

## Appendix – Scope of Work

### What you do

### What we do

#### 1. Registration and Application

Each School joining the Multi Academy Trust will need to register their interest in becoming an Academy online with the DfE through the Academies section of their website and subsequently will need to submit a formal application for conversion to Academy status with the Secretary of State.

The DfE will appoint a Project Lead who will work with you through the process.

We are happy to review application forms and answer any queries, particularly in relation to the consent of any trustees, land holdings and the impact of any PFI/BSF arrangements.

We will liaise with the Project Lead to ensure they are kept informed and to explain to them yours and any trustees' requirements.

#### 2. Resolution by Governing Body

Each Governing Body will need to pass a resolution at a full meeting to make a formal application to the Secretary of State for conversion to Academy status.

We are happy to attend Governing Body meetings to explain the process for applying and the implications of becoming an Academy. We will provide you with a draft form of resolution, if required.

#### 3. Required Consents

The Academies Act 2010 sets out those bodies whose consent must be obtained before conversion.

The consent of any trustees will be needed.

We will advise on whether any consents are required and how these should be obtained to satisfy legal requirements as well as the Department's preferences. We are familiar with the common conditions attached to consent involving land and governance arrangements. Our fixed fee includes advising any trustees in issuing their consent where instructed.

#### 4. Consultation under the Transfer of Undertakings (Protection of Employment) Regulations (TUPE)

A process of converting to Academy status inevitably involves the transfer of employment of all staff at the School from either the local authority or the Governing Body to the new Academy Trust Company and therefore the employment law requirements of TUPE must be

We will advise on the legal implications of TUPE, with particular regard to pension rights.

We will draft initial letters to be sent to staff where the Governing Body is the employer and to the Local Authority where they are the

complied with.

employer.

We will advise on implications where "measures" are contemplated. We will prepare election materials where elected representatives for staff are required. We will draft letters to staff after the consultation period has ended and in anticipation of the transfer date.

Our fixed fee does not include any review of staff contracts; advising on representations made at consultation meetings; advising on issues that arise from discussions with staff representatives; advising on convening a second or subsequent hearing; advising on issues raised by the local authority following consultation meetings and in relation to data transfer regarding employees. We will quote separately for this work applying the rates set out above.

## **5. Discussions with other stake holders**

There is a legal obligation to consult with the local community, which would include parents, students and other community bodies, although this is not anticipated to amount to a full statutory consultation.

We will be happy to provide advice as to appropriate consultation including the DfE's requirements, but would expect that for the most part schools will have a good feel for this themselves.

## **6. Establishing the Academy Trust**

The legal body which will run each of the academies, employ all staff and hold some form of interest in each of the School sites is the Academy Trust Company and specifically a Multi Academy Trust Company where this option is adopted. This must be a company limited by guarantee which, by virtue of the Academies Act, will have exempt charitable status. The constitutional documentation for a company limited by guarantee is a Memorandum and Articles of Association. The company has members who are, in effect, guardians of the constitution. We would expect any Trustees of the School (s) to be involved in these discussions.

The Articles will set out the composition of the Board of Directors which will have strategic control and ultimate responsibility for the operational control of the Academies. The Directors of the company will also be charity trustees. Local Governing Bodies or Advisory Boards can be established to run each Academy.

We will advise on governance structures.

We will establish the company or companies as appropriate and ensure appropriate documentation is lodged with Companies House and the Department for Education.

We will advise on the duties and rights of members, directors and governors.

We will draft and advise on the Memorandum and Articles of Association. We will liaise with the DfE Project Lead to get these agreed by the Department. We will also develop and advise on the use of a Scheme of Delegation.

## **7. Transfer of land**

The current requirement of the DfE is that the Academy Trust Company has guaranteed security of tenure over the land of the new Academy, which will either be a freehold interest (if owned by the governing body) or a lease for 125 years granted by the local authority (where appropriate). Any land held by Trustees will continue to be held by them.

Whilst there is a model lease which the DfE has approved, inevitably local circumstances have to be taken into account in the drafting of the lease.

We can advise on any direction or transfer scheme to be put in place by the Secretary of State where lease negotiations with the Local Authority stall.

There may also be a Church Supplemental Agreement if relevant to the School's land's arrangements.

We will advise on land arrangements, including the requirements of the local authority and any Trustees.

Where a lease or transfer is taking place, we will undertake site due diligence, including a review of title and an assessment of any third party interests. We will draft the lease or transfer and seek to agree it with the LA and will then subsequently arrange for such lease or transfer to be registered at the Land Registry. We will complete any necessary stamp duty form.

We will also provide the required Land Questionnaire to the Department, together with any draft SoS direction.

We have also successfully argued with the Department for the freehold transfer of any land held by the Governing Body to the Academy Trust Company.

Any land held by any Trustees will be reported on but not transferred. A Church Supplemental Agreement would be entered into and we would advise on this and agree an appropriate form with the DfE (based on any nationally agreed documents).

We will also advise on the implications of any complex arrangements for managed sports facilities and community centres including pre-schools and children's centres. Whilst the fixed fee covers advice, it does not cover drafting and/or negotiating these agreements, which the DfE usually insist are in place before conversion. We will quote separately for this work if applicable.

## **8. Funding Agreement**

A Master Funding Agreement is entered into between the Secretary of State and the Academy Trust Company. In consideration of the Academy Trust Company agreeing to run the academies as independent schools, the Secretary of State agrees to fund the Company. The Agreement includes a number of conditions imposed by the Secretary of State and deals in particular with the termination provisions or intervention. Funding per Academy is reflected in a Supplemental Funding Agreement for each Academy.

We will draft the Master and Supplemental Funding Agreements using the standard forms provided by the Department. We will liaise with the Department on it in order to get their approval to them. We will advise on the rights and obligations of the Academy Trust Company in the Funding Agreements.

## **9. Implications for Contracts**

The change of status from the maintained school to an independent school may have consequences for existing contracts, including PFI arrangements, and these will need to be considered carefully to ensure that there are no adverse consequences.

We will advise generally on the impact of such agreements. Because the extent of these are not likely to be known at this stage, our basic fixed fee does not include any review of such agreements or any documents that might need to be entered into as a consequence of the conversion, in particular any PFI or BSF contracts. We will quote separately for this work applying the rates set out below.

We will advise on and negotiate the Commercial Transfer Agreement for each School, which may or may not involve the Local Authority.

## **10. Other registrations**

At the point of which the Academy is established, it will need to be registered as an independent school with the DfE, Teachers Pensions, the LGPS and HMRC. A number of other third parties will need to be informed, most particularly insurers and bankers. Registration with HMRC for VAT purposes needs to be considered.

We will advise generally on this, but do not expect any significant work to be done in relation to this.