# Contents

April 2017 v...

...been applied or m...

...description... ...ed ...used

Please confirm which ... y ...plies to free schools an... Appli...
...r... or academies

| Clause No. | Description | | Applied | Not used |
|---|---|---|---|---|
| | ...applies where an acade... previously a VC or foundation s... ...ated with a religious cha... | ...new | | |
| | Only ap... provis... applies where the academ... | ...was ...ool ...ter | | |
| 2... 2(i) | ...applies where there was a... ...ndent school | ...has an SEN | | |
| | Only ... Does not apply to free s... ...te... was a predecessor indep... ...o...), or new provision aca... | ...edecessor | | |
| | Only ap... indep... applies only to academi... ...ols designated with a reli... | ...ools (unless ...dent... ...es | ✓ | |
| 2... | ...there... applies only to academi... sch...ly wholly selective gramm... | ...and free ...character | | |
| 2... | Clause applies only to academi... sch...ly partially selective gram... | ...that were ...schools | | |
| 2... | Clause applies to free schools... former br... academies designate... ...gi... character | ...that were ...schools | | |
| | ...former... only applies where the a... ...ated with a religious cha... | ...new ...ith a | | |
| 2... | ...prious... only applies where the a... re...ter designated with a reli... ...ter... | ...demy is ...ter | | |
| 2... | ...design... applies where an acade... ...vi...us y a VC school or found... ...ated with a religious cha... | ...demy has ...ls | ✓ | |
| 2... | ...not ...en | ...was ...ion school ...ter | | |
| | cha... clause applies if the acade... ...cated with a denomination... ...ter – CE etc. rather than... previous... ...desig... | ...is ...religious ...ristian' | | |
| ... | Sub cla... desig... cha... | | | |

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| Cl | Descriptor | Applied | Not used |
|---|---|---|---|
| 3.A | Option 1 applies to converter and sponsored academies: if used delete option 2 | ✓ | |
| 3.A | Option 2 applies to free schools and new provision academies: if used delete option 1 | | ✓ |
| 3.H | Clause relating to start-up only applies in some cases (does not apply to academy converters) | | ✓ |
| 3.L | Clause only applies to full sponsored intermediate sponsored academies with approved Academy Action Plans | | ✓ (No) |
| 3.K | Clause does not apply to free schools (where there was a predecessor independent school), or new provision academies | ✓ | |
| 5.C | Clause applies only to a boarding academy/free school | | ✓ |
| 5.I | Clause only applies to sponsored academy | | ✓ |
| 5.K | Clause applies to free schools and not applied to new provision academies | | ✓ |
| 5.L | Clause applies to free schools and not applied to new provision academies | | ✓ |
| 5.M | Clause applies to free schools and not applied to new provision academies | | ✓ |
| 5.N | Clause applies to free schools and not applied to new provision academies | | ✓ |
| 5.O | Clause applies to free schools and not applied to new provision academies | | ✓ |
| 6.H | Clause only applies to schools which designated with a Church of England or Roman Catholic character | | ✓ |

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# ESTABLISHING THE ACADEMY

1. This Agreement made between the Secretary of State for Education and Whole Education Trust is supplemental to the master funding agreement made between the same parties and dated 15 November 201_ (the "**Master Agreement**").

**Definitions and interpretation**

2. Except as expressly provided in this Agreement words and expressions contained in the Master Agreement will have the same meanings in this Agreement. In addition:

   (a) The following capital sed words and expressions will have the following meanings:

   "the Academy" means the S_____ester Prim___ Academy.

   "boarding" has the meaning given by regulations under subsection (3) of section 6_B of the Education and Inspections Act 20_6 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 Family Act 201_.

   "Termination Notice" means a notice served 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.

   (b) The Interpretation Act 1978 applies to this Agreement as it applies to an Act of Parliament.

   (c) References in this Agreement to clauses and annexes will, unless otherwise stated, be to clauses and annexes of this Agreement.

**The Academy**

A1120155

Clause 4: AGREEMENT

3. Calculation of GAG

3.D The Secretary of State will calculate GAG based on the pupil count at the [term]. 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 is used by the relevant LA for determining the budget of the maintained sector school.

3.E In calculating any financial years after that referred to in clause 3.E, the basis of the count for determining GAG will be:

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

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

3.F 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 [ ]. If the Secretary of State has indicated that additional grant may be available in such circumstances, the Academy Trust will bid for this additional funding and of need and providing appropriate supporting evidence. The Secretary of State may accept or refuse the bid at his discretion.

3.G [ ] use

3.H 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

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...cretar... ...ate... ...pay... ...arger GAG in the notice period, to enable the ...adem... ...er... ...ect... ...

## Other relevant ...ing

3.J ...t Use...

3.K ...e Sec... ...of ...na... ...y the Academy Trust' c...ts in connection with ...transf...em...s f... a Predecessor School u...de... the Transfer of ...certa... ...Pr... ...o... ...ployment) Regulations 2...06... Such payment ...be a... ...in... ...-by... ...se basis. The Academy ...ust must not budget ...such... ...e... ...ss... ...e Secretary of State co...fir...s in writing that it will ...paid.

## Carryi...g forwa... ...ur...

3.... ...y add... ...ra... ...de... ...accordance with clause 3.... fo... a ...eriod after the ...cretar... ...tate... erv... Termination Notice or a ...e...mi...ation Warning ...tice u...s... ...ne... ...otherwise terminate... th... Master Agreement, ...y be... ...fo... ...with...u...limitation o... dedu...tio... u...il the circumstances ...out in... ...e 3... ...se...ap...ly or the Academy...os...s.

## 4. ...LAND

"...and" means... ...d... ...S...e...ter Primary School, St J...n...s Road, H...uyton, L...6 C U... ... being... ...nd... ...ere... ...der the freehold title ...un...er M...5527...4 and de...mise... by... he...

"Lease" means... ...se...er...upational agreement...et...een the Academy Trust... ...a... hir... ...l... (th... ...nd...c...) unde... wh...ch the Academy Trust deri...es title to the L...n...

"Pr...ope... Not...e...an... ...ord... ...otice, ...rop...sal, d...ma...nd... ...r other requirement iss...ued... ...arly c... ...e...en... ...rit... ...n...luding the Landlord) wh... n...at...rially affects th... A...a...my T... ...bil... ...se... e Land for the purpose... o... he Academy.

## Restric...ons o... ...tr...

4.A The Academy

a) will [within 2...] signing of this Agreement in circumstances where the Land [has been 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 on 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 other 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 waive the Restriction, whether by itself, its 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 caused ... 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.

a) a latent 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) an apparent need will arise when the DfE is actually aware of an explicit demand for pupil places in the area where the Academy is situated, following representations from parents in that area; and

c) unmet 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) considers that any representations from the Academy Trust by the expiry of 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 admissions 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**

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cretary 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 1 August of the Critical Year. Any such notice will be given within 21 days after the Expert's determination will have been given to the parties and, in any event, the Secretary of State will have been written notice of its refusal to provide sufficient additional funding for the Academy to cover the Shortfall.

**Effect of termination**

5.Z   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 of 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 in and within 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;

        e)      dissolution expenses.

5.DD  This Agreement is terminated or the Academy Trust owns capital assets

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6.E  T... this Agreement will... ffect the acc... ed ights... emedies
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6.H  N...

This Agreement _____ n 20 December 2016

Executed on beh_____ by:

_____

Director

_____ Director

Company Secretary

_____

Witness

Name:

Address:

The Corporate S_____

THE SECRETAR_____ ATION

affixed _____ s de___

_____

Duly Authorised

April 2___

# ... PUPILS WITH SPECIAL EDUCATIONAL 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.

   B. Not used

   C. Not used

   D. Not used

8. ADMISSION OF PUPILS WITH SEN AND DISABILITIES

8 A. The Academy Trust must for each of the academies subject to its right of appeal to the Secretary of State, admit pupils with a statement of SEN naming the Academy.

8 B. Where a LA proposes to name one or more academies in a statement of SEN, it must send the Academy Trust written notice of this, stating why it considers the Academy to be suitable for the pupil in question. Within 15 days of receipt of that notice, the Academy Trust must consent to being named, except

8.H     Clauses A to B.G or 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.

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Di r David

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