second instalment** will be paid when it is demonstrated that work on the main project has started on site (the Local Authority reserve the right to inspect the site and the works progress at, or shortly after, this declaration). **The third and final instalment** will be paid on completion of the project on site. It is anticipated that this completion will be demonstrated with provision of both a Contractors Certificate of Completion and a Building Control Certificate of Completion. The Local Authority will expect to be invited to see the completed building prior to its occupation by staff and/or students. In some circumstances an advance of funds can be agreed to support project development and design fees.

1.1.3. Payments in excess of £500,000 total will be paid based on partial completion evaluations, agreed by the Recipient and the Local Authority, based on the level of works completed against an agreed and approved programme of delivery. The evaluations would normally take place at monthly intervals with agreed payments being processed within 14 days of the receipt of the agreed invoice. The evaluations will be confirmed by the Local Authority's own QS if necessary and are subject to inspection with or without notice. In some circumstances an advance of funds can be agreed to support project development and design fees.

2. Payment Schedule:

Harris Academy			
New Build ARP facility. Provision Payment Schedule			
Total Grant £850,000	Date	Agreed Payment	Date of Agreed Payment
Order Placed	tba	£100,000	tba
Start on Site		£250,000	
Mid stage Assessment		£250,000	
Practical Completion		£250,000	

Schedule 3

## **Contract Documentation and Plans**

**See attached feasibility by AMR consultants from May 2020**