Department
for Education

Special academy and free school: supplemental funding agreement

March 2018

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SUMMARY

Information about the Academy:

Name of Academy Trust	Orchard Hill College Academy Trust
Company number	08476149
Date of Master Funding Agreement	
Name of academy	Arbour Vale School
Opening date	1 November 2018
Type of academy (indicate whether academy or free school)	Special Academy
Name of predecessor school (where applicable)	Arbour Vale School
Planned number of places	304
Age range	2 to 19
Number of sixth form places	56
Number of residential places	12
Land arrangements **(Version 1-7 or other)**	Version 2
Address and title number of Land	Farnham Road , Farnham Royal, Slough, Berkshire, SL2 3AE with title numbers: BK308927 and BK391699
Part of a PFI Scheme	Yes

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		✓
2.D	Only applies to free schools admitting pupils without a statement of SEN or EHC plan		✓
2.G	Only applies where there was a predecessor independent school or non-maintained special school		✓
2.S to 2.EE	Only applies to free schools or new provision academies that admit pupils without a statement of SEN or EHC plan		✓
2.FF	Does not apply to free schools (unless there was a predecessor independent school or non-maintained special school), or new provision academies	✓	
2.GG	Only applies to free schools or new provision academies that admit pupils without a statement of SEN or EHC plan		✓
3.B – 3.G	Only applies to free schools or new provision academies that admit pupils without a statement of SEN or EHC plan		✓
3.H	Clause does not apply to academy converters or new provision academies		✓
3.J	Only applies to full sponsored and intermediate sponsored academies with approved Academy Action Plans	✓	
3.K	Does not apply to free schools (unless there was a predecessor independent school or non-maintained special school), or new provision academies	✓	
5.G.1	Clause applies only to boarding academies/ boarding free schools	✓	
5.I	Clause only applies to sponsored academies	✓	

Clause No.	Descriptor	Applied	Not used
5.K	Clause applies to free schools and may be applied to new provision academies		✓
5.L	Clause applies to free schools and may be applied to new provision academies		✓
5.M	Clause applies to free schools and may be applied to new provision academies		✓
5.N	Clause applies to free schools and may be applied to new provision academies		✓
5.O	Clause applies to free schools and may be applied to new provision academies		✓
5.P	Clause applies to free schools and may be applied to new provision academies		✓

Please identify any other variations from the model that apply to this academy (e.g. clauses relating to PFI):

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

Descriptor	Clause No.	Applied	Not used
Only applies to academies which form part of a PFI arrangement	1. K	✓	
Only applies to academies which form part of a PFI arrangement	1. L	✓	
Only applies to academies which form part of a PFI arrangement	3.M	✓	
Only applies to academies which form part of a PFI arrangement	3. N	✓	
Only applies to academies which form part of a PFI arrangement	3. O	✓	
Only applies to academies which form part of a PFI arrangement	5. B(f) - (l)	✓	

Descriptor	Clause No.	Applied	Not used
Only applies to academies which form part of a PFI arrangement	5. AA - 5. MM	✓	

1. ESTABLISHING THE ACADEMY

1.A This Agreement made between the Secretary of State for Education and Orchard Hill College Academy Trust is supplemental to the master funding agreement made between the same parties and dated 31 October 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 Arbour Vale School which is specially organised to make special educational provision for pupils with SEN.

"**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.

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

"**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.

"**National Minimum Standards**" means the National Minimum Standards for Boarding Schools published by the Secretary of State under section 87C(1) of the Children Act 1989 as amended by the Care Standards Act 2000.

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

"PFI Contractor" means QED (Slough) Ltd, 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 dated 3 August 2006 and entered into by the LA and PFI Contractor (as may be amended from time to time).

"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.EE.

"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.

"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.

"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 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 Not used

1.K The Acdemy Trust shall enter into the School Agreement, the Principal Agreement and the Lease.

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

Academy opening date

1.M The Academy Trust will open the Academy on 1 November 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.A.1b 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.A.1b 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.

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 304 places in the age range 2 to 19, including 12 residential places and a sixth form of 56 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 and any relevant provisions of the Childrens and Families Act 2014 apply, the Academy Trust may not admit a child to the school unless a statement of SEN or EHC plan naming the Academy or the predecessor school, is maintained for that child.

(Clauses 2.J-2.Q 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 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.

2.J The Academy Trust must admit all children with a Statement of SEN naming the Academy.

2.K The Academy Trust must have regard to the Special Educational Needs Code of practice 2001 when dealing with statements of SEN.

2.L 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.

2.M 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.

2.N 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.

2.O 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.

2.P 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.

2.Q Clauses 2.J-2.Q 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.

2.R [Not used]

2.S Not used

2.T Not used

2.U Not used

2.V Not used

2.W Pupils on roll in a Predecessor School which was a maintained, a non-maintained special 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.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 Subject to clauses 2.II and 2.JJ the Academy Trust, must provide for the teaching of religious education and for a daily act of collective worship at the Academy.

2.II Subject to clause 2.JJ 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;

2.JJ 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. 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 regulation 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 Not used

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 The Academy Trust may apply to the Secretary of State for financial assistance in relation to proposed redundancies at the Academy. In response to such an application, the Secretary of State may at his discretion agree to meet a proportion of the Academy Trust's costs arising from the inclusion of academies in the schedules to the Redundancy Payments (Continuity of Employment in Local Government) (Modification) Order 1999. The Secretary of State may agree to meet the costs of an employee's prior eligible service,

being service before the Academy opened, but the Academy Trust must meet the costs of service after the Academy opened. The Secretary of State's financial assistance in this respect will only be available in the first two years after the Academy opens.

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

Carrying forward of funds

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

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.N, 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.M above, the Secretary of State shall:

3.O.1. Notify the Academy Trust of the Payment under the Principal Agreement;

3.O.2. take into account (acting reasonably) any representations made by the Academy Trust providing reasons why the relevant liabilities were not settled;

3.O.3. take into account (acting reasonably) any representations made by the Academy Trust as to the nature of the liabilities under consideration.

4. LAND

"**Land**" means the land at Arbour Vale School, Farnham Road , Farnham Royal, Slough, Berkshire, SL2 3AE, being the land registered with title number BK308927 and part of the land being registered with title number BK391699 and demised by the Lease.

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

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

Restrictions on Land transfer

4.A The Academy Trust must:

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

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

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

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

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

e) not, without the Secretary of State's consent, apply to disapply, modify, cancel or remove the Restriction, whether by itself, a holding company, a subsidiary company, or a receiver, administrator or liquidator acting in the name of the Academy Trust.

Obligations of the Academy Trust

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

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

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

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

b) grant any consent or licence; or

c) create or allow any encumbrance; or

d) part with or share possession or occupation; or

e) enter into any onerous or restrictive obligations,

in respect of all or part of the Land.

Option

4.E The Academy Trust grants and the Secretary of State accepts an option (the "**Option**") to acquire the Land at nil consideration. The Secretary of State may exercise the Option in writing on termination of this Agreement. If the Option is exercised, completion will take place 28 days after the exercise date in accordance with the Law Society's Standard Conditions of Sale for Commercial Property in force at that date.

Option Notice

4.F The Academy Trust:

a) must, within 14 days after acquiring the Land or, if later, after signing this Agreement, apply to the Land Registry on Form AN1 (including a copy of this Agreement) for a notice of the Option (the "**Option Notice**") to be entered in the register, taking any further steps required to have the Option Notice registered and promptly confirming to the Secretary of State when this has been done;

b) if it has not registered the Option Notice, agrees that the Secretary of State may apply to register it using Form UN1;

c) must not, without the Secretary of State's consent, apply to disapply, modify or remove the Option Notice, whether by itself, a holding company, a subsidiary company, or a receiver, administrator or liquidator acting in the name of the Academy Trust, and

d) must, in the case of previously unregistered land, within 14 days after acquiring the Land or, if later, after signing this Agreement, apply to register a Class C(iv) land charge in the Land Charges Registry, and send the Secretary of State a copy of the relevant entry within 7 days after the registration has been completed. If the Secretary of State considers that the Academy Trust has not complied with this clause, he may apply to secure the registration.

Property Notices

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

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

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

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

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

Breach of Lease

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

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

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

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

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

Sharing the Land

4.J Where:

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

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

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

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

4.L For the purposes of clause 4.J:

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

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

c) **planned number of places** has the meaning given in clause 2.C

5. TERMINATION

Termination by either party

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

Termination Warning Notice

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

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

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

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

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

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

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

g) the Secretary of State considers that in the immediately preceding 12 month period, the aggregate of payments made by the Academy Trust to the LA under the Principal Agreement has reached a level which the Secretary of State considers to be excessive and which may (assessed objectively) cause the Academy Trust material financial difficulties 5%

of GAG;

h) the Secretary of State considers (acting reasonably) that the Academy Trust's compliance with the School Agreement or the Principal Agreement is such that claims or disputes are of a number or nature likely to materially and adversely impact on the provision of educational services at the Academy;

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 k) (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 If, following an inspection, the Chief Inspector makes a notification to the Secretary of State in respect of the Academy under section 87(4) of the Children Act 1989, or the Chief Inspector is otherwise of the opinion that the Academy Trust has not met the National Minimum Standards or the Independent School Standards in respect of the Academy, the Secretary of State may serve a Termination Warning Notice, specifying the date by which the Academy Trust must make any representations.

5.H If the Secretary of State has served a Termination Warning Notice under clause 5.F or clause 5.G.1 and:

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

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

he may serve a Termination Notice.

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

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

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

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

Termination by the Secretary of State

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

5.K Not used

5.L Not used

5.M Not used

5.N Not used

5.O Not used

5.P Not used

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

5.BB 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.CC 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.DD 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.EE Any Academy Trust Insolvency Notice must specify:

5.EE.1 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.FF 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.GG 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:

5.GG.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;

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

5.GG.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:

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

(b) (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.HH 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.II The Expert's and the educational specialist's fees shall be borne equally between the parties.

5.JJ For the purpose of clauses 5.KK and 5.MM, "Insolvency Decision" means either:

5.JJ.1 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

5.JJ.2 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.KK Within 10 Business Days of an Insolvency Decision, the Secretary of State may either at its option:

5.KK.1 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

5.KK.2 terminate this Agreement on not less than 20 Business Days notice to the Academy Trust.

5.LL 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.MM 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.

5.NN 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.OO 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.PP 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.QQ 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.RR 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.SS 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 31 October 2018

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

..... and .....

Director **Director**

or .....

Company Secretary

or .....

Witness

Name: TRACEY GOODSELL

Address: 8th Floor, Quadrant House
The Quadrant, Sutton, Sy, SM2 5AS

The Corporate Seal of

THE SECRETARY OF STATE FOR EDUCATION

affixed to this deed is authenticated by:

.....

Duly Authorised

Department for Education

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