



# NOTES TO ACCOMPANY OCCUPATION OF SCHOOL PREMISES

VERSION: FEBRUARY 2021

## 1 INTRODUCTION

1.1 The CES advises Trustees to: "...adopt and use the new 'Occupation of School Premises' document ("OOSP") which delegates the performance of Trustees' health and safety duties".

1.2 That document has been prepared by the CES and contains references to other documents and to legislation.

1.3 These notes accompany the 'Occupation of School Premises' document of the same version date. It aims to bring together into one resource either the text of or references to all other documents referred to.

1.4 It also highlights some areas of the OOSP of particular interest to schools.

1.5 References to paragraph numbers in the OOSP are indicated thus: [Px.y] where x.y is the relevant paragraph number. References to footnotes are indicated thus: [Fn] where n is the footnote number.

## 2 REFERENCES IN THE MAIN DOCUMENT

2.1 [P1.1] "School" means either the governing body of a VA school or the Trustees of the relevant Catholic Education Trust (for an academy). See definitions (P5.1 and P5.2 of OOSP).

2.2 [N1] *Governance of a Catholic School: A Clarification of Roles and Responsibilities for England & Wales*, CES September 2014. [https://www.catholiceducation.org.uk/guidance-for-schools/governance/item/download/36886\\_545f5332c6807f2b9b13c7e096ddcfaf](https://www.catholiceducation.org.uk/guidance-for-schools/governance/item/download/36886_545f5332c6807f2b9b13c7e096ddcfaf)

2.3 [P3.3] and [N4] Note that letting of premises referred to in the second bullet point does not include casual lettings.

2.4 [P3.5] Note that letting of premises referred to does not include casual lettings.

1.1 [P3.6] second bullet point and [N5]: the Governing Body responsibilities for the School Premises as defined in *DfE "Blue Book Guidance" Capital Funding for Voluntary Aided Schools in England, Feb 2011* are defined as follows (Page 3):

***The Basic Principles - Who is responsible for what.***

*Responsibility for work to VA school premises is shared between the school's governing body and the Local Authority (LA). The principles applied to split this responsibility are as follows:*

## *Capital work*

*VA school governing bodies are liable for:*

- *the existing buildings (internal and external), including those buildings previously known as 'excepted' (kitchens, dining areas, medical/dental rooms, swimming pools, caretakers' dwelling houses)*
- *perimeter walls and fences, even if they are around the playing fields*
- *playgrounds*
- *furniture, fixtures and fittings – including ICT infrastructure and equipment*
- *other capital items (which can include capital work to boilers or other services)*

*LAs are liable for:*

- *playing fields (including sports pitches and hard surfaced games areas)*
- *buildings on those fields and related to their use*

*These liabilities are not specifically related to ownership. For example, governing bodies of those VA schools which were previously Grant Maintained may now own the playing fields and associated buildings, but the LA will still be responsible for any work to them.*

*Even if the LA owns any of the 'excepted' buildings referred to above, the VA governing body is responsible for any capital work to them. To protect any investment (in case of a future sale), the school needs to notify the LA of any related capital expenditure within 12 months. If it is proposed to dispose of the building at a later date, an independent valuation is required. If agreement about sharing the sale proceeds cannot be reached the Secretary of State does have the power to intervene.*

*Teachers' dwelling houses are the liability of the trustees. No capital grant is payable for work to these buildings as they are not the responsibility of the VA school governing body or the LA.*

2.5 [P4.3] The Education & Skills Funding Agency document, 'Terms and Conditions of grant funding for dioceses and non-diocesan voluntary aided schools groups in receipt of school condition allocations in financial year 2020-21' which also sets out the responsibilities of Governing Bodies in relation to health and safety is appended to this document as Appendix A.

2.6 [N7] s53 Health and Safety at Work Act 1974  
<https://www.legislation.gov.uk/ukpga/1974/37/section/53> ;

2.7 [N7]reg 7 Management of Health and Safety at Work Regulations 1999  
<https://www.legislation.gov.uk/uksi/1999/3242/regulation/7/made>

2.8 [P4.8] section 4(1) of the Health and Safety at Work Act 1974 ("HSA 1974")  
<https://www.legislation.gov.uk/ukpga/1974/37/section/4>

2.9 [P4.8] Control of Asbestos Regulations 2012 ("CAR 2012")  
<https://www.legislation.gov.uk/uksi/2012/632/contents/made>

2.10 [P4.8] Construction Design and Management Regulations 2015  
<https://www.legislation.gov.uk/uksi/2015/51/contents/made>

2.11 [P4.8] Regulatory Reform (Fire Safety) Order 2005 ("FSO 2015")  
<https://www.legislation.gov.uk/uksi/2005/1541/contents/made>

2.12 [P4.11] Approved Code of Practice, 'Managing and Working with Asbestos'  
<https://www.hse.gov.uk/pubns/priced/l143.pdf> (this is free to download despite the URL).

3 APPENDIX A “TERMS AND CONDITIONS OF GRANT FUNDING FOR DIOCESES AND NON-DIOCESAN VOLUNTARY AIDED SCHOOLS GROUPS IN RECEIPT OF SCHOOL CONDITION ALLOCATIONS IN FINANCIAL YEAR 2020-21”

**1.1 TERMS AND CONDITIONS OF GRANT FUNDING FOR DIOCESES AND NON-DIOCESAN VOLUNTARY AIDED SCHOOLS GROUPS IN RECEIPT OF SCHOOL CONDITION ALLOCATIONS IN FINANCIAL YEAR 2020-21**

**Introduction**

1. Payment and use of the School Condition Allocation grant shall be subject to the specific conditions and requirements relating to this grant as set out in, or referred to in, this grant conditions document.
2. Dioceses and non-diocesan voluntary aided school groups will need to comply with any further reasonable conditions and requirements relating to school condition allocations that the Secretary of State may, from time to time, specify. The Department will provide dioceses and non-diocesan voluntary aided school groups with appropriate notice of these conditions or requirements.

**Definitions**

3. In this Agreement the following terms will have the following meanings:

<b>Agreement</b>	These Terms and Conditions plus, relevant Annexes specifically labelled as constituting part of the terms and conditions, and subsequent notification of School Condition Allocation amounts.
<b>Breach</b>	A failure to comply with any terms within this Agreement.
<b>Crown Body</b>	Any department, office or executive agency of the Crown.
<b>Department</b>	The Department for Education.
<b>Financial Year</b>	Means the 12 months from 1 April to 31 March in any year.
<b>EIR</b>	The Environmental Information Regulations 2004.
<b>FOIA</b>	The Freedom of Information Act 2000.
<b>Funded Activities</b>	Individual projects at VA schools in receipt of Funding.
<b>Funding</b>	Capital grant provided by the Secretary of State through the School Condition Allocations mechanisms, for the purposes of maintaining and improving voluntary-aided schools prioritising

	keeping school buildings safe and in good working order by tackling poor building condition, building compliance, energy efficiency and health and safety issues.
<b>Funding Period</b>	The total period for which the Funding is allocated.
<b>Lead Diocese</b>	The nominated lead diocese in a diocesan grouping, who will be the recipient of Funding.
<b>Month</b>	Calendar month.
<b>Prohibited Act</b>	<p>A) Directly or indirectly offering, giving, or agreeing to give any servant of the Crown any gift or consideration of any kind as an inducement or reward for:</p> <p>(i) Doing or not doing (or for having done or not having done) any act in relation to the performance of this Agreement; and/or</p> <p>(ii) Showing or not showing favour or disfavour to any person in relation to this Agreement;</p> <p>B) Committing any offence:</p> <p>(i) Under the Bribery Act;</p> <p>(ii) Under legislation creating offences in respect of fraudulent acts; and/or</p> <p>(iii) At common law in respect of fraudulent acts in relation to this Agreement; and/or</p> <p>C) Defrauding or attempting to defraud or conspiring to defraud the Crown.</p>
<b>School Group</b>	A group of voluntary aided schools that are not connected to a diocese, and which have chosen to group together, as agreed with the Department for the purposes of receiving a single School Condition Allocation.
<b>Secretary of State</b>	Secretary of State for Education.
<b>State Aid</b>	Any advantage granted by public authorities through state resources on a selective basis to any organisations that could potentially distort competition and

	trade in the European Union (EU).
<b>The Parties</b>	The Secretary of State and the diocese(s)/non-diocesan School Group(s) signing this Agreement.
<b>Us/We/Our</b>	The Secretary of State and the Department for Education, including Our employees and those acting for us.
<b>Unspent</b>	At a particular date means Funding that has not been spent or committed by You.
<b>You/Your</b>	The body receiving the School Condition Allocation – that is the diocese or School Group.

### **Interpretations**

4. In this Agreement, unless the context otherwise requires:
- A) The singular includes the plural and vice versa
  - B) Reference to a gender includes any gender
  - C) References to a person include an individual, company, body, corporate, corporation, unincorporated association, firm, partnership or other legal entity or Crown Body
  - D) A reference to any law includes reference to that law as amended, extended, consolidated or re-enacted from time to time
  - E) The words “including”, “other”, “in particular”, “for example” and similar words will not limit the generality of the preceding words and will be construed as if they were immediately followed by the words “without limitation”
  - F) References to “writing” include typing, printing, lithography, photography, display on a screen, electronic and facsimile transmission and other modes of representing or reproducing words in a visible form, and expressions referring to writing will be construed accordingly
  - G) References to “representations” will be construed as references to present facts, to “warranties” as referenced to present and future facts and to “undertakings” as references to obligations under this Agreement
  - H) The headings in this Agreement are for ease of reference only and will not affect the interpretation or construction of this Agreement.

### **Purpose and scope of grants**

- 5. The Parties confirm that it is their intention to be bound by this Agreement. The Parties further acknowledge and agree that the Funding is not being allocated by the Department as consideration for provision of services to the Department.
- 6. The Funding must be used exclusively for capital expenditure in support of the purposes set out in Clause 10 of this Agreement. If there is any doubt about whether expenditure can be classified as capital expenditure meeting the purposes set out in Clause 10, and can therefore be funded from School Condition Allocations, You should seek local advice (e.g. from auditors). You

must put measures in place to ensure that the schools to which capital funding from the School Condition Allocations is provided are spending the Funding for capital expenditure purposes only.

7. The Funding must not be used to support activity which influences or attempts to influence Parliament, Government or political parties, or to influence the awarding or renewal of contracts or grants, or to influence legislative or regulatory action.
8. The Department makes no commitment to renewing or continuing the Funding after the term of this Agreement and will not be liable for any additional cost incurred by You either during or after the Funding Period.
9. You agree and accept that You and the VA schools under Your funding responsibility will not apply for duplicate funding in respect of any part of the Funded Activities or any related administration costs that We are funding under this Agreement. This does not prevent You or the schools from aggregating funding from different sources to fund works that couldn't be funded from the School Condition Allocation.
10. Part II of Schedule 3 to the School Standards and Framework Act 1998 provides that the governing body of a Voluntary Aided school is responsible for meeting the capital expenditure necessary for the purposes of maintaining and improving that school, with the exception of any expenditure relating to playing fields or any building or other structure erected thereon in connection with the use of playing fields (responsibility for which falls to the local authority). Governing bodies are responsible for maintaining an environment that is safe and in good working order for children to learn, and are expected to prioritise tackling poor condition, addressing building compliance issues, and dealing with health and safety and energy efficiency issues. Dioceses must play an oversight role in ensuring that governing bodies are upholding these responsibilities, and School Groups should likewise ensure any agreed prioritisation of Funding addresses these priorities.
11. The Funding is being provided to You in accordance with the Secretary of State's powers under Schedule 3.
12. The Funding is not intended to cover capital expenditure which falls outside the responsibilities set out in Schedule 3.
13. Schedule 3 limits the amount of any grant paid to 90% of the expenditure unless the Secretary of State agrees exceptional circumstances apply.
14. VA schools do not have access to a VAT refund scheme, therefore the School Condition Allocations model increases the weighted pupil allocation to reflect this. The net impact is a VA factor that uplifts School Condition Allocations by 8%.

#### **Changes to the Department's requirements**

15. We will notify You in writing of any changes to Our policies in relation to the Funding.

16. As set out in Clause 2, You will need to comply with any further reasonable requirements of which you will have been given appropriate notice.

### **General terms and conditions**

17. In the case of dioceses, the Department will make Funding available according to a payment schedule, the dates for which will be advised to You separately. In the case of grouped dioceses, Funding will be paid to the nominated Lead Diocese according to a payment schedule and Lead Dioceses will distribute such Funding to the dioceses for which they are responsible.

18. The Department will also make Funding available to the Schools Groups. In these cases, Funding will be held centrally by the Department until each Schools Group has determined how it should be prioritised on capital works. This will be communicated to the Department by the lead school within each Schools Group. Schools within a Schools Group will then apply to the Department directly to release any relevant funding agreed for by the school and its School Group. The payment will be on invoice-based claims, submitted and paid to individual schools. At no point will any school within a Schools Group hold funding on behalf of another.

19. The methodology used to calculate the grants, will be set out by the Department in a published methodology document on GOV.UK.

20. As provided in paragraph 13 above, legislation limits the Secretary of State's contribution towards the cost of capital expenditure incurred by the governing body of a voluntary aided school to 90%. Governing bodies will be expected to continue to meet the remaining 10% of costs, and so shall secure and contribute all other sources of funding identified for each project.

21. Where costs savings are secured through efficient procurement or appropriate value engineering, or where new capital priorities emerge, You will have the flexibility to vire the Funding between Funded Activities, and/or reprioritise and reprofile expenditure of the Funding over the Funding Period, provided all expenditure is appropriately accounted for at year-end, and provided the Secretary of State's contribution to an individual project does not exceed 90% of costs. Also, provided that the Funding continues to be used for capital expenditure purposes. However, any additional costs that arise through a project in excess of the quantum of the Funding will not be met by the Department and We would expect these costs to be met by re-prioritising the Funding provided or using existing reserves.

22. Towards the end of the Funding Period We will ask You to detail all the Funded Activities that have received Funding during the Funding Period, together with a categorised breakdown of the key elements of spend on each Funded Activity, how much has been spent, and what Funding - if any - You expect to profile in

the following Financial Year. We will also ask for details of any further carry-over for Funding not already committed to a specific Funded Activity which You wish to hold back for the following Financial Year.

23. Subject to any in-year virement or reprofiling of Funding, at the end of the Funding Period, any unspent funds must either be returned or must have been notified to the Department as soon as possible as being carried forward to the following Financial Year. The Department will review any carry over on a case-by-case basis and any Funding may be clawed back in the form of reduced future School Condition Allocations if any Funded Activity supported through the Funding fails to be completed and the Department has not been appropriately informed about carry-over. Transfers of Funding between dioceses will be allowed, although dioceses should be mindful of the need to continue to meet their own needs from available Funding.
24. On a sample basis We will also be carrying out further checks, drilling down into the detail of individual Funded Activities, and so may ask You or your schools for further information or supporting evidence, for example, copies of invoices, procurement documentation or completion certificates. This may include seeking information on the assurances You secured from schools about their compliance with statutory and other obligations. Such assurances may include:
- confirming and, where appropriate, demonstrating that all committed Funding has been spent on agreed Funded Activities in line with the purposes of the Funding (and in line with schools' and the dioceses' estate vision, strategy and asset management plans);
  - obtaining information to demonstrate that dioceses have an understanding of the estate and are able to formulate a plan for its maintenance through a prioritised programme of maintenance works informed by up to date and costed condition data - to enable schools to ensure buildings remain in safe, working condition;
  - confirming and, where appropriate, demonstrating that schools have policies and procedures that ensure buildings support the provision of a safe environment for children and staff, and comply with all relevant regulations, including, but not limited to, those related to health and safety (The Health and Safety at Work Act 1974), fire safety and the control and management of asbestos;
  - confirming and, where appropriate, demonstrating that there are clear, documented roles and responsibilities, processes and procedures covering: governance, budget and finance, performance management and other data related to the estate, procurement and delivery of projects, and emergency planning;
  - confirming and, where appropriate, demonstrating that sound financial and delivery governance is in place, including a robust and value for money approach to prioritising, planning, procuring and delivering Funded Activities; and

- confirming and, where appropriate, demonstrating that full records and an audit trail of decisions, procurement, project delivery and finances are kept.
25. The supply of Funding does not imply Secretary of State approval for any land transactions on publicly funded land (including acquisitions, sales, leases, etc) required to deliver, or contribute funds for, the individual Funded Activity. The relevant landowner will be required to seek such approvals separately as necessary. Equally, the governing body of an individual school to be allocated Funding is solely responsible for its compliance with its statutory obligations and is required to secure any statutory approvals required to deliver the Funded Activity. However, as the overseer of how Funding is spent, dioceses are expected to sufficiently assure themselves that governing bodies are meeting these requirements before committing any Funding.
26. Funding is not usually intended to be used for projects where the primary focus is school expansion. The only instance when it is permissible for the Funding to contribute to school expansion is if the primary rationale for the project is addressing poor condition, and expansion is a by-product. In such cases, Funding does not imply Secretary of State approval for a significant change, or approval of any business case for expansion. The diocese or governing body of the individual school will be responsible for ensuring that such approvals are secured prior to beginning the Funded Activity, but again, as the overseer of how Funding is spent, dioceses are expected to assure themselves that the governing body has taken the necessary steps before committing any Funding, and School Groups should similarly ensure amongst themselves that approvals are in place before prioritising Funding.
27. You must put in place appropriate information, monitoring and internal reporting systems to secure delivery and which ensure that the Funding is spent in line with this Agreement and with due regard for achieving value for money. You also agree to respond to all reasonable requests for information from the Department and/or its representatives on the use of the Funding.
28. You will have the ability to reprofile and reprioritise Funding during the Funding Period. However, We will not provide additional Funding above the School Condition Allocation to rectify substandard work, or to pay for the impact of late delivery or cost overruns howsoever due, relating to projects funded through the Funding.

*How the Funding can be used*

29. Subject to the expectations on the use of Funding set out in this Agreement, You may allocate Funding to projects across schools in accordance with your own priorities. In making these strategic decisions on the use of significant capital funding, You will be expected to have a clear rationale for decisions on allocations, which offers value for money and supports the purposes of School Condition Allocations. In accordance with good practice, this must include

developing a capital asset management plan for the schools you are responsible for.

30. Individual VA schools must allow for site safety and security through upholding maintenance and inspection activities, which should cover the security arrangements in place at the school. Security arrangements may vary to reflect the differing nature of sites and buildings and so schools will need to consider what is appropriate for their organisation, but such measures could include:
  - (a) Perimeter fencing and landscaping
  - (b) Security lighting
  - (c) Alarm systems
  - (d) Security surveillance systems
  - (e) Access control
  - (f) Compliance with DBS clearance requirements.
31. Whilst responsibility rests with individual schools, in making these strategic decisions on the use of significant capital funding, You will be expected to oversee compliance with the issues outlined in Clause 30, taking appropriate action to assure Yourself and prompting schools as necessary. The Department's expectation is for You to actively manage Your capital asset management plan to actively support governing bodies in these activities.
32. Individual schools must ensure that they meet their obligations to the trustees of the school, in relation to the maintenance and upkeep of the land and buildings. You are expected to assure yourself that schools have had due regard to these obligations when allocating Funding.
33. VA schools receiving Funding should ensure value for money and consider using the Department's procurement frameworks.
34. We reserve the right to request information on how You intend to allocate the Funding (or have used and/or allocated previous Funding as the case may be), before considering whether any future Funding is made available or whether any conditions need to be imposed on the payment of any future Funding.
35. We also reserve the right to change the amount of, withhold or implement alternative arrangements for access to Funding, such as payment on invoice at Our sole discretion, acting reasonably, if We have concerns regarding financial management of the Funding or if any of the following circumstances apply:
  - (a) If a diocese or Schools Group falls below the threshold for School Condition Allocations;
  - (b) If there is a change in the structure of a diocese because it merges with one or more other diocese(s) or because a single diocese splits into two or more dioceses;

- (c) You have breached any term of this Agreement;
- (d) You, or any school for which you are responsible, have provided false or incorrect statements or information in relation to any Funded Activity or fails to provide information related to the Funding reasonably requested by the Secretary of State;
- (e) In relation to any Funded Activity You have taken any actions which unfairly bring or are likely to unfairly bring the Department's name or reputation and/or the Department into disrepute. Actions include omissions in this context.

36. Before taking such action, We will consider the relevant circumstances and may take into account any representations from You or the relevant governing body.

#### *When Funding can be used*

- I. For financial year 2020-21, You may use the Funding throughout the Financial Year and may carry up to 100% of Your School Condition Allocation forward into 2021-22. We will ask for information on proposed carry over toward the end of the Funding Period and will be able to review these proposals via the end of year expenditure returns. Once You are in the second year of funding in 2021-22, We expect You to inform Us of any underspend and how You wish to carry over into future years.

#### *Other conditions*

- II. This Funding may be used alongside other sources of funding, as You deem appropriate, where this will support priorities for using the Funding and be within the purpose of the School Condition Allocation. However, You cannot carry forward more than 100% of Your allocation in a single year. This will prevent You from carrying forward Funding two years in a row.

#### **Records to be kept**

- 37. You will be expected to keep clear records which include details of Funding received and disbursed and details of all Funded Activities as a means to assure Yourself and the Department that the Funding is being spent for capital purposes. Accounting records, including original invoices, receipts, procurement records, VAT records etc. must be kept by individual schools in receipt of Funding and made available to You. All accounting records relating to Funded Activities must be kept for at least seven years.
- 38. You must make your records available at any reasonable time for inspection by officials from the Department or their representatives or by the Comptroller and Auditor General of the National Audit Office, or his representatives. You are also expected to require that schools provide relevant information when requested.

#### **Accountability and assurance**

39. You agree to respond to all reasonable requests for information from Us or Our representatives, within any reasonable period prescribed, and to supplying any documents or other information reasonably requested by Us. You likewise agree that You will use Your reasonable endeavours to procure that schools for which You are responsible for will also provide information.
40. You will be asked to fill out a mid-year return to detail all Funded Activities, including how much Funding is being used, and commentary on whether the Funded Activity would have been possible without the Funding. The Department will also ask You, through a data collection exercise, to confirm that the Funding has been used for the purposes provided and spent according to this Agreement. This collection is mandatory, and You will be required to submit Your responses by the deadlines stated in the data collection instructions.
41. If You do not comply with any of the provisions of this Agreement, the Department will take action, and in extremis, the Secretary of State may decide to withdraw future eligibility for receiving a direct School Condition Allocation and require voluntary aided schools to make bids to the Condition Improvement Fund in future years. We may also require repayment of all or any part of the Funding through reduction in future allocations.

#### **Compliance with Law and Legislation**

42. You must, ensure that in relation to Funded Activities, You have regard to and comply with, relevant and applicable laws, and Department guidelines and policies.
43. We recognise that in relation to Funded Activities, key responsibility for compliance will often sit at individual school level. However, as stated elsewhere in this Agreement, in making strategic decisions on how to manage and allocate significant capital funding, You are expected to take reasonable steps to assure yourself schools for whom You are responsible are likewise compliant or having due regard.
44. It is agreed that statutory and other constraints on the exchange of information will be fully respected, including the requirements of the Data Protection Legislation, the FOIA and EIR and the Human Rights Act 1998 and any amendments or successors to these Acts.
45. You must observe Your obligations under the EIR, FOIA and HRA, and under the common law duty of confidentiality but shall immediately comply with any lawful request by Us to share data for the purpose of preventing or detecting crime.
46. You hereby acknowledge that We are subject to requirements under the EIR and/or FOIA Where requested by Us, You will provide reasonable assistance and cooperation to Us to assist Our compliance with Our information disclosure obligations.

47. On request from Us, You will provide Us with all such relevant documents and information relating to Your data protection policies and procedures as We may reasonably require.
48. You acknowledge that We, acting in accordance with the codes of practice issued and revised from time to time under FOIA and/or EIR may disclose information concerning You and this Agreement without consulting with You.
49. We will take reasonable steps to notify You of a request for information to the extent that it is permissible and reasonably practical for Us to do so but (notwithstanding any other provision in this Agreement). We will be responsible for determining, in Our absolute discretion, acting reasonably, whether any information is exempt from disclosure in accordance with the EIR and/or FOIA.

### **Procurement Law, Subcontracting, State-aid and Value for Money**

50. Where schools seek to procure the supply of any goods, works or services from a third party in connection with this Agreement or any Funded Activities, You should take reasonable steps before allocating Funding for these goods, works, or services to assure yourself that the school is complying in all material aspects with relevant European and UK legislation.

### **Subcontracting**

51. Individual schools taking forward Funded Activities may need to engage subcontractors to undertake work. and will remain responsible for their compliance with appropriate legislation and guidance. You should however take reasonable steps in allocating Funding to assure yourselves that schools are having due regard to their responsibilities in this regard.

### **Responsibility**

52. You are (and will remain at all times) fully responsible for ensuring that Funding is allocated and spent in accordance with this Agreement and the aims and objectives of School Condition Allocations, and for providing assurance to Us on these issues.
53. You shall not carry out any activities that could be considered to be state-aided, and nor shall You pay illegal State Aid to any organisation or individual. You will take all reasonable steps to ensure that where any awards are made from the Funded Activities those awards are compatible with State Aid law including requesting such documentation as is necessary to ensure compliance with State Aid law.

### **Financial Management**

54. You must have a system of internal financial controls to safeguard against fraud and theft (which shall be developed and maintained in accordance with generally accepted accounting practices) and shall require that the internal/external

auditors report on the adequacy or otherwise of that system. Value for money need not automatically mean the cheapest price but should be justifiable in terms of the best outcome in relation to price. All cases of fraud or theft (whether proven or suspected) relating to the Funded Activities must be referred to Us.

55. You should be able to demonstrate that Your systems of financial and manpower control, management and organisation will enable You to meet the objectives of this Agreement around how Funding is allocated and spent, and the assurance of this spend back to Us.
56. You must comply with the recommendations of the Public Accounts Committee and any other expenditure controls specified by Government.
57. You must inform us immediately if You are expecting any financial difficulties or any delays, which could affect Your ability to allocate Funding as provided in this Agreement.

#### **Amendment or variation or termination of the Funding**

58. No amendment or variation to this Agreement shall be effective unless it is in writing, agreed and signed by those authorised to do so on behalf of each of the parties.
59. In the event of any Breach of this Agreement, We may serve a notice on You requiring remedial action to be taken within a specified period, to allow a remedial plan to be agreed in writing by both parties. If the Breach has not been remedied as per the remedial plan, this Agreement will be terminated with immediate effect on receipt of notice in writing.
60. In the event of a change of Government or in policy direction, this Agreement may be terminated by us, or We may reduce the scope of the Funded Activities, by giving at least 3 months' notice in writing.

#### **Termination by default**

61. We may by notice in writing to You terminate this Agreement, or reduce the scope of the Funded Activities, with immediate effect if any of the following events occur;
  - (a) You intend to use, have used in the past, or use the Funding for purposes other than those for which they have been provided and in compliance with this Agreement;
  - (b) In the reasonable opinion of the Department, You are distributing Funding in a negligent manner; in this context negligence includes but is not limited to failing to prevent or report fraud or corruption;
  - (c) You obtain duplicate funding from a third party for the Funded Activities;

- (d) You obtain funding from a third party which in Our reasonable opinion, undertakes activities that are likely to bring the reputation of the Department into disrepute
- (e) You provide Us with any materially misleading or inaccurate information
- (f) You commit or committed a Prohibited Act or fail to report a Prohibited Act to the Department as soon as You become aware of it
- (g) You cease to operate for any reason, or You pass a resolution (or any competent jurisdiction makes an order) that You be wound up or dissolved (other than for the purpose of a bona fide and solvent reconstruction or amalgamation)
- (h) You become insolvent, or are declared bankrupt or placed into receivership, administration or liquidation, or a petition is presented for Your winding up, or You enter into any arrangement or composition for the benefit of Your creditors, or You are unable to pay Your debts as they fall due
- (i) Funding is found to be unlawful State Aid
- (j) You fail to comply with any of the terms of this Agreement and fail to rectify any breach within such period set out in the remedial plan referred to in Clause 59 detailing the failure.

### **Terms of the agreement surviving termination**

62. In the event of termination of this Agreement, You agree to continue to provide information in relation to the allocation or spend of Funding, and the provisions of this Agreement as requested by the Department with regards to the Funding or Funded Activities.

### **Financial or other irregularities:**

63. You must inform Us immediately if there are any grounds for suspecting financial irregularity in the use of the Funding, explain what steps are being taken to investigate the irregularity and keep Us informed about the progress of the investigation. For these purposes “financial irregularity” includes fraud or other impropriety, mismanagement, and the use of Funding for any purpose other than those stipulated in this Agreement.

### **Prevention of Fraud**

64. The Department places the utmost importance on the need to prevent Fraud and irregularity in the delivery of this Agreement. You,

- a) Have an established system that enables You, to report inappropriate behaviour by colleagues in respect of contract performance claims;

- b) Ensure that Your performance management systems do not encourage individual staff to make false claims regarding achievement of agreement performance targets;
  - c) Ensure that an audit system is implemented to provide periodic checks, as a minimum at six (6) Monthly intervals, to ensure effective and accurate recording and reporting.
65. You shall use Your best endeavours to safeguard the Funding against fraud generally and, in particular fraud on behalf of Your directors, employees, or partners. You shall pay the utmost regard to safeguarding public Funding against misleading claims for payment and shall notify Us immediately if it has reason to suspect that any irregularity or fraud has occurred or is occurring.