



Department  
for Education

# **Mainstream academy and free school: supplemental funding agreement**

**April 2016**

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## **SUMMARY**

### **Information about the Academy:**

<b>Name of Academy Trust</b>	Wirral Academy Trust
<b>Company number</b>	07472190
<b>Date of Master Funding Agreement</b>	17 March 2015
<b>Name of academy</b>	Birkenhead Sixth Form College
<b>Opening date</b>	1 August 2017
<b>Type of academy (indicate whether academy or free school)</b>	Sixth Form Academy
<b>Name of predecessor institution (where applicable)</b>	Birkenhead Sixth Form College
<b>Capacity number</b>	1500
<b>Age range</b>	16 plus
<b>Number of boarding places</b>	N/A
<b>Land arrangements (Version 1-7 or other)</b>	Version 1
<b>Address and title number of Land</b>	Birkenhead Sixth Form College, Park Road West , Claughton, Birkenhead, Title Number MS283390

Please confirm which clause variations have been applied or marked as 'Not used'

Clause No.	Descriptor	Applied	Not used
1.J	Only applies to free schools and new provision academies		X
2.F	Only applies where there was a predecessor institution	X	
2.G	Clause does not apply to free schools (unless there was a predecessor institution), or new provision academies	X	
3.G	Clause relating to Start-up only applies in some cases (does not apply to academy converters)		X
3.J	Clause only applies to full sponsored and intermediate sponsored academies with approved Academy Action Plans		X
3.K	Clause does not apply to free schools (unless there was a predecessor institution), or new provision academies		X
5.I	Clause only applies to sponsored academies		X
5.J	Clause applies to free schools and may be applied to new provision academies		X
5.K	Clause applies to free schools and may be applied to new provision academies		X
5.L	Clause applies to free schools and may be applied to new provision academies		X
5.M	Clause applies to free schools and may be applied to new provision academies		X
5.N	Clause applies to free schools and may be applied to new provision academies		X

**Please confirm whether additional clauses have been included (e.g. PFI clauses which will be supplied by your project lead if needed)**

Descriptor	Clause No.	Applied	Not used



## **1. ESTABLISHING THE ACADEMY**

- 1.A This Agreement made between the Secretary of State for Education and Wirral Academy Trust is supplemental to the master funding agreement made between the same parties and dated 17 March 2015 (the “**Master Agreement**”).

### **Definitions and interpretation**

- 1.B Except as expressly provided in this Agreement words and expressions defined in the Master Agreement will have those same meanings in this Agreement.

- 1.C The following capitalised words and expressions will have the following meanings:

“**The Academy**” means known as Birkenhead Sixth Form College.

“**awarding organisations**” means organisations referred to as such by Ofqual.

References to “**educational institution**” shall where the context so admits be references to the Academy.

“**Individualised Learner Record**” is a dataset that collects information on learners and their learning in the Further Education system in England

“**SEN**” means Special Educational Needs and the expressions “**special educational needs**” and “**special educational provision**” have the meaning set out in sections 20(1) and 21(2) of the Children and Families Act 2014.

“**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) ) the Land transferred to the Academy Trust from the Predecessor Institution.

“**Predecessor Institution**” means the educational institution which the Academy has replaced, where applicable.

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

**“Termination Warning Notice”** means a notice sent by the Secretary of State to the Academy Trust, stating his intention to terminate this Agreement.

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

1.E Reference in this Agreement to clauses and annexes will, unless otherwise stated, be to clauses and annexes to this Agreement.

### **The Academy**

1.F The Academy is a 16-19 Academy as defined in clause 1.4 of the Master Agreement.

1.G The Academy Trust will establish and maintain the Academy in accordance with the Master Agreement and this Agreement.

1.H The Academy Trust will open the Academy on 1 August 2017

1.I The Academy Trust agrees that, prior to the Academy opening date, the Academy is an institution for the purposes of the Chief Inspector’s duties under section 118(2) and 125 of the Education and Inspections Act 2006 and accordingly, the Chief Inspector may inspect the Academy before that date.

1.J Not used.

1.K Further to clause 1.13 of the Master Agreement, the following conditions and requirements must also apply in relation to the Academy:

- a) The Academy Trust must ensure that learning takes place in safe, healthy and supportive environments, which meet the needs of students;
- b) The Academy Trust must comply with all relevant statutory requirements and the most recent policies and national minimum standards, including those in relation to financial health and/or control,



which may be issued by DfE, EFA, awarding organisations and the Chief Inspector, including but not limited to, those published on the relevant body's website.

## **2. RUNNING OF THE ACADEMY**

### **Teachers and staff**

2.A Subject to clause 2.4 of the Master Agreement 7.A of this Agreement and section 67 of the Children and Families Act 2014, the Academy Trust may, in accordance with any relevant Guidance, employ anyone it believes is suitably qualified or is otherwise eligible to plan and prepare lessons and courses for students, teach students, and assess and report on students' development, progress and attainment.

2.A.1 The Academy Trust must comply with the Further Education (Providers of Education)(England) Regulations 2006 (SI 2006/3199) as if the Academy were a further education institution subject to the following modifications:

- a) references to "a further education institution" or "the institution" shall be treated as references to the Academy, except in regulations 9(1)(b) and 19(2)(a)(ii) where they shall have their normal meaning;
- b) the Academy Trust is not obliged to comply with any of the requirements in relation to staff qualifications namely, in section 3(2), section 5(3); section 17(1) only in so far as it relates to section 18(3); section 22 only in so far as it relates to paragraph 4 of Part 1 of the Schedule. For the avoidance of doubt, the relevant staff qualification requirements do not need to be met by members of staff at the Academy; and
- c) references to "new member of staff" shall include individual Charity Trustees and the Chair of the Board of Charity Trustees and in respect of them:

- i. the obligation to carry out an enhanced disclosure and barring service check as provided for in section 5(5) will apply whether or not their position will involve a relevant activity;
- ii. the reference in section 6 to “considering his suitability for a position that will involve a relevant activity” will be treated as a reference to considering his suitability for a position as a Charity Trustee or Chair of the Board of Charity Trustees, as appropriate;
- iii. references to “beginning work at the further education institution” shall be treated as references to beginning work as a Charity Trustee or Chair of the Board of Charity Trustees, as appropriate;
- iv. where the Academy Trust is required to carry out an enhanced disclosure and barring service check in respect of the Chair of the Board of Charity Trustees it must be counter signed by the Secretary of State.

2.A.2 Further to Clause 2.8 (a) of the Master Agreement the Academy Trust must at the request of the board of governors or academy trust of that other educational institution 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 or Predecessor Institution.

## **Students**

2.B1 The planned capacity of the Academy is 1500 in the age range 16 to 19.

2.B2 The Academy Trust must ensure that the Academy meets the needs of individual students, including students with learning difficulties and disabilities.

2.B3 Where secondary education is provided to persons of compulsory school age by the Academy, the Academy Trust shall secure that, except when a teacher is present in the room, no education is provided to a person who has attained the age of nineteen years in a room in which any persons of compulsory school age are for the time being receiving secondary education. A teacher

will be considered to be present in the room at a particular time even though no teacher is present if:

- a) it would be impracticable to secure the presence of a teacher in a room at that time; and
- b) the absence of a teacher at that time has not lasted more than five minutes.

2.B Not used.

### **Charging**

2.C The Academy will only make charges where institutions within the further education sector are permitted to as set out in the current 16 to 19 Funding Guidance published by the Secretary of State, or such guidance on 16 to 19 funding issued by the Secretary of State as may from time to time be applicable.

2.D The Academy Trust must charge fees for the full cost of the education provided at an Academy to non-European Economic Area students who:-

- a) have a valid United Kingdom visa the terms of which state that the relevant student cannot access non-fee paying education; or
- b) no longer have a valid United Kingdom visa allowing them to enter or remain in the United Kingdom but are applying to renew such a visa; and in each case
- c) transferred to the Academy from any predecessor institution.

If the Academy fails to charge these students, or is unable to recover fees by the end of the term for which they are due, it must report this to the Secretary of State who may inform the UK Border Agency.

2.F (1) Further to clause 2.16 of the Master Agreement there must be no charge for admission to or attendance at the Academy and the Academy will only charge



students where the law allows institutions within the further education sector to charge.

### **Admissions**

2.E The Academy will be an educational institution principally concerned with providing full-time or part-time education suitable to the requirements of persons over compulsory school age but under 19, at the start of the academic year (31 August) whose requirements for:

- a) the admission of students to the Academy;
- b) the admission to the Academy and support for students with learning difficulties and with disabilities; and
- c) student exclusions,

are set out in written policies to be agreed by the Secretary of State prior to the signing of this agreement. Such policies to be fair, objective and transparent, and formulated in accordance with the Academy Trust's legal powers and duties in relation to 16 to 19 provision.

2.F In respect of any policies agreed in accordance with clause 2.G:

- a) The Secretary of State agrees that the Academy Trust may vary the policies subject to the Academy Trust informing the Secretary of State of any variation to the policies in writing as soon as reasonably practicable; and

2.G The Academy Trust agrees to vary the policies as may become necessary to comply with changes to future legislation and/or as the Secretary of State may require.

### **Curriculum**

2.H Clause 2.22 of the Master Agreement will not apply to this Academy. The Academy Trust must ensure that the curriculum provided by the Academy is

suitable to the requirements of students and can include vocational, social, physical and recreational training.

- 2.I The Academy Trust must provide for the teaching of religious education for any student at the Academy wishing to receive it; and ensure that at an appropriate time, on at least one day each week during which the Academy is open, an act of collective worship is held which students at the Academy may attend.

### **3. GRANT FUNDING**

#### **Calculation of GAG**

3A-3D Not used.

- 3.E The Secretary of State will calculate GAG based on the student count at the Academy using the 16-19 National Funding Formula, as set out in the Funding Guidance for Young People and published by the Secretary of State. In order to calculate GAG for the Academy Financial Year in which the Academy opens, the student count will be determined on the same basis as that used for determining the budget of the Predecessor Institution.

- 3.F For Academy Financial Years after that referred to in clause 2.E the basis of funding will be the 16 – 19 National Funding Formula.

3.F (i) Further to Clause 3.15 of the Master Agreement the Academy Trust must not use GAG for:

(a) the provision of prescribed higher education to students of the academy;  
or

(b) to fund apprenticeships.

- 3.F (ii) GAG for each Academy Financial Year for the Academy will include:

- a) funding in accordance with the national funding formula for the education and training of 16-19 year olds, determined by the Secretary of State and taking account of the number of students at the Academy;



- b) payment of any additional specific grants made available to institutions within the further education sector, where the Academy meets the criteria for those grants, and at the Secretary of State's discretion; and
  - c) funding for any other costs to the Academy which the Secretary of State considers necessary.
- 3.G The Secretary of State may, at his discretion, adjust the basis of the student count to take account of any diseconomies of scale which may affect the Academy if it is operating below the planned capacity in clause 2.B. If such an adjustment is made in any Academy Financial Year, this will not change the basis of the student count for calculating the following Academy Financial Year's GAG. If the Secretary of State has indicated that additional grant may be payable in such circumstances, the Academy Trust will bid for this additional grant based on need and providing appropriate supporting evidence. The Secretary of State may accept or refuse the bid at his discretion.
- 3.H Not Used.
- 3.I The Secretary of State recognises that if a Termination Notice or a Termination Warning Notice is served, or the Master Agreement is otherwise terminated, the intake of new students during the notice period may decline and therefore payments based on the number of students attending the Academy may be insufficient to meet the Academy's needs. In these circumstances the Secretary of State may pay a larger GAG in the notice period, to enable the Academy to operate effectively.

**Other relevant funding**

- 3.J Not used.
- 3.K Not used.
- 3.L Not used.

### **Carrying forward of funds**

- 3.M Any additional grant made in accordance with clause 3.I, for a period after the Secretary of State has served a Termination Notice or a Termination Warning Notice under this Agreement, or otherwise has terminated the Master Agreement, may be carried forward without limitation or deduction until the circumstances set out in clause 3.I cease to apply or the Academy closes.

## **4. LAND**

**"Land"** means the freehold land at, being the land registered at Birkenhead Sixth Form College, Park Road West, Cloughton, Birkenhead, with title number MS283390, which is to be the permanent site of the Academy.

**"Property Notice"** means any order, notice, proposal, demand or other requirement issued by any competent authority which materially affects the Academy Trust's ability to use the Land for the purposes of the Academy.

### **Restrictions on Land transfer**

#### **4.A The Academy Trust must:**

- a) within 28 days of the signing of this Agreement in circumstances where the Land is transferred to the Academy Trust prior to the date of this Agreement, or otherwise within 28 days of the transfer of the Land to the Academy Trust, apply to the Land Registry using Form RX1 for the following restriction (the "Restriction") to be entered in the proprietorship register for the Land:

*No disposition of the registered estate by the proprietor of the registered estate is to be registered without a written consent signed by the Secretary of State for Education, of Sanctuary Buildings, Great Smith Street, London SW1P 3BT;*

- b) take any further steps reasonably required to ensure that the Restriction is entered on the proprietorship register;



- c) promptly confirm to the Secretary of State when the Restriction has been registered;
- d) if it has not registered the Restriction, permit the Secretary of State to do so in its place; and
- e) not, without the Secretary of State's consent, apply to disapply, modify, cancel or remove the Restriction, whether by itself, a holding company, a subsidiary company, or a receiver, administrator or liquidator acting in the name of the Academy Trust.

#### **Obligations of the Academy Trust**

4.B The Academy Trust must keep the Land clean and tidy and make good any damage or deterioration to the Land. The Academy Trust must not do anything to lessen the value or marketability of the Land without the Secretary of State's consent.

4.C The Academy Trust must not, without the Secretary of State's consent:

- a) grant any consent or licence; or
- b) create or allow any encumbrance; or
- c) part with or share possession or occupation; or
- d) enter into any onerous or restrictive obligations,

in respect of all or part of the Land.

#### **Option**

4.D The Academy Trust grants and the Secretary of State accepts an option (the "Option") to acquire all or part of the Land at nil consideration. The Secretary of State may exercise the Option in writing on termination of this Agreement. If the Option is exercised, completion will take place 28 days after the exercise date in accordance with the Law Society's Standard Conditions of Sale for Commercial Property in force at that date.

## **Option Notice**

### **4.E The Academy Trust:**

- a) must, within 14 days after acquiring the Land or, if later, after signing this Agreement, apply to the Land Registry on Form AN1 (including a copy of this Agreement) for a notice of the Option (the “**Option Notice**”) to be entered in the register, taking any further steps required to have the Option Notice registered and promptly confirming to the Secretary of State when this has been done;
- b) if it has not registered the Option Notice, agrees that the Secretary of State may apply to register it using Form UN1;
- c) must not, without the Secretary of State's consent, apply to disapply, modify or remove the Option Notice, whether by itself, a holding company, a subsidiary company, or a receiver, administrator or liquidator acting in the name of the Academy Trust, and
- d) must, in the case of previously unregistered land, within 14 days after acquiring the Land or, if later, after signing this Agreement, apply to register a Class C(iv) land charge in the Land Charges Registry, and send the Secretary of State a copy of the relevant entry within 7 days after the registration has been completed. If the Secretary of State considers that the Academy Trust has not complied with this clause, he may apply to secure the registration.

## **Property Notices**

### **4.F If the Academy Trust receives a Property Notice, it must:**

- a) send a copy of it to the Secretary of State within 14 days, stating how the Academy Trust intends to respond to it;
- b) promptly give the Secretary of State all the information he asks for about it;



- c) allow the Secretary of State to take all necessary action, with or instead of the Academy Trust, to comply with it, and
- d) use its best endeavours to help the Secretary of State in connection with it.

### **Sharing the Land**

#### **4.G Where:**

- a) the Secretary of State identifies basic or parental need for additional places in the area in which the Academy is situated; and
- b) the Secretary of State then considers that not all the Land is needed for the operation of the Academy at planned capacity,

The Secretary of State must consult with the Academy Trust to determine whether part of the Land could be demised or leased to another Academy trust, as the Secretary of State considers appropriate, for the purpose of that Academy Trust establishing and maintaining an educational institution on the Land.

4.H To the extent the Academy Trust and the Secretary of State agree to part of the Land being demised or leased in accordance with clause 4.G, the Academy Trust must use its best endeavours to procure all necessary consents in order to enable it to share occupation of the Land with the incoming Academy Trust and to provide the incoming Academy Trust with security of tenure over the Land occupied by it, and shall enter into any legal arrangements which the Secretary of State requires for this purpose. The Secretary of State shall meet the necessary and reasonable costs incurred by the Academy Trust in connection with this clause.

#### **4.I For the purposes of clause 4.G:**

- a) a basic need will arise when the forecast demand for student places in the area where the Academy is situated is greater than the existing capacity to provide them;



- b) a parental need will arise when the DfE is actually aware of an additional demand for student places in the area where the Academy is situated, following representations from parents in that area; and
- c) planned capacity has the meaning given in clause 2.B.

## **5. TERMINATION**

### **Termination by either party**

- 5.A Either party may give at least seven Academy Financial Years' notice to terminate this Agreement. Such termination would take effect on 31 August of the relevant year.

### **Termination Warning Notice**

- 5.B The Secretary of State may serve a Termination Warning Notice where he considers that:
- a) the Academy Trust has breached the provisions of this Agreement or the Master Agreement; or
  - b) the standards of performance of students at the Academy are unacceptably low; or
  - c) there has been a serious breakdown in the way the Academy is managed or governed; or
  - d) the safety of students or staff is threatened, including due to breakdown of discipline.
- 5.C A Termination Warning Notice served under clause 5.B will specify:
- a) the action the Academy Trust must take;
  - b) the date by which the action must be completed; and
  - c) the date by which the Academy Trust must make any representations, or confirm that it agrees to undertake the specified action.

- 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 has made a report under section 124(4)(a) or 125(4)(a) of the Education and Inspections Act 2006 and stated that he does not consider the education or training inspected in the Academy to be of a quality adequate to meet the reasonable needs of those receiving it, 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.G.1 Not used.
- 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 Not used.

5.K Not used.

5.L Not used.

5.M Not used.

5.N Not used.

#### **Funding and admission during notice period**

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

5.P 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 students 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.Q 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.R 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 on 31 August before the Critical Year.

5.S Any notice given by the Academy Trust under clause 5.R 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.R 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.T 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 students at the Academy and use their best endeavours to agree a practical solution to the problem.

- 5.U 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.V 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.W 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.X 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 of 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.Y If this Agreement is terminated, the Academy will cease to be an Academy within the meaning of sections 1 and 1B of the Academies Act 2010.



- 5.Z 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.AA 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.BB 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 clause 5.Z, 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.CC 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.CC(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.DD The Secretary of State may:

- a) Waive all or part of the repayment due under sub-clause 5.CC(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.

5.EE Further to Clause 5.2 of the Master Agreement the following provisions (5.FF – 5.H) will apply to the Academy.

5.FF If a complaint is made about matters arising wholly or partly before the Academy opened, the Academy Trust:

- a) agrees that the Secretary of State will have the power to investigate the subject of the complaint as if it had taken place after the Academy opened; and
- b) must act in accordance with any recommendation from the Secretary of State.

5.GG If the Secretary of State could have given a direction under section 56E of the Further and Higher Education Act 1992 to the governing body of the Predecessor Institution relating to matters occurring within the 12 months immediately before the Academy opened, the Academy Trust:

- a) agrees that the Secretary of State may give directions to the Academy Trust as though the Academy were a Sixth Form College and section 56E applied to the governing body of that Sixth Form College; and
- b) must act in accordance with any such direction from the Secretary of State.

5.HH If a complaint made to the governing body of the Predecessor Institution has not been fully investigated when the Academy opens, the Academy Trust must continue to investigate that complaint in accordance with the complaints procedures established by that governing body.



5.II If a complaint is made to the Academy Trust about matters arising wholly or partly during the 12 months before the Academy opened, the Academy Trust agrees to investigate that complaint as if the matter complained of had taken place after the Academy opened.

## **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.

6.B (i) The Parties agree that for the purposes of the Academy clauses 4.27, 4.31 and 4.34 of the Master Agreement are to be interpreted using the definition of "Publicly Funded Assets" outlined in this Agreement.

6.B (ii) Further to Clause 4.30 of the Master Agreement the following provision will apply to the Academy.

6.B (iii) If the Academy Trust sells a capital asset which was transferred to it for no or nominal consideration from the **Predecessor Institution** the Academy Trust must, if required by the Secretary of State, pay all or part of the sale proceeds to the Secretary of State, taking into account the amount of the proceeds to be reinvested by the Academy Trust.

### **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 26 July 2017

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



**Director**

and



**Witness**

Name:



Address:



The Corporate Seal of

**THE SECRETARY OF STATE FOR EDUCATION**

affixed to this deed is authenticated by:



**Duly Authorised**



## **ANNEXES**

### **7. STUDENTS WITH SPECIAL EDUCATION NEEDS (SEN) AND DISABILITIES**

“Statement of SEN” means a statement made under section 324 of the Education Act 1996.

“EHC plan” means an Education, Health and Care plan made under sections 37(2) to 40 of the Children and Families Act 2014.

7.A Except as set out in clause 8 below, the Children and Families Act 2014 imposes duties directly on Academies in respect of students with special educational needs, including the admission of students with EHC plans. If an Academy Trust considers that a LA should not have named the Academy in an EHC plan, 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 to any right of appeal which a parent of the child may have to the First Tier Tribunal (Special Educational Needs and Disability) or the Upper Tribunal Administrative Appeals Chamber.

7.B Not Used

7.C Not Used

7.D Not Used

### **8. ADMISSION OF STUDENTS 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 students 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 student 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). ) or the Upper Tribunal Administrative Appeals Chamber.
- 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 finally 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 8.A to 8.G only apply insofar as the relevant provisions of the Children and Families Act 2014 relating to SEN and disability do not apply to Academies and Free Schools.





Department  
for Education

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