



Department
for Education

Alternative provision academy and free school: supplemental funding agreement

December 2020 v4

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SUMMARY SHEET

Information about the Academy:

Name of Academy Trust	Venn Academy Trust
Company number	09662303
Date of Master Funding Agreement	27 th March 2019
Name of academy	Euler Academy
Opening date	September 2021
Type of academy (indicate whether academy or free school)	Free School
Name of predecessor school (where applicable)	N/A
Capacity number	56
Age range	5-11
Number of sixth form places	N/A
Number of boarding places	N/A
SEN unit / Resource provision	56 place SEMH
Land arrangements (Version 1-8 or other)	Version 7
Address and title number of Land (and Temporary Site)	Permanent Site: Land at the former White House Unit, Salthouse Road, Kingston Upon Hull, HU8 9HJ. Freehold title number HS341416

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	Applied	
2.F	Only applies where there was a predecessor independent school		Not used
2.I	Clause does not apply to free schools (unless there was a predecessor independent school), or new provision academies		Not used
2.U	Clause <i>reflects the requirements for religious education and daily collective worship</i>		Not used
3.C	Clause only applies to full sponsored and intermediate sponsored academies with approved Academy Action Plans		Not used
3.D	Clause does not apply to free schools (unless there was a predecessor independent school), or new provision academies		Not used
5.G.1	Clause applies only to a boarding academy/boarding free school		Not used
5.I	Clause only applies to sponsored academies		Not used
5.K	Clause applies to free schools and may be applied to new provision academies	Applied	
5.L	Clause applies to free schools and may be applied to new provision academies	Applied	
5.M	Clause applies to free schools and may be applied to new provision academies	Applied	
5.N	Clause applies to free schools and may be applied to new provision academies	Applied	

Clause No.	Descriptor	Applied	Not used
5.O	Clause applies to free schools and may be applied to new provision academies	Applied	

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):

These 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 Venn Academy Trust is supplemental to the master funding agreement made between the same parties and dated 27th March 2019 (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 Euler Academy.

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

“**Commissioner**” means local authorities and/or schools referring children/pupils to the Alternative Provision Academy for admission under the legal powers set out in clauses 2.G to clauses 2.M.

“**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.

“**EHC plan**” means an education, health and care plan made under section 37 of the Children and Families Act 2014.

“**Prospective Pupils**” means those pupils who have been referred to the Academy and accepted a place.

“**Pupil Premium**” means the amount allocated by a local authority from the pupil premium grant to a school under the terms and conditions of the grant;

“**Pupil Premium Grant**” means a grant of that name paid to a local authority by the Secretary of State under section 14 of the 2002 Act in respect of pupils who are entitled to a pupil premium;

“Pupil Referral Unit (PRU)” means an Academy or Free School which meets the requirements set out in Section 19(2) of the Education Act 1996.

“SEN” means special educational needs and has the meaning set out in sections 20(1) 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 Alternative Provision as defined in clause 1.4 of the Master Agreement.

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

1.H The Academy Trust will open the Academy on 1st September 2021.

1.I The Academy Trust must ensure that so far as is reasonably practicable and consistent with clause 2.U of this Agreement and the Equality Act 2010, the policies and practices adopted by the Academy (in particular regarding curriculum, uniform and school food) enable pupils of all faiths and none to play a full part in the life of the Academy, and do not disadvantage pupils or parents of any faith or none. For the avoidance of doubt, this requirement applies irrespective of the proportion of pupils of any faiths or none currently attending or predicted to join the school.

1.J Further to clause 1.13(b) of the Master Agreement the Academy Trust must ensure that the educational provision is made at the Academy for children of compulsory school age who, by reason of illness, exclusion from school or otherwise, may not for any period receive suitable education unless alternative provision is made for them.

2. RUNNING OF THE ACADEMY

Teachers and staff

- 2.A Subject to clause 2.A.1 and 7.A of this Agreement (if used), 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 The Academy Trust must designate a staff member at the Academy as responsible for promoting the educational achievement of registered pupils at the Academy who are being looked after by a la, or are no longer looked after by a la because of an adoption, special guardianship or child arrangements order, or because they have been adopted from 'state care' outside England and Wales, and in doing so must comply with the law, regulations and guidance that apply to maintained schools. The Academy Trust must ensure the designated person undertakes appropriate training and has regard to any guidance issued by the Secretary of State.

Pupils

- 2.B The planned number of places at the Academy is 56 places in the age range 5 to 11. The planned number of places and the age ranges are not determinative of GAG. GAG for each Academy Financial Year will be determined by the Secretary of State in accordance with clauses 3.12 and 3.15 of the Master Agreement.
- 2.C Where the Company considers that there is a need to increase the overall planned number of places stated in clause 2.B, the Company must seek the approval of the Secretary of State and the requirements of this Agreement may be amended accordingly by agreement between the Secretary of State and the Company.
- 2.D Not used
- 2.E Not used
- 2.F Not used

Admissions

- 2.G The Academy Trust will act in accordance with equalities law
- 2.H Except where clauses 2.I, 2.K, 7.A and 8.A apply, the Academy Trust may not admit a child of compulsory school age unless it is by way of a referral from a Commissioner through one of the referral routes set out in Clause 2.J

- 2.I Not used
- 2.J The Secretary of State may:
- a) direct the Academy Trust to admit a named pupil to the Academy:
 - i. following an application from a 1a 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 no longer meet the requirements at 1C of the Academies Act, do not comply with this Agreement, or are otherwise unlawful.
- 2.K The Academy Trust may only admit a child of compulsory school age:
- a) referred by a local authority where the local authority has a duty to that child under section 19 of the Education Act 1996.
 - b) referred by a maintained school or Academy where the maintained school or Academy has a duty under Section 100 of the Education and Inspections Act 2006.
 - c) referred by a maintained school under powers set out in section 29(A) of the Education Act 2002.
 - d) referred by an Academy under general powers in the Articles of the Academy Trust for the purpose of improving the child's behaviour.
- 2.L The Academy Trust shall have a referral policy, the initial policy to be agreed with the Department for Education. Any referral policy will include the number of places to be provided, the age range of pupils, the oversubscription criteria, and a fair, transparent and objective process for considering whether the education provided will be appropriate for prospective pupils. The Academy Trust will consult on any changes to its referral policy with key stakeholders including the local authority, local schools, any other school or local authority which has previously commissioned places and any other relevant parties.
- 2.M Any changes to admission arrangements proposed by the Academy Trust should be discussed with Commissioners and must be agreed with the Secretary of State.

Pupil registration and information sharing

- 2.N The Academy Trust must ensure that pupils attending the Academy are appropriately registered, in line with its legal duties and those of any other school that the pupil attends.
- 2.O As far as reasonably practicable, in agreeing contractual arrangements with Commissioners the Academy Trust shall request appropriate information on the needs and prior attainment of pupils who will attend the Academy.
- 2.P The Academy Trust will provide regular feedback to Commissioners (and in any event when requested by the Commissioner to do so) on progress made by the pupil, the pupil's needs and attainment.

Objections and determinations

- 2.Q The Academy Trust must make clear when determining the Academy's admission arrangements, that objections should be submitted to the ESFA or any successor to it.
- 2.R A determination of an objection, by the ESFA or any successor to it on behalf of the Secretary of State, or by the Secretary of State, will be binding upon the Academy.

Curriculum

- 2.S The Academy Trust may provide for the teaching of religious education and a daily act of collective worship at the Academy.
- 2.T 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.U].
- 2.U Not used
- 2.V 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

General Annual Grant (GAG)

3.A GAG for each Academy Financial Year for the Academy will include:

- a) funding equivalent to that which would be received by a PRU maintained by the local authority with similar characteristics, determined by the Secretary of State and taking account of the number of pupils and/or places at the Academy;
- b) funding to cover necessary functions which would be carried out by the relevant LA if the Academy were a school maintained by a local authority;
- c) payments in respect of further, specific grants made available to schools maintained by the local authority, where the Academy meets the requisite conditions and criteria necessary for a school maintained by the local authority to receive these grants.
- d) funding for matters for which it is necessary for the Academy to incur extra costs, for as long as those costs are deemed necessary by the Secretary of State; and
- e) The Secretary of State may make provision, within his absolute discretion, for GAG to be adjusted in-year if the number of pupils attending the Academy at specified dates exceeds or falls below thresholds specified by letter. Arrangements for this will be set out in the Annual Letter of Funding or its equivalent.

Calculation of GAG

3.B The Secretary of State recognises that if he serves a Termination Notice or a Termination Warning Notice, or otherwise terminates the Master Agreement, the intake of new pupils during the notice period may decline. In these circumstances the Secretary of State may pay a larger GAG in the notice period, to enable the Academy to operate effectively.

3.B.1. Not used

Other relevant funding

3.C Not used

3.D Not used

Carrying forward of funds

3.E Any additional grant made in accordance with clause 3.B, 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.B cease to apply or the Academy closes.

4. **LAND**

"Permanent Land" means the land at the former Whitehouse Unit, Salthouse Road, Kingston Upon Hull, HU8 9HJ, registered at Land Registry with freehold title number HS341416 and demised by the Permanent Lease.

"Permanent Lease" means the lease, any subsequent variations to the lease or other occupational agreement between the Academy Trust and a third party (the **"Permanent Landlord"**) under which the Academy Trust derives or will derive title to the Permanent Land.

"Property Notice" means any order, notice, proposal, demand or other requirement issued by any competent authority (including the Permanent Landlord) which materially affects the Academy Trust's ability to use the Permanent Land for the purposes of the Academy or any correspondence that affects the extent of the Permanent Land.

Restrictions on Permanent Land transfer

4.A The Academy Trust must:

- a) within 28 days of the signing of this Agreement in circumstances where the Permanent Land is demised to the Academy Trust prior to the date of this Agreement, or otherwise within 28 days of the demise of the Permanent 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 Permanent Lease:

"No disposition of the registered estate by the proprietor of the registered estate, or by the proprietor of any registered charge, not being a charge registered before the entry of this restriction, 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 required to ensure that the Restriction is entered on the proprietorship register of the Academy Trust's title;
- c) promptly confirm to the Secretary of State when the Restriction has been registered;
- d) if it has not registered the Restriction, allow 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 Permanent Land clean and tidy and make good any damage or deterioration to the Permanent Land. The Academy Trust must not do anything to lessen the value or marketability of the Permanent Land without the Secretary of State's consent. The Academy Trust must comply with the Permanent Lease and promptly enforce its rights against the Permanent Landlord.
- 4.C The Academy Trust must not, without the Secretary of State's consent:
 - a) terminate, renew, vary, surrender, dispose of or agree any revised rent under the Permanent Lease; or
 - 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 Permanent Land Provided that that the Academy Trust may grant a licence or share occupation of part of the Permanent Land with a proprietor or proposed proprietor of an academy or a body or individual providing services or facilities which are within the uses permitted by the Permanent Lease and where no relationship of landlord and tenant arises as a result of such occupation.
- 4.D The Academy Trust must obtain the Secretary of State's consent before taking any action, including the service of any notice or waiver of any condition, under any contract relating to the acquisition of the Permanent Land.
- 4.E If the Academy Trust is, or if it is reasonably foreseeable that it will be, in material breach of the Permanent 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.F After notifying the Secretary of State under clause 4.E, 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.

4.G Not used.

4.H If any part of the property situated on the Permanent Land is damaged or destroyed by an insured risk and the Academy Trust receives the proceeds of insurance but it cannot apply those proceeds to rebuild or reinstate the property because it is impossible or impractical to do so, then the Academy Trust shall pay the insurance proceeds to the Secretary of State in full.

Property notices

4.I 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.

Option

4.J The Academy Trust grants and the Secretary of State accepts an option (the "**Option**") to acquire the Permanent Land at nil consideration. The Secretary of State may exercise the Option in writing:

- a) if this Funding Agreement is terminated for any reason;
- b) at any time on or after the issue of a Termination Notice; or
- c) if any of the conditions (a) to (c) in clause 4.M applies; or
- d) if the Academy Trust cannot use all or part of the Permanent Land as the permanent site of the Academy under clause 4.L.

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

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

and in either case in accordance with the Law Society's Standard Conditions of Sale for Commercial Property in force at that date.

4.J.2 The Permanent Land is held by Venn Academy Trust, an exempt charity.

Option notice

4.K The Academy Trust:

- a) must, within 14 days after acquiring the Permanent 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 Permanent 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 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.

Permanent Land not used for the purposes of the Academy

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

Sharing the Permanent Land

4.M If:

- a) the Academy does not reach its planned capacity, as stated in clause 2.B, within five Academy Financial Years or
- b) the Academy Trust or the Secretary of State serves notice to terminate this Agreement under clause 5.A or
- c) the Secretary of State considers that not all the Permanent Land is needed for the operation of the Academy at planned capacity,

the Academy Trust must share occupation of the Permanent Land with such other academy as the Secretary of State considers appropriate and enter into any legal arrangements which the Secretary of State requires for this purpose provided that the Secretary of State shall meet the necessary and reasonable legal costs incurred by the Academy Trust in connection with entering into any such arrangements under this clause.

Exercise of Rights

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

5. TERMINATION

Termination by either party

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

Termination Warning Notice

- 5.B The Secretary of State may serve a Termination Warning Notice where he considers that:
- a) the Academy Trust has breached the provisions of this Agreement or the Master Agreement; or
 - b) the standards of performance of 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.
 - 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.

- 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 If at any time before the Academy opens, the total number of pupil referrals from commissioners to attend the Academy in September 2021 is less than 14, the Secretary of State may:
 - a) require the Academy Trust not to open the Academy until the number of prospective pupils has reached 14; or
 - b) serve a Termination Notice.
- 5.L If at any time after the Academy has opened, the Secretary of State considers that the Academy is not financially viable because of low pupil numbers, then he may:
 - a) serve a Termination Warning Notice; or
 - b) serve a Termination Notice.

- 5.M If both parties agree that the Academy is not financially viable because of low pupil numbers, they may jointly terminate this Agreement after agreeing the precise terms of termination.
- 5.N Not used.
- 5.O If at any time before the Academy opening date, the Secretary of State considers that:
- a) the Academy would, on opening, provide an unacceptably low standard of education; or
 - b) the safety of pupils or staff at the Academy would, on opening, be threatened; or
 - c) the staff employed at the Academy are unsuitable; or
 - d) there is a serious breakdown in the way the Academy Trust is being managed or governed; or
 - e) the buildings and other structures on the Permanent Land are unsuitable or the Academy Trust has not obtained Building Regulations approval,
- he may either:
- A. require the Academy Trust:
 - i. not to open the Academy; or
 - ii. not to admit pupils of a particular age range, to be determined by the Secretary of State; or
 - iii. not to use any building or other structure on the Permanent Land,until each relevant matter in paragraphs (a) to (e) above has been resolved to the Secretary of State's satisfaction; or
 - B. serve a Termination Notice.

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 1C 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 clause 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.

Information Sharing with Local Authorities – Statutory Responsibilities

- 6.H The Academy Trust must provide:
- a) the name, address and date of birth of the pupil or student;
 - b) the name and address of a parent of the pupil or student;
 - c) information in the institution's possession about the pupil or student (except if the pupil or student concerned (in the case of a pupil or student

who has attained the age of 16) or a parent of the pupil or student concerned (in the case of a pupil or student who has not attained the age of 16) has instructed the Academy Trust not to provide information of that kind);

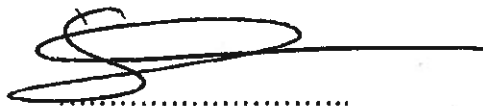
upon request under section 14 of the Education and Skills Act 2008 from a local authority (for the purpose of enabling or assisting it to exercise its functions under Part 1 of that Act); or

upon request under section 72 of that Act from a body providing services under sections 68 or 70(1)(b) of the Act (for the purposes of providing such services), the following information to that body.

This Agreement was executed as a Deed on

[DATE]

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



Director

and

.....

Director

or



Company Secretary

or

.....

Witness

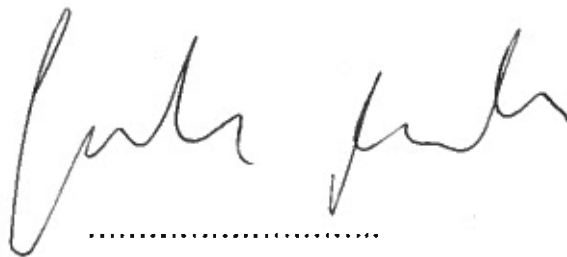
Name:

Address:

The Corporate Seal of

THE SECRETARY OF STATE FOR EDUCATION

affixed to this deed is authenticated by:



Duly Authorised

ANNEXES

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

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



Department
for Education

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