



Department
for Education

Academy and free school: master funding agreement

July 2014

Schedule 4
Amended Master Funding Agreement



Academy and free
school master
funding agreement

July 2014

Contents

SUMMARY SHEET	4
1. INTRODUCTION	5
Definitions of types of Academies:.....	5
Other defined terms:	6
General Obligations of the Academy Trust	9
Governance	12
2. RUNNING OF THE ACADEMIES.....	13
Length of school day and year	13
Teachers and staff.....	13
School meals.....	15
Pupil Premium.....	15
Charging	16
Exclusions.....	17
Curriculum	17
Assessment.....	18
3. GRANT FUNDING	21
Recurrent Expenditure Grants.....	21
Capital Grant.....	21
General Annual Grant (GAG)	23
Earmarked Annual Grant (EAG)	25
Arrangements for paying GAG and EAG.....	26
Other relevant funding	27
4. FINANCIAL AND ACCOUNTING REQUIREMENTS	27
General	27
Application of the Academies Financial Handbook.....	28
Budgeting for funds	29
Carrying forward of funds.....	30
Annual accounts and audit.....	30
Keeping financial records.....	31
Access to financial records	31
Acquiring and disposing of Publicly Funded Assets	32
Retention of proceeds from the disposal of capital assets	32

Transactions outside the usual planned range33

Borrowing.....33

5. COMPLAINTS.....33

6. TERMINATION35

Termination by either party35

Change of Control of the Academy Trust38

7. OTHER CONTRACTUAL ARRANGEMENTS.....38

Information.....38

Access by the Secretary of State's Officers38

Notices39

Contractual41

SUMMARY SHEET

Information about the Academy Trust:

Name of Academy Trust	CIDARI EDUCATION LIMITED
Address	Church House, Cathedral Close, Blackburn, Lancashire, BB1 5AA
Company Number	8822760
Contact details for the Chair of Charity Trustees	Church House, Cathedral Close, Blackburn, Lancashire, BB1 5AA

Please confirm whether additional clauses have been included (e.g. PFI clauses)

Descriptor	Clause No.	Applied	Not used

1. INTRODUCTION

Introduction and definitions

- 1.1 This Agreement is between the Secretary of State for Education (the “**Secretary of State**”) and Cidari Education Limited (the “**Academy Trust**”), and is an academy agreement as defined by section 1 of the Academies Act 2010.
- 1.2 The Academy Trust is a company limited by guarantee incorporated in England and Wales with company number 8822760. The Academy Trust is a charity and its directors are the Charity Trustees of the Academy Trust.
- 1.3 In order for the Academy Trust to establish and run a number of Academies in England, according to the provisions of the Academies Act 2010, and in order for the Secretary of State to make payments to the Academy Trust, the Academy Trust must meet the requirements in this Agreement and in each **Supplemental Agreement** that has been entered into by the Academy Trust and the Secretary of State in respect of each Academy.
- 1.4 In this Agreement, and (except as expressly provided otherwise) in each Supplemental Agreement, the capitalised words and expressions listed below will have the following meanings:-

Definitions of types of Academies:

An “**Academy**” is a school or educational institution established and run in accordance with the Academies Act 2010, and where this Agreement refers collectively to “**Academies**” run by the Academy Trust, this may include any of the following types of school or educational institution:

A “**Free School**” means an Academy which is a new educational institution within the meaning of section 9(1)(a) of the Academies Act 2010.

A “**Mainstream Academy**” means an Academy or a Free School which meets the requirements set out in section 1A(1) of the Academies Act 2010.

An “**Alternative Provision Academy**” means an Academy or a Free School which meets the requirements set out in section 1C(1) of the Academies Act 2010.

A “**Special Academy**” means an Academy or a Free School which meets the criteria set out in section 1A(2) of the Academies Act 2010.

A “**Sponsored Academy**” will be (unless otherwise stated) a Mainstream Academy which is established pursuant to an Academy Order under section 4 of the Academies Act 2010, which will be designated as a Sponsored Academy within the Supplemental Agreement applicable to that Academy, and as such certain conditions may apply to it.

“**Studio School**” means a type of Free School, principally for pupils and students aged between 14 and 19, which places an emphasis on such pupils and students obtaining employability skills through project-based learning.

“**University Technical College**” means a type of Free School, principally for pupils and students aged between 14 and 19, which provides technical education with the emphasis on a particular industry or scientific sector.

A “**16-19 Academy**” means an Academy or a Free School which meets the requirements set out in section 1B(1) of the Academies Act 2010.

Other defined terms:

“**16-19 Funding Guidance**” means the guidance published by the EFA and amended from time to time, on behalf of the Secretary of State.

“**Academies Financial Handbook**” means the document with that title published by the EFA and amended from time to time, on behalf of the Secretary of State.

“**Academy Financial Year**” means the year from 1 September to 31 August, or a different period notified in writing by the Secretary of State.

“**Articles**” means the Academy Trust’s articles of association.

“**Charity Trustees**” means the directors of the Academy Trust who are responsible for the general control and management of the administration of the Academy Trust.

“Chief Inspector” means Her Majesty’s Chief Inspector of Education, Children’s Services and Skills.

“Commissioner” means LAs and/or schools referring pupils to an Alternative Provision Academy for admission under the legal powers set out in the relevant Supplemental Agreement.

“Control” means the power of an organisation or individual (‘A’) to ensure that the affairs of a another organisation are conducted in accordance with A’s wishes, whether through share ownership or voting power, by agreement, because of powers conferred by articles of association or any other document, or otherwise; and **“Controls”** will be construed accordingly.

“DfE” means the Department for Education.

“EFA” means the Education Funding Agency.

“Guidance” means guidance issued by or on behalf of the Secretary of State, as amended from time to time.

“Independent School Standards” means the independent school standards prescribed under section 157 of the Education Act 2002.

“LA” means a local authority.

“Local Governing Body” means the committee (if any) established by the Academy Trust in relation to an Academy or Academies, within the Academy Trust, in accordance with the Articles.

“Parents” means parents or guardians.

“Predecessor School” means the school which the Academy in question replaced, where applicable.

“Publicly Funded Assets” means (a) assets or property funded wholly or partly using payments made by or on behalf of the Secretary of State, and (b) publicly funded land as defined in paragraph 22(3) of Schedule 1 to the Academies Act 2010.

“Pupil Premium” means an amount equivalent to the pupil premium as defined in the School and Early Years Finance (England) Regulations 2013

“Pupil Referral Unit” means any school established in England and maintained by a LA which is specially organised to provide education for children falling within section 19(1) of the Education Act 1996.

Any reference to **“Secretary of State”** includes a reference to the EFA acting on the Secretary of State’s behalf.

“Secretary of State’s consent” means the Secretary of State’s specific, prior written consent, which will not be unreasonably withheld or delayed.

“SEN” means Special Educational Needs and the expressions **“special educational needs”** and **“special educational provision”** have the meaning set out in section 312 of the Education Act 1996.

“Start-up Period” has the meaning as defined in the relevant Supplemental Agreement.

“Supplemental Agreement” means an agreement supplemental to this Agreement for any Academy which the Academy Trust agrees to establish and maintain and the Secretary of State agrees to fund, which is substantially in the form of the supplemental funding agreement entered into by both parties at the time that this Agreement is signed.

“Teaching Staff” means teachers and the principal or head teacher employed at the Academy.

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

1.5 The Interpretation Act 1978 applies to this Agreement as it applies to an Act of Parliament.

1.6 A reference in this Agreement to any party or body includes its successors.

- 1.7 Any words following the terms 'include', 'including' or 'in particular' are by way of illustration, not limitation.
- 1.8 A reference in this Agreement to land includes any buildings or structures on the land.
- 1.9 A reference in this Agreement to pupils includes students at a 16-19 Academy.
- 1.10 Where any legislation, legal requirement or published guidance is referred to, unless otherwise stated, the following terms should be interpreted as follows:
- a) "school" refers to the relevant Mainstream Academy, Alternative Provision Academy, Special Academy or Studio School, and "educational institution" refers, where the context so admits, to a 16-19 Academy;
 - b) the "head teacher" may refer to the Academy's head teacher or principal;
 - c) references to the "governing body" or "responsible authorities" will be taken to refer to the Academy Trust; and
 - d) references to registered pupils will be treated as references to registered pupils at the Academy.
- 1.11 References in this Agreement or any Supplemental Agreement to any named legislation, legal requirement or published guidance should be taken to include any amendment to or replacement of it.
- 1.12 If any questions arise about how this Agreement should be interpreted, the answer will be decided by the Secretary of State, after discussion with the Academy Trust.

General Obligations of the Academy Trust

- 1.13 In order for the Academy Trust to establish and run independent schools and/or educational institutions in England, according to the terms of the

C:\USERS\RHR\APPDATA\LOCAL\MICROSOFT\WINDOWS\TEMPORARY INTERNET FILES\CONTENT.OUTLOOK\97UX3FP1\MASTER FUNDING AGR-V2 (2).DOCX

Academies Act 2010, and in order for the Secretary of State to make payments to the Academy Trust, the Academy Trust must meet the conditions and requirements set out in this Agreement, and in each Supplemental Agreement for an Academy for which payments are claimed. In particular, the Academy Trust must ensure the Academies it runs meet the applicable requirements as follows:

- a) for **Mainstream Academies**, those specified in Section 1A of the Academies Act 2010;
- b) for **Alternative Provision Academies**, those specified in Section 1C of the Academies Act 2010;
- c) for **16-19 Academies**, those specified in Section 1B of the Academies Act 2010;
- d) for **Special Academies**, those specified in section 1A(2) of the Academies Act 2010, and:
 - i. the Academy Trust must ensure special educational provision is made at each of the Special Academies for one or more categories of SEN. These categories may include, but are not limited to: Specific Learning Difficulties, Moderate Learning Difficulties, Severe Learning Difficulties, Profound and Multiple Learning Difficulties, Behaviour Emotional Social and Development Needs, Speech Language and Communication Needs, Autistic Spectrum Disorder, Visual Impairment, Hearing Impairment, Multi-Sensory Impairment, Physical Disability;
 - ii. the Academy Trust may not refuse to admit a child whose statement of SEN names one of the Special Academies on the sole basis that some, or all, of the child's SEN do not feature in the categories referred to in clause 1.13(d)(i) of this agreement.
 - iii. the Academy Trust must comply with all of the obligations imposed upon special academies by legislation, and with the

obligations imposed upon the governing bodies of maintained special schools in Chapter 1 of Part 4 of the Education Act 1996.

- iv. the Academy Trust must ensure that each Special Academy's website includes details of the arrangements for the admission of disabled pupils; the steps taken to prevent disabled pupils from being treated less favourably than other pupils; the facilities provided to assist access to the Academy by disabled pupils; and the plan prepared by the Academy Trust under paragraph 3 of Schedule 10 to the Equality Act 2010. Disabled pupils in this paragraph mean pupils who are disabled for the purposes of the Equality Act 2010.

1.14 To the extent that it is compatible with the Academy Trust fulfilling its charitable purpose of advancing education in the United Kingdom for the public benefit, the Academy Trust must ensure that each of its Academies is at the heart of its community, promoting community cohesion and sharing facilities with other schools and/or other educational institutions and the wider community.

1.15 The Academy Trust must conduct its Academies within the terms and requirements of:

- a) the Articles;
- b) any legislation or legal requirement that applies to academies, including the Independent School Standards and legislation about meeting the needs of pupils with SEN and disabilities;
- c) the Academies Financial Handbook, as stated in clauses 4.6 to 4.8; and
- d) this Agreement, and any and all Supplemental Agreements.

- 1.16 The Academy Trust must, as soon as is reasonable, establish an appropriate mechanism for the receipt and management of donations for the purpose of its aims as specified in the Articles.
- 1.17 The Academy Trust must obtain the Secretary of State's consent before applying to have an Academy designated as a school with religious character. The Secretary of State may at his discretion refuse or consent to the Academy Trust making such an application.
- 1.18 Unless the Academy Trust is designated as a school with a religious character under the Religious Character of Schools (Designation Procedure) (Independent Schools) (England) Regulations 2003, it agrees to be bound by the prohibition against discrimination in section 85 of the Equality Act 2010.
- 1.19 The Academy Trust is not required to publish information under this Agreement, or any Supplemental Agreement, if to do so would breach its obligations under the Data Protection Act 1998.
- 1.20 The Academy Trust must ensure that its Academies meet the needs of individual pupils, including pupils with SEN and disabilities.

Governance

- 1.21 The Academy Trust will be governed by a board comprising the Charity Trustees of the Academy Trust (the "**Board of Charity Trustees**").
- 1.22 The Board of Charity Trustees must have regard to any Guidance on the governance of academy trusts.
- 1.23 The Academy Trust must ensure that it engages with the relevant Local Governing Body (if any) or representatives of each Academy, and that arrangements are in place for matters relating to the functioning of each Academy to be brought to the attention of the Charity Trustees of the Academy Trust.
- 1.24 The Academy Trust must provide to the Secretary of State the names of all new or replacement members of the Academy Trust, 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.

- 1.25 The Academy Trust must not appoint any new or replacement members until it has first informed them, and they have agreed, that their names will be shared with the Secretary of State to enable him to assess their suitability.
- 1.26 If the Academy Trust establishes and maintains a Free School, it must, in addition to its obligations under clauses 1.24 and 1.25:
- a) provide to the Secretary of State the names of all new or replacement Charity Trustees of the Academy Trust, stating whether they have been appointed or elected, the date of their appointment or election and, where applicable, the name of the Charity Trustees they replaced as soon as is practicable and in any event within 14 days of their appointment or election; and
 - b) not appoint or elect any new or replacement Charity Trustees until it has first informed them, and they have agreed, that their names will be shared with the Secretary of State to enable him to assess their suitability.

2. RUNNING OF THE ACADEMIES

Length of school day and year

- 2.1 The length of the school day and year will be the responsibility of the Academy Trust and for the purpose of this paragraph "school" also means a **16 to 19 Academy**.

Teachers and staff

- 2.2 In complying with the Independent School Standards, the Academy Trust must require enhanced Disclosure and Barring Service ("DBS") certificates as appropriate for members of staff, supply staff, members of the Academy Trust, individual Charity Trustees and the chair of the Board of Charity Trustees.

- 2.3 The Academy Trust must promptly submit to the Secretary of State, on request, the information contained in any enhanced DBS certificate that it receives.
- 2.4 The Academy Trust must, where applicable, in respect of each of its Academies designate a member of staff at each Academy responsible for promoting the educational achievement of pupils at the Academy who are being looked after by an LA, and in doing so must comply with the law, regulations and guidance that apply to maintained schools.
- 2.5 Teachers' pay and conditions of service at the Academies are the responsibility of the Academy Trust.
- 2.6 The Academy Trust must ensure that all teachers employed in each Academy have access to the Teachers' Pension Scheme and, in so doing, must comply with the requirements of the scheme and with Fair Deal for staff pensions guidance published by HM Treasury.
- 2.7 The Academy Trust must, in accordance with the Local Government Pension Scheme (Administration) Regulations 2008 and with Fair Deal for staff pensions guidance published by HM Treasury, ensure that all affected staff employed by the Academy Trust other than teachers have access to the Local Government Pension Scheme, unless an individual expressly chooses to opt out of the Scheme in accordance with the regulations.
- 2.8 Where a member of the Teaching Staff employed at an Academy applies for a teaching post at another academy, a maintained school or a further education institution, the Academy Trust must at the request of the board of governors or academy trust of that other educational institution:
- a) advise in writing whether or not, in the previous two years, there has been any formal capability considerations or proceedings for that teacher at the Academy or the Predecessor School;

- b) give written details of the concerns which gave rise to any such consideration of that teacher's capability, the duration of the proceedings and their outcome.

School meals

- 2.9 Subject to clause 2.12, the Academy Trust must provide school lunches and free school lunches in accordance with the provisions of sections 512(3) and 512ZB(1) of the Education Act 1996 as if references in sections 512 and 512ZB to a local authority were to the Academy Trust and as if references to a school maintained by a local authority were to any of its Academies.
- 2.10 The Academy Trust must comply with school food standards legislation as if its Academies were maintained schools.
- 2.11 Where the Academy Trust provides milk to pupils, it must be provided free of charge to pupils who would be eligible for free milk if they were pupils at a maintained school.
- 2.12 Clauses 2.9 to 2.11 do not apply to 16-19 Academies. For **16-19 Academies**, the Academy Trust must comply with any Guidance in relation to free meals in the further education sector, as far as it applies to those Academies.

Pupil Premium

- 2.13 For all of its Academies eligible for Pupil Premium, and for each Financial Year, the Academy Trust must publish, on the Academy's website, , information about:
- a) the amount of Pupil Premium allocation that it will receive during the Academy Financial Year;
 - b) what it intends to spend the Pupil Premium allocation on;
 - c) what it spent its Pupil Premium allocation on in the previous Academy Financial Year;

- d) the impact of the previous year's Pupil Premium allocation on educational attainment.

2.14 For all of its Academies eligible for Year 7 literacy and numeracy catch-up premium funding, and for each Academy Financial Year, the Academy Trust must publish, on the Academy's website, information about:

- a) the amount of Year 7 literacy and numeracy catch-up premium grant that it will receive during the Academy Financial Year;
- b) what it intends to spend its Year 7 literacy and numeracy catch-up premium grant on;
- c) what it spent its Year 7 literacy and numeracy catch-up premium grant on in the previous Academy Financial Year;
- d) the impact of the previous year's Year 7 literacy and numeracy catch-up premium grant on educational attainment, and how that effect was assessed.

Charging

2.15 For all its Academies except 16 to 19 Academies, the Academy Trust must comply with sections 402, 450-457 and 459-462 of the Education Act 1996 with regard to public examinations, charging, providing information, inviting voluntary contributions and recovering civil debts, as if its Academies were maintained schools.

2.16 There must be no charge for admission to or attendance at any of the Academies, and the Academies will only charge pupils where the law allows maintained schools to charge.

2.17 Clause 2.16 does not prevent the Academy Trust receiving funds from an LA or a charity in respect of the admission and attendance of a pupil with SEN to an Academy.

2.18 Notwithstanding clause 2.16, the Academy Trust may charge people who are not registered pupils at one of its Academies for education or use of facilities.

- 2.19 Where an Academy provides a pupil with board and lodging, the Academy Trust must not charge the parent of that pupil more than the cost to the Academy Trust of providing the board and lodging, except as required by the Fees, Charges and Levies guidance in HM Treasury's publication 'Managing Public Money'.

Exclusions

- 2.20 In respect of **Mainstream Academies, and Special Academies which admit pupils without statements of SEN and Studio Schools**, the Academy Trust must, if asked to by an LA, enter into an agreement which has the effect that where:

- a) the Academy admits a pupil who has been permanently excluded from a maintained school, the Academy itself or another academy with whom the LA has a similar agreement; or
- b) the Academy Trust permanently excludes a pupil from the Academy, the arrangements for payment will be the same as if the Academy were a maintained school, under Regulations made under section 47 of the Schools Standards and Framework Act 1998.

Curriculum

- 2.21 The curriculum is the responsibility of the Academy Trust.
- 2.22 The Academy Trust must ensure that the curriculum provided in each Academy to pupils up to the age of 16 is balanced and broadly based. In respect of **Mainstream** and **Special Academies**, the Academy Trust must ensure that the curriculum includes English, mathematics and science. In respect of **Alternative Provision Academies** the Academy Trust must ensure that the curriculum includes English and mathematics.
- 2.23 The Academy Trust must publish information in relation to the current curriculum provision at each Academy on that Academy's website, including:
- a. the content of the curriculum;

- b. its approach to the curriculum;
- c. if applicable, the GCSE options and other Key Stage 4 qualifications offered by each Academy and, if applicable, any other qualifications offered by each Academy;
- d. the names of any phonics or reading schemes in operation for Key Stage 1 if applicable; and
- e. how parents (including parents of prospective pupils) and Commissioners (if applicable) can obtain further information about that Academy's curriculum.

2.24 The Academy Trust must not allow any view or theory to be taught as evidence-based if it is contrary to established scientific or historical evidence and explanations. This clause applies to all subjects taught at an Academy.

2.25 The Academy Trust must provide for the teaching of evolution as a comprehensive, coherent and extensively evidenced theory. In respect of any **Alternative Provision Academies** and **16-19 Academies**, the Academy Trust must do this where relevant to the curriculum.

2.26 The Academy Trust must ensure that principles are promoted which support fundamental British values, of: respect for the basis on which the law is made and applied in England; respect for democracy and support for participation in the democratic processes; support for equality of opportunity for all; support and respect for the liberties of all within the law; and respect for and tolerance of different faiths and religious and other beliefs.

2.27 The Academy Trust must ensure that careers guidance is provided at each of its Academies, in accordance with the requirements on maintained schools in the Education Act 1997.

Assessment

2.28 The Academy Trust must:

- a) ensure that pupils and students at each of its Academies are entered for examinations, in line with the requirements on maintained schools in section 402 of the Education Act 1996;
- b) comply with the relevant Guidance, as it applies to maintained schools, in respect of each **Mainstream Academy**, each **Special Academy** and each **Studio School** to ensure that pupils take part in assessments, and in teacher assessments of pupils' performance; and must do so for each **Alternative Provision Academy** unless there are exceptional reasons to do otherwise;
- c) ensure that students at each **16 to 19 Academy** take part in assessments of students' performance appropriate to the qualifications offered;
- d) report on assessments as the Secretary of State requires, or provide any information on assessments, on the same basis that maintained schools are required to provide the information;
- e) for all Key Stages, allow monitoring and moderation of the Academy's assessment arrangements as required by the Secretary of State.

2.29 Unless specifically approved in writing by the Secretary of State, the Academy Trust must not use GAG to offer any course of education or training which leads to a qualification, if that qualification is not approved by the Secretary of State for the purpose of section 96 of the Learning and Skills Act 2000.

2.30 Unless informed by the Secretary of State that alternative information must be published, the Academy Trust must ensure that the following information is published on the relevant Academy's website for each **Mainstream Academy**, for each **Alternative Provision Academy**, and where relevant for each **Special Academy**, and in respect of sub-paragraph b) where relevant for each **Studio School**:

- a) if applicable, the Academy's most recent Key Stage 2 results as published by the Secretary of State in the School Performance Tables:

- 5.D The Secretary of State will consider any representations from the Academy Trust which he receives by the date specified in the Termination Warning Notice. The Secretary of State may amend the Termination Warning Notice to specify further action which the Academy Trust must take, and the date by which it must be completed.
- 5.E If the Secretary of State considers that the Academy Trust has not responded to the Termination Warning Notice as specified under clause 5.C(c), or has not completed the action required in the Termination Warning Notice as specified under clauses 5.C(a) and (b) (and any further action specified under clause 5.D) he may serve a Termination Notice.

Termination by the Secretary of State after inspection

- 5.F If the Chief Inspector gives notice to the Academy Trust that:
- a) special measures are required to be taken in relation to the Academy;
or
 - b) the Academy requires significant improvement
- the Secretary of State may serve a Termination Warning Notice, specifying the date by which the Academy Trust must make any representations.
- 5.G In deciding whether to give notice of his intention to terminate under clause 5.F, the Secretary of State will have due regard to the overall performance of the Academy Trust.
- 5.H If the Secretary of State has served a Termination Warning Notice under clause 5.F and:
- a) has not received any representations from the Academy Trust by the date specified in the notice; or
 - b) having considered the representations made by the Academy Trust remains satisfied that this Agreement should be terminated;
- he may serve a Termination Notice.

5.I Not Used.

Termination by the Secretary of State

5.J If the Secretary of State has determined that the Academy will be removed from the Register of Independent Schools and no appeal against that determination is pending, he may serve a Termination Notice.

5.K Not used.

5.L Not used.

5.M Not used.

5.N Not used.

5.O Not used.

Funding and admission during notice period

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

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

Notice of intention to terminate by Academy Trust

5.R The Secretary of State will, before the start of each Academy Financial Year, provide the Academy Trust with a final funding allocation indicating the level of GAG and EAG to be provided in the next Academy Financial Year (the **"Funding Allocation"**).

- 5.S If the Academy Trust is of the opinion that, after receipt of the Funding Allocation for the next Academy Financial Year (the "**Critical Year**") and after taking into account all other resources likely to be available to the Academy, including other funds that are likely to be available to the Academy from other academies operated by the Academy Trust ("**All Other Resources**"), it is likely that the cost of running the Academy during the Critical Year would cause the Academy Trust to become insolvent (and for this reason only) then the Academy Trust may give written notice of its intention to terminate this Agreement at the end of the then current Academy Financial Year.
- 5.T Any notice given by the Academy Trust under clause 5.S must be provided to the Secretary of State within six weeks of the Secretary of State issuing the Funding Allocation. The notice given by the Academy Trust under clause 5.S must specify:
- a) the grounds upon which the Academy Trust's opinion is based, including:
 - i. evidence of those grounds;
 - ii. any professional accounting advice the Academy Trust has received;
 - iii. a detailed statement of steps which the Academy Trust proposes to take to ensure that the running costs of the Academy are reduced such that costs are less than the Funding Allocation and All Other Resources, and the period of time within which such steps will be taken; and
 - b) the shortfall in the Critical Year between the Funding Allocation and All Other Resources expected to be available to the Academy Trust to run the Academy and the projected expenditure on the Academy; and
 - c) a detailed budget of income and expenditure for the Academy during the Critical Year (the "**Projected Budget**").

- 5.U Both parties will use their best endeavours to agree whether or not the cost of running the Academy during the Critical Year would cause the Academy Trust to become insolvent. Both parties recognise that they will need to engage in a constructive dialogue at the time about how best to provide education for the pupils at the Academy and use their best endeavours to agree a practical solution to the problem.
- 5.V If no agreement is reached by 30 April (or another date if agreed between the parties) as to whether the cost of running the Academy during the Critical Year would cause the Academy Trust to become insolvent, then that question will be referred to an independent expert (the "**Expert**") for resolution. The Expert's determination will be final and binding on both parties. The Expert will be requested to specify in his determination the amount of the shortfall in funding (the "**Shortfall**").
- 5.W The Expert will be an insolvency practitioner with significant professional experience of educational institutions or academies. If the parties fail to agree upon the appointment of the Expert then the Expert will be appointed by the President of the Institute of Chartered Accountants in England and Wales. The Expert's fees will be borne equally between the parties.
- 5.X The Expert will be required in reaching his determination to take account of advice from an educational specialist who is professionally familiar with the issues arising from the budget management of schools. If the parties fail to agree upon the appointment of the educational specialist then the educational specialist will be appointed by the Chairman of the Specialist Schools and Academies Trust (or any successor or equivalent body). The educational specialist's fees will be borne equally between the parties.
- 5.Y If the Expert determines that the cost of running the Academy during the Critical Year would cause the Academy Trust to become insolvent, and the Secretary of State will not have agreed to provide sufficient additional funding to cover the Shortfall, then the Academy Trust will be entitled to terminate this Agreement, by notice expiring on 31 August before to the Critical Year. Any such notice will be given within 21 days after (a) the Expert's determination

will have been given to the parties or (b), if later, the Secretary of State will have given written notice of his refusal to provide sufficient additional funding for the Academy to cover the Shortfall.

Effect of termination

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

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

5.EE The Secretary of State may:

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

6. OTHER CONTRACTUAL ARRANGEMENTS

Annexes

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

The Master Agreement

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

General

6.C The Academy Trust cannot assign this Agreement.

6.D Failure to exercise, or a delay in exercising, any right or remedy of the Secretary of State under this Agreement (including the right to terminate this Agreement), or a single or partial exercise of such a right or remedy, is not a

waiver of, and does not prevent or restrict any initial or further exercise of, that or any other right or remedy.

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

This Agreement was executed as a Deed on

2014

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



and



Director

Director

The Corporate Seal of

THE SECRETARY OF STATE FOR EDUCATION

affixed to this deed is authenticated by:

.....

Duly Authorised

ANNEXES

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

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

7.A Clause 2.A does not apply to anyone whom the Academy Trust appoints as the Special Educational Needs Co-ordinator under section 317(3A) of the Education Act 1996, who must instead meet the requirements in Regulation 3 of the Education (Special Educational Needs Co-ordinators) (England) Regulations 2008 .

7.B The Academy Trust must comply with all the duties imposed on maintained schools, with regard to pupils with SEN and disabilities, in:

- a) Part 4 of the Education Act 1996;
- b) The Education (Special Educational Needs) (Information) Regulations 1999;
- c) The Education (Special Educational Needs Co-ordinators) (England) (Amendment) Regulations 2008.

7.C Where a child who has SEN is being educated in an Academy run by the Academy Trust, those concerned with making special educational provision for the child must secure that the child engages in the activities of the school together with children who do not have SEN, as far as is reasonably practicable and is compatible with:

- a) the child receiving the special educational provision which his learning difficulty calls for;
- b) the provision of efficient education for the children with whom he will be educated; and
- c) the efficient use of resources.

- 7.D The Academy Trust must ensure that its Academies' websites include details of the implementation of their policies for pupils with SEN; the arrangements for the admission of disabled pupils; the steps taken to prevent disabled pupils from being treated less favourably than other pupils; and the facilities provided to assist access to that Academy by disabled pupils (disability as being defined for the purposes of the Equality Act 2010).

8. ADMISSION OF PUPILS WITH SEN AND DISABILITIES

- 8.A The Academy Trust must for each of its Academies, subject to its right of appeal to the Secretary of State, admit all pupils with a statement of SEN naming the Academy.
- 8.B Where an LA proposes to name one of the Academies in a statement of SEN, it must give the Academy Trust written notice of this, stating why it considers that Academy to be suitable for the pupil in question. Within 15 days of receipt of the LA's notice, the Academy Trust must consent to being named, except where admitting the child would be incompatible with the provision of efficient education for other children, and no reasonable steps could secure compatibility. In deciding whether a child's inclusion would be incompatible with the efficient education of other children or the efficient use of resources, the Academy Trust must have regard to the relevant Guidance issued to maintained schools.
- 8.C If the Academy Trust decides that admitting the child would be incompatible with the provision of efficient education or the efficient use of resources, it must, within the 15 days, notify the LA in writing, giving its reasons for its decision.
- 8.D The Academy Trust must then seek to establish from the LA whether or not it agrees with this determination. If the LA does not agree with the Academy Trust's response, and names the Academy in the child's statement of SEN, the Academy Trust must admit the child to the school as specified in the statement or otherwise by the LA.

- 8.E If in such case, the Academy Trust considers that the LA should not have named the Academy in the statement, it may ask the Secretary of State to determine whether the LA has acted unreasonably, and to make an order directing the LA to reconsider. The Secretary of State's determination will be final, subject only to any right of appeal which a parent of the child may have to the First-tier Tribunal (Special Educational Needs and Disability).
- 8.F If a parent of a child for whom the LA maintains a statement appeals to the First-tier Tribunal (Special Educational Needs and Disability), either for or against the naming of the Academy in the child's statement, then the Tribunal's decision will be binding, even if it is different from that of the Secretary of State.
- 8.G Where it has been determined that the Academy be named in a child's statement of SEN, the Academy Trust must admit the child to the Academy, notwithstanding any other admissions requirements in this Agreement.
- 8.H Clauses 7.A to 8.H only apply insofar as the relevant provisions of the Children & Families Act 2014 relating to SEN and disability do not apply to Academies and Free Schools.



Department
for Education

© Crown copyright 2014

You may re-use this document/publication (not including logos) free of charge in any format or medium, under the terms of the Open Government Licence v2.0. To view this licence, visit www.nationalarchives.gov.uk/doc/open-government-licence/version/2 or email: psi@nationalarchives.gsi.gov.uk.

Where we have identified any third party copyright information you will need to obtain permission from the copyright holders concerned.

We welcome feedback. If you would like to make any comments about this publication, please email AFSPD.feedback@education.gsi.gov.uk, quoting the title of this document. Specific project queries should be sent to the allocated project lead/lead contact. Any general enquiries regarding this publication should be sent to us at www.education.gov.uk/contactus.

This document is available to download at www.gov.uk/government/publications.



Follow us on Twitter: [@educationgovuk](https://twitter.com/educationgovuk)