# DEED OF VARIATION
# OF THE MASTER FUNDING AGREEMENT AND
# THE SUPPLEMENTAL FUNDING AGREEMENTS
# FOR THE PRIMARY ACADEMIES OF HASTINGS ACADEMIES TRUST

The Parties to this Deed are:

(1) **THE SECRETARY OF STATE FOR EDUCATION** of Sanctuary Buildings, Great Smith Street, London SW1P 3BT (the "**Secretary of State**");

(2) **HASTINGS ACADEMIES TRUST (to be renamed University of Brighton Academies Trust)**, a charitable company incorporated in England and Wales with registered company number 07185046 whose registered address is at The St Leonards Academy, Edinburgh Road, St Leonards On Sea, East Sussex, TN38 8HH ( "**HAT**"),

together referred to as the "Parties".

**INTRODUCTION**

A. The academies listed in Schedule 1 to this Deed are academies within the meaning of the Academies Act 2010 (together the "**Academies**", each an "**Academy**") and are currently operated by HAT (a multi academy trust).

B. In relation to the Academies, the Secretary of State and HAT entered into:
    a. a Master funding agreement dated 18 October 2013 (the "**MFA**"); and
    b. Supplemental Funding Agreements for the maintenance and funding of each of the Academies on the dates set out against each Academy's name in Schedule 1 to this Deed (together the "**SFAs**").

C. It is proposed that, with effect from 00.01 am on 1 September 2017 ("**Transfer Date**"), HAT will assume responsibility for the management and operation of additional academies in succession to University of Brighton Academies Trust ("**UoBAT**") ("**Transfer**").

D. As part of the Transfer process, a master funding agreement between (1) the Secretary of State and (2) UoBAT, dated 20 March 2015, will be novated by UoBAT to HAT (the "**UoBAT MFA**"). A copy of the UoBAT MFA is set out at Part A of Schedule 2 of this Deed.

E. Subject to the novation of the UoBAT MFA, the Parties wish to vary the terms of the MFA and SFAs subject to the provisions of this Deed.

**LEGAL AGREEMENT**

1. Any word or phrase used in this Deed shall, if that word or phrase is defined in the MFA and/or the SFAs, bear the meaning given to it in the MFA and/or SFAs.

**VARIATION**

2. Subject to the novation of the UoBAT MFA to HAT, the Secretary of State and HAT agree that, with effect from the Transfer Date:

    2.1. the MFA shall be deemed to be amended in the form of, and replaced by, the UoBAT MFA (as novated), a copy of which is set out at Part A of Schedule 2 to this Deed; and

    2.2 each of the SFAs shall be amended and restated so as to take effect in the form set out at Part B of Schedule 2 to this Deed and pursuant to the UoBAT MFA.

3. As varied by this Deed, the SFAs shall each remain in full force and effect. The MFA shall be deemed to have remained in full force and effect, its replacement by the UoBAT MFA pursuant to clause 2.1 being deemed to be an amendment to the terms of the MFA effected by such replacement.

**GOVERNING LAW AND JURISDICTION**

4. This Deed shall be governed by and interpreted in accordance with English law.

5. The Parties irrevocably agree that the courts of England and Wales shall have exclusive jurisdiction to settle any dispute or claim that arises out of, or in connection with, this deed or its subject matter or formation (including non-contractual disputes or claims).

**COUNTERPARTS**

6. This Deed may be executed in any number of counterparts and by the parties to it on separate counterparts, each of which when so executed and delivered shall be an original, but all the counterparts shall together constitute one and the same instrument.

IN WITNESS whereof this Deed has been executed by the parties hereto and is intended to be and is hereby delivered on the last date listed below.

EXECUTED as a deed by affixing the corporate seal )
of **THE SECRETARY OF STATE FOR EDUCATION** )
authenticated by:- )

……
Duly authorised by the **SECRETARY OF STATE FOR EDUCATION**
Date…….

EXECUTED as a deed by
**HASTINGS ACADEMIES**
**TRUST** acting by one director in
the presence of a witness:

Director ……
Print name……...
Date ……..

Witness ……
Print name……..
Address……
Occupation……

**Schedule 1**

**The Academies**

| **Academy** | **Date of Supplemental Funding Agreement** |
|---|---|
| The Baird Primary Academy | 18 December 2013 |
| Churchwood Primary Academy | 18 August 2014 (as amended on 22 December 2015) |
| Dudley Infant Academy | 18 October 2013 |
| Hollington Primary Academy | 18 August 2014 (as amended on 22 December 2015) |
| Robsack Wood Primary Academy | 18 August 2014 |
| Silverdale Primary Academy | 26 January 2015 |
| West St Leonards Primary Academy | 18 October 2013 |

**Schedule 2**

**Part A- UoBAT MFA**

Department for Education

# Academy and free school: master funding agreement

December 2014

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## SUMMARY SHEET

**Information about the Academy Trust:**

| | |
|---|---|
| **Name of Academy Trust** | University of Brighton Academies Trust |
| **Address** | University of Brighton<br>Multi-Academy Trust Office<br>Checkland Building<br>Falmer<br>BN1 9PH |
| **Company Number** | 9466013 |
| **Contact details for the Chair of Charity Trustees** | Professor Julian Crampton<br>University of Brighton Academies Trust<br>University of Brighton<br>Multi-Academy Trust Office<br>Checkland Building<br>Falmer<br>BN1 9PH |

**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** |
|---|---|---|---|
| None | | | |

## 1. INTRODUCTION

**Introduction and definitions**

1.1 This Agreement is between the Secretary of State for Education (the **"Secretary of State"**) and University of Brighton Academies Trust (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 9466013. 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.

"**Business day**" means any day other than a Saturday, Sunday, Christmas Day, Good Friday or any day which is a bank holiday with the meaning given to that expression in the Banking and Financial Dealings Act 1971.

"**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**" and the expression "**Department**" means the Department for Education or any successor Department which has responsibility for schools"

"**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 an 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 sections 20(1) and 21(2) of the Children and Families Act 2014.

"**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 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 an Academy operated by 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.

1.27 The Academy Trust must not amend or remove the provisions in its Articles relating to the appointment or election or the resignation or removal of Charity Trustees or members ("the Governance Articles") without the Secretary of State's consent.

1.28 Before any change to the Governance Articles is proposed the Academy Trust must give notice to the Secretary of State of:

a) the proposed amendment or removal; and;

b) the reason for it.

1.29 If the Secretary of State consents to the proposed changes, the Academy Trust shall approve any changes to the Articles as soon as reasonably practicable and provide the Secretary of State with a copy of the amended Articles and the resolution(s) approving them.

## 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 the Academy actively promotes the fundamental British values of democracy, the rule of law, individual liberty, and mutual respect and tolerance of those with different faiths and beliefs.

2.26A The Academy Trust must ensure the Academy promotes principles that support equality of opportunity for all.

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:

i. "% achieving Level 4 or above in reading, writing and maths";

ii. "% making expected progress in reading", "% making expected progress in writing", and "% making expected progress in maths";

iii. in relation to reading, "% achieving Level 5 or above"; and

iv. in relation to writing, "% achieving Level 5 or above"; and

v. in relation to maths, "% achieving Level 5 or above";

b) if applicable, the Academy's most recent Key Stage 4 results as published by the Secretary of State under the following column headings in the School Performance Tables:

i. "% achieving 5 + A* - C GCSEs (or equivalent) including English and maths GCSEs";

ii. "% achieving the English Baccalaureate"; and

iii. "% of pupils making expected progress";

c) information about where and how parents (including parents of prospective pupils) can access the most recent report about the Academy published by the Chief Inspector; and

d) information as to where and how parents (including parents of prospective pupils) can access the School Performance Tables published by the Secretary of State.

2.31 The Academy Trust must ensure that, in relation to any **16-19 Academies**, any performance information requested by the Secretary of State is published on the Academy's website.

2.32 The Secretary of State may direct any Academy to participate in international education surveys, under the Education Act 1996, as if it were a maintained school.

## 3. GRANT FUNDING

**Recurrent Expenditure Grants**

3.1 The Secretary of State will pay grants towards Recurrent Expenditure, and may pay grants towards Capital Expenditure, for each Academy.

3.2 "**Recurrent Expenditure**" means any money spent on the establishment, conduct, administration and maintenance of an Academy which does not fall within Capital Expenditure.

3.3 In respect of Recurrent Expenditure, the Secretary of State will pay **General Annual Grant** ("**GAG**") and may additionally pay **Earmarked Annual Grant** ("**EAG**"). These are two separate and distinct grants.

3.4 Except with the Secretary of State's consent, the Academy Trust must not make commitments to spending which will have substantial implications for future grant. No decision by the Academy Trust will commit the Secretary of State to paying any particular amount of grant.

**Capital Grant**

3.5 The Secretary of State may pay a grant ("**Capital Grant**") to the Academy Trust for the purpose of spending on items of Capital Expenditure.

3.6 "**Capital Expenditure**" means expenditure on:

a) acquiring land and buildings;

b) erecting, enlarging, improving or demolishing any building including fixed plant, installation, wall, fence or other structure, or any playground or hard standing;

c) installing electrical, mechanical or other services other than necessary repairs and maintenance due to normal wear and tear;

d) buying vehicles;

e) installing and equipping premises with furnishings and equipment, other than necessary repairs and maintenance due to normal wear and tear;

f) installing and equipping premises with computers, networking for computers, operating software and ICT equipment, other than necessary updates or repairs and maintenance due to normal wear and tear;

g) providing and equipping premises, including playing fields and other facilities for social activities and physical recreation other than necessary repairs and maintenance due to normal wear and tear;

h) works of a permanent character other than the purchase or replacement of minor day-to-day items;

i) any major repairs or replacements which are specified as capital expenditure in any grant letter relating to them;

j) such other items (whether like or unlike any of the foregoing) of a substantial or enduring nature which the Secretary of State agrees are capital expenditure for the purposes of this Agreement;

k) professional fees properly and reasonably incurred in connection with the provision of any of the above;

l) VAT and other taxes payable on any of the above.

3.7 Any Capital Grant funding that may be made available to the Academy Trust will be notified to it by the Secretary of State.

3.8 The Academy Trust must spend Capital Grant only on items of Capital Expenditure approved by the Secretary of State and in accordance with conditions specified by the Secretary of State. Further, the Academy Trust must provide evidence that it has obtained all planning and other consents required for any proposed building and infrastructure development to be funded using Capital Grant.

3.9 In order to receive payments of Capital Grant, the Academy Trust must provide supporting invoices and certificates in the format specified by the Secretary of State.

3.10 The Academy Trust must provide an account of Capital Grant received and associated spending on Capital Expenditure using Capital Grant in the Academy Trust's financial statements and any financial reports or returns that the Secretary of State may require.

3.11 If in its use of Capital Grant the Academy Trust does not comply with this Agreement or any of the conditions specified by the Secretary of State, or the project does not accord with the original specification or has not been completed, the Secretary of State may at his discretion not make any further payments of Capital Grant and require the Academy Trust to repay all or part of the Capital Grant.

**General Annual Grant (GAG)**

3.12 The Secretary of State will pay GAG to the Academy Trust towards the normal running costs or capital expenditure of each of its Academies, including:

a) teachers' salaries and related costs (including pension contributions, full and part-time teaching staff and payments in respect of seconded teachers);

b) non-teaching staff salaries and related costs (including pension contributions);

c) employees' expenses;

d) buying, maintaining, repairing and replacing teaching and learning materials and other educational equipment, including books and stationery;

e) buying, maintaining, repairing and replacing other assets including ICT equipment and software, sports equipment and laboratory equipment and materials;

f) examination fees;

g) repairs, servicing and maintenance of buildings (including redecoration, heating, plumbing, lighting etc.); maintenance of grounds (including boundary fences and walls); insurance; cleaning materials and contract cleaning; water and sewerage; fuel and light (including electricity and gas); rents; rates; purchase, maintenance, repairs and replacement of furniture and fittings;

h) medical equipment and supplies;

i) staff development (including in-service training);

j) curriculum development;

k) the costs of providing school meals for pupils (including the cost of providing free school lunches to pupils who are eligible to receive them), and any discretionary grants to pupils to meet the cost of pupil support, including support for pupils with SEN or disabilities;

l) administration; and

m) establishment expenses and other institutional costs.

3.13 GAG for each Academy Financial Year for each **Mainstream Academy**, **Special Academy** and **Studio School** will include:

a) funding equivalent to that which would be received by a maintained school with similar characteristics, determined by the Secretary of State and taking account of the number of pupils at the Academy;

b) funding to cover necessary functions which would be carried out by the relevant LA if the Academy were a maintained school;

c) payment of any additional specific grants made available to maintained schools, where the Academy meets the criteria for those grants, and at the Secretary of State's discretion; and

d) funding for any other costs to the Academy which the Secretary of State considers necessary.

3.14 The Academy Trust must use GAG only for maintaining, carrying on, managing and developing the Academies in accordance with this Agreement and the relevant Supplemental Agreement, except where the Secretary of State has given specific consent for the Academy Trust to use GAG for another charitable purpose.

3.15 In particular (but without limitation) the Academy Trust must not use GAG for:

a) education and training for adults who are not pupils of the Academy, other than staff professional development;

b) nursery provision for which parents are charged a fee;

c) nursery provision to children outside of the relevant Academy's age range as stated in the applicable Supplemental Agreement;

d) Children's Centres;

e) any additional cost of providing sport and leisure facilities for a purpose not permitted in clause 3.14.

**Earmarked Annual Grant (EAG)**

3.16 The Secretary of State may pay EAG to the Academy Trust for specific purposes, agreed between the Secretary of State and the Academy Trust, and as described in the relevant funding letter. The Academy Trust must spend EAG only in accordance with that letter.

3.17 Where the Academy Trust is seeking a specific EAG for any Academy Financial Year, it must send a letter outlining its proposals and the reasons for the request to the DfE.

**Arrangements for paying GAG and EAG**

3.18 Before each Academy Financial Year, the Secretary of State will notify the Academy Trust of the GAG and EAG amounts in respect of each Academy which, subject to parliamentary approval, the Secretary of State plans for that Academy Financial Year and how these have been calculated.

3.19 The amounts of GAG for an Academy Financial Year will be determined annually by the Secretary of State, and notified to the Academy Trust in a funding letter sent before the relevant Academy Financial Year begins (the "**Annual Letter of Funding**").

3.20 Amounts of EAG will be notified to the Academy Trust wherever possible in the Annual Letter of Funding or as soon as is practicable afterwards.

3.21 The Annual Letter of Funding will, as well as stating the grant amounts, set out how these have been calculated. It will not include grants which cannot be calculated in time because there is not enough information, or for other administrative reasons. Any such grants will be notified as soon as practicable.

3.22 The Secretary of State will pay GAG in monthly instalments on or before first day of each month ("the relevant month"), to fund the salaries and other payroll costs of all monthly paid employees and all other costs payable during the relevant month. The detailed arrangements for payment will be set out in the Annual Letter of Funding, or an equivalent.

3.23 If GAG or EAG is miscalculated:

a) because of a mistake by the Secretary of State, which leads to an underpayment to the Academy Trust, the Secretary of State will correct the underpayment in the same or subsequent Academy Financial Years;

b) because the Academy Trust provided incorrect information, which leads to an underpayment to the Academy Trust, the Secretary of State may correct the underpayment in the same or subsequent Academy Financial Years;

c) for any reason which results in an overpayment to the Academy Trust, the Secretary of State may recover any overpaid grant in the same or subsequent Academy Financial Years, having considered all the relevant circumstances and taking into account any representations from the Academy Trust.

**Other relevant funding**

3.24. The Academy Trust may receive additional funding from an LA under an agreement with that LA for the provision of support for pupils with SEN who require high levels of such support. The Academy Trust must ensure that all support required under that agreement is provided for those pupils.

## 4. FINANCIAL AND ACCOUNTING REQUIREMENTS

**General**

4.1 In order for the Secretary of State to provide grant funding to the Academy Trust, the Academy Trust must be fulfilling the financial and reporting requirements in this Agreement, and any Supplemental Agreements.

4.2 In its conduct and operation, the Academy Trust must apply financial and other controls which meet the requirements of regularity, propriety and value for money.

4.3 The Academy Trust must appoint an accounting officer and must notify the Secretary of State of that appointment. The Academy Trust must assign to the accounting officer the responsibilities of the role set out in the Academies Financial Handbook and HM Treasury's publication 'Managing Public Money'.

4.4 The Academy Trust must abide by the requirements of, and have regard to the guidance for, charities and charity trustees issued by the Charity Commission and, in particular, the Charity Commission's guidance on 'Protecting Charities from Harm'. Any references in this document which require charity trustees to report to the Charity Commission should instead be interpreted as reporting to the body or person appointed as the principal regulator under the Charities Act 2011.

4.5 The Academy Trust must abide by the requirements of the current 16 to 19 Funding Guidance published by the Secretary of State, in respect of any provision for students who are above compulsory school age until the academic year in which they reach the age of 19.

4.5A If the Secretary of State pays any grant to or on behalf of the Academy Trust, in respect of any Free Schools that the Academy Trust establishes and maintains, which includes an amount to cover VAT, the Academy Trust shall, having paid the VAT, promptly submit a VAT reclaim application to Her Majesty's Revenue and Customs (HMRC). Any failure by the Academy Trust to submit a VAT reclaim application to HMRC, or to pursue the application diligently, or to repay any reclaimed amount to the Secretary of State as soon as reasonably practicable following receipt will be taken into account by the Secretary of State in:

a) calculating and paying any subsequent grant to the Academy Trust; or

b) adjusting GAG payable to the Academy Trust in subsequent Academy Financial Years.

**Application of the Academies Financial Handbook**

4.6 In relation to the use of grant paid to the Academy Trust by the Secretary of State, the Academy Trust must follow the requirements of, and have regard to the guidance in, the Academies Financial Handbook.

4.7 The Academy Trust must have adequate insurance cover or opt in to the Department's arrangements as set out in the Academies Financial Handbook.

4.8 The Academy Trust must submit information about its finances to the Secretary of State in accordance with the Academies Financial Handbook, or as otherwise specified by the Secretary of State.

**Budgeting for funds**

4.9 The Academy Trust must balance its budget from each Academy Financial Year to the next. For the avoidance of doubt, this does not prevent the Academy Trust from:

a) subject to clause 4.14, carrying a surplus from one Academy Financial Year to the next; or

b) carrying forward from previous Academy Financial Years sufficient cumulative surpluses on grants from the Secretary of State to meet an in-year deficit on such grants in a subsequent financial year, in accordance with clauses 4.14-4.16 and 3.L of the relevant Supplemental Agreement; or

c) incurring an in-year deficit on funds from sources other than grants from the Secretary of State in any Academy Financial Year, provided it does not affect the Academy Trust's responsibility to ensure that its Academies balance their respective overall budgets from each Academy Financial Year to the next.

4.10 The Academy Trust may spend or accumulate funds from private sources or public sources other than grants from the Secretary of State for the benefit of the Academy Trust as it sees fit. Any surplus from private or public sources

other than grants from the Secretary of State must be separately identified in the Academy Trust's accounts.

4.11 For clarity, and in accordance with the intent of parity of funding with LA maintained schools, in circumstances where a Predecessor School had a deficit balance and the DfE has settled this with the relevant LA, that amount will be recovered from the Academy Trust's GAG over a period not normally exceeding 3 years (unless the Secretary of State's in his discretion decides otherwise) after the Academy opened.

4.12 The Academy Trust's budget must be approved for each Academy Financial Year by the Board of Charity Trustees.

4.13 The approved budget must be submitted to the Secretary of State in a form, and by a date, to be notified by the Secretary of State.

**Carrying forward of funds**

4.14 At the end of any Academy Financial Year the Academy Trust may carry forward unspent GAG from previous Academy Financial Years without limit (unless a limit is specified in the Academies Financial Handbook, or otherwise as specified in writing by the Secretary of State, in which case that limit will apply).

4.15 The Academy Trust must use any GAG carried forward only for purposes of GAG as set out in this agreement, or otherwise as specified in the Academies Financial Handbook or in writing by the Secretary of State.

4.16 Any additional grant provided for an Academy's Start-Up Period may be carried forward, without limitation or deduction, until the Start-Up Period ends.

4.17 Any unspent grant not allowed to be carried forward under clauses 4.14-4.16 and 3.L of the relevant Supplemental Agreement may be taken into account in the payment of subsequent grant.

**Annual accounts and audit**

4.18 The Academy Trust must prepare and file with Companies House the annual reports and accounts required by the Companies Act 2006.

4.19 In addition, the Academy Trust must prepare its annual reports and accounts for each Academy Financial Year:

a) in accordance with the Charity Commission's 'Accounting and Reporting by Charities: Statement of Recommended Practice', as if the Academy Trust was a registered charity; and

b) otherwise as the Secretary of State directs.

4.20 The Academy Trust's accounts must be audited annually by independent auditors appointed in line with the Academies Financial Handbook.

4.21 The accounts must carry an audit report stating whether, in the opinion of the auditors, the accounts show a true and fair view of the Academy Trust's affairs. The accounts must also be supported by such other audit reports, relating to the use of grants and other matters, as the Secretary of State directs.

4.22 The Academy Trust's annual report must include the names of all members of the Academy Trust who served during the year.

4.23 The Academy Trust's annual reports and accounts, and the auditor's reports, must be submitted to the Secretary of State by 31 December each Academy Financial Year, or as otherwise specified by the Secretary of State. The Academy Trust must publish on its website its annual reports and accounts, current memorandum of association, Articles and Funding Agreement and the names of its Charity Trustees and members. The Secretary of State may also publish the Academy Trust's annual reports and accounts, and the audit report, as he sees fit.

**Keeping financial records**

4.24 The Academy Trust must keep proper accounting records. Statements of income and expenditure, statements of cash flow and balance sheets must be produced in such form and frequency as the Secretary of State directs.

**Access to financial records**

4.25 The books of accounts and all relevant records, files and reports of the Academy Trust, including those relating to financial controls, must be open at all reasonable times to officials of the DfE and the National Audit Office, and to their agents and contractors, for inspection or carrying out value for money studies. The Academy Trust must give those officials and contractors reasonable assistance with their enquiries. For the purposes of this clause 'relevant' means in any way relevant to the provision and use of grants provided by the Secretary of State under this Agreement.

4.26 The Secretary of State may, at his expense, instruct auditors to report to him on the adequacy and effectiveness of the Academy Trust's accounting systems and internal controls to standards determined by the Secretary of State, and to make recommendations for improving the Academy Trust's financial management.

**Acquiring and disposing of Publicly Funded Assets**

4.27 In relation to Publicly Funded Assets, the Academy Trust must not, without the Secretary of State's consent:

a) acquire or dispose of freehold land;

b) take up or grant a leasehold of land;

dispose of any other class of capital assets except as permitted in the Academies Financial Handbook, and subject to Part 3 of Schedule 1 to the Academies Act 2010.

4.28 The Academy Trust must give 30 days' notice to the Secretary of State, whether or not the circumstances require his approval, of its intention to take any of the actions in clause 4.27.

**Retention of proceeds from the disposal of capital assets**

4.29 Except as permitted in the Academies Financial Handbook, if the Academy Trust sells capital assets which were acquired or enhanced wholly or partly using payments made by or on behalf of HM Government the Academy Trust must pay to the Secretary of State, at his request, an amount of the sale proceeds equivalent to the proportion of the original cost of the acquisition or enhancement which was met by or on behalf of HM Government.

4.30 If the Academy Trust sells a capital asset which was transferred to it for no or nominal consideration from an LA, a Predecessor School or a Predecessor School's foundation, the Academy Trust must, if required by the Secretary of State, pay all or part of the sale proceeds to the LA or to the Secretary of State, taking into account the amount of the proceeds to be reinvested by the Academy Trust.

**Transactions outside the usual planned range**

4.31 In relation to Publicly Funded Assets, the Academy Trust must not, without the Secretary of State's consent:

a) give any guarantees, indemnities or letters of comfort, except such as are given in normal contractual relations;

b) write off any debts or liabilities owed to it; or

c) offer to make any special payments as defined in HM Treasury's publication 'Managing Public Money' (including ex gratia payments, staff severance payments and compensation payments)

above any values specified in the Academies Financial Handbook.

4.32 The Academy Trust must give the Secretary of State 30 days' notice, whether or not the circumstances require his consent, of its intention to do any of the actions in clause 4.31.

4.33 The Academy Trust must promptly notify the Secretary of State of any loss arising from suspected theft or fraud in line with the requirements in the Academies Financial Handbook, or otherwise specified by the Secretary of State.

**Borrowing**

4.34 Except as permitted in the Academies Financial Handbook, the Academy Trust must not borrow against Publicly Funded Assets, or so as to put Publicly Funded Assets at risk, without the Secretary of State's consent.

## 5. COMPLAINTS

5.1 With regards to a **Mainstream Academy**, **a Special Academy** an **Alternative Provision Academy** or **a 16-19 Academy**, if a complaint is made about matters arising wholly or partly before the Academy opened, and all or part of that complaint was investigated by the Local Government Ombudsman under Part III of the Local Government Act 1974 ("**Part III**"), or could have been investigated under Part III if the Predecessor School/Pupil Referral Unit had remained a maintained school/Pupil Referral Unit, the Academy Trust:

a) must abide by the provisions of Part III as if the Academy were a maintained school/Pupil Referral Unit;

b) 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

c) must act in accordance with any recommendation from the Secretary of State as if that recommendation had been made under Part III and the Academy were a maintained school/Pupil Referral Unit.

5.2 With regards to a **Mainstream Academy,** a **Special Academy** or a **16-19 Academy**, if the Secretary of State could have given an order or a direction under section 496 or 497 of the Education Act 1996 to the governing body of the Predecessor School and that order or direction related to matters occurring within the 12 months immediately before the Academy opened, the Academy Trust:

a) agrees that the Secretary of State may give orders or directions to the Academy Trust as though the Academy were a maintained school and sections 496 and 497 applied to the governing body of that maintained school; and

b) must act in accordance with any such order or direction from the Secretary of State.

5.3 If at the time of the opening of any **Mainstream Academy, Special Academy, Alternative Provision Academy** or **16-19 Academy** the investigation of a complaint made to the governing body of the Predecessor School/Pupil Referral Unit has not yet been completed, the Academy Trust must continue to investigate that complaint in accordance with the complaints procedures established by that governing body.

5.4 If a complaint is made to the Academy Trust about matters arising in whole or in part during the 12 months prior to the opening of any **Mainstream Academy**, any **Special Academy** any **Alternative Provision Academy** or any **16-19 Academy** the Academy Trust agrees to investigate that complaint as if the matter complained of had taken place after the Academy opened.

## 6. TERMINATION

6.1 This Agreement will commence on the date of delivery and continue until terminated in accordance with clauses 6.2-6.7, or until all Supplemental Agreements have terminated.

**Termination by either party**

6.2 The Secretary of State may serve a Termination Notice if any of the following events occur, or if he considers that there is a serious risk that any of them may occur:

a) the Academy Trust calls a formal or informal meeting of its creditors or enters into any formal or informal composition or arrangement with its creditors; or

b) the Academy Trust proposes a voluntary arrangement within Section 1 of the Insolvency Act 1986 (as amended); or

c) the Academy Trust is unable to pay its debts within the meaning of Section 123 of the Insolvency Act 1986 provided that, for the purposes of this clause, Section 123 (1)(a) of the Insolvency Act 1986 will have effect as if £10,000 was substituted for £750. The Academy Trust will not be deemed unable to pay its debts for the purposes of this clause if any such demand as is mentioned in the said Section is being contested in good faith by the Academy Trust; or

d) the Academy Trust has a receiver and manager (except those appointed by the Charity Commission under the Charities Act 2011), administrator or administrative receiver appointed over all or part of its undertakings, assets or income; or

e) any distraint, execution or other process is levied or enforced on any of the Academy Trust's property and is not paid out, withdrawn or discharged within 15 business days; or

f) the Academy Trust has passed a resolution for its winding up; or

g) an order is made for the winding up or administration of the Academy Trust.

6.3 The Academy Trust must promptly notify the Secretary of State, with an explanation of the circumstances, after receiving any petition which may result in an order for its winding up or administration.

6.4 If

a) any Charity Trustee or member of the Academy Trust refuses to consent to any checks required under this Agreement, or as otherwise requested by the Secretary of State; or

b) the Secretary of State determines that any Charity Trustee or member of the Academy Trust is unsuitable,

the Secretary of State may:

i. direct the Academy Trust to ensure that the Charity Trustee or member resigns or is removed within 42 days, failing which the Secretary of State may serve a Termination Notice; or

ii. serve a Termination Notice.

6.5 For the purposes of clause 6.4 a Charity Trustee or member of the Academy Trust will be "unsuitable" if that Charity Trustee or member:

a) has been convicted of an offence;

b) has been given a caution in respect of an offence;

c) is subject to a relevant finding in respect of an offence; or

d) has engaged in relevant conduct,

as a result of which, the Secretary of State considers that that Charity Trustee or member is unsuitable to take part in the management of the Academies.

6.6 For the purposes of clause 6.5:

a) a Charity Trustee or member of the Academy Trust will be subject to a "relevant finding" in respect of an offence if:

i. that Charity Trustee or member has been found not guilty of the offence by reason of insanity;

ii. that Charity Trustee or member has been found to be under a disability and to have done the act charged against them in respect of the offence; or

iii. a court outside the United Kingdom has made a finding equivalent to that described in paragraphs (i) and (ii) above.

b) "relevant conduct" is conduct by a Charity Trustee or member of the Academy Trust which is:

i. aimed at undermining the fundamental British values of democracy, the rule of law, individual liberty and mutual respect and tolerance of those with different faiths and beliefs; or

ii. found to be in breach of professional standards by a professional body; or

iii. so inappropriate that, in the opinion of the Secretary of State, it makes that Charity Trustee or member unsuitable to take part in the management of the Academy.

**Change of Control of the Academy Trust**

6.7 The Secretary of State may at any time, subject to clause 6.8, serve a Termination Notice if there is a change:

a) in the Control of the Academy Trust; or

b) in the Control of a legal entity that Controls the Academy Trust.

6.8 Where a person ('P') is a member or director of a body corporate (as a corporation sole or otherwise) by virtue of an office, no change of Control arises merely by P's successor becoming a member or director in P's place.

6.9 The Academy Trust must promptly notify the Secretary of State if there is a proposed or actual change of Control of the Academy Trust, or of a legal entity that Controls the Academy Trust.

6.10 When notifying the Secretary of State further to clause 6.9, the Academy Trust must seek his agreement that, if he is satisfied with the change of Control, he will not exercise his right to terminate this Agreement further to clause 6.7.

## 7. OTHER CONTRACTUAL ARRANGEMENTS

**Information**

7.1 The Academy Trust must promptly provide to the Secretary of State any information about the Academy Trust, or any of its Academies, which he regards as necessary to fulfil his role and responsibilities.

7.2 The Secretary of State will give the Academy Trust any information it reasonably requires of him for the running of its Academies.

**Access by the Secretary of State's Officers**

7.3 The Academy Trust must allow DfE officials to enter any of its Academies at any reasonable time. All records, files and reports relating to the running of each Academy must be available to them at any reasonable time. Two DfE officials may attend and speak at any meetings of each Academy's Local Governing Body, of the Academy Trust's Board of Charity Trustees or any other meetings of the Charity Trustees of the Academy Trust, but will withdraw from any discussion of an Academy's or the Academy Trust's relationship with the Secretary of State or any discussion of bids for funding to the Secretary of State.

7.4 The following documents must be provided to the Secretary of State or any person nominated by the Secretary of State on request:

a) the agenda for every meeting of the Board of Charity Trustees, any Local Governing Body or any committee to which the Board of Charity Trustees delegates any of its functions;

b) the draft minutes of every such meeting, if they have been approved by the chairman of that meeting;

c) the signed minutes of every such meeting; and

d) any report, document or other paper considered at any such meeting.

7.5 The Academy Trust may exclude from items provided under clause 7.4 any content relating to:

a) a named teacher or other person employed, or proposed to be employed, at any Academy;

b) a named pupil or student at, or candidate for admission to, any Academy; and

c) any matter which the Academy Trust reasonably believes should remain confidential.

**Notices**

7.6 A notice or communication given to a party in connection with this Agreement or any Supplemental Agreement:

a) must be in writing (excluding email, except where agreed in advance) and in English;

b) must be delivered by hand or sent by pre-paid first-class post or other next working day delivery service;

c) will be deemed to have been received:

i. if delivered by hand, at the time when a delivery receipt is signed or when the notice is left at the address in paragraph (d), or

ii. if posted, at 9.00am on the second working day after posting; and

d) must be sent to the party for the attention of the contact and at the address listed as follows (or to a different contract or address previously notified to the sending party, the change taking effect five working days after deemed receipt of the notice):

| Name of party | Position of contact | Address |
|---|---|---|
| Secretary of State | Head of Academies Division | Department for Education<br>Sanctuary Buildings<br>Great Smith Street<br>London<br>SW1P 3BT |
| University of Brighton Academies Trust | Chairman | University of Brighton Academies Trust<br>University of Brighton<br>Multi-Academy Trust Office<br>Checkland Building<br>Falmer<br>BN1 9PH |

**Contractual**

7.7 This Academy Trust cannot assign this Agreement.

7.8 Failure to exercise, or 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.

7.9 Termination of this Agreement will not affect the accrued rights, remedies, obligations or liabilities of the parties to this Agreement existing at termination.

7.10 This Agreement may be executed in any number of counterparts, each of which when executed and delivered will constitute a duplicate original, but all of which will together constitute the same agreement.

7.11 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) will 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.

This Agreement was executed as a Deed on 20 March 2015

Executed on behalf of **UNIVERSITY OF BRIGHTON ACADEMIES TRUST** by:

**Director** : [redacted]

In the presence of a witness:

Signature:

Name:

Address: [redacted]

The Corporate Seal of

**THE SECRETARY OF STATE FOR EDUCATION**

affixed to this deed is authenticated by:

**Duly Authorised**

Department for Education

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## Part B- Amended Supplemental Funding Agreements

Department for Education

# Mainstream academy and free school: supplemental funding agreement

**April 2016**

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## SUMMARY SHEET

**Information about the Academy:**

| | |
|---|---|
| **Name of Academy Trust** | Hastings Academies Trust (to be renamed University of Brighton Academies Trust) |
| **Company number** | 07185046 |
| **Date of Master Funding Agreement** | 20 March 2015 |
| **Name of academy** | The Baird Primary Academy |
| **Opening date** | 1 January 2014 |
| **Type of academy (indicate whether academy or free school)** | Mainstream academy |
| **Religious designation** | N/A |
| **Wholly or partly selective** | N/A |
| **Name of predecessor school (where applicable)** | Elphinstone Primary School |
| **Capacity number** | 446 in total(420 + 26 full time nursery places) |
| **Age range** | 3-11 years |
| **Number of sixth form places** | None |
| **Number of boarding places** | None |
| **SEN unit / Resource provision** | N/A |
| **Land arrangements**<br><br>**(Version 1-7 or other)** | Version 2 |
| **Address and title number of Land** | The Baird Primary Academy, Elphinstone Avenue, Hastings TN34 2DE<br><br>Title number ESX355865 |

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

| Clause No. | Descriptor | Applied | Not used |
|---|---|---|---|
| 1.I | Only applies to free schools and new provision academies | | X |
| 2.A.1 | Clause applies where an academy was previously a VC or foundation school designated with a religious character | | X |
| 2.C, 2.D | Only applies where the academy has an SEN unit | | X |
| 2.E | Only applies where there was a predecessor independent school | | X |
| 2.G | Clause does not apply to free schools (unless there was a predecessor independent school), or new provision academies | X | |
| 2.M | Clause applies only to academies and free schools designated with a religious character | | X |
| 2.N | Clause applies only to academies that were formerly wholly selective grammar schools | | X |
| 2.O | Clause applies only to academies that were formerly partially selective grammar schools | | X |
| 2.T | Clause applies to free schools and new provision academies designated with a religious character | | X |
| 2.W | Clause only applies where the academy is designated with a religious character | | X |
| 2.X | Clause only applies where the academy has not been designated with a religious character | X | |
| 2.Y | Clause applies where an academy was previously a VC school or foundation school designated with a religious character | | X |
| 2.Yc) | Sub-clause applies if the academy is designated with a denominational religious character – CE etc. rather than 'Christian' | | X |

| Clause No. | Descriptor | Applied | Not used |
|---|---|---|---|
| 3.A – 3.F | Option 1 applies to converter and sponsored academies: if used delete option 2 | X | |
| 3.A – 3.F | Option 2 applies to free schools and new provision academies: if used delete option 1 | | 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 independent school), or new provision academies | X | |
| 5.G.1 | Clause applies only to a boarding academy/free school. | | X |
| 5.I | Clause only applies to sponsored 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 |
| 5.O | 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 identify any other variations from the model that apply to this academy (e.g. clauses relating to PFI, or any required because the multi academy trust includes academies designated with different religious characters, or a**

**mixture of those designated with a religious character, and those which are not):**

**Additional clauses 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 Hastings Academies Trust (to be renamed University of Brighton Academies Trust) is supplemental to the master funding agreement made between the same parties and dated 20 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 the The Baird Primary Academy.

**"Coasting"** has the meaning given by regulations under subsection (3) of section 60B of the Education and Inspections Act 2006 in relation to a school to which that section applies.

"**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.

"**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 Mainstream 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 January 2014.

1.I ***Not Used***

## 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 pupils, teach pupils, and assess and report on pupils' development, progress and attainment.

2.A.1 ***Not used.***

**Pupils**

2.B The planned capacity of the Academy is 446 in total (420 plus 26 full time nursery places) in the age range 3 to 11 years. The Academy will be an all ability inclusive school.

**SEN unit**

2.C ***Not used.***

2.D ***Not Used***

**Charging**

2.E ***Not used.***

**Admissions**

2.F Subject to clauses 2.K– 2.L the Academy Trust will act in accordance with, and will ensure that its Independent Appeal Panel is trained to act in accordance with, the School Admissions Code and School Admission Appeals Code published by the DfE (the "Codes") and all relevant admissions law as they apply to foundation and voluntary aided schools, and with equalities law. Reference in the Codes or legislation to "admission authorities" will be deemed to be references to the Academy Trust.

2.G Pupils on roll in a Predecessor School which was a maintained or independent school will transfer automatically to the Academy on opening. All children already offered a place at that Predecessor School must be admitted to the Academy.

2.H The Academy Trust must participate in the local Fair Access Protocol. The Academy Trust must participate in the coordinated admission arrangements operated by the LA in whose area the Academy is situated. If the Academy is a free school, the Academy Trust is not required to participate in coordination for its first intake of pupils.

2.I The Academy Trust may determine admission arrangements (subject to consultation in line with the Codes) that give priority for admission to children attracting the Pupil Premium, including the service premium (the "pupil premium admission criterion"), but not above looked-after children and previously looked-after children.

2.J Where the Academy Trust applies the pupil premium admission criterion, it must provide information in its admission arrangements about eligibility for the premiums.

2.K For the purposes of applying the pupil premium admission criterion only, sections 1.9(f) and 2.4(a) of the School Admissions Code do not apply insofar as they prevent admission authorities from giving priority to children according

to the financial or occupational status of parents or using supplementary forms that ask for:

a) any personal details about their financial status; or

b) whether parents are serving in the UK armed forces or were serving in the UK armed forces, and are exercising parental care and responsibility for the child in question.

2.L The Secretary of State may:

a) direct the Academy Trust to admit a named pupil to the Academy:

i. following an application from an LA including complying with a school attendance order as defined in section 437 of the Education Act 1996. Before doing so the Secretary of State will consult the Academy Trust; or

ii. where in relation to a specific child or children the Academy Trust has failed to act in accordance with the Codes or this Agreement or has otherwise acted unlawfully; or

b) direct the Academy Trust to amend its admission arrangements where they do not comply with the Codes or this Agreement, or are otherwise unlawful.

2.M ***Not used.***

2.N ***Not used.***

2.O ***Not used.***

2.P The Academy Trust must ensure that parents and 'relevant children' (as described in the **Codes**) have the right to appeal to an Independent Appeal Panel if they are dissatisfied with an admission decision of the Academy Trust. The arrangements for appeals must comply with the Codes as they apply to foundation and voluntary aided schools. The determination of the appeal panel is binding on all parties.

2.Q Subject to clause 2.R, the meaning of "**relevant area**" for the purposes of consultation requirements in relation to admission arrangements is that determined by the relevant LA for maintained schools in the area in accordance with the Education (Relevant Areas for Consultation on Admission Arrangements) Regulations 1999.

2.R If the Academy does not consider the relevant area determined by the LA for the maintained schools in the area to be appropriate, it must apply to the Secretary of State by 1 August before the academic year in question for a determination of the appropriate relevant area for the Academy, setting out the reasons for this view. The Secretary of State will consult the Academy Trust and the LA in whose area the Academy is situated in reaching a decision.

2.S The Office of the Schools Adjudicator ("**OSA**") will consider objections to the Academy's admission arrangements (except objections against the agreed variations from the Codes specified at clause 2.K, over which it has no jurisdiction). The Academy Trust must therefore make it clear, when determining the Academy's admission arrangements, that objections should be submitted to the OSA. The OSA's determination of an objection is binding on the Academy and the Academy Trust must make appropriate changes to its admission arrangements as quickly as possible.

2.T ***Not used.***

**Curriculum**

2.U The Academy Trust must provide for the teaching of religious education and a daily act of collective worship at the Academy.

2.V The Academy Trust must comply with section 71(1)-(6) and (8) of the School Standards and Framework Act 1998 as if the Academy were a community, foundation or voluntary school, and as if references to "religious education" and "religious worship" in that section were references to the religious education and religious worship provided by the Academy in accordance with clause 2.X**.**

2.W ***Not used.***

2.X Subject to clause 2.V, **where the academy has not been designated with a religious character** (in accordance with section 124B of the School Standards and Framework Act 1998 or further to section 6(8) of the Academies Act 2010):

a) provision must be made for religious education to be given to all pupils at the Academy in accordance with the requirements for agreed syllabuses in section 375(3) of the Education Act 1996 and paragraph 2(5) of Schedule 19 to the School Standards and Framework Act 1998;

b) the Academy must comply with section 70(1) of, and Schedule 20 to, the School Standards and Framework Act 1998 as if it were a community, foundation or voluntary school which does not have a religious character, except that paragraph 4 of that Schedule does not apply. The Academy may apply to the Secretary of State for consent to be relieved of the requirement imposed by paragraph 3(2) of that Schedule.

2.Y ***Not used.***

2.Z The Academy Trust must have regard to any Guidance, further to section 403 of the Education Act 1996, on sex and relationship education to ensure that children at the Academy are protected from inappropriate teaching materials and that they learn the nature of marriage and its importance for family life and for bringing up children. The Academy Trust must also have regard to the requirements in section 405 of the Education Act 1996, as if the Academy were a maintained school.

2.AA The Academy Trust must prevent political indoctrination, and secure the balanced treatment of political issues, in line with the requirements for maintained schools set out in the Education Act 1996, and have regard to any Guidance.

# 3. GRANT FUNDING

**Calculation of GAG**

3A-3D. Not used.

3.E The Secretary of State will calculate GAG based on the pupil count at the Academy. In order to calculate GAG for the Academy Financial Year in which the Academy opens, the pupil count will be determined on the same basis as that used by the relevant LA for determining the budget of the maintained Predecessor School.

3.F For Academy Financial Years after that referred to in clause 3.E, the basis of the pupil count for determining GAG will be:

a) for pupils in Year 11 and below, the Schools Census which is used to fund maintained schools for the financial year overlapping with the Academy Financial Year in question; and

b) for pupils in Year 12 and above, the formula which is in use at the time for maintained schools.

3.G The Secretary of State may, at his discretion, adjust the basis of the pupil 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 pupil 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 pupils during the notice period may decline and

therefore payments based on the number of pupils 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 The Academy Trust may apply to the Secretary of State for financial assistance in relation to proposed redundancies at the Academy. In response to such an application, the Secretary of State may at his discretion agree to meet a proportion of the Academy Trust's costs arising from the inclusion of academies in the schedules to the Redundancy Payments (Continuity of Employment in Local Government) (Modification) Order 1999. The Secretary of State may agree to meet the costs of an employee's prior eligible service, being service before the Academy opened, but the Academy Trust must meet the costs of service after the Academy opened. The Secretary of State's financial assistance in this respect will only be available in the first two years after the Academy opens.

3.K The Secretary of State may pay the Academy Trust's costs in connection with the transfer of employees from a Predecessor School under the Transfer of Undertakings (Protection of Employment) Regulations 2006. Such payment will be agreed on a case-by-case basis. The Academy Trust must not budget for such a payment unless the Secretary of State confirms in writing that it will be paid.

**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 terminates 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 land at The Baird Primary Academy, Elphinstone Avenue, Hastings TN34 2DE, being the land registered with title number Title number ESX355865 and demised by the Lease.

"**Lease**" means the lease or other occupational agreement between the Academy Trust and a third party (the "**Landlord**") under which the Academy Trust derives title to the Land.

"**Property Notice**" means any order, notice, proposal, demand or other requirement issued by any competent authority (including the Landlord) 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 comply with the Lease and promptly enforce its rights against the Landlord.

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

a) terminate, vary, surrender, renew, dispose of or agree any revised rent under the Lease;

b) grant any consent or licence; or

c) create or allow any encumbrance; or

d) part with or share possession or occupation; or

e) enter into any onerous or restrictive obligations,

in respect of all or part of the Land.

**Option**

4.E The Academy Trust grants and the Secretary of State accepts an option (the "**Option**") to acquire 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.F 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.G 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.

**Breach of Lease**

4.H If the Academy Trust is, or if it is reasonably foreseeable that it will be, in material breach of the Lease, the Academy Trust must immediately give written notice to the Secretary of State stating what the breach is and what action the Academy Trust has taken or proposes to take to remedy it, including timescales where appropriate.

4.I After notifying the Secretary of State under clause 4.H, the Academy Trust must:

a) promptly give the Secretary of State all the information he asks for about the breach;

b) allow the Secretary of State to take all necessary action, with or instead of the Academy Trust, to remedy or prevent the breach, and

c) use its best endeavours to help the Secretary of State to remedy or prevent the breach.

**Sharing the Land**

4.J 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 sublet 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.K To the extent the Academy Trust and the Secretary of State agree to part of the Land being demised or sublet in accordance with clause 4.J, the Academy Trust must use its best endeavours to procure either the approval of the Landlord or any necessary amendments to the Lease 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.L For the purposes of clause 4.J:

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 DfE 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.

## 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 pupils 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 pupils or staff is threatened, including due to breakdown of discipline; or

e) the Academy is coasting provided he has notified the Academy Trust that it is coasting.

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 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.G.1 ***Not used.***

5.H If the Secretary of State has served a Termination Warning Notice under clause 5.Fand:

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 If the Chief Inspector gives a notice referred to in clause 5.F to the Academy Trust within two years after the Academy opened, the Secretary of State may only serve a Termination Warning Notice under clause 5.F if:

a) the Chief Inspector has held a monitoring inspection under section 8 of the Education Act 2005 later than two years after the Academy opened; and

b) the Chief Inspector considers that the Academy is not making enough progress towards the removal of the designation referred to in his

notice.

Nothing in this clause prevents or prejudices the Secretary of State exercising any other rights arising from or under this Agreement (including, for the avoidance of doubt, any rights under clauses 5.B to 5.E).

**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 on 31 August before the Critical 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 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 2017

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

| | | |
|---|---|---|
| …….. | and | …….. |
| **Director** | | **Director** |
| | or | …….. |
| | | **Company Secretary** |
| | or | …….. |
| | | **Witness** |
| | | Name: |
| | | Address: |

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.

**"EHC plan"** means an Education, Health and Care plan made under sections 37(2) 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 pupils with special educational needs, including the admission of pupils 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 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) 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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Department for Education

# Mainstream academy and free school: supplemental funding agreement

**April 2016**

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## SUMMARY SHEET

**Information about the Academy:**

| | |
|---|---|
| **Name of Academy Trust** | Hastings Academies Trust (to be renamed University of Brighton Academies Trust) |
| **Company number** | 07185046 |
| **Date of Master Funding Agreement** | 20 March 2015 |
| **Name of academy** | Churchwood Primary Academy |
| **Opening date** | 1 September 2014 |
| **Type of academy (indicate whether academy or free school)** | Mainstream academy |
| **Religious designation** | N/A |
| **Wholly or partly selective** | N/A |
| **Name of predecessor school (where applicable)** | Churchwood Primary School |
| **Capacity number** | 257 in total<br>• (210<br>• + 54 places for 3 year olds (27 morning places, 27 afternoon places) and<br>• + 40 places for 2 year olds (20 morning places, 20 afternoon places)) |
| **Age range** | 2-11 years |
| **Number of sixth form places** | None |
| **Number of boarding places** | None |
| **SEN unit / Resource provision** | N/A |
| **Land arrangements**<br><br>**(Version 1-7 or other)** | Version 2 |
| **Address and title number of Land** | Churchwood Primary Academy, Church In The Wood Lane, St Leonards-On-Sea TN38 9AB |

| | |
|---|---|
| **Name of Academy Trust** | Hastings Academies Trust (to be renamed University of Brighton Academies Trust) |
| | Title numbers ESX 360685 and ESX370197 |

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

| Clause No. | Descriptor | Applied | Not used |
|---|---|---|---|
| 1.I | Only applies to free schools and new provision academies | | X |
| 2.A.1 | Clause applies where an academy was previously a VC or foundation school designated with a religious character | | X |
| 2.C, 2.D | Only applies where the academy has an SEN unit | | X |
| 2.E | Only applies where there was a predecessor independent school | | X |
| 2.G | Clause does not apply to free schools (unless there was a predecessor independent school), or new provision academies | X | |
| 2.M | Clause applies only to academies and free schools designated with a religious character | | X |
| 2.N | Clause applies only to academies that were formerly wholly selective grammar schools | | X |
| 2.O | Clause applies only to academies that were formerly partially selective grammar schools | | X |
| 2.T | Clause applies to free schools and new provision academies designated with a religious character | | X |
| 2.W | Clause only applies where the academy is designated with a religious character | | X |
| 2.X | Clause only applies where the academy has not been designated with a religious character | X | |
| 2.Y | Clause applies where an academy was previously a VC school or foundation school designated with a religious character | | X |
| 2.Yc) | Sub-clause applies if the academy is designated with a denominational religious character – CE etc. rather than 'Christian' | | X |

| Clause No. | Descriptor | Applied | Not used |
|---|---|---|---|
| 3.A – 3.F | Option 1 applies to converter and sponsored academies: if used delete option 2 | X | |
| 3.A – 3.F | Option 2 applies to free schools and new provision academies: if used delete option 1 | | 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 independent school), or new provision academies | X | |
| 5.G.1 | Clause applies only to a boarding academy/free school. | | X |
| 5.I | Clause only applies to sponsored 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 |
| 5.O | 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 identify any other variations from the model that apply to this academy (e.g. clauses relating to PFI, or any required because the multi academy trust includes academies designated with different religious characters, or a**

**mixture of those designated with a religious character, and those which are not):**

**Additional clauses 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 Hastings Academies Trust (to be renamed University of Brighton Academies Trust) is supplemental to the master funding agreement made between the same parties and dated 20 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 the Churchwood Primary Academy.

**"Coasting"** has the meaning given by regulations under subsection (3) of section 60B of the Education and Inspections Act 2006 in relation to a school to which that section applies.

"**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.

"**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 Mainstream 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 2014.

1.I ***Not used.***

## 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 pupils, teach pupils, and assess and report on pupils' development, progress and attainment.

2.A.1 ***Not used.***

**Pupils**

2.B The planned capacity of the Academy is 257 (210 + 54 places for 3 year olds (27 morning places and 27 afternoon places) plus 40 places for 2 year olds (20 morning places and 20 afternoon places) in the age range 2 years to 11 years. The Academy will be an all ability inclusive school.

**SEN unit**

2.C ***Not used.***

2.D ***Not used.***

**Charging**

2.E ***Not used.***

**Admissions**

2.F Subject to clauses 2.K– 2.L the Academy Trust will act in accordance with, and will ensure that its Independent Appeal Panel is trained to act in accordance with, the School Admissions Code and School Admission Appeals Code published by the DfE (the "Codes") and all relevant admissions law as they apply to foundation and voluntary aided schools, and with equalities law. Reference in the Codes or legislation to "admission authorities" will be deemed to be references to the Academy Trust.

2.G Pupils on roll in a Predecessor School which was a maintained or independent school will transfer automatically to the Academy on opening. All children already offered a place at that Predecessor School must be admitted to the Academy.

2.H The Academy Trust must participate in the local Fair Access Protocol. The Academy Trust must participate in the coordinated admission arrangements operated by the LA in whose area the Academy is situated. If the Academy is a free school, the Academy Trust is not required to participate in coordination for its first intake of pupils.

2.I The Academy Trust may determine admission arrangements (subject to consultation in line with the Codes) that give priority for admission to children attracting the Pupil Premium, including the service premium (the "pupil premium admission criterion"), but not above looked-after children and previously looked-after children.

2.J Where the Academy Trust applies the pupil premium admission criterion, it must provide information in its admission arrangements about eligibility for the premiums.

2.K For the purposes of applying the pupil premium admission criterion only, sections 1.9(f) and 2.4(a) of the School Admissions Code do not apply insofar as they prevent admission authorities from giving priority to children according to the financial or occupational status of parents or using supplementary forms that ask for:

a) any personal details about their financial status; or

b) whether parents are serving in the UK armed forces or were serving in the UK armed forces, and are exercising parental care and responsibility for the child in question.

2.L The Secretary of State may:

a) direct the Academy Trust to admit a named pupil to the Academy:

i. following an application from an LA including complying with a school attendance order as defined in section 437 of the Education Act 1996. Before doing so the Secretary of State will consult the Academy Trust; or

ii. where in relation to a specific child or children the Academy Trust has failed to act in accordance with the Codes or this Agreement or has otherwise acted unlawfully; or

b) direct the Academy Trust to amend its admission arrangements where they do not comply with the Codes or this Agreement, or are otherwise unlawful.

2.M ***Not used.***

2.N ***Not used.***

2.O ***Not used.***

2.P The Academy Trust must ensure that parents and 'relevant children' (as described in the **Codes**) have the right to appeal to an Independent Appeal Panel if they are dissatisfied with an admission decision of the Academy Trust. The arrangements for appeals must comply with the Codes as they apply to foundation and voluntary aided schools. The determination of the appeal panel is binding on all parties.

2.Q Subject to clause 2.R, the meaning of "**relevant area**" for the purposes of consultation requirements in relation to admission arrangements is that

determined by the relevant LA for maintained schools in the area in accordance with the Education (Relevant Areas for Consultation on Admission Arrangements) Regulations 1999.

2.R If the Academy does not consider the relevant area determined by the LA for the maintained schools in the area to be appropriate, it must apply to the Secretary of State by 1 August before the academic year in question for a determination of the appropriate relevant area for the Academy, setting out the reasons for this view. The Secretary of State will consult the Academy Trust and the LA in whose area the Academy is situated in reaching a decision.

2.S The Office of the Schools Adjudicator ("**OSA**") will consider objections to the Academy's admission arrangements (except objections against the agreed variations from the Codes specified at clause 2.K, over which it has no jurisdiction). The Academy Trust must therefore make it clear, when determining the Academy's admission arrangements, that objections should be submitted to the OSA. The OSA's determination of an objection is binding on the Academy and the Academy Trust must make appropriate changes to its admission arrangements as quickly as possible.

2.T ***Not used.***

**Curriculum**

2.U The Academy Trust must provide for the teaching of religious education and a daily act of collective worship at the Academy.

2.V The Academy Trust must comply with section 71(1)-(6) and (8) of the School Standards and Framework Act 1998 as if the Academy were a community, foundation or voluntary school, and as if references to "religious education" and "religious worship" in that section were references to the religious education and religious worship provided by the Academy in accordance with clause 2.X***.***

2.W **Not used.**

2.X Subject to clause 2.V, **where the academy has not been designated with a religious character** (in accordance with section 124B of the School Standards and Framework Act 1998 or further to section 6(8) of the Academies Act 2010):

a) provision must be made for religious education to be given to all pupils at the Academy in accordance with the requirements for agreed syllabuses in section 375(3) of the Education Act 1996 and paragraph 2(5) of Schedule 19 to the School Standards and Framework Act 1998;

b) the Academy must comply with section 70(1) of, and Schedule 20 to, the School Standards and Framework Act 1998 as if it were a community, foundation or voluntary school which does not have a religious character, except that paragraph 4 of that Schedule does not apply. The Academy may apply to the Secretary of State for consent to be relieved of the requirement imposed by paragraph 3(2) of that Schedule.

2.Y ***Not used.***

2.Z The Academy Trust must have regard to any Guidance, further to section 403 of the Education Act 1996, on sex and relationship education to ensure that children at the Academy are protected from inappropriate teaching materials and that they learn the nature of marriage and its importance for family life and for bringing up children. The Academy Trust must also have regard to the requirements in section 405 of the Education Act 1996, as if the Academy were a maintained school.

2.AA The Academy Trust must prevent political indoctrination, and secure the balanced treatment of political issues, in line with the requirements for maintained schools set out in the Education Act 1996, and have regard to any Guidance.

## 3. GRANT FUNDING

**Calculation of GAG**

3A-3D. Not used.

3.E The Secretary of State will calculate GAG based on the pupil count at the Academy. In order to calculate GAG for the Academy Financial Year in which the Academy opens, the pupil count will be determined on the same basis as that used by the relevant LA for determining the budget of the maintained Predecessor School.

3.F For Academy Financial Years after that referred to in clause 3.E, the basis of the pupil count for determining GAG will be:

a) for pupils in Year 11 and below, the Schools Census which is used to fund maintained schools for the financial year overlapping with the Academy Financial Year in question; and

b) for pupils in Year 12 and above, the formula which is in use at the time for maintained schools.

3.G The Secretary of State may, at his discretion, adjust the basis of the pupil 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 pupil 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 pupils during the notice period may decline and therefore payments based on the number of pupils 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 The Secretary of State may pay the Academy Trust's costs in connection with the transfer of employees from a Predecessor School under the Transfer of Undertakings (Protection of Employment) Regulations 2006. Such payment will be agreed on a case-by-case basis. The Academy Trust must not budget for such a payment unless the Secretary of State confirms in writing that it will be paid.

**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 terminates 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 land at Churchwood Primary Academy, Church In The Wood Lane, St Leonards-On-Sea TN38 9AB, being the land registered with title number ESX360685 and ESX370197 and demised by the Lease.

"**Lease**" means the lease or other occupational agreement between the Academy Trust and a third party (the "**Landlord**") under which the Academy Trust derives title to the Land.

"**Property Notice**" means any order, notice, proposal, demand or other requirement issued by any competent authority (including the Landlord) 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 comply with the Lease and promptly enforce its rights against the Landlord.

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

a) terminate, vary, surrender, renew, dispose of or agree any revised rent under the Lease;

b) grant any consent or licence; or

c) create or allow any encumbrance; or

d) part with or share possession or occupation; or

e) enter into any onerous or restrictive obligations,

in respect of all or part of the Land.

**Option**

4.E The Academy Trust grants and the Secretary of State accepts an option (the "**Option**") to acquire 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.F 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.G 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.

**Breach of Lease**

4.H If the Academy Trust is, or if it is reasonably foreseeable that it will be, in material breach of the Lease, the Academy Trust must immediately give written notice to the Secretary of State stating what the breach is and what action the Academy Trust has taken or proposes to take to remedy it, including timescales where appropriate.

4.I After notifying the Secretary of State under clause 4.H, the Academy Trust must:

a) promptly give the Secretary of State all the information he asks for about the breach;

b) allow the Secretary of State to take all necessary action, with or instead of the Academy Trust, to remedy or prevent the breach, and

c) use its best endeavours to help the Secretary of State to remedy or prevent the breach.

**Sharing the Land**

4.J 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 sublet 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.K To the extent the Academy Trust and the Secretary of State agree to part of the Land being demised or sublet in accordance with clause 4.J, the Academy Trust must use its best endeavours to procure either the approval of the Landlord or any necessary amendments to the Lease 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.L For the purposes of clause 4.J:

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 DfE 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.

## 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 pupils 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 pupils or staff is threatened, including due to breakdown of discipline; or

e) the Academy is coasting provided he has notified the Academy Trust that it is coasting.

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 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.G.1 ***Not used.***

5.H If the Secretary of State has served a Termination Warning Notice under clause 5.Fand:

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 on 31 August before the Critical 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 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 2017

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

| | | |
|---|---|---|
| …….. | and | …….. |
| **Director** | | **Director** |
| | or | …….. |
| | | **Company Secretary** |
| | or | …….. |
| | | **Witness** |
| | | Name: |
| | | Address: |

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.

**"EHC plan"** means an Education, Health and Care plan made under sections 37(2) 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 pupils with special educational needs, including the admission of pupils 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 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) 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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Department for Education

# Mainstream academy and free school: supplemental funding agreement

**April 2016**

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## SUMMARY SHEET

**Information about the Academy:**

| | |
|---|---|
| **Name of Academy Trust** | Hastings Academies Trust (to be renamed University of Brighton Academies Trust) |
| **Company number** | 07185046 |
| **Date of Master Funding Agreement** | 20 March 2015 |
| **Name of academy** | Dudley Infant Academy |
| **Opening date** | 1 November 2013 |
| **Type of academy (indicate whether academy or free school)** | Mainstream academy |
| **Religious designation** | N/A |
| **Wholly or partly selective** | N/A |
| **Name of predecessor school (where applicable)** | Dudley Infant School |
| **Capacity number** | 180 |
| **Age range** | 5-7 years |
| **Number of sixth form places** | None |
| **Number of boarding places** | None |
| **SEN unit / Resource provision** | No |
| **Land arrangements**<br><br>**(Version 1-7 or other)** | Version 2 |
| **Address and title number of Land** | Dudley Infant Academy Harold Road, Hastings TN35 5NJ<br><br>Title number ESX355098 |

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

| Clause No. | Descriptor | Applied | Not used |
|---|---|---|---|
| 1.I | Only applies to free schools and new provision academies | | X |
| 2.A.1 | Clause applies where an academy was previously a VC or foundation school designated with a religious character | | X |
| 2.C, 2.D | Only applies where the academy has an SEN unit | | X |
| 2.E | Only applies where there was a predecessor independent school | | X |
| 2.G | Clause does not apply to free schools (unless there was a predecessor independent school), or new provision academies | X | |
| 2.M | Clause applies only to academies and free schools designated with a religious character | | X |
| 2.N | Clause applies only to academies that were formerly wholly selective grammar schools | | X |
| 2.O | Clause applies only to academies that were formerly partially selective grammar schools | | X |
| 2.T | Clause applies to free schools and new provision academies designated with a religious character | | X |
| 2.W | Clause only applies where the academy is designated with a religious character | | X |
| 2.X | Clause only applies where the academy has not been designated with a religious character | X | |
| 2.Y | Clause applies where an academy was previously a VC school or foundation school designated with a religious character | | X |
| 2.Yc) | Sub-clause applies if the academy is designated with a denominational religious character – CE etc. rather than 'Christian' | | X |

| Clause No. | Descriptor | Applied | Not used |
|---|---|---|---|
| 3.A – 3.F | Option 1 applies to converter and sponsored academies: if used delete option 2 | X | |
| 3.A – 3.F | Option 2 applies to free schools and new provision academies: if used delete option 1 | | 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 independent school), or new provision academies | X | |
| 5.G.1 | Clause applies only to a boarding academy/free school. | | X |
| 5.I | Clause only applies to sponsored 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 |
| 5.O | 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 identify any other variations from the model that apply to this academy (e.g. clauses relating to PFI, or any required because the multi academy trust includes academies designated with different religious characters, or a**

**mixture of those designated with a religious character, and those which are not):**

**Additional clauses 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 Hastings Academies Trust (to be renamed University of Brighton Academies Trust) is supplemental to the master funding agreement made between the same parties and dated 20 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 the Dudley Infant Academy.

**"Coasting"** has the meaning given by regulations under subsection (3) of section 60B of the Education and Inspections Act 2006 in relation to a school to which that section applies.

"**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.

"**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 Mainstream 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 November 2013.

1.I ***Not used.***

## 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 pupils, teach pupils, and assess and report on pupils' development, progress and attainment.

2.A.1 ***Not used.***

**Pupils**

2.B The planned capacity of the Academy is 180 in the age range 5 to 7 years The Academy will be an all ability inclusive school.

**SEN unit**

2.C ***Not used.***

2.D ***Not used.***

**Charging**

2.E ***Not used.***

**Admissions**

2.F Subject to clauses 2.K– 2.L the Academy Trust will act in accordance with, and will ensure that its Independent Appeal Panel is trained to act in accordance with, the School Admissions Code and School Admission Appeals Code published by the DfE (the "Codes") and all relevant admissions law as they apply to foundation and voluntary aided schools, and with equalities law. Reference in the Codes or legislation to "admission authorities" will be deemed to be references to the Academy Trust.

2.G Pupils on roll in a Predecessor School which was a maintained or independent school will transfer automatically to the Academy on opening. All children already offered a place at that Predecessor School must be admitted to the Academy.

2.H The Academy Trust must participate in the local Fair Access Protocol. The Academy Trust must participate in the coordinated admission arrangements operated by the LA in whose area the Academy is situated. If the Academy is a free school, the Academy Trust is not required to participate in coordination for its first intake of pupils.

2.I The Academy Trust may determine admission arrangements (subject to consultation in line with the Codes) that give priority for admission to children attracting the Pupil Premium, including the service premium (the "pupil premium admission criterion"), but not above looked-after children and previously looked-after children.

2.J Where the Academy Trust applies the pupil premium admission criterion, it must provide information in its admission arrangements about eligibility for the premiums.

2.K For the purposes of applying the pupil premium admission criterion only, sections 1.9(f) and 2.4(a) of the School Admissions Code do not apply insofar as they prevent admission authorities from giving priority to children according to the financial or occupational status of parents or using supplementary forms that ask for:

a) any personal details about their financial status; or

b) whether parents are serving in the UK armed forces or were serving in the UK armed forces, and are exercising parental care and responsibility for the child in question.

2.L The Secretary of State may:

a) direct the Academy Trust to admit a named pupil to the Academy:

i. following an application from an LA including complying with a school attendance order as defined in section 437 of the Education Act 1996. Before doing so the Secretary of State will consult the Academy Trust; or

ii. where in relation to a specific child or children the Academy Trust has failed to act in accordance with the Codes or this Agreement or has otherwise acted unlawfully; or

b) direct the Academy Trust to amend its admission arrangements where they do not comply with the Codes or this Agreement, or are otherwise unlawful.

2.M ***Not used.***

2.N ***Not used.***

2.O ***Not used.***

2.P The Academy Trust must ensure that parents and 'relevant children' (as described in the **Codes**) have the right to appeal to an Independent Appeal Panel if they are dissatisfied with an admission decision of the Academy Trust. The arrangements for appeals must comply with the Codes as they apply to foundation and voluntary aided schools. The determination of the appeal panel is binding on all parties.

2.Q Subject to clause 2.R, the meaning of "**relevant area**" for the purposes of consultation requirements in relation to admission arrangements is that determined by the relevant LA for maintained schools in the area in accordance with the Education (Relevant Areas for Consultation on

Admission Arrangements) Regulations 1999.

2.R If the Academy does not consider the relevant area determined by the LA for the maintained schools in the area to be appropriate, it must apply to the Secretary of State by 1 August before the academic year in question for a determination of the appropriate relevant area for the Academy, setting out the reasons for this view. The Secretary of State will consult the Academy Trust and the LA in whose area the Academy is situated in reaching a decision.

2.S The Office of the Schools Adjudicator ("**OSA**") will consider objections to the Academy's admission arrangements (except objections against the agreed variations from the Codes specified at clause 2.K, over which it has no jurisdiction). The Academy Trust must therefore make it clear, when determining the Academy's admission arrangements, that objections should be submitted to the OSA. The OSA's determination of an objection is binding on the Academy and the Academy Trust must make appropriate changes to its admission arrangements as quickly as possible.

2.T ***Not used.***

**Curriculum**

2.U The Academy Trust must provide for the teaching of religious education and a daily act of collective worship at the Academy.

2.V The Academy Trust must comply with section 71(1)-(6) and (8) of the School Standards and Framework Act 1998 as if the Academy were a community, foundation or voluntary school, and as if references to "religious education" and "religious worship" in that section were references to the religious education and religious worship provided by the Academy in accordance with clause 2.X***.***

2.W ***Not used.***

2.X Subject to clause 2.V, **where the academy has not been designated with a religious character** (in accordance with section 124B of the School

Standards and Framework Act 1998 or further to section 6(8) of the Academies Act 2010):

a) provision must be made for religious education to be given to all pupils at the Academy in accordance with the requirements for agreed syllabuses in section 375(3) of the Education Act 1996 and paragraph 2(5) of Schedule 19 to the School Standards and Framework Act 1998;

b) the Academy must comply with section 70(1) of, and Schedule 20 to, the School Standards and Framework Act 1998 as if it were a community, foundation or voluntary school which does not have a religious character, except that paragraph 4 of that Schedule does not apply. The Academy may apply to the Secretary of State for consent to be relieved of the requirement imposed by paragraph 3(2) of that Schedule.

2.Y ***Not used.***

2.Z The Academy Trust must have regard to any Guidance, further to section 403 of the Education Act 1996, on sex and relationship education to ensure that children at the Academy are protected from inappropriate teaching materials and that they learn the nature of marriage and its importance for family life and for bringing up children. The Academy Trust must also have regard to the requirements in section 405 of the Education Act 1996, as if the Academy were a maintained school.

2.AA The Academy Trust must prevent political indoctrination, and secure the balanced treatment of political issues, in line with the requirements for maintained schools set out in the Education Act 1996, and have regard to any Guidance.

## 3. GRANT FUNDING

**Calculation of GAG**

3A-3D. Not used.

3.E The Secretary of State will calculate GAG based on the pupil count at the Academy. In order to calculate GAG for the Academy Financial Year in which the Academy opens, the pupil count will be determined on the same basis as that used by the relevant LA for determining the budget of the maintained Predecessor School.

3.F For Academy Financial Years after that referred to in clause 3.E, the basis of the pupil count for determining GAG will be:

a) for pupils in Year 11 and below, the Schools Census which is used to fund maintained schools for the financial year overlapping with the Academy Financial Year in question; and

b) for pupils in Year 12 and above, the formula which is in use at the time for maintained schools.

3.G The Secretary of State may, at his discretion, adjust the basis of the pupil 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 pupil 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 pupils during the notice period may decline and therefore payments based on the number of pupils 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 The Secretary of State may pay the Academy Trust's costs in connection with the transfer of employees from a Predecessor School under the Transfer of Undertakings (Protection of Employment) Regulations 2006. Such payment will be agreed on a case-by-case basis. The Academy Trust must not budget for such a payment unless the Secretary of State confirms in writing that it will be paid.

**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 terminates 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 land at Dudley Infant Academy Harold Road, Hastings TN35 5NJ

, being the land registered with title number Title number ESX355098 and demised by the Lease.

"**Lease**" means the lease or other occupational agreement between the Academy Trust and a third party (the "**Landlord**") under which the Academy Trust derives title to the Land.

"**Property Notice**" means any order, notice, proposal, demand or other requirement issued by any competent authority (including the Landlord) 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 comply with the Lease and promptly enforce its rights against the Landlord.

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

a) terminate, vary, surrender, renew, dispose of or agree any revised rent under the Lease;

b) grant any consent or licence; or

c) create or allow any encumbrance; or

d) part with or share possession or occupation; or

e) enter into any onerous or restrictive obligations,

in respect of all or part of the Land.

**Option**

4.E The Academy Trust grants and the Secretary of State accepts an option (the "**Option**") to acquire 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.F 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.G 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.

**Breach of Lease**

4.H If the Academy Trust is, or if it is reasonably foreseeable that it will be, in material breach of the Lease, the Academy Trust must immediately give written notice to the Secretary of State stating what the breach is and what action the Academy Trust has taken or proposes to take to remedy it, including timescales where appropriate.

4.I After notifying the Secretary of State under clause 4.H, the Academy Trust must:

a) promptly give the Secretary of State all the information he asks for about the breach;

b) allow the Secretary of State to take all necessary action, with or instead of the Academy Trust, to remedy or prevent the breach, and

c) use its best endeavours to help the Secretary of State to remedy or prevent the breach.

**Sharing the Land**

4.J 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 sublet 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.K To the extent the Academy Trust and the Secretary of State agree to part of the Land being demised or sublet in accordance with clause 4.J, the Academy Trust must use its best endeavours to procure either the approval of the Landlord or any necessary amendments to the Lease 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.L For the purposes of clause 4.J:

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 DfE 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.

## 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 pupils 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 pupils or staff is threatened, including due to breakdown of discipline; or

e) the Academy is coasting provided he has notified the Academy Trust that it is coasting.

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 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.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 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 on 31 August before the Critical 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 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 2017

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

| | | |
|---|---|---|
| …….. | and | …….. |
| **Director** | | **Director** |
| | or | …….. |
| | | **Company Secretary** |
| | or | …….. |
| | | **Witness** |
| | | Name: |
| | | Address: |

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.

**"EHC plan"** means an Education, Health and Care plan made under sections 37(2) 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 pupils with special educational needs, including the admission of pupils 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 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) 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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Department for Education

# Mainstream academy and free school: supplemental funding agreement

**April 2016**

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## SUMMARY SHEET

**Information about the Academy:**

| | |
|---|---|
| **Name of Academy Trust** | Hastings Academies Trust (to be renamed University of Brighton Academies Trust) |
| **Company number** | 07185046 |
| **Date of Master Funding Agreement** | 20 March 2015 |
| **Name of academy** | Robsack Wood Primary Academy |
| **Opening date** | 1 September 2014 |
| **Type of academy (indicate whether academy or free school)** | Mainstream academy |
| **Religious designation** | N/A |
| **Wholly or partly selective** | N/A |
| **Name of predecessor school (where applicable)** | Robsack Wood Community Primary School |
| **Capacity number** | 474 in total<br><br>(420 + 54 nursery places) |
| **Age range** | 3 months – 11 years |
| **Number of sixth form places** | None |
| **Number of boarding places** | None |
| **SEN unit / Resource provision** | N/A |
| **Land arrangements**<br><br>**(Version 1-7 or other)** | Version 2 |
| **Address and title number of Land** | Robsack Wood Primary Academy, Whatlington Way, St Leonards-On-Sea TN38 9TE<br><br>Title number ESX361994 |

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

| Clause No. | Descriptor | Applied | Not used |
|---|---|---|---|
| 1.I | Only applies to free schools and new provision academies | | X |
| 2.A.1 | Clause applies where an academy was previously a VC or foundation school designated with a religious character | | X |
| 2.C, 2.D | Only applies where the academy has an SEN unit | | X |
| 2.E | Only applies where there was a predecessor independent school | | X |
| 2.G | Clause does not apply to free schools (unless there was a predecessor independent school), or new provision academies | X | |
| 2.M | Clause applies only to academies and free schools designated with a religious character | | X |
| 2.N | Clause applies only to academies that were formerly wholly selective grammar schools | | X |
| 2.O | Clause applies only to academies that were formerly partially selective grammar schools | | X |
| 2.T | Clause applies to free schools and new provision academies designated with a religious character | | X |
| 2.W | Clause only applies where the academy is designated with a religious character | | X |
| 2.X | Clause only applies where the academy has not been designated with a religious character | X | |
| 2.Y | Clause applies where an academy was previously a VC school or foundation school designated with a religious character | | X |
| 2.Yc) | Sub-clause applies if the academy is designated with a denominational religious character – CE etc. rather than 'Christian' | | X |

| Clause No. | Descriptor | Applied | Not used |
|---|---|---|---|
| 3.A – 3.F | Option 1 applies to converter and sponsored academies: if used delete option 2 | X | |
| 3.A – 3.F | Option 2 applies to free schools and new provision academies: if used delete option 1 | | 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 independent school), or new provision academies | X | |
| 5.G.1 | Clause applies only to a boarding academy/free school. | | X |
| 5.I | Clause only applies to sponsored 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 |
| 5.O | 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 identify any other variations from the model that apply to this academy (e.g. clauses relating to PFI, or any required because the multi academy trust includes academies designated with different religious characters, or a**

**mixture of those designated with a religious character, and those which are not):**

**Additional clauses 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 Hastings Academies Trust (to be renamed University of Brighton Academies Trust) is supplemental to the master funding agreement made between the same parties and dated 20 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 the Robsack Wood Primary Academy.

**"Coasting"** has the meaning given by regulations under subsection (3) of section 60B of the Education and Inspections Act 2006 in relation to a school to which that section applies.

"**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.

"**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 Mainstream 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 2014.

1.I ***Not used.***

## 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 pupils, teach pupils, and assess and report on pupils' development, progress and attainment.

2.A.1 ***Not used.***

**Pupils**

2.B The planned capacity of the Academy is 474 (420 + 54 nursery places) in the age range 3 months to 11 years. The Academy will be an all ability inclusive school.

**SEN unit**

2.C ***Not used.***

2.D ***Not used.***

**Charging**

2.E ***Not used.***

**Admissions**

2.F Subject to clauses 2.K– 2.L the Academy Trust will act in accordance with, and will ensure that its Independent Appeal Panel is trained to act in accordance with, the School Admissions Code and School Admission Appeals Code published by the DfE (the "Codes") and all relevant admissions law as they apply to foundation and voluntary aided schools, and with equalities law. Reference in the Codes or legislation to "admission authorities" will be deemed to be references to the Academy Trust.

2.G Pupils on roll in a Predecessor School which was a maintained or independent school will transfer automatically to the Academy on opening. All children already offered a place at that Predecessor School must be admitted to the Academy.

2.H The Academy Trust must participate in the local Fair Access Protocol. The Academy Trust must participate in the coordinated admission arrangements operated by the LA in whose area the Academy is situated. If the Academy is a free school, the Academy Trust is not required to participate in coordination for its first intake of pupils.

2.I The Academy Trust may determine admission arrangements (subject to consultation in line with the Codes) that give priority for admission to children attracting the Pupil Premium, including the service premium (the "pupil premium admission criterion"), but not above looked-after children and previously looked-after children.

2.J Where the Academy Trust applies the pupil premium admission criterion, it must provide information in its admission arrangements about eligibility for the premiums.

2.K For the purposes of applying the pupil premium admission criterion only, sections 1.9(f) and 2.4(a) of the School Admissions Code do not apply insofar as they prevent admission authorities from giving priority to children according

to the financial or occupational status of parents or using supplementary forms that ask for:

a) any personal details about their financial status; or

b) whether parents are serving in the UK armed forces or were serving in the UK armed forces, and are exercising parental care and responsibility for the child in question.

2.L The Secretary of State may:

a) direct the Academy Trust to admit a named pupil to the Academy:

i. following an application from an LA including complying with a school attendance order as defined in section 437 of the Education Act 1996. Before doing so the Secretary of State will consult the Academy Trust; or

ii. where in relation to a specific child or children the Academy Trust has failed to act in accordance with the Codes or this Agreement or has otherwise acted unlawfully; or

b) direct the Academy Trust to amend its admission arrangements where they do not comply with the Codes or this Agreement, or are otherwise unlawful.

2.M ***Not used.***

2.N ***Not used.***

2.O ***Not used.***

2.P The Academy Trust must ensure that parents and 'relevant children' (as described in the **Codes**) have the right to appeal to an Independent Appeal Panel if they are dissatisfied with an admission decision of the Academy Trust. The arrangements for appeals must comply with the Codes as they apply to foundation and voluntary aided schools. The determination of the appeal panel is binding on all parties.

2.Q Subject to clause 2.R, the meaning of "**relevant area**" for the purposes of consultation requirements in relation to admission arrangements is that determined by the relevant LA for maintained schools in the area in accordance with the Education (Relevant Areas for Consultation on Admission Arrangements) Regulations 1999.

2.R If the Academy does not consider the relevant area determined by the LA for the maintained schools in the area to be appropriate, it must apply to the Secretary of State by 1 August before the academic year in question for a determination of the appropriate relevant area for the Academy, setting out the reasons for this view. The Secretary of State will consult the Academy Trust and the LA in whose area the Academy is situated in reaching a decision.

2.S The Office of the Schools Adjudicator ("**OSA**") will consider objections to the Academy's admission arrangements (except objections against the agreed variations from the Codes specified at clause 2.K, over which it has no jurisdiction). The Academy Trust must therefore make it clear, when determining the Academy's admission arrangements, that objections should be submitted to the OSA. The OSA's determination of an objection is binding on the Academy and the Academy Trust must make appropriate changes to its admission arrangements as quickly as possible.

2.T ***Not used.***

**Curriculum**

2.U The Academy Trust must provide for the teaching of religious education and a daily act of collective worship at the Academy.

2.V The Academy Trust must comply with section 71(1)-(6) and (8) of the School Standards and Framework Act 1998 as if the Academy were a community, foundation or voluntary school, and as if references to "religious education" and "religious worship" in that section were references to the religious education and religious worship provided by the Academy in accordance with clause 2.X**.**

2.W ***Not used.***

2.X Subject to clause 2.V, **where the academy has not been designated with a religious character** (in accordance with section 124B of the School Standards and Framework Act 1998 or further to section 6(8) of the Academies Act 2010):

a) provision must be made for religious education to be given to all pupils at the Academy in accordance with the requirements for agreed syllabuses in section 375(3) of the Education Act 1996 and paragraph 2(5) of Schedule 19 to the School Standards and Framework Act 1998;

b) the Academy must comply with section 70(1) of, and Schedule 20 to, the School Standards and Framework Act 1998 as if it were a community, foundation or voluntary school which does not have a religious character, except that paragraph 4 of that Schedule does not apply. The Academy may apply to the Secretary of State for consent to be relieved of the requirement imposed by paragraph 3(2) of that Schedule.

2.Y ***Not used.***

2.Z The Academy Trust must have regard to any Guidance, further to section 403 of the Education Act 1996, on sex and relationship education to ensure that children at the Academy are protected from inappropriate teaching materials and that they learn the nature of marriage and its importance for family life and for bringing up children. The Academy Trust must also have regard to the requirements in section 405 of the Education Act 1996, as if the Academy were a maintained school.

2.AA The Academy Trust must prevent political indoctrination, and secure the balanced treatment of political issues, in line with the requirements for maintained schools set out in the Education Act 1996, and have regard to any Guidance.

# 3. GRANT FUNDING

**Calculation of GAG**

3A-3D. Not used.

3.E The Secretary of State will calculate GAG based on the pupil count at the Academy. In order to calculate GAG for the Academy Financial Year in which the Academy opens, the pupil count will be determined on the same basis as that used by the relevant LA for determining the budget of the maintained Predecessor School.

3.F For Academy Financial Years after that referred to in clause 3.E, the basis of the pupil count for determining GAG will be:

a) for pupils in Year 11 and below, the Schools Census which is used to fund maintained schools for the financial year overlapping with the Academy Financial Year in question; and

b) for pupils in Year 12 and above, the formula which is in use at the time for maintained schools.

3.G The Secretary of State may, at his discretion, adjust the basis of the pupil 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 pupil 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 pupils during the notice period may decline and

therefore payments based on the number of pupils 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 The Secretary of State may pay the Academy Trust's costs in connection with the transfer of employees from a Predecessor School under the Transfer of Undertakings (Protection of Employment) Regulations 2006. Such payment will be agreed on a case-by-case basis. The Academy Trust must not budget for such a payment unless the Secretary of State confirms in writing that it will be paid.

**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 terminates 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 land at Robsack Wood Primary Academy, Whatlington Way, St Leonards-On-Sea TN38 9TE, being the land registered with title number ESX361994 and demised by the Lease.

"**Lease**" means the leases or other occupational agreements between the Academy Trust and a third party (the "**Landlord**") under which the Academy Trust derives title to the Land.

"**Property Notice**" means any order, notice, proposal, demand or other requirement issued by any competent authority (including the Landlord) 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 comply with the Lease and promptly enforce its

rights against the Landlord.

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

a) terminate, vary, surrender, renew, dispose of or agree any revised rent under the Lease;

b) grant any consent or licence; or

c) create or allow any encumbrance; or

d) part with or share possession or occupation; or

e) enter into any onerous or restrictive obligations,

in respect of all or part of the Land.

**Option**

4.E The Academy Trust grants and the Secretary of State accepts an option (the "**Option**") to acquire 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.F 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.G 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.

**Breach of Lease**

4.H If the Academy Trust is, or if it is reasonably foreseeable that it will be, in material breach of the Lease, the Academy Trust must immediately give written notice to the Secretary of State stating what the breach is and what action the Academy Trust has taken or proposes to take to remedy it, including timescales where appropriate.

4.I After notifying the Secretary of State under clause 4.H, the Academy Trust

must:

a) promptly give the Secretary of State all the information he asks for about the breach;

b) allow the Secretary of State to take all necessary action, with or instead of the Academy Trust, to remedy or prevent the breach, and

c) use its best endeavours to help the Secretary of State to remedy or prevent the breach.

**Sharing the Land**

4.J 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 sublet 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.K To the extent the Academy Trust and the Secretary of State agree to part of the Land being demised or sublet in accordance with clause 4.J, the Academy Trust must use its best endeavours to procure either the approval of the Landlord or any necessary amendments to the Lease 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.L For the purposes of clause 4.J:

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 DfE 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.

## 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 pupils 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 pupils or staff is threatened, including due to breakdown of discipline; or

e) the Academy is coasting provided he has notified the Academy Trust that it is coasting.

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 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.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 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 on 31 August before the Critical 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 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 2017

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

| | | |
|---|---|---|
| …….. | and | …….. |
| **Director** | | **Director** |
| | or | …….. |
| | | **Company Secretary** |
| | or | …….. |
| | | **Witness** |
| | | Name: |
| | | Address: |

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.

**"EHC plan"** means an Education, Health and Care plan made under sections 37(2) 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 pupils with special educational needs, including the admission of pupils 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 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) 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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Department for Education

# Mainstream academy and free school: supplemental funding agreement

**April 2016**

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## SUMMARY SHEET

**Information about the Academy:**

| | |
|---|---|
| **Name of Academy Trust** | Hastings Academies Trust (to be renamed University of Brighton Academies Trust) |
| **Company number** | 07185046 |
| **Date of Master Funding Agreement** | 20 March 2015 |
| **Name of academy** | Silverdale Primary Academy |
| **Opening date** | 1 February 2015 |
| **Type of academy (indicate whether academy or free school)** | Mainstream academy |
| **Religious designation** | N/A |
| **Wholly or partly selective** | N/A |
| **Name of predecessor school (where applicable)** | Silverdale Primary School |
| **Capacity number** | 630 total |
| **Age range** | 5-11 years |
| **Number of sixth form places** | None |
| **Number of boarding places** | None |
| **SEN unit / Resource provision** | N/A |
| **Land arrangements**<br><br>**(Version 1-7 or other)** | Version 2 |
| **Address and title number of Land** | Silverdale Primary Academy, Perth Road, St Leonards-On-Sea TN37 7EA<br><br>Title number ESX364032 |

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

| Clause No. | Descriptor | Applied | Not used |
|---|---|---|---|
| 1.I | Only applies to free schools and new provision academies | | X |
| 2.A.1 | Clause applies where an academy was previously a VC or foundation school designated with a religious character | | X |
| 2.C, 2.D | Only applies where the academy has an SEN unit | | X |
| 2.E | Only applies where there was a predecessor independent school | | X |
| 2.G | Clause does not apply to free schools (unless there was a predecessor independent school), or new provision academies | X | |
| 2.M | Clause applies only to academies and free schools designated with a religious character | | X |
| 2.N | Clause applies only to academies that were formerly wholly selective grammar schools | | X |
| 2.O | Clause applies only to academies that were formerly partially selective grammar schools | | X |
| 2.T | Clause applies to free schools and new provision academies designated with a religious character | | X |
| 2.W | Clause only applies where the academy is designated with a religious character | | X |
| 2.X | Clause only applies where the academy has not been designated with a religious character | X | |
| 2.Y | Clause applies where an academy was previously a VC school or foundation school designated with a religious character | | X |
| 2.Yc) | Sub-clause applies if the academy is designated with a denominational religious character – CE etc. rather than 'Christian' | | X |

| Clause No. | Descriptor | Applied | Not used |
|---|---|---|---|
| 3.A – 3.F | Option 1 applies to converter and sponsored academies: if used delete option 2 | X | |
| 3.A – 3.F | Option 2 applies to free schools and new provision academies: if used delete option 1 | | 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 independent school), or new provision academies | X | |
| 5.G.1 | Clause applies only to a boarding academy/free school. | | X |
| 5.I | Clause only applies to sponsored 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 |
| 5.O | 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 identify any other variations from the model that apply to this academy (e.g. clauses relating to PFI, or any required because the multi academy trust includes academies designated with different religious characters, or a**

**mixture of those designated with a religious character, and those which are not):**

**Additional clauses 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 Hastings Academies Trust (to be renamed University of Brighton Academies Trust) is supplemental to the master funding agreement made between the same parties and dated 20 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 the Silverdale Primary Academy.

**"Coasting"** has the meaning given by regulations under subsection (3) of section 60B of the Education and Inspections Act 2006 in relation to a school to which that section applies.

"**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.

"**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 Mainstream 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 February 2015.

1.I ***Not used.***

## 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 pupils, teach pupils, and assess and report on pupils' development, progress and attainment.

**2.A.1** ***Not used.***

**Pupils**

2.B The planned capacity of the Academy is 630 in the age range 5 to 11 years.. The Academy will be an all ability inclusive school.

**SEN unit**

2.C ***Not used.***

2.D ***Not used.***

**Charging**

2.E ***Not used.***

**Admissions**

2.F Subject to clauses 2.K– 2.L the Academy Trust will act in accordance with, and will ensure that its Independent Appeal Panel is trained to act in accordance with, the School Admissions Code and School Admission Appeals Code published by the DfE (the "Codes") and all relevant admissions law as they apply to foundation and voluntary aided schools, and with equalities law. Reference in the Codes or legislation to "admission authorities" will be deemed to be references to the Academy Trust.

2.G Pupils on roll in a Predecessor School which was a maintained or independent school will transfer automatically to the Academy on opening. All children already offered a place at that Predecessor School must be admitted to the Academy.

2.H The Academy Trust must participate in the local Fair Access Protocol. The Academy Trust must participate in the coordinated admission arrangements operated by the LA in whose area the Academy is situated. If the Academy is a free school, the Academy Trust is not required to participate in coordination for its first intake of pupils.

2.I The Academy Trust may determine admission arrangements (subject to consultation in line with the Codes) that give priority for admission to children attracting the Pupil Premium, including the service premium (the "pupil premium admission criterion"), but not above looked-after children and previously looked-after children.

2.J Where the Academy Trust applies the pupil premium admission criterion, it must provide information in its admission arrangements about eligibility for the premiums.

2.K For the purposes of applying the pupil premium admission criterion only, sections 1.9(f) and 2.4(a) of the School Admissions Code do not apply insofar as they prevent admission authorities from giving priority to children according to the financial or occupational status of parents or using supplementary forms that ask for:

a) any personal details about their financial status; or

b) whether parents are serving in the UK armed forces or were serving in the UK armed forces, and are exercising parental care and responsibility for the child in question.

2.L The Secretary of State may:

a) direct the Academy Trust to admit a named pupil to the Academy:

i. following an application from an LA including complying with a school attendance order as defined in section 437 of the Education Act 1996. Before doing so the Secretary of State will consult the Academy Trust; or

ii. where in relation to a specific child or children the Academy Trust has failed to act in accordance with the Codes or this Agreement or has otherwise acted unlawfully; or

b) direct the Academy Trust to amend its admission arrangements where they do not comply with the Codes or this Agreement, or are otherwise unlawful.

2.M ***Not used.***

2.N ***Not used.***

2.O ***Not used.***

2.P The Academy Trust must ensure that parents and 'relevant children' (as described in the **Codes**) have the right to appeal to an Independent Appeal Panel if they are dissatisfied with an admission decision of the Academy Trust. The arrangements for appeals must comply with the Codes as they apply to foundation and voluntary aided schools. The determination of the appeal panel is binding on all parties.

2.Q Subject to clause 2.R, the meaning of "**relevant area**" for the purposes of consultation requirements in relation to admission arrangements is that determined by the relevant LA for maintained schools in the area in accordance with the Education (Relevant Areas for Consultation on

Admission Arrangements) Regulations 1999.

2.R If the Academy does not consider the relevant area determined by the LA for the maintained schools in the area to be appropriate, it must apply to the Secretary of State by 1 August before the academic year in question for a determination of the appropriate relevant area for the Academy, setting out the reasons for this view. The Secretary of State will consult the Academy Trust and the LA in whose area the Academy is situated in reaching a decision.

2.S The Office of the Schools Adjudicator ("**OSA**") will consider objections to the Academy's admission arrangements (except objections against the agreed variations from the Codes specified at clause 2.K, over which it has no jurisdiction). The Academy Trust must therefore make it clear, when determining the Academy's admission arrangements, that objections should be submitted to the OSA. The OSA's determination of an objection is binding on the Academy and the Academy Trust must make appropriate changes to its admission arrangements as quickly as possible.

2.T ***Not Used***.

**Curriculum**

2.U The Academy Trust must provide for the teaching of religious education and a daily act of collective worship at the Academy.

2.V The Academy Trust must comply with section 71(1)-(6) and (8) of the School Standards and Framework Act 1998 as if the Academy were a community, foundation or voluntary school, and as if references to "religious education" and "religious worship" in that section were references to the religious education and religious worship provided by the Academy in accordance with clause2.X**.**

2.W ***Not used.***

2.X Subject to clause 2.V, **where the academy has not been designated with a religious character** (in accordance with section 124B of the School

Standards and Framework Act 1998 or further to section 6(8) of the Academies Act 2010):

a) provision must be made for religious education to be given to all pupils at the Academy in accordance with the requirements for agreed syllabuses in section 375(3) of the Education Act 1996 and paragraph 2(5) of Schedule 19 to the School Standards and Framework Act 1998;

b) the Academy must comply with section 70(1) of, and Schedule 20 to, the School Standards and Framework Act 1998 as if it were a community, foundation or voluntary school which does not have a religious character, except that paragraph 4 of that Schedule does not apply. The Academy may apply to the Secretary of State for consent to be relieved of the requirement imposed by paragraph 3(2) of that Schedule.

2.Y ***Not used.***

2.Z The Academy Trust must have regard to any Guidance, further to section 403 of the Education Act 1996, on sex and relationship education to ensure that children at the Academy are protected from inappropriate teaching materials and that they learn the nature of marriage and its importance for family life and for bringing up children. The Academy Trust must also have regard to the requirements in section 405 of the Education Act 1996, as if the Academy were a maintained school.

2.AA The Academy Trust must prevent political indoctrination, and secure the balanced treatment of political issues, in line with the requirements for maintained schools set out in the Education Act 1996, and have regard to any Guidance.

## 3. GRANT FUNDING

**Calculation of GAG**

3A-3D. Not used.

3.E The Secretary of State will calculate GAG based on the pupil count at the Academy. In order to calculate GAG for the Academy Financial Year in which the Academy opens, the pupil count will be determined on the same basis as that used by the relevant LA for determining the budget of the maintained Predecessor School.

3.F For Academy Financial Years after that referred to in clause 3.E, the basis of the pupil count for determining GAG will be:

a) for pupils in Year 11 and below, the Schools Census which is used to fund maintained schools for the financial year overlapping with the Academy Financial Year in question; and

b) for pupils in Year 12 and above, the formula which is in use at the time for maintained schools.

3.G The Secretary of State may, at his discretion, adjust the basis of the pupil 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 pupil 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 pupils during the notice period may decline and therefore payments based on the number of pupils 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 The Secretary of State may pay the Academy Trust's costs in connection with the transfer of employees from a Predecessor School under the Transfer of Undertakings (Protection of Employment) Regulations 2006. Such payment will be agreed on a case-by-case basis. The Academy Trust must not budget for such a payment unless the Secretary of State confirms in writing that it will be paid.

**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 terminates 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 land at Silverdale Primary Academy, Perth Road, St Leonards-On-Sea (TN37 7EA) , being the land registered with title numberESX364032 and demised by the Lease.

"**Lease**" means the lease or other occupational agreement between the Academy Trust and a third party (the "**Landlord**") under which the Academy Trust derives title to the Land.

"**Property Notice**" means any order, notice, proposal, demand or other requirement issued by any competent authority (including the Landlord) 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 comply with the Lease and promptly enforce its rights against the Landlord.

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

a) terminate, vary, surrender, renew, dispose of or agree any revised rent

under the Lease;

b) grant any consent or licence; or

c) create or allow any encumbrance; or

d) part with or share possession or occupation; or

e) enter into any onerous or restrictive obligations,

in respect of all or part of the Land.

**Option**

4.E The Academy Trust grants and the Secretary of State accepts an option (the "**Option**") to acquire 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.F 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.G 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.

**Breach of Lease**

4.H If the Academy Trust is, or if it is reasonably foreseeable that it will be, in material breach of the Lease, the Academy Trust must immediately give written notice to the Secretary of State stating what the breach is and what action the Academy Trust has taken or proposes to take to remedy it, including timescales where appropriate.

4.I After notifying the Secretary of State under clause 4.H, the Academy Trust must:

a) promptly give the Secretary of State all the information he asks for about the breach;

b) allow the Secretary of State to take all necessary action, with or instead

of the Academy Trust, to remedy or prevent the breach, and

c) use its best endeavours to help the Secretary of State to remedy or prevent the breach.

**Sharing the Land**

4.J 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 sublet 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.K To the extent the Academy Trust and the Secretary of State agree to part of the Land being demised or sublet in accordance with clause 4.J, the Academy Trust must use its best endeavours to procure either the approval of the Landlord or any necessary amendments to the Lease 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.L For the purposes of clause 4.J:

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 DfE 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.

## 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 pupils 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 pupils or staff is threatened, including due to breakdown of discipline; or

e) the Academy is coasting provided he has notified the Academy Trust that it is coasting.

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 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.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 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 on 31 August before the Critical 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 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 2017

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

| | | |
|---|---|---|
| …….. | and | …….. |
| **Director** | | **Director** |
| | or | …….. |
| | | **Company Secretary** |
| | or | …….. |
| | | **Witness** |
| | | Name: |
| | | Address: |

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.

**"EHC plan"** means an Education, Health and Care plan made under sections 37(2) 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 pupils with special educational needs, including the admission of pupils 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 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) 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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Department for Education

# Mainstream academy and free school: supplemental funding agreement

**April 2016**

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## SUMMARY SHEET

**Information about the Academy:**

| | |
|---|---|
| **Name of Academy Trust** | Hastings Academies Trust (to be renamed University of Brighton Academies Trust) |
| **Company number** | 07185046 |
| **Date of Master Funding Agreement** | 20 March 2015 |
| **Name of academy** | West St Leonards Primary Academy |
| **Opening date** | 1 November 2013 |
| **Type of academy (indicate whether academy or free school)** | Mainstream academy |
| **Religious designation** | N/A |
| **Wholly or partly selective** | N/A |
| **Name of predecessor school (where applicable)** | West St Leonards Primary School |
| **Capacity number** | 420 total |
| **Age range** | 5-11 years |
| **Number of sixth form places** | None |
| **Number of boarding places** | None |
| **SEN unit / Resource provision** | Yes / 12<br><br>Moderate learning difficulty and physical disability |
| **Land arrangements**<br><br>**(Version 1-7 or other)** | Version 2 |
| **Address and title number of Land** | West St Leonards Primary Academy, Harley Shute Road, St Leonards-On-Sea TN38 SBX<br><br>Title number ESX355092 |

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

| Clause No. | Descriptor | Applied | Not used |
|---|---|---|---|
| 1.I | Only applies to free schools and new provision academies | | X |
| 2.A.1 | Clause applies where an academy was previously a VC or foundation school designated with a religious character | | X |
| 2.C, 2.D | Only applies where the academy has an SEN unit | X | |
| 2.E | Only applies where there was a predecessor independent school | | X |
| 2.G | Clause does not apply to free schools (unless there was a predecessor independent school), or new provision academies | X | |
| 2.M | Clause applies only to academies and free schools designated with a religious character | | X |
| 2.N | Clause applies only to academies that were formerly wholly selective grammar schools | | X |
| 2.O | Clause applies only to academies that were formerly partially selective grammar schools | | X |
| 2.T | Clause applies to free schools and new provision academies designated with a religious character | | X |
| 2.W | Clause only applies where the academy is designated with a religious character | | X |
| 2.X | Clause only applies where the academy has not been designated with a religious character | X | |
| 2.Y | Clause applies where an academy was previously a VC school or foundation school designated with a religious character | | X |
| 2.Yc) | Sub-clause applies if the academy is designated with a denominational religious character – CE etc. rather than 'Christian' | | X |

| Clause No. | Descriptor | Applied | Not used |
|---|---|---|---|
| 3.A – 3.F | Option 1 applies to converter and sponsored academies: if used delete option 2 | X | |
| 3.A – 3.F | Option 2 applies to free schools and new provision academies: if used delete option 1 | | 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 independent school), or new provision academies | X | |
| 5.G.1 | Clause applies only to a boarding academy/free school. | | X |
| 5.I | Clause only applies to sponsored 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 |
| 5.O | 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 identify any other variations from the model that apply to this academy (e.g. clauses relating to PFI, or any required because the multi academy trust includes academies designated with different religious characters, or a**

**mixture of those designated with a religious character, and those which are not):**

**Additional clauses 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 Hastings Academies Trust (to be renamed University of Brighton Academies Trust) is supplemental to the master funding agreement made between the same parties and dated 20 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 the West St Leonards Primary Academy.

**"Coasting"** has the meaning given by regulations under subsection (3) of section 60B of the Education and Inspections Act 2006 in relation to a school to which that section applies.

"**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.

"**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 Mainstream 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 November 2013.

1.I ***Not used.***

## 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 pupils, teach pupils, and assess and report on pupils' development, progress and attainment.

2.A.1 ***Not used.***

**Pupils**

2.B The planned capacity of the Academy is 420 in the age range 5 to 11 years, which for the avoidance of doubt includes pupils with designated places pursuant to clause 2.C. The Academy will be an all ability inclusive school.

**SEN unit**

2.C The Academy must operate designated places reserved for pupils with SEN (SEN Unit or Resourced Provision) with up to12 planned places for pupils with moderate learning difficulty and physical disability in the age range 5 to 11 years.

2.D The Secretary of State may at any time determine that the SEN Unit or Resourced Provision should cease to operate. In making such a determination, the Secretary of State will:

a) consider the views of the Academy and relevant LAs (in their strategic role in the commissioning of SEN provision); and

b) consider how his determination will affect the LAs' ability to secure suitable SEN provision for children in the area.

**Charging**

2.E **Not used.**

**Admissions**

2.F Subject to clauses 2.K– 2.L the Academy Trust will act in accordance with, and will ensure that its Independent Appeal Panel is trained to act in accordance with, the School Admissions Code and School Admission Appeals Code published by the DfE (the "Codes") and all relevant admissions law as they apply to foundation and voluntary aided schools, and with equalities law. Reference in the Codes or legislation to "admission authorities" will be deemed to be references to the Academy Trust.

2.G Pupils on roll in a Predecessor School which was a maintained or independent school will transfer automatically to the Academy on opening. All children already offered a place at that Predecessor School must be admitted to the Academy.

2.H The Academy Trust must participate in the local Fair Access Protocol. The Academy Trust must participate in the coordinated admission arrangements operated by the LA in whose area the Academy is situated. If the Academy is a free school, the Academy Trust is not required to participate in coordination for its first intake of pupils.

2.I The Academy Trust may determine admission arrangements (subject to consultation in line with the Codes) that give priority for admission to children

attracting the Pupil Premium, including the service premium (the "pupil premium admission criterion"), but not above looked-after children and previously looked-after children.

2.J Where the Academy Trust applies the pupil premium admission criterion, it must provide information in its admission arrangements about eligibility for the premiums.

2.K For the purposes of applying the pupil premium admission criterion only, sections 1.9(f) and 2.4(a) of the School Admissions Code do not apply insofar as they prevent admission authorities from giving priority to children according to the financial or occupational status of parents or using supplementary forms that ask for:

a) any personal details about their financial status; or

b) whether parents are serving in the UK armed forces or were serving in the UK armed forces, and are exercising parental care and responsibility for the child in question.

2.L The Secretary of State may:

a) direct the Academy Trust to admit a named pupil to the Academy:

i. following an application from an LA including complying with a school attendance order as defined in section 437 of the Education Act 1996. Before doing so the Secretary of State will consult the Academy Trust; or

ii. where in relation to a specific child or children the Academy Trust has failed to act in accordance with the Codes or this Agreement or has otherwise acted unlawfully; or

b) direct the Academy Trust to amend its admission arrangements where they do not comply with the Codes or this Agreement, or are otherwise unlawful.

2.M ***Not Used.***

2.N ***Not Used.***

2.O ***Not Used.***

2.P The Academy Trust must ensure that parents and 'relevant children' (as described in the **Codes**) have the right to appeal to an Independent Appeal Panel if they are dissatisfied with an admission decision of the Academy Trust. The arrangements for appeals must comply with the Codes as they apply to foundation and voluntary aided schools. The determination of the appeal panel is binding on all parties.

2.Q Subject to clause 2.R, the meaning of "**relevant area**" for the purposes of consultation requirements in relation to admission arrangements is that determined by the relevant LA for maintained schools in the area in accordance with the Education (Relevant Areas for Consultation on Admission Arrangements) Regulations 1999.

2.R If the Academy does not consider the relevant area determined by the LA for the maintained schools in the area to be appropriate, it must apply to the Secretary of State by 1 August before the academic year in question for a determination of the appropriate relevant area for the Academy, setting out the reasons for this view. The Secretary of State will consult the Academy Trust and the LA in whose area the Academy is situated in reaching a decision.

2.S The Office of the Schools Adjudicator ("**OSA**") will consider objections to the Academy's admission arrangements (except objections against the agreed variations from the Codes specified at clause 2.K, over which it has no jurisdiction). The Academy Trust must therefore make it clear, when determining the Academy's admission arrangements, that objections should be submitted to the OSA. The OSA's determination of an objection is binding on the Academy and the Academy Trust must make appropriate changes to its admission arrangements as quickly as possible.

2.T ***Not Used.***

**Curriculum**

2.U The Academy Trust must provide for the teaching of religious education and a daily act of collective worship at the Academy.

2.V The Academy Trust must comply with section 71(1)-(6) and (8) of the School Standards and Framework Act 1998 as if the Academy were a community, foundation or voluntary school, and as if references to "religious education" and "religious worship" in that section were references to the religious education and religious worship provided by the Academy in accordance with clause 2.X***.***

2.W ***Not used.***

2.X ***Not Used***Subject to clause 2.V, **where the academy has not been designated with a religious character** (in accordance with section 124B of the School Standards and Framework Act 1998 or further to section 6(8) of the Academies Act 2010):

a) provision must be made for religious education to be given to all pupils at the Academy in accordance with the requirements for agreed syllabuses in section 375(3) of the Education Act 1996 and paragraph 2(5) of Schedule 19 to the School Standards and Framework Act 1998;

b) the Academy must comply with section 70(1) of, and Schedule 20 to, the School Standards and Framework Act 1998 as if it were a community, foundation or voluntary school which does not have a religious character, except that paragraph 4 of that Schedule does not apply. The Academy may apply to the Secretary of State for consent to be relieved of the requirement imposed by paragraph 3(2) of that Schedule.

2.Y ***Not used.***

2.Z The Academy Trust must have regard to any Guidance, further to section 403 of the Education Act 1996, on sex and relationship education to ensure that children at the Academy are protected from inappropriate teaching materials

and that they learn the nature of marriage and its importance for family life and for bringing up children. The Academy Trust must also have regard to the requirements in section 405 of the Education Act 1996, as if the Academy were a maintained school.

2.AA The Academy Trust must prevent political indoctrination, and secure the balanced treatment of political issues, in line with the requirements for maintained schools set out in the Education Act 1996, and have regard to any Guidance.

## 3. GRANT FUNDING

**Calculation of GAG**

3A-3D. Not used.

3.E The Secretary of State will calculate GAG based on the pupil count at the Academy. In order to calculate GAG for the Academy Financial Year in which the Academy opens, the pupil count will be determined on the same basis as that used by the relevant LA for determining the budget of the maintained Predecessor School.

3.F For Academy Financial Years after that referred to in clause 3.E, the basis of the pupil count for determining GAG will be:

a) for pupils in Year 11 and below, the Schools Census which is used to fund maintained schools for the financial year overlapping with the Academy Financial Year in question; and

b) for pupils in Year 12 and above, the formula which is in use at the time for maintained schools.

3.G The Secretary of State may, at his discretion, adjust the basis of the pupil 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 pupil 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 pupils during the notice period may decline and therefore payments based on the number of pupils 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 The Academy Trust may apply to the Secretary of State for financial assistance in relation to proposed redundancies at the Academy. In response to such an application, the Secretary of State may at his discretion agree to meet a proportion of the Academy Trust's costs arising from the inclusion of academies in the schedules to the Redundancy Payments (Continuity of Employment in Local Government) (Modification) Order 1999. The Secretary of State may agree to meet the costs of an employee's prior eligible service, being service before the Academy opened, but the Academy Trust must meet the costs of service after the Academy opened. The Secretary of State's financial assistance in this respect will only be available in the first two years after the Academy opens.

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 terminates 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 land at West St Leonards Primary Academy, Harley Shute Road, St Leonards-On-Sea TN38 SBX , being the land registered with title number ESX355092 and demised by the Lease.

"**Lease**" means the lease or other occupational agreement between the Academy Trust and a third party (the "**Landlord**") under which the Academy Trust derives title to the Land.

"**Property Notice**" means any order, notice, proposal, demand or other requirement issued by any competent authority (including the Landlord) 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 comply with the Lease and promptly enforce its rights against the Landlord.

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

a) terminate, vary, surrender, renew, dispose of or agree any revised rent under the Lease;

b) grant any consent or licence; or

c) create or allow any encumbrance; or

d) part with or share possession or occupation; or

e) enter into any onerous or restrictive obligations,

in respect of all or part of the Land.

**Option**

4.E The Academy Trust grants and the Secretary of State accepts an option (the "**Option**") to acquire 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.F 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.G 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.

**Breach of Lease**

4.H If the Academy Trust is, or if it is reasonably foreseeable that it will be, in material breach of the Lease, the Academy Trust must immediately give written notice to the Secretary of State stating what the breach is and what action the Academy Trust has taken or proposes to take to remedy it, including timescales where appropriate.

4.I After notifying the Secretary of State under clause 4.H, the Academy Trust must:

a) promptly give the Secretary of State all the information he asks for about the breach;

b) allow the Secretary of State to take all necessary action, with or instead of the Academy Trust, to remedy or prevent the breach, and

c) use its best endeavours to help the Secretary of State to remedy or prevent the breach.

**Sharing the Land**

4.J 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 sublet 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.K To the extent the Academy Trust and the Secretary of State agree to part of the Land being demised or sublet in accordance with clause 4.J, the Academy Trust must use its best endeavours to procure either the approval of the Landlord or any necessary amendments to the Lease 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.L For the purposes of clause 4.J:

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 DfE 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.

## 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 pupils 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 pupils or staff is threatened, including due to breakdown of discipline; or

e) the Academy is coasting provided he has notified the Academy Trust that it is coasting.

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 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.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 If the Chief Inspector gives a notice referred to in clause 5.F to the Academy Trust within two years after the Academy opened, the Secretary of State may only serve a Termination Warning Notice under clause 5.F if:

a) the Chief Inspector has held a monitoring inspection under section 8 of the Education Act 2005 later than two years after the Academy opened; and

b) the Chief Inspector considers that the Academy is not making enough progress towards the removal of the designation referred to in his notice.

Nothing in this clause prevents or prejudices the Secretary of State exercising any other rights arising from or under this Agreement (including, for the avoidance of doubt, any rights under clauses 5.B to 5.E).

**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 on 31 August before the Critical 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 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 2017

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

| | | |
|---|---|---|
| …….. | and | …….. |
| **Director** | | **Director** |
| | or | …….. |
| | | **Company Secretary** |
| | or | …….. |
| | | **Witness** |
| | | Name: |
| | | Address: |

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.

**"EHC plan"** means an Education, Health and Care plan made under sections 37(2) 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 pupils with special educational needs, including the admission of pupils 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 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) 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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