



Department  
for Education

# **16 to 19 academy and free school: supplemental funding agreement**

**December 2020 v3**

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## SUMMARY

### Information about the Academy:

<b>Name of Academy Trust</b>	The Prospect Trust
<b>Company number</b>	10842315
<b>Date of Master Funding Agreement</b>	31 August 2017 as varied by deed of variation dated 2021
<b>Name of academy</b>	The Sixth Form College Farnborough
<b>Opening date</b>	1 September 2017
<b>Type of academy (indicate whether academy or free school)</b>	16-19 Academy
<b>Name of predecessor institution (where applicable)</b>	The Sixth Form College Farnborough
<b>Capacity number</b>	4250
<b>Age range</b>	16-19
<b>Number of boarding places</b>	N/A
<b>Land arrangements (Version 1-8 or other)</b>	Version 1
<b>Address and title number of Land (and Temporary Site)</b>	Land at: 1) Sixth Form College Farnborough, Prospect Avenue, Farnborough GU14 8JX which is registered with freehold title absolute under title number HP811959

	<p>2) 20 Prospect Avenue, Farnborough GU14 8JU registered with freehold title absolute under title number HP382790</p> <p>10 Prospect Avenue, Farnborough GU14 8JU registered with freehold title absolute under title number HP575041</p>
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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.A.1	Only applies where an academy was previously a VC school or foundation school designated with a religious character.		X
2.E	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.H	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.G.1	Clause applies to a boarding academy/boarding free school only		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

Clause No.	Descriptor	Applied	Not used
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
6.H	Clause only applies to schools which are designated with a Church of England or Roman Catholic character		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 The Prospect Trust is supplemental to the master funding agreement made between the same parties and dated 31 August 2017 (as varied from time to time) (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 the academy known as The Sixth Form College Farnborough.

“**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 has the meaning set out in section 20(1) of the Children and Families Act 2014.

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

“**Publicly Funded Assets**” means (a) assets or property funded wholly or partly using payment made by or on behalf of the Secretary of State and (b) the Land transferred to the Academy Trust from the Predecessor Institution.

“**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 opened the Academy on 1 September 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 Department for Education, ESFA, awarding organisations and the Chief Inspector, including but not limited to, those published on the relevant body's website.
- 1.L 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 Department for Education, ESFA, 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.A.2 and 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 The Academy Trust must designate a staff member at the Academy as responsible for promoting the educational achievement of registered pupils at the Academy who are being looked after by a LA, or are no longer looked after by a LA because of an adoption, special guardianship or child

arrangements order, or because they have been adopted from 'state care' outside England and Wales, and in doing so must comply with the law, regulations and guidance that apply to maintained schools. The Academy Trust must ensure the designated person undertakes appropriate training and has regard to any guidance issued by the Secretary of State.

## **Students**

- 2.B The planned capacity of the Academy is 4250 in the age range 16 to 19.
- 2.C The Academy Trust must ensure that the Academy meets the needs of individual students, including students with SEN and disabilities.
- 2.D 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.D.a The Academy Trust will make arrangements for ensuring that the Academy is conducted with a view to safeguarding and promoting the welfare of children (those students under the age of 18) receiving education or training at the Academy or under the auspices of the Academy Trust in an environment outside the direct control of the Academy Trust. In doing so, the Academy Trust will have regard to any guidance published, from time to time, by the Secretary of State for Education which sets out the expectations in relation to safeguarding practice within further education institutions. References to 'must' in any such guidance will be treated as 'should' for the purposes of this Agreement, save for any references to legal requirements arising from the Safeguarding Vulnerable Groups Act 2006 in respect of referrals to the Disclosure and Barring Service.

## **Charging**

- 2.E 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.F Not Used.

### **Admissions**

2.G 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 whose requirements for:

- a) the admission of students to the Academy;
- b) the admission to the Academy and support for students with SEN 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 need 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.H 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
- b) 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.I 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.J The Academy Trust must provide for:

- a) the teaching of religious education for any student at the Academy wishing to receive it; and

- b) 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 by the relevant LA for determining the budget of the Predecessor Institution.
- 3.F For Academy Financial Years after that referred to in clause 3.E, the basis of the student count for determining GAG 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.

### **Carrying forward of funds**

3.L 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 The Sixth Form College Farnborough, Prospect Avenue, Farnborough GU14 8JX registered with freehold title number HP811959; registered freehold land at 20 Prospect Avenue, Farnborough GU14 8JU registered with freehold title number HP382790 and registered freehold land at 10 Prospect Avenue, Farnborough GU14 8JU registered with freehold title absolute under title number HP575041, all of 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 or any correspondence that affects the extent of the Land.

### **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 provided that the Academy Trust may grant a licence or share occupation of part of the Land with a proprietor or proposed proprietor of an Academy or a body or individual providing services or facilities which are for community, fundraising or recreational purposes ancillary to educational services and where no relationship of landlord and tenant arises as

a result of such occupation.

## 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:

- a) if this Funding Agreement is terminated for any reason;
- b) at any time on or after the issue of a Termination Notice;
- c) if, under clause 4.H, the Academy Trust and the Secretary of State agree that part of the Land should be demised or leased to another academy trust; or
- d) if, under clause 4.J, the Academy Trust cannot use all or part of the Land as the permanent site of the Academy.

4.D.1 If the Option is exercised, completion will take place

- a) 28 days after the exercise date where a Termination Notice has not been issued; or
- b) where a Termination Notice has been issued, the date specified in the Termination Notice as to when this Agreement shall terminate

and in either case 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 that part of 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 legal costs incurred by the Academy Trust in connection with entering into any such arrangements under this clause.

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

- a) a **basic need** will arise when the forecast demand for pupil 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 Department for Education is actually aware of an additional demand for pupil 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.

4.J If the Academy Trust cannot use all or part of the Land as the permanent site of the Academy but the Secretary of State agrees not to terminate this Agreement on that basis, the Secretary of State may notify the Academy Trust that he intends to exercise the Option to transfer all or part of the Land for nil consideration to himself or his nominee.

4.K On or following the issue of a Termination Notice, the Secretary of State may give notice that he intends to exercise his rights under clause 4.D. Any such notice is without prejudice to his right to exercise any other rights available to him.

## 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 before 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.

## 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.

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.

## **Information Sharing with Local Authorities – Statutory Responsibilities**

- 6.I The Academy Trust must provide:
- a) the name, address and date of birth of the pupil or student;
  - b) the name and address of a parent of the pupil or student;
  - c) information in the institution's possession about the pupil or student (except if the pupil or student concerned (in the case of a pupil or student who has attained the age of 16) or a parent of the pupil or student concerned (in the case of a pupil or student who has not attained the age of 16) has instructed the Academy Trust not to provide information of that kind);
- upon request under section 14 of the Education and Skills Act 2008 from a local authority (for the purpose of enabling or assisting it to exercise its functions under Part 1 of that Act); or
- upon request under section 72 of that Act from a body providing services under sections 68 or 70(1)(b) of the Act (for the purposes of providing such services), the following information to that body.



## ANNEXES

### 7. ADMISSION OF CHILDREN AND YOUNG PEOPLE WITH EDUCATION, HEALTH AND CARE PLANS

“**EHC plan**” means an Education, Health and Care plan made under section 37 of the Children and Families Act 2014.

- 7.A The Children and Families Act 2014 imposes duties directly on Academies in respect of student with SEN, including the admission of student 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 Academy Trust must admit the student if such a determination is pending. The Secretary of State’s determination as to whether the LA acted unreasonably will be final, subject to any right of appeal which a student (if over compulsory school age) or the parent of the student may have to the First-tier Tribunal (Special Educational Needs and Disability) or the Upper Tribunal Administrative Appeals Chamber.



Department  
for Education

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