

**(1) SOUTH YORK MULTI ACADEMY TRUST**

**and**

**(2) THE YORK DIOCESAN BOARD OF EDUCATION**

# **MEMORANDUM OF UNDERSTANDING**

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THIS AGREEMENT is made on

2018

**BETWEEN:**

- (1) **SOUTH YORK MULTI ACADEMY TRUST** a charitable company limited by guarantee (Company number 11082297) of Fulford School, Fulfordgate, Heslington Lane, Fulford, York YO10 4FY (the "**Company**"); and
- (2) **THE YORK DIOCESAN BOARD OF EDUCATION** an unincorporated statutory body established pursuant to the Diocesan Boards of Education Measure 1991 of Amy Johnson Way, Clifton Moor, York YO30 4XT (the "**DBE**").

(together the "**Parties**")

**WHEREAS:**

- (A) The Company was incorporated on 24 November 2017 with the object of advancement of education, in particular but without prejudice to the generality of the foregoing by establishing, maintaining, carrying on, managing and developing Academies which shall offer a broad and balanced curriculum and which shall include:
  - (i) Church of England schools designated as such which shall be conducted in accordance with the principles, practices and tenets of the Church of England both generally and in particular in relation to arranging for religious education and daily acts of worship, and having regard to any advice issued by the Diocesan Board of Education ("**Church of England Academies**"); and
  - (ii) other Academies whether with or without a designated religious character; but in relation to each of the Academies to recognise and support their individual ethos, whether or not designated Church of England ("**Community Academies**").
- (B) Pursuant to Articles 12B and 12C of the Articles, the appointment and removal of the Community Members shall be in accordance with any such procedure agreed by the Company, Members and DBE from time to time.
- (C) The purpose of this Memorandum of Understanding is to record the agreed appointment and removal procedures in pursuance of Articles 12B and 12C (see clauses 2-4) and to set out certain agreements between the Parties with respect to the Governance arrangements of the Company.

- (D) The Parties agree that where the provisions of this Memorandum of Understanding and the Articles are in conflict, the Articles will take precedence.
- (E) Although not a party to this agreement, the Members, from time to time, shall be required to agree and adhere to the terms of this agreement in the Member's Ethos Undertaking.

IT IS AGREED as follows:

1 **Definitions**

1.1 In this Memorandum of Understanding the following expressions shall mean:

<b>"Academies"</b>	all the schools established pursuant to Article 4 of the Articles and <b>"Academy"</b> shall mean any one such school.
<b>"Articles"</b>	the Articles of Association of the Company.
<b>"Church of England Academy"</b>	an academy designated as a Church of England school pursuant to Article 4(i) of the Articles and <b>"Church of England Academies"</b> shall mean any number of such academies.
<b>"Community Academy"</b>	an academy established pursuant to Article 4(ii) of the Articles and <b>"Community Academies"</b> shall mean any number of such academies.
<b>"Community Members"</b>	members of the Company appointed pursuant to Article 12B of the Articles and <b>"Community Member"</b> shall mean any one such member.
<b>"Diocese of York Educational Trust"</b>	the Diocese of York Educational Trust (company number: 7943724).
<b>"Foundation LGB Member"</b>	a member of the Local Governing Body of a Church of England Academy appointed by the DBE and <b>"Foundation LGB Members"</b> shall mean any number of such members.
<b>"Local Governing Bodies"</b>	the committees appointed pursuant to Articles 100-102 and 104 of the Articles and <b>"Local Governing Body"</b>

shall mean any one such committee.

**"Member Appointed Trustee"** a director of the Company appointed pursuant to Article 50 of the Articles.

**"Member Ethos Undertaking"** the Deed of Undertaking signed by the Members on their appointment in the form set out in Schedule 1 or as otherwise agreed by the DBE, from time to time.

**"Trustees"** the directors of the Company pursuant to Article 46 of the Articles and **"Trustee"** means any one such director.

**"York St John University"** York St John University (company number: 4498683).

## 2 **Members**

2.1 Unless otherwise agreed by the Parties the number of Members shall be five and comprise:

2.1.1 the Diocese of York Educational Trust;

2.1.2 one person appointed by the Diocese of York Education Trust, from time to time;

2.1.3 York St John University; and

2.1.4 two Community Members

2.2 Each Member of the Company is required on appointment to complete (and the Company shall ensure that each Member on appointment completes) a **Member Ethos Undertaking** in the form set out in Schedule 1 (unless otherwise agreed by the DBE and the Company, from time to time).

2.3 The Company shall provide the other Members and the DBE with a copy of a Member's Member Ethos Undertaking within 14 days of that member's appointment.

2.4 The Members shall remove a Member in accordance with the Articles if directed to do so by the DBE in the following circumstances:

2.4.1 the Member has not completed a Member Ethos Undertaking in accordance with clause 2.2 and/or the Member Ethos Undertaking is not provided to the DBE upon request; or

- 2.4.2 the DBE is of the reasonable opinion that (a) the Member is not complying with the terms of their Member Ethos Undertaking and (b) the Member's actions and/or omissions are having or could have a negative impact on the governance and/or ethos of one or more of the Church of England Academies within the Company.
- 2.5 For the avoidance of doubt, clauses 2.2 to 2.4 will apply to any Member appointed before date of this agreement (whether as signatories to the Memorandum of Association or otherwise) who is still a Member on the date of this agreement. Any such Member shall be required to complete the Member Ethos Undertaking within 10 days of the date of this agreement and the Company shall provide the other Members and the DBE with a copy of each such Member's Member Ethos Undertaking within 14 days of the date of this agreement.
- 2.6 In the event that any Academy Local Governing Body has material concerns about any Member's compliance with the Member Ethos Undertaking, the Chair of that Local Governing Body shall raise the issue with the Members and the DBE ("**a Member Complaint Notice**"). The Members, the Chair of the Local Governing Body of the Academy and the DBE shall meet within 21 days of the issue of a Member Complaint Notice. The Chair of the Local Governing Body of the Academy shall be entitled to make representations at that meeting. The Members and the DBE shall agree within 14 days of the meeting what action, if any, should be taken to remedy the concerns in the Member Complaint Notice, but for the avoidance of doubt any course of action that is agreed upon shall not include removal of the Diocese of York Educational Trust and/or York St John University as Members or prejudice the Diocese of York Educational Trust's right to appoint a Member pursuant to the Articles.
- 2.7 Wherever possible, the appointment of a new Member should take place simultaneously with the resignation of the outgoing Member so that the composition of the Membership as described in clause 2.1 is maintained.
- 2.8 In accordance with the Master Funding Agreement, any candidate whose name is put forward for appointment as a Member must agree to their name being shared with the Secretary of State in order for her to assess their suitability and must agree to submit to all other such checks that the Company is legally required to undertake on its Members from time to time. Their appointment as a Member (or continued appointment, as the case may be) shall be subject to them undergoing and satisfactorily completing such checks and assessments.

- 2.9 In accordance with the Master Funding Agreement, the Company will provide the Secretary of State with the names of all new or replacement Members of the Company stating the date of their appointment and, where applicable, the name of the Member they replaced as soon as is practicable and in any event within 14 days of their appointment.
- 2.10 The Company will maintain a Register of Members noting all appointments and retirements of Members.

### **3 Appointment of Community Members**

- 3.1 For the purposes of Article 12B of the Articles the agreed procedure for appointing Community Members shall be pursuant to clauses 3.2 to 3.6 of this agreement.
- 3.2 On being notified of an impending vacancy of a Community Member, the Members shall ask the Board of Trustees to provide one or more recommendations for the appointment of a replacement Community Member, which shall be considered by the Members.
- 3.3 In making a recommendation, the Board of Trustees shall consult with the Chairs of the Local Governing Bodies and any other persons as the Board of Trustees thinks fit to identify a suitable candidate to recommend to the Members. In making a recommendation, the Board of Trustees shall give preference to any candidate(s) drawn from the communities local to the Academies and/or possessing special knowledge of the areas local to the Academies.
- 3.4 In the absence of any material concerns regarding the suitability of a recommended candidate, Members shall appoint a candidate recommended by the Board of Trustees. The Members will make an appointment by way of a special resolution.
- 3.5 If the Members determine that a candidate is unsuitable for appointment then the Members will notify the Board of Trustees and the DBE in writing explaining the reason(s) why a candidate was not deemed suitable for appointment. The Board of Trustees shall then recommend another candidate to the Members in accordance with clause 3.2 and 3.3.
- 3.6 Where the Board of Trustees have suggested more than one candidate to the Members, in the absence of any material concerns regarding the suitability of the candidates, the Members will decide which candidate they prefer for appointment and then appoint such person in accordance with the Articles.

#### 4 **Removal of Community Members**

4.1 For the purposes of Article 12C of the Articles the agreed procedure for removing Community Members shall be pursuant to clauses 4.2 to 5 of this agreement.

4.2 Without prejudice to Articles 15 and 18 of the Articles, any Member, the Board of Trustees or any Local Governing Body may request the removal of a Community Member if they deem it to be in the best interests of the Company. Any such request must be made in writing to the Members and must set out the reason(s) why it is felt that the Community Member should be removed.

4.3 Where a proposal to remove a Community Member is made by a Member or a Local Governing Body, Members must consult with the Board of Trustees with regard to the removal of the Community Member. The Board of Trustees may consult with the Chairs of the Local Governing Bodies with regard to a proposal for removal, where the Board of Trustees deems this appropriate.

4.4 The Members (other than the Community Member whose removal is being considered) will consider any proposal to remove a Community Member made in accordance with clauses 4.1 and 4.3 and may agree by way of a special resolution to remove a Community Member.

4.5 The removal of a Community Member should take place simultaneously or as contemporaneously as possible with the appointment of a new Community Member so that the composition of the Membership as described in clause 2.1 is maintained.

#### 5 **Appointment of the Diocese of York Educational Trust appointed Member**

5.1 The Diocese of York Educational Trust shall consult the other Members before appointing a Member pursuant to Article 12(b) of the Articles.

#### 6 **Appointment of Trustees**

6.1 The Trustees will be appointed in accordance with the Articles.

6.2 Each Trustee is required on their appointment as a Trustee to complete (and the Company shall ensure that each Trustee on appointment completes) a **Trustees' Ethos Undertaking** in the form set out in Schedule 2 (unless otherwise agreed by the DBE and Company from time to time).



6.3 The Company shall provide the Members and the DBE with a copy of a Trustee's Ethos Undertaking within 14 days of that appointment.

6.4 For the avoidance of doubt, clauses 6.2 to 6.3 will apply to any Trustee appointed before date of this agreement who is still a Trustee on the date of this agreement. Any such Trustee shall be required to complete the Trustees' Ethos Undertaking within 10 days of the date of this agreement and the Company shall provide the Members and the DBE with a copy of each such Trustee's Trustees' Ethos Undertaking within 14 days of the date of this agreement.

6.5 The Company shall ensure that all appointments and retirements of Trustees are noted on the Company's Register of Directors, registered with Companies House and with any other regulator as required.

## **7 Appointment of Member Appointed Trustees**

7.1 Members are to be responsible for ensuring appropriate procedures are in place for the recruitment of Member Appointed Trustees both in terms of finding suitable candidates and putting in place an open and robust selection process for candidates.

7.2 In appointing Member Appointed Trustees the Members shall consider whether candidates have the right skills and attributes to:

7.2.1 contribute to the effective governance of the Company;

7.2.2 ensure the Christian character of the Church of England Academies is preserved and developed; and

7.2.3 ensure the individual ethos of Community Academies is respected and supported; and

7.2.4 ensure an appropriate skills mix on the Board of Trustees.

## **8 Trustee Ethos Undertakings**

8.1 The Members shall remove a Member Appointed Trustee pursuant to the Articles if directed to do so by the DBE in the following circumstances:

8.1.1 the Trustee in question has not completed a Trustees' Ethos Undertaking in accordance with clauses 6.2-6.4 of this agreement and/or the Trustee's Ethos Undertaking is not provided to the DBE upon request; or

8.1.2 the DBE is of the reasonable opinion that (a) the Trustee in question is not complying with the terms of their Trustees' Ethos Undertaking and (b) the Trustee's actions and or/omissions are having or could have a negative impact on the governance and/or ethos of one or more of the Church of England Academies within the Company.

8.2 In the event that an Academy Local Governing Body has material concerns about any Trustee's compliance with the Trustee Ethos Undertaking, the Chair of the Local Governing Body of the Academy shall raise the issue directly with the Members and the DBE ("**a Trustee Complaint Notice**"). The Members and the DBE shall meet within 21 days of the issue of a Trustee Complaint Notice. The Chair of the Local Governing Body of the Academy shall be entitled to make representations at that meeting. The Members and the DBE shall agree within 14 days of the meeting what action, if any, should be taken to remedy the concerns in the Member Complaint Notice, but for the avoidance of doubt any course of action that is agreed upon shall not prejudice the right of the Diocese of York Educational Trust to appoint a Trustee pursuant to the Articles.

## 9 **Local Governing Bodies**

9.1 There must be a Local Governing Body for each Community Academy unless the Board of Trustees decides otherwise.

9.2 There must be a Local Governing Body for each Church of England Academies unless otherwise agreed between the Board of Trustees and the DBE.

9.3 The composition of the Local Governing Bodies of Church of England Academies will be in accordance with the Supplemental Funding Agreement (as agreed by the DBE) and will contain as a minimum the following number of Foundation LGB Members:

9.3.1 a minimum of two and at least 25% of the membership of the Local Governing Body for a former Voluntary Controlled school;

9.3.2 such number of Foundation LGB Members such that the number of Foundation LGB Members outnumber all other members of the Local Governing Body by no less than two for a former Voluntary Aided school;

9.3.3 if a former Voluntary Controlled school's Supplemental Funding Agreement contains clauses stating that the Academy should be treated as if it were a Voluntary Aided School in relation to the provision of religious education and daily

acts of worship, then the number of Foundation LGB Members should be as per clause 9.3.2.

- 9.4 All Local Governing Body members of a Church of England Academy Local Governing Body are to complete on appointment (and the Company shall ensure that each such person completes) a Local Governing Body Ethos Undertaking in the form set out in Schedule 3, or as otherwise agreed by the DBE from time to time.
- 9.5 The Company shall retain copies of all Local Governing Body Ethos Undertakings for the period of the relevant Local Governing Body member's term of office and shall provide the DBE with a copy of each such Undertaking within 14 days of receiving a request from the DBE to do so.
- 9.6 For the avoidance of doubt, clauses 9.4 to 9.5 will apply to any member of a Local Governing Body of a Church of England school appointed before date of this agreement who is still a Local Governing Body member on the date of this agreement. Any such Local Governing Body member shall be required to complete the Local Governing Body Ethos Undertaking within 10 days of the date of this agreement.
- 9.7 The Board of Trustees shall remove a member of a Local Governing Body at a Church of England Academy if directed to do so by the DBE in the following circumstances:
- 9.7.1 the Local Governing Body Member in question has not signed a Local Governing Body Ethos Undertaking in accordance with clauses 9.4 to 9.6 of this agreement and/or the Local Governing Body Ethos Undertaking is not provided to the DBE within 14 days of request; or
- 9.7.2 the DBE is of the reasonable opinion that (a) the Local Governing Body member in question is not complying with the terms of their Local Governing Body Ethos Undertaking and (b) the Local Governing Body member's actions and/or omissions are having or could have a negative impact on the governance and/or ethos of the relevant Church of England Academy.

## 10 **Appointment of Chief Executive Office or Executive Principal**

- 10.1 The Board of Trustees is responsible for ensuring that procedures are put in place to appoint a Chief Executive Officer and (if required) any Executive Principal in accordance with the Articles.
- 10.2 Such procedures for selection of a candidate to be the Chief Executive Officer or (as the case may be) an Executive Principal shall include an interview panel appointed by the

Board of Trustees to make a recommendation to the Board of Trustees on the appointment.

10.3 The Company shall notify the DBE in the event that a recruitment process for the Chief Executive and/or any Executive Principal who will have oversight of a Church of England Academy is proposed. The DBE shall be entitled to appoint an adviser to sit with the interview panel for any such process whilst it conducts interviews and makes its recommendations to the Board of Trustees. The DBE advisor may provide advice, but will not be included in the decision making process of the interview panel.

10.4 In making its recommendations to the Board of Trustees, the interview panel must ensure that any recommended candidate:

10.4.1 is fit and able to preserve and develop their religious character of Church Academies; and

10.4.2 is fit and able to preserve and develop the individual ethos of Community Academies.

## 11 **Amendment**

11.1 No alteration or addition to this agreement shall be made without the prior written consent of the Members (given unanimously) and the agreement of the Parties.

## 12 **Governing Law and Jurisdiction**

12.1 This agreement shall be governed by, and construed in accordance with, English law.

12.2 The Parties agree irrevocably agree that the courts of England shall have jurisdiction to settle any dispute which may arise out of, or in connection with, this agreement, and that accordingly any proceedings may be brought in such courts.

## 13 **Counterparts**

13.1 This agreement may be signed for and on behalf of the Parties in any number of counterparts all of which taken together shall constitute one and the same document and any party may sign this agreement by signing any one or more of such counterparts.

**IN WITNESS** of which this deed has been duly executed and unconditionally delivered on the date first above written.

**SCHEDULE 1**

**MEMBER ETHOS UNDERTAKING**

**MEMBER DEED OF UNDERTAKING**

**South York Multi Academy Trust  
COMPANY REGISTRATION NO. 11082297 )  
(the "Academy Trust")**

I, [name] of [address] do hereby undertake to:

1. The Members of the Academy Trust from time to time; and
2. The York Diocesan Board of Education

to carry out my role in such a way as is conducive to upholding the Objects of the Academy Trust:

1. Insofar as they relate to any Church of England academy within the Academy Trust from time to time, and in particular with the intention of:

- Protecting the Church of England designation of Church of England academies; and
- Ensuring that those academies are conducted in accordance with the principles, practices and tenets of the Church of England generally;
- Ensuring that those academies are conducted in accordance with the principles, practices and tenets of the Church of England in particular in relation to arranging for religious education and daily acts of worship;

always having due regard to the advice and guidance of the York Diocesan Board of Education; and

2. to respect, support and promote the non-designated status of Community schools within the Academy Trust in terms of their individual ethos and community status.

**Memorandum of Understanding**

I also undertake to:

1. The Academy Trust
2. The Members of the Academy Trust
3. The York Diocesan Board of Education

to agree to and abide by the terms of the Memorandum of Understanding between the Academy Trust and the York Diocesan Board of Education dated [     ] . as amended from time to time (**the "Memorandum of Understanding"**).

By signing this Deed I agree that the procedure appointing and removing Community Members contained within the Memorandum of Understanding is the agreed procedure for appointment and removal of Community Members pursuant to Articles 12B and 12C of the articles of association of the Academy Trust.

**EXECUTED as a DEED** by [name]

Signed: .....

In the presence of:

Witness signature .....

Witness Name .....

Witness address .....

Witness occupation .....

Date:

**SCHEDULE 2**

**TRUSTEES' ETHOS UNDERTAKING**

**TRUSTEES' DEED OF UNDERTAKING**

South York Multi Academy Trust

COMPANY REGISTRATION NO. 11082297 )

(the "Academy Trust")

I, [name] of [address] do hereby undertake to:

1. The Members of the Academy Trust from time to time; and
2. The York Diocesan Board of Education

to carry out my role in such a way as is conducive to upholding the Objects of the Academy Trust:-

1. insofar as they relate to any Church of England academy within the Academy Trust from time to time, and in particular with the intention of:

- Protecting the Church of England designation of Church of England academies; and
- Ensuring that those academies are conducted in accordance with the principles, practices and tenets of the Church of England generally; and
- Ensuring that those academies are conducted in accordance with the principles, practices and tenets of the Church of England in particular in relation to arranging for religious education and daily acts of worship,

always having due regard to the advice and guidance of the York Diocesan Board of Education; and

2. to respect, support and promote the non-designated status of Community schools within the Academy Trust in terms of their individual ethos and community status.

**EXECUTED as a DEED by [name]**

Signed: .....

In the presence of :

Witness signature .....

Witness Name .....

Witness address .....

Witness occupation .....

Date:



**SCHEDULE 3**

**LOCAL GOVERNING BODY ETHOS UNDERTAKING**

**LOCAL GOVERNOR ETHOS UNDERTAKING**

**[Name of Academy] (the "Academy")**

**Part of South York Multi Academy Trust (the "Academy Trust)**

I, [name] of [address] hereby undertake to The Board of Trustees of the Academy Trust and the York Diocesan Board of Education to carry out my role as Local Governor at the Academy in such a way as is conducive to:

- Protecting the Church of England designation of the Church of England Academy; and
- Ensuring that the Academy is conducted in accordance with the principles, practices and tenets of the Church of England generally; and
- Ensuring that the Academy is conducted in accordance with the principles, practices and tenets of the Church of England in relation to arranging for religious education and daily acts of worship,

always having due regard to the advice and guidance of the York Diocesan Board of Education.

Signed: .....

Print Name: .....

Date: .....