Department for Education

# Special academy and free school: supplemental funding agreement

## Red Kite Special Academy

## December 2014

**CONTENTS**


| | |
|---|---|
| **SUMMARY** | **4** |
| Information about the Academy: | 4 |
| **1. ESTABLISHING THE ACADEMY** | **7** |
| Definitions and interpretation | 7 |
| The Academy | 8 |
| Academy opening date | 9 |
| **2. RUNNING OF THE ACADEMY** | **9** |
| Length of school day and year | 9 |
| Teachers and staff | 9 |
| Places and Pupils | 10 |
| Charging | 10 |
| Admissions | 11 |
| Exclusions | 14 |
| Curriculum | 14 |
| **3. GRANT FUNDING** | **15** |
| Calculation of GAG | 15 |
| Other relevant funding | 16 |
| Carrying forward of funds | 16 |
| **4. LAND** | **16** |
| Restrictions on Land transfer | 17 |
| Obligations of the Academy Trust | 17 |
| Property Notices | 19 |
| Option | 19 |

Option Notice 19

Land not used for the purposes of the academy 20

Sharing the Land 20

**5. TERMINATION 21**

Termination by either party 21

Termination Warning Notice 21

Termination by the Secretary of State after inspection 22

Termination by the Secretary of State 23

Funding and admission during notice period 24

Notice of intention to terminate by Academy Trust 25

Effect of termination 27

**6. OTHER CONTRACTUAL ARRANGEMENTS 28**

Annexes 28

The Master Agreement 29

General 29

## SUMMARY

**Information about the Academy:**

| | |
|---|---|
| **Name of Academy Trust** | Kingsley Learning Foundation |
| **Company number** | 07834300 |
| **Date of Master Funding Agreement** | 14 March 2018 |
| **Name of academy** | Red Kite Special Academy |
| **Opening date** | 03 September 2018 |
| **Type of academy (indicate whether academy or free school)** | Free School |
| **Name of predecessor school (where applicable)** | N/A |
| **Planned number of places** | 100 |
| **Age range** | 4-18 |
| **Number of sixth form places** | 10 |
| **Number of residential places** | None |
| **Land arrangements (Version 1-7 or other)** | Version 7 |
| **Address and title number of Land** | Land on the East Side of Uppingham Road, Corby NN17 2UJ registered under title number NN252889 |

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

| Clause No. | Descriptor | Applied | Not used |
|---|---|---|---|
| 1.J | Only applies to free schools and new provision academies | X | |
| 2.D | Only applies to free schools admitting pupils without a statement of SEN or EHC plan | | X |
| 2.G | Only applies where there was a predecessor independent school or non-maintained special school | | X |
| 2.S to 2.FF | Only applies to free schools or new provision academies that admit pupils without a statement of SEN or EHC plan | | X |
| 2.W | Does not apply to free schools (unless there was a predecessor independent school or non-maintained special school), or new provision academies | | X |
| 2.GG | Only applies to free schools or new provision academies that admit pupils without a statement of SEN or EHC plan | | X |
| 3.B – 3.G | Only applies to free schools or new provision academies that admit pupils without a statement of SEN or EHC plan | | X |
| 3.H | Clause does not apply to academy converters or new provision academies | X | |
| 3.J | Only applies to full sponsored and intermediate sponsored academies with approved Academy Action Plans | | X |
| 3.K | Does not apply to free schools (unless there was a predecessor independent school or non-maintained special school), or new provision academies | | X |
| 5.G.1 | Clause applies only to boarding academies/free schools | | 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 |
| 5.P | Clause applies to free schools and may be applied to new provision academies | X | |

## 1. ESTABLISHING THE ACADEMY

1.A This Agreement made between the Secretary of State for Education and Kingsley Learning Foundation is supplemental to the master funding agreement made between the same parties and dated 14 March 2018 (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 Red Kite Special Academy which is specially organised to make special educational provision for pupils with SEN.

"**EHC plan**" means an Education, Health and Care plan made under section 37(2) of the Children and Families Act 2014.

"**Pupils with a statement of SEN or EHC plan**" means those pupils, with a statement of SEN or EHC plan, admitted under clauses 2.C and 2.H to 2.R.

"**Pupils without a statement of SEN or EHC plan**" means those pupils, with SEN but without a statement of SEN or EHC plan, admitted under clauses 2.D and 2.S to 2.FF.

"**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**" means up to 4 Academy Financial Years and covers the period up to and including the first Academy Financial Year in which the Academy can offer its planned places (as set down in clause 2.C), whichever is the shorter.

"**Statement of SEN**" means a statement made under section 324 of the Education Act 1996.

"**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 Special 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 must ensure special educational provision is made at the Academy for one or more categories of SEN. These categories may include, but are not limited to SLD, PMLD, and ASD.

1.I The Academy Trust may not refuse to admit a child whose statement of SEN or EHC plan names the Academy on the sole basis that some, or all, of the child's SEN do not feature in the categories referred to in clause 1.H of this agreement.

1.J The Academy Trust must ensure that so far as is reasonably practicable and consistent with 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.

**Academy opening date**

1.K The Academy Trust will open the Academy on 03 September 2018.

## 2. RUNNING OF THE ACADEMY

**Length of school day and year**

2.A.1 Further to clause 2.1 of the Master Agreement, the Academy Trust is responsible for setting the dates when the school terms and holidays are to begin and end, and the times of schools sessions.

**Teachers and staff**

2.A Subject to clause 2.4 of the Master Agreement and 2.B of this Agreement the Academy Trust must not employ anyone under a contract of employment or for services to plan and prepare lessons and courses for pupils, teach pupils, and assess and report on pupils' development, progress and attainment ("specified work"), who is not either:

a) a qualified teacher within the meaning of regulations made under section 132 of the Education Act 2002; or

b) otherwise eligible to do specified work under the Education (Specified Work)(England) Regulations 2012 (SI 2012/762), which for the purpose of this clause must be construed as if the Academy were a maintained school.

2.B Clause 2.A will not apply to anyone who:

a) transferred to the employment of the Academy Trust by virtue of the Transfer of Undertakings (Protection of Employment) Regulations 2006;

b) immediately prior to the transfer, was employed to do specified work; and

c) immediately before transferring, was not:

i. a qualified teacher within the meaning of regulations made under section 132 of the Education Act 2002 and fully registered with the appropriate body, or

ii. eligible to do specified work under the Education (Specified Work)(England) Regulations 2012 (SE 2012/762)

("transferred staff member"). The Academy Trust must ensure that any transferred staff member that carries out specified work and does not meet the requirements of clause 2.A(a) or 2.A(b), meets those requirements as soon as possible.

**Places and Pupils**

2.C The planned number of places at the Academy is 100 places in the age range 4-18, including a sixth form of 10 places.

2.D Not used.

2.E The Academy Trust must ensure that the Academy meets the needs of individual pupils.

2.F The Academy Trust must seek approval from the Secretary of State where they consider there is a need to increase the planned number of places stated in clause 2.C. The requirements of this Agreement may then be amended by agreement between the Secretary of State and the Academy Trust.

**Charging**

2.G Not used.

**Admissions**

2.H Except as set out in clauses 2.J – 2.Q 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.

2.I Except where clauses 2.D and 2.T apply, the Academy Trust may not admit a child to the school unless a statement of SEN or EHC plan naming the Academy, is maintained for that child.

2.J The Academy Trust may admit a child to the Academy if:

a) the child is admitted for the purposes of an assessment of the child's educational needs under section 323 of the Education Act 1996 , and the child's admission to the Academy is with the agreement of the LA, the Academy trust, the child's parent and any person whose advice is to be sought in accordance with regulation 7 of the Education (Special Educational Needs) (England) (Consolidation) Regulations 2001;

b) the child remains admitted following an assessment under section 323 of the Education Act 1996; or

c) the child is admitted following a change in the child's circumstances, with the agreement of the LA, the Academy Trust and the child's parents.

2.K Subject to clause 2.J(a), the Academy Trust may allow the child to remain at the Academy:

a) until the expiry of ten school days after the LA has served a notice under section 325 of the Education Act 1996 that they do not propose to make a statement; or

b) until a statement is made.

2.L Where the LA intends to name the Academy in a statement of SEN, and has served a copy of the proposed statement of SEN (amended statement of SEN) upon the Academy Trust, the Academy Trust must respond, in writing, to the LA's proposal within 15 days of receipt of the notice.

2.M 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 where no reasonable steps may be made to secure compatibility. The Academy Trust must have regard to relevant guidance issued by the Secretary of State to maintained schools when making its determination.

2.N If the Academy Trust determines that admitting the child would be incompatible with the provision of efficient education, it must notify the LA that it does not agree that the Academy should be named in the pupil's statement of SEN. This notice must set out all the facts and matters the Academy Trust relies upon in support of its consideration that:

a) admitting the child would be incompatible with efficiently educating other children; and

b) the Academy Trust cannot take reasonable steps to secure this compatibility.

2.O The Academy Trust must admit a child to the Academy, where an LA maintains a statement of SEN for a child under section 324 of the Education Act 1996 which names the Academy, even if they consider the Academy should not have been named in the child's statement of SEN.

2.P Where the Academy Trust considers that the Academy should not have been named in a child's statement of SEN, they may ask the Secretary of State to

determine that the LA has acted unreasonably in naming the Academy and to make an order directing the LA to amend the child's statement of SEN by removing the name of the Academy. Where the Secretary of State makes an order to this effect, the Academy Trust will cease to be under an obligation to admit the child from the date of the Secretary of State's Order, or from such date as the Secretary of State specifies. In specifying a date the Secretary of State must take into account both the welfare of the child in question and the degree of difficulty caused to the Academy by the child's continued admission.

2.Q Where the Secretary of State determines that an LA has acted reasonably in naming the Academy in a child's statement of SEN, the Academy Trust must continue to admit the child until the Academy ceases to be named in the statement of SEN.

2.R Clauses 2.J – 2.Q only apply in so far as the relevant provisions of the Children and Families Act 2014 relating to SEN and disability do not apply to Academies and Free Schools.

2.S Not used.

2.T Not used.

2.U Not used.

2.V Not used.

2.W Not used.

2.X Not used.

2.Y Not used.

2.Z Not used.

2.AA Not used.

2.BB Not used.

2.CC Not used.

2.DD Not used.

2.EE Not used.

2.FF Not used.

**Exclusions**

2.GG Not used.

**Curriculum**

2.HH The Academy Trust, where practical must provide for the teaching of religious education and for acts of collective worship at the Academy.

2.II Subject to clause 2.JJ:

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 the requirements of regulation 5A of the Education (Special Educational Needs)(England)(Consolidation) Regulations 2001 as if it were a maintained school.

2.JJ The Academy Trust must comply with regulation 5A of the Education (Special Educational Needs)(England)(Consolidation) Regulations 2001 as if the Academy were a community or foundation special school, and as if references to "Religious Education" and to "Religious Worship" in that section were references to religious education and religious worship provided by the Academy in accordance with clause 2.II.

2.KK The Academy Trust agrees that, where the Academy is listed in the register of Independent Schools as having a religious ethos, paragraph 5(b) of Schedule 11 of the Equality Act 2010 shall not apply to the Academy.

2.LL 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.MM 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**

3.A The Secretary of State will determine GAG for the Academy for each Academy Financial Year, taking into account relevant factors.

3.B Not used.

3.C Not used.

3.D Not used.

3.E Not used.

3.F Not used.

3.G Not used.

3.H The Secretary of State may pay a further element of GAG to the Academy Trust during the Start-Up Period to meet additional costs which cannot otherwise be met from GAG.

3.I 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 and therefore payments based on the number of places related to 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 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 on the East Side of Uppingham Road, Corby NN17 2UJ being part of the land registered with title number NN252889 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 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, 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 comply with the Lease and promptly enforce its rights against the 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 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 Land.

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 Land.

4.E 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.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 If the Academy Trust has not entered into the Lease by 31 January 2019, the Secretary of State may serve a Termination Notice.

**Property Notices**

4.H 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.I 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 if this Funding Agreement is terminated for any reason, or if the Academy Trust cannot use all or part of the Land as the permanent site of the Academy under clause 4.K. 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.J 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 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.

**Land not used for the purposes of the academy**

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

**Sharing the Land**

4.L If:

a) the Academy does not reach its planned number of places, as stated in clause 2.C within 4 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 Land is needed for the operation of the Academy at planned number of places,

the Academy Trust must share occupation of the 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.

## 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.

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 If at any time before the Academy opens, the total number of prospective pupils who have accepted offers of places to attend the Academy in September 2018 is less than 34, the Secretary of State may:

a) require the Academy Trust not to open the Academy until 34 prospective pupils have accepted offers of places to attend the Academy; 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 For the purpose of clause 5.K "prospective pupils" means those pupils who have:

a) a statement of SEN or EHC plan that name the Academy; or

b) accepted an offer of a place to attend the Academy in September 2018

5.O Not used.

5.P 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 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 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.Q 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.R 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.S 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.T 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.U Any notice given by the Academy Trust under clause 5.T 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.T 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.V 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.W 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.X 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.Y 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.Z 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.AA 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.BB Subject to clauses 5.CC and 5.DD, 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.CC 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.DD 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.BB, 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.EE 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.EE(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.FF The Secretary of State may:

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

This Agreement was executed as a Deed on 22 March 2018

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

[redacted]

**Director**

and

.....

**Director**

[redacted]

or

**Company Secretary**

or .....

**Witness**

Name:

Address:

The Corporate Seal of

**THE SECRETARY OF STATE FOR EDUCATION**

affixed to this deed is authenticated by:



[redacted]

**Duly Authorised**