Department for Education

Mainstream academy and free school: supplemental funding agreement

Wright Robinson College

March 2018 v6

Contents

SUMMARY SHEET **4**

Information about the Academy: 4

1. ESTABLISHING THE ACADEMY **8**

Definitions and interpretation 8

The Academy 9

2. RUNNING OF THE ACADEMY **10**

Teachers and staff 10

Pupils 11

SEN unit 11

Charging 11

Admissions 11

Curriculum 13

3. GRANT FUNDING **15**

Calculation of GAG 15

Other relevant funding 16

4. LAND **17**

Freehold Site 18

Leasehold site 21

5. TERMINATION **26**

Termination by either party 26

Termination Warning Notice 26

Termination by the Secretary of State after inspection 29

Termination by the Secretary of State 29

Funding and admission during notice period 30

Notice of intention to terminate by Academy Trust 30

Effect of termination 36

6. OTHER CONTRACTUAL ARRANGEMENTS 38

Annexes 38

The Master Agreement 38

General 38

ANNEXES 41

7. ADMISSION OF CHILDREN AND YOUNG PEOPLE WITH EDUCATION, HEALTH AND CARE PLANS 41

8. ADMISSION OF CHILDREN WITH A STATEMENT OF SPECIAL EDUCATIONAL NEEDS 41

SUMMARY SHEET

Information about the Academy:

Name of Academy Trust	Flagship Learning Trust
Company number	11683714
Date of Master Funding Agreement	24 October 2019
Name of academy	Wright Robinson College
Opening date	1 November 2019
Type of academy (indicate whether academy or free school)	Mainstream
Religious designation	N/A
Wholly or partly selective	N/A
Name of predecessor school (where applicable)	Wright Robinson College
Capacity number	1800
Age range	11 to 16
Number of sixth form places	N/A
Number of boarding places	N/A
SEN unit / Resource provision	N/A
Part of a PFI Scheme	Yes
Land arrangements **(Version 1-8 or other)**	Version 1 (following transfer of the freehold after the PFI) Version 2 (during the PFI and until the transfer of the freehold)
Address and title number of Land	The land at Wright Robinson High School, Abbey Hey Lane, Gorton, Manchester, M18 8RL, being part of the land registered with title number GM905943.

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

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

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

Please identify any other variations from the model that apply to this academy (e.g. clauses relating to PFI, or any required because the multi academy trust includes academies designated with different religious characters, or a mixture of those designated with a religious character, and those which are not):

Additional clauses will be supplied by your project lead if needed.

Descriptor	Clause No.	Applied	Not used
Land Clauses - References to "Academy Trust" have been corrected to lower case where this is referring to a different academy trust to Flagship Learning Trust.	4.G – 4.H/4.T-4.U	X	
Leasehold Land Clauses - The reference to security of tenure has been removed as this is not appropriate where the land is held pursuant to a lease	4.T – 4.U		X
Only applies to academies which form part of a PFI arrangement	1.J	X	
Only applies to academies which form part of a PFI arrangement	1.K	X	
Only applies to academies which form part of a PFI arrangement	3.M	X	
Only applies to academies which form part of a PFI arrangement	3.N	X	
Only applies to academies which form part of a PFI arrangement	3.O	X	
Only applies to academies which form part of a PFI arrangement	5B(d)-(k)	X	
Only applies to academies which form part of a PFI arrangement	5Z-5LL	X	

1. ESTABLISHING THE ACADEMY

1.A This Agreement made between the Secretary of State for Education and Flagship Learning Trust is supplemental to the master funding agreement made between the same parties and dated 24 October 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 Wright Robinson College;

"**Academy Trust Insolvency Notice**" - clause 5.CC;

"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;

"**Critical Years**" - clause 5.BB;

"**Current Funding**" - clause 5.BB;

"**Insolvency**" has the meaning given to it in section 123 of the Insolvency Act 1986;

"Lease" has the meaning given to it in clause 4 of this Agreement;

"**Normal Payment Matters**" has the meaning given to it in the Principal Agreement;

"**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;

"**PFI Contractor**" means Manchester Schools Services Limited (company number 05319068), the counterparty of the LA to the Project Agreement;

"**PFI EAG Refusal**" - clause 5.BB;

"**Principal Agreement**" means the principal agreement entered into by the Secretary of State, the Academy Trust and the LA in connection with the Academy and dated on or around the date of this Agreement;

"**Project Agreement**" means the PFI project agreement entered into by the LA and PFI Contractor dated 22 July 2005 as amended by a deed of variation dated 23 March 2007 (as may be amended from time to time);

"**School Agreement**" means the school agreement entered into by the LA and the Academy Trust relating to the provision of facilities and services to the Academy and dated on or around the date of this Agreement;

"**Shortfall**" - clause 5.FF;

"**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; and

"**Termination Warning Notice**" means a notice sent by the Secretary of State to the Academy Trust, stating his intention to terminate this Agreement.

1.D The Interpretation Act 1978 applies to this Agreement as it applies to an Act of Parliament.

1.E Reference in this Agreement to clauses and annexes will, unless otherwise stated, be to clauses and annexes to this Agreement.

The Academy

1.F The Academy is a Mainstream Academy as defined in clause 1.4 of the Master Agreement.

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

1.H The Academy Trust will open the Academy on 1 November 2019.

1.I Not used.

1.J The Academy Trust shall enter into the School Agreement, the Principal Agreement and the Lease.

1.K The Academy Trust must conduct the Academy within the terms and requirements of the Principal Agreement, the School Agreement and the Lease.

2. RUNNING OF THE ACADEMY

Teachers and staff

2.A Subject to clause 2.A.2 and 7.A of this Agreement and section 67 of the Children and Families Act 2014, the Academy Trust may, in accordance with any relevant Guidance, employ anyone it believes is suitably qualified or is otherwise eligible to plan and prepare lessons and courses for pupils, teach pupils, and assess and report on pupils' development, progress and attainment.

2.A.1 The Academy Trust shall in relation to:

a) any person who may apply for a position as an employee or to be otherwise engaged by the Academy Trust, and

b) any employee with whom the Academy Trust enters into a contract of employment or a contract for services,

act in accordance with and hereby agrees to be bound by section 124AA of the School Standards and Framework Act 1998 ("**SSFA**"), so far as those provisions apply to, and as if the Academy Trust were, a voluntary controlled or foundation school designated by an order under section 69(3) of the SSFA as a school having a religious character. For the avoidance of doubt, the Academy Trust agrees and acknowledges that section 124A of the SSFA shall not therefore apply to it in relation to the persons referred to at (a) and (b) above.

2.A.2 The Academy Trust must designate a staff member at the Academy as

responsible for promoting the educational achievement of registered pupils at the Academy who are being looked after by an LA, or are no longer looked after by an 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 capacity of the Academy is 1800 in the age range 11 to 16. The Academy will be an all ability inclusive school.

SEN unit

2.C Not used.

2.D Not used.

Charging

2.E Not used.

Admissions

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

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

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

2.I Not used.

2.J Not used.

2.K Not used.

2.L The Secretary of State may:

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

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

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

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

2.M Not used.

2.N Not used.

2.O Not used.

2.P The Academy Trust must make arrangements to ensure an independent appeals panel is established for the Academy and its clerk and members are trained to act in accordance with the Codes. The Academy Trust must ensure that parents and 'relevant children' (as described in the Codes) are informed

of their right to appeal to an Independent Appeal Panel if they are dissatisfied with an admission decision of the Academy Trust. The arrangements for appeals must comply with the Codes as they apply to foundation and voluntary aided schools. The determination of the appeal panel is binding on all parties.

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

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

2.S The Office of the Schools Adjudicator ("**OSA**") will consider objections to the Academy's admission arrangements (except objections against any agreed derogations from the provisions of the Codes specified in this funding agreement, over which it has no jurisdiction). The Academy Trust must therefore make it clear, when determining the Academy's admission arrangements, that objections should be submitted to the OSA. The OSA's determination of an objection is binding on the Academy and the Academy Trust must make appropriate changes to its admission arrangements to give effect to the Adjudicator's decision within two months of the decision (or by 28 February following the decision, whichever is sooner), unless an alternative timescale is specified by the Adjudicator.

2.T Not used.

Curriculum

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

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

2.W Not used.

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

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

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

2.Y Not used.

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

and for bringing up children. The Academy Trust must also have regard to the requirements in section 405 of the Education Act 1996, as if the Academy were a maintained school.

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

3. GRANT FUNDING

Calculation of GAG

3A-3D. Not used.

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

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

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

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

3.G The Secretary of State may, at his discretion, adjust the basis of the pupil count to take account of any diseconomies of scale which may affect the Academy if it is operating below the planned capacity in clause 2.B. If such an adjustment is made in any Academy Financial Year, this will not change the basis of the pupil count for calculating the following Academy Financial Year's GAG. If the Secretary of State has indicated that additional grant may be

payable in such circumstances, the Academy Trust will bid for this additional grant based on need and providing appropriate supporting evidence. The Secretary of State may accept or refuse the bid at his discretion.

3.H Not used.

3.I The Secretary of State recognises that if a Termination Notice or a Termination Warning Notice is served, or the Master Agreement is otherwise terminated, the intake of new pupils during the notice period may decline and therefore payments based on the number of pupils attending the Academy may be insufficient to meet the Academy's needs. In these circumstances the Secretary of State may pay a larger GAG in the notice period, to enable the Academy to operate effectively.

Other relevant funding

3.J Not used.

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

Carrying forward of funds

3.L Any additional grant made in accordance with clause 3.I, for a period after the Secretary of State has served a Termination Notice or a Termination Warning Notice under this Agreement, or otherwise terminates the Master Agreement, may be carried forward without limitation or deduction until the circumstances set out in clause 3.I cease to apply or the Academy closes.

3.M The Academy Trust must use the GAG funding it receives prudently to cover the normal reasonable running costs of the Academy including payments which fall due pursuant to the School Agreement or the Principal Agreement and to make payments under the School Agreement which will in turn form a

contribution to the LA's obligations to pay the unitary charge under the Project Agreement.

3.N If the Secretary of State makes a payment under the Principal Agreement the Secretary of State may, subject to clause 3.O, set off or abate an equivalent amount from any GAG payable to the Academy Trust pursuant to this Agreement in the following financial year.

3.O Before making any set off or abatement pursuant to clause 3.N above, the Secretary of State shall:

a) notify the Academy Trust of the payment under the Principal Agreement;

b) take into account (acting reasonably) any representations made by the Academy Trust providing reasons why the relevant liabilities were not settled;

c) take into account (acting reasonably) any representations made by the Academy Trust as to the nature of the liabilities under consideration.

4. LAND

"**Freehold Land**" means the freehold land at Wright Robinson High School, Abbey Hey Lane, Gorton, Manchester, M18 8RL, being part of the land registered with title number GM905943, which is to be the permanent site of the Academy.

"**Freehold Property Notice**" means any order, notice, proposal, demand or other requirement issued by any competent authority which materially affects the Academy Trust's ability to use the Freehold Land for the purposes of the Academy.

"**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 Leasehold Land.

"**Leasehold Land**" means the land at Wright Robinson High School, Abbey Hey Lane, Gorton, Manchester, M18 8RL, being part of the land registered with title number GM905943 and demised by the Lease.

"**Leasehold 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 Leasehold Land for the purposes of the Academy.

Freehold Site

4.1A Following:

a) the expiry or early termination of the Project Agreement; and

b) the transfer of the Freehold Land to the Academy Trust,

the provisions of clauses 4.A to 4.I shall apply.

Restrictions on Freehold Land transfer

4.A The Academy Trust must:

a) within 28 days of the transfer of the Freehold Land to the Academy Trust, apply to the Land Registry using Form RX1 for the following restriction (the "**Freehold Restriction**") to be entered in the proprietorship register for the Freehold Land:

No disposition of the registered estate by the proprietor of the registered estate is to be registered without a written consent signed by the Secretary of State for Education, of Sanctuary Buildings, Great Smith Street, London SW1P 3BT;

b) take any further steps reasonably required to ensure that the Freehold Restriction is entered on the proprietorship register;

c) promptly confirm to the Secretary of State when the Freehold Restriction has been registered;

d) if it has not registered the Freehold Restriction, permit the Secretary of State to do so in its place; and

e) not, without the Secretary of State's consent, apply to disapply, modify,

cancel or remove the Freehold 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 Freehold Land clean and tidy and make good any damage or deterioration to the Freehold Land. The Academy Trust must not do anything to lessen the value or marketability of the Freehold Land without the Secretary of State's consent.

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

a) grant any consent or licence; or

b) create or allow any encumbrance; or

c) part with or share possession or occupation; or

d) enter into any onerous or restrictive obligations,

in respect of all or part of the Freehold Land.

Freehold Option

4.D The Academy Trust grants and the Secretary of State accepts an option (the "**Freehold Option**") to acquire all or part of the Freehold Land at nil consideration. The Secretary of State may exercise the Freehold Option in writing on termination of this Agreement. If the Freehold 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.

Freehold Option Notice

4.E The Academy Trust:

a) must, within 14 days after acquiring the Freehold Land apply to the Land Registry on Form AN1 (including a copy of this Agreement) for a

notice of the Freehold Option (the "**Freehold Option Notice**") to be entered in the register, taking any further steps required to have the Freehold Option Notice registered and promptly confirming to the Secretary of State when this has been done;

b) if it has not registered the Freehold 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 Freehold 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 Freehold Land apply to register a Class C(iv) land charge in the Land Charges Registry, and send the Secretary of State a copy of the relevant entry within 7 days after the registration has been completed. If the Secretary of State considers that the Academy Trust has not complied with this clause, he may apply to secure the registration.

Freehold Property Notices

4.F If the Academy Trust receives a Freehold Property Notice, it must:

a) send a copy of it to the Secretary of State within 14 days, stating how the Academy Trust intends to respond to it;

b) promptly give the Secretary of State all the information he asks for about it;

c) allow the Secretary of State to take all necessary action, with or instead of the Academy Trust, to comply with it, and

d) use its best endeavours to help the Secretary of State in connection with it.

Sharing the Freehold Land

4.G Where:

a) the Secretary of State identifies basic or parental need for additional places in the area in which the Academy is situated; and

b) the Secretary of State then considers that not all the Freehold Land is needed for the operation of the Academy at planned capacity,

The Secretary of State must consult with the Academy Trust to determine whether part of the Freehold Land could be demised or leased to another academy trust, as the Secretary of State considers appropriate, for the purpose of that academy trust establishing and maintaining an educational institution on the Freehold Land.

4.H To the extent the Academy Trust and the Secretary of State agree to part of the Freehold Land being demised or leased in accordance with clause 4.G, the Academy Trust must use its best endeavours to procure all necessary consents in order to enable it to share occupation of the Freehold Land with the incoming academy trust and to provide the incoming academy trust with security of tenure over the Freehold Land occupied by it, and shall enter into any legal arrangements which the Secretary of State requires for this purpose. The Secretary of State shall meet the necessary and reasonable costs incurred by the Academy Trust in connection with this clause.

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

a) a basic need will arise when the forecast demand for pupil places in the area where the Academy is situated is greater than the existing capacity to provide them;

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

c) planned capacity has the meaning given in clause 2.B.

Leasehold site

During the Project Agreement

4.J The provisions of clauses 4.K to 4.V shall apply during the following periods:

a) during the subsistence of the Project Agreement; and

b) from the expiry or early termination of the Project Agreement until such time as the freehold of the Leasehold Land is transferred to the Academy Trust.

Restrictions on Leasehold Land transfer

4.K The Academy Trust must:

a) within 28 days of the signing of this Agreement in circumstances where the Leasehold Land is transferred to the Academy Trust prior to the date of this Agreement, or otherwise within 28 days of the transfer of the Leasehold Land to the Academy Trust, apply to the Land Registry using Form RX1 for the following restriction (the "**Leasehold Restriction**") to be entered in the proprietorship register for the Leasehold Land:

No disposition of the registered estate by the proprietor of the registered estate is to be registered without a written consent signed by the Secretary of State for Education, of Sanctuary Buildings, Great Smith Street, London SW1P 3BT;

b) take any further steps reasonably required to ensure that the Leasehold Restriction is entered on the proprietorship register;

c) promptly confirm to the Secretary of State when the Leasehold Restriction has been registered;

d) if it has not registered the Leasehold Restriction, permit the Secretary of State to do so in its place; and

e) not, without the Secretary of State's consent, apply to disapply, modify, cancel or remove the Leasehold 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.L Save to the extent that any of the Academy Trust's obligations are the responsibility of the PFI Contractor (whereupon the Academy Trust must use reasonable endeavours to procure the PFI Contractor's compliance with its obligations under the Project Agreement), the Academy Trust must keep the Leasehold Land clean and tidy and make good any damage or deterioration to the Leasehold Land. The Academy Trust must not do anything to lessen the value or marketability of the Leasehold Land without the Secretary of State's consent.

4.M The Academy Trust must comply with the Lease and promptly enforce its rights against the Landlord.

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

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

b) grant any consent or licence; or

c) create or allow any encumbrance; or

d) part with or share possession or occupation; or

e) enter into any onerous or restrictive obligations,

in respect of all or part of the Leasehold Land.

Leasehold Option

4.O The Academy Trust grants and the Secretary of State accepts an option (the "**Leasehold Option**") to acquire the Leasehold Land at nil consideration. The Secretary of State may exercise the Option in writing on termination of this Agreement. If the Leasehold 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.

Leasehold Option Notice

4.P The Academy Trust:

a) must, within 14 days after acquiring the Leasehold 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 Leasehold Option (the "**Leasehold Option Notice**") to be entered in the register, taking any further steps required to have the Leasehold Option Notice registered and promptly confirming to the Secretary of State when this has been done;

b) if it has not registered the Leasehold 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 Leasehold 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 Leasehold Land or, if later, after signing this Agreement, apply to register a Class C(iv) land charge in the Land Charges Registry, and send the Secretary of State a copy of the relevant entry within 7 days after the registration has been completed. If the Secretary of State considers that the Academy Trust has not complied with this clause, he may apply to secure the registration.

Leasehold Property Notices

4.Q If the Academy Trust receives a Leasehold Property Notice, it must:

a) send a copy of it to the Secretary of State within 14 days, stating how the Academy Trust intends to respond to it;

b) promptly give the Secretary of State all the information he asks for about it;

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

of the Academy Trust, to comply with it, and

d) use its best endeavours to help the Secretary of State in connection with it.

Breach of Lease

4.R 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.S After notifying the Secretary of State under clause 4.R, the Academy Trust must:

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

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

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

Sharing the Leasehold Land

4.T Where:

a) the Secretary of State identifies basic or parental need for additional places in the area in which the Academy is situated; and

b) the Secretary of State then considers that not all the Leasehold Land is needed for the operation of the Academy at planned capacity,

the Secretary of State must consult with the Academy Trust to determine whether part of the Leasehold Land could be demised or sublet to another academy trust, as the Secretary of State considers appropriate, for the purpose of that academy trust establishing and maintaining an educational

institution on the Leasehold Land.

4.U To the extent the Academy Trust and the Secretary of State agree to part of the Leasehold Land being demised or sublet in accordance with clause 4.T, the Academy Trust must use its best endeavours to procure either the approval of the Landlord or any necessary amendments to the Lease in order to enable it to share occupation of the Leasehold Land with the incoming academy trust, and shall enter into any legal arrangements which the Secretary of State requires for this purpose. The Secretary of State shall meet the necessary and reasonable costs incurred by the Academy Trust in connection with this clause.

4.V For the purposes of clause 4.T:

a) **a basic need** will arise when the forecast demand for pupil places in the area where the Academy is situated is greater than the existing capacity to provide them;

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

c) **planned capacity** has the meaning given in clause 2.B.

5. TERMINATION

Termination by either party

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

Termination Warning Notice

5.B The Secretary of State may serve a Termination Warning Notice where he considers that:

a) the Academy Trust has breached the provisions of this Agreement or

the Master Agreement; or

b) the standards of performance of pupils at the Academy are unacceptably low; or

c) there has been a serious breakdown in the way the Academy is managed or governed; or

d) the safety of pupils or staff is threatened, including due to breakdown of discipline; or

e) the Academy is Coasting provided he has notified the Academy Trust that it is Coasting;

f) the Secretary of State is obliged to make a payment under the Principal Agreement;

g) in the immediately preceding 12 month period, the aggregate of the payments made by the Academy Trust to the LA under the Principal Agreement has reached more than 5% of GAG;

h) the Secretary of State considers (acting reasonably) that there has been a Persistent Breach of the School Agreement or the Principal Agreement likely to materially and adversely impact on the provision of educational services at the Academy, and for the purposes of this clause 5.B(g), "Persistent Breach" means: (i) a particular breach which has recurred three (3) or more times in any rolling six (6) month period; or (ii) the occurrence of five (5) or more different breaches in any rolling six (6) month period;

i) the Academy Trust has committed a material breach of the School Agreement or the Principal Agreement;

j) the Secretary of State has received a notice from the LA informing it of instances of breaches or non-compliance by the Academy Trust with the School Agreement or Principal Agreement that may have the consequence of causing the LA to be in breach or default of the Project

Agreement;

k) the Academy Trust has failed to take the action referred to in clause 5.C by the date specified in clause 5.C; or

l) the circumstances envisaged by clauses 5.II and 5.JJ of this Agreement in respect of EAG funding are applicable

Each of a) to l) (inclusive) above is a default event for the purposes of this Agreement.

5.C A Termination Warning Notice served under clause 5.B will specify:

a) the action the Academy Trust must take;

b) the date by which the action must be completed; and

c) the date by which the Academy Trust must make any representations, or confirm that it agrees to undertake the specified action.

5.D The Secretary of State will consider any representations from the Academy Trust which he receives by the date specified in the Termination Warning Notice. The Secretary of State may amend the Termination Warning Notice to specify further action which the Academy Trust must take, and the date by which it must be completed.

5.E If the Secretary of State considers that the Academy Trust has not responded to the Termination Warning Notice as specified under clause 5.C(c), or has not completed the action required in the Termination Warning Notice as specified under clauses 5.C(a) and (b) (and any further action specified under clause 5.D) he may serve a Termination Notice.

Termination by the Secretary of State after inspection

5.F If the Chief Inspector gives notice to the Academy Trust that:

a) special measures are required to be taken in relation to the Academy; or

b) the Academy requires significant improvement

the Secretary of State may serve a Termination Warning Notice, specifying the date by which the Academy Trust must make any representations.

5.G In deciding whether to give notice of his intention to terminate under clause 5.F, the Secretary of State will have due regard to the overall performance of the Academy Trust.

5.G.1 Not used.

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

a) has not received any representations from the Academy Trust by the date specified in the notice; or

b) having considered the representations made by the Academy Trust remains satisfied that this Agreement should be terminated;

he may serve a Termination Notice.

5.I Not used.

Termination by the Secretary of State

5.J If the Secretary of State has determined that the Academy will be removed from the Register of Independent Schools and no appeal against that determination is pending, he may serve a Termination Notice.

5.K Not used.

5.L Not used.

5.M Not used.

5.N Not used.

5.O Not used.

Funding and admission during notice period

5.P If the Secretary of State serves a Termination Notice under clause 5.A, the Academy Trust may continue during the notice period to admit pupils to the Academy, and to receive GAG and EAG, in accordance with this Agreement.

5.Q If the Secretary of State serves a Termination Warning Notice or a Termination Notice otherwise than under clause 5.A, the Academy Trust may continue during the notice period to admit pupils to the Academy (unless the Secretary of State specifies otherwise), and to receive GAG and EAG, in accordance with this Agreement.

Notice of intention to terminate by Academy Trust

5.R The provisions of this clause 5R and of clauses 5.S to 5.Y (inclusive) shall apply when the Project Agreement has expired or been terminated. 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.

5.Z The provisions of this clause 5.Z and of clauses 5.AA to 5.LL (inclusive) shall apply when the Project Agreement is subsisting.

5.AA The Secretary of State will, before the start of each Academy Financial Year, provide the Academy Trust with a final allocation indicating the level of GAG and EAG to be provided in the next following Academy Financial Year (the "**Indicative Funding**").

5.BB For the purpose of clauses 5.BB to 5.LL:

"**Critical Years**" means the current financial year and, if an annual letter of funding or its equivalent has been received for the following financial year, that financial year;

"**Current Funding**" means the funding specified in the annual letters of funding (or their equivalent) for the Critical Years and all other resources available and likely to be available to the Academy Trust, including funds detailed in the Master Agreement;

A "**PFI EAG Refusal**" occurs where:

(a) the Academy Trust has made a request for EAG funding in connection with its obligations or discharging its liabilities under the School Agreement or the Principal Agreement; and

(b) the Secretary of State has not agreed, in accordance with clauses 3.16 and 3.17 of the Master Agreement, to provide such EAG funding to the Academy Trust.

5.CC Within 30 days of being notified by the Secretary of State of a PFI EAG Refusal, the Academy Trust may provide written notice that it considers that, after taking into account its Current Funding, it is likely that the running costs during the Critical Years would cause the Academy Trust to go into Insolvency ("**Academy Trust Insolvency Notice**").

5.DD Any Academy Trust Insolvency Notice 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, upon which the Academy Trust's opinion is based;

iii. a detailed statement of steps which the Academy Trust proposes

to take to ensure that as soon as reasonably practicable the running costs are reduced sufficiently in the Critical Years to ensure that such costs are less than its Current Funding and the period of time within which such steps will be taken;

iv. the shortfall in the Critical Years between the Current Funding expected to be available to the Academy Trust to cover the running costs and the projected expenditure of the Academy Trust; and

v. a detailed budget of income and expenditure for the Academy during the Critical Years.

5.EE Within 15 days of the provision of the Academy Trust Insolvency Notice, both parties shall discuss and if possible (using reasonable endeavours) agree whether or not it is likely that the running costs during the Critical Years would cause the Academy Trust to go into Insolvency and such Insolvency could not be avoided through prudent financial management (including, by using GAG funding prudently). 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 agree to use their reasonable endeavours to agree a practical solution to the problem.

5.FF If no agreement is reached in accordance with clause 5.EE within 15 days of the Academy Trust Insolvency Notice being served, then the following questions shall be referred to an independent expert (the "Expert") for determination:

a) 5.FF.1 whether, on the basis of the Current Funding, it is likely that the running costs during the Critical Years would cause the Academy Trust to go into Insolvency;

b) 5.FF.2 whether the Academy Trust is using the funds provided under this Agreement and the Master Agreement prudently; and

c) 5.FF.3 whether the Academy Trust is using the funds provided under

this Agreement and the Master Agreement in accordance with the requirements of this Agreement and the Master Agreement.

The Expert's determination shall be final and binding on both parties. The Expert shall be requested to specify in his determination:

i. the amount of the shortfall (if any) in funding between the running costs and the Current Funding during the Critical Years (the "**Shortfall**"); and

ii. (if appropriate) recommendations as to future spending and the running costs.

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 shall be appointed by the President of the Institute of Chartered Accountants in England and Wales.

5.GG The parties shall procure that the Expert (together with any educational specialist appointed pursuant to this clause) will act promptly in determining the matters referred to him. The Expert will be required 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 shall be appointed by the Chairman of the Specialist Schools and Academies Trust.

5.HH The Expert's and the educational specialist's fees shall be borne equally between the parties.

5.II For the purpose of clauses 5.JJ and 5.LL, "**Insolvency Decision**" means either:

a) in accordance with clause 5.EE, the Secretary of State agrees with the Academy Trust that on the basis of the Current Funding it is likely that the running costs during the Critical Years would cause the Academy

Trust to go into Insolvency which could not be avoided through prudent financial management (including, using GAG funding prudently); or

b) an Expert determines in accordance with clause 5.FF that on the basis of the Current Funding it is likely that the running costs during the Critical Years would cause the Academy Trust to go into Insolvency or that the Academy Trust is not using the funds provided under this Agreement and the Master Agreement prudently and in accordance with the requirements of this Agreement and the Master Agreement.

5.JJ Within 10 Business Days of an Insolvency Decision, the Secretary of State may either at its option:

a) withdraw the PFI EAG Refusal and promptly pay to the Academy Trust the amount of requested EAG funding or such other sum as shall be appropriate; or

b) terminate this Agreement on not less than 20 Business Days notice to the Academy Trust.

5.KK In the event that the Secretary of State provides additional EAG funding in accordance with clause 5.JJ, the Secretary of State may within 12 months of paying the additional EAG funding, terminate this Agreement at any time.

5.LL In the event that there is no Insolvency Decision, this Agreement shall continue and the Secretary of State shall not be obliged to pay to the Academy Trust the requested EAG funding.

Effect of termination

5.MM 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.NN Subject to clauses 5.OO and 5.PP, 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.OO 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.PP 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.NN, 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.QQ 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.QQ(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.RR The Secretary of State may:

a) Waive all or part of the repayment due under sub-clause 5.QQ(b) if the Academy Trust obtains his permission to invest the sale proceeds for its charitable purposes; or

b) direct the Academy Trust to pay all or part of the sale proceeds to the relevant LA.

6. OTHER CONTRACTUAL ARRANGEMENTS

Annexes

6.A Any annexes to this Agreement form part of and are incorporated into this Agreement.

The Master Agreement

6.B Except as expressly provided in this Agreement, all provisions of the Master Agreement have full force and effect.

General

6.C The Academy Trust cannot assign this Agreement.

6.D Failure to exercise, or a delay in exercising, any right or remedy of the Secretary of State under this Agreement (including the right to terminate this Agreement), or a single or partial exercise of such a right or remedy, is not a waiver of, and does not prevent or restrict any initial or further exercise of, that or any other right or remedy.

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

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

6.G This Agreement and any dispute or claim arising out of or in connection with it or its subject matter or formation (including non-contractual disputes or claims) shall be governed by and construed in accordance with the law of England and Wales, and submitted to the exclusive jurisdiction of the courts of England and Wales.

6.H Not used.

ANNEXES

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

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

7.A 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 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 parent of the pupil may have to the First Tier Tribunal (Special Educational Needs and Disability) or the Upper Tribunal Administrative Appeals Chamber.

8. ADMISSION OF CHILDREN WITH A STATEMENT OF SPECIAL EDUCATIONAL NEEDS

(Clauses 8.A-8.G only apply where the pupil has a statement of special educational needs (SEN) rather than an EHC plan and where they therefore continue to be subject to the relevant provisions of the Education Act 1996. EHC plans are replacing statements of SEN but although all statements of SEN should have been converted to an EHC plan by the 1 April 2018 this clause is retained to protect pupils who still have a statement of special education need after this date. The detail on the drafting of a statement below is retained to protect pupils in exceptional circumstances.)

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

8.A The Academy Trust must admit all children with a Statement of SEN naming the Academy.

8.B The Academy Trust must have regard to the Special Educational Needs Code of Practice 2001 when dealing with statements of SEN.

8.C Where the LA sends the Academy Trust a draft statement with a proposal that the Academy is named in the final statement, the Academy Trust must respond within 15 working days unless the time period falls within a school holiday that is longer than two weeks in which case the Academy Trust should respond within 15 working days of the end of the school holiday.

8.D In its response the Academy Trust must either:

a. consent to being named in the final statement or

b. explain why it believes that admitting the child would be incompatible with the provision of efficient education for other children and the efficient use of resources, including why no reasonable steps could secure compatibility. In doing so the Academy Trust must have regard to the relevant legislation and Code of Practice. If the LA does not agree with the Academy Trust's response, and names the Academy in the child's Statement of SEN, the Academy Trust must admit the child to the school as specified in the statement or otherwise by the LA. The final decision as to whether to name the Academy falls to the LA.

8.E If the Academy Trust considers that the LA should not have named the Academy in the statement of SEN, 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 will be final, subject only to any right of appeal which a parent of the child may have to the First-tier Tribunal (Special Educational Needs and Disability) or the Upper Tribunal Administrative Appeals Chamber.

8.F If a parent of a child for whom the LA maintains a statement appeals to the First-tier Tribunal (Special Educational Needs and Disability) or the Upper Tribunal Administrative Appeals Chamber, either for or against the naming of

the Academy in the child's statement, then the Tribunal's decision will be binding, even if it is different from that of the Secretary of State.

8.G Where it has been finally determined that the Academy be named in a child's Statement of SEN, the Academy Trust must admit the child to the Academy, notwithstanding any other admissions requirements in this Agreement.

8.H Clauses 8.A to 8.G only apply insofar as the relevant provisions of the Children and Families Act 2014 relating to SEN and disability do not apply to Academies and Free Schools.