



Department  
for Education

# **Alternative provision academy and free school: supplemental funding agreement**

**March 2018**

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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.D, 2.E	Only applies where the academy has an SEN unit		X
2.F	Only applies where there was a predecessor independent school		X
2.I	Clause does not apply to free schools (unless there was a predecessor independent school), or new provision academies		X
2.U	Clause reflects the requirements for religious education and daily collective worship	X	
3.C	Clause only applies to full sponsored and intermediate sponsored academies with approved Academy Action Plans		X
3.D	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/boarding 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	

## **1. ESTABLISHING THE ACADEMY**

1.A This Agreement made between the Secretary of State for Education and Education Partnership Trust is supplemental to the master funding agreement made between the same parties and dated 15/4/2019 (the "**Master Agreement**").

### **Definitions and Interpretation**

1.B Except as expressly provided in this Agreement words and expressions defined in the Master Agreement will have those same meanings in this Agreement.

1.C The following capitalised words and expressions will have the following meanings:

"The **Academy**" means The Heights Burnley Academy.

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

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

"**Coasting**" has the meaning given by regulations under subsection (3) of section 60B of the Education and Inspections Act 2006 in relation to a school to which that section applies.

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

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



- 1.I The Academy Trust must ensure that so far as is reasonably practicable and consistent with clause 2.U of this Agreement and the Equality Act 2010, the policies and practices adopted by the Academy (in particular regarding curriculum, uniform and school food) enable pupils of all faiths and none to play a full part in the life of the Academy, and do not disadvantage pupils or parents of any faith or none. For the avoidance of doubt, this requirement applies irrespective of the proportion of pupils of any faiths or none currently attending or predicted to join the school.
- 1.J Further to clause 1.13(b) of the Master Agreement the Academy Trust must ensure that the educational provision is made at the Academy for children of compulsory school age who, by reason of illness, exclusion from school or otherwise, may not for any period receive suitable education unless alternative provision is made for them.

## **2. RUNNING OF THE ACADEMY**

### **Teachers and staff**

- 2.A Subject to clause 2.A.1 and 7.A of this Agreement (if used), the Academy Trust may, in accordance with any relevant Guidance, employ anyone it believes is suitably qualified or is otherwise eligible to plan and prepare lessons and courses for pupils, teach pupils, and assess and report on pupils' development, progress and attainment.
- 2.A.1 The Academy Trust must designate a staff member at the Academy as responsible for promoting the educational achievement of registered pupils at the Academy who are being looked after by 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.

- 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 no longer meet the requirements at 1C of the Academies Act, do not comply with this Agreement, or are otherwise unlawful.

2.K The Academy Trust may only admit a child of compulsory school age:

- a) referred by a local authority where the local authority has a duty to that child under section 19 of the Education Act 1996.
- b) referred by a maintained school or Academy where the maintained school or Academy has a duty under Section 100 of the Education and Inspections Act 2006.
- c) referred by a maintained school under powers set out in section 29(A) of the Education Act 2002.
- d) referred by an Academy under general powers in the Articles of the Academy Trust for the purpose of improving the child's behaviour.

2.L The Academy Trust shall have a referral policy, the initial policy to be agreed with the Department. Any referral policy will include the number of places to be provided, the age range of pupils, the oversubscription criteria, and a fair, transparent and objective process for considering whether the education provided will be appropriate for prospective pupils. The Academy Trust will consult on any changes to its referral policy with key stakeholders including the local authority, local schools, any other school or local authority which has previously commissioned places and any other relevant parties.



education and religious worship provided by the Academy in accordance with clause 2.U.

- 2.U At its discretion in accordance with clause 2.T, where the Academy Trust has made provision for the teaching of religious and/or for a daily act of collective worship (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.V 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.W 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**

#### **Other relevant funding**

3.C Not used.

3.D Not used.

#### **Carrying forward of funds**

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

### **4. LAND**

“Land” means the land at March Street, Burnley, BB12 0BT., being the land registered with title number LAN205695 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



in respect of all or part of the Land.

- 4.D The Academy Trust must obtain the Secretary of State's consent before taking any action, including the service of any notice or waiver of any condition, under any contract relating to the acquisition of the Land.
- 4.E If the Academy Trust is, or if it is reasonably foreseeable that it will be, in material breach of the Lease, the Academy Trust must immediately give written notice to the Secretary of State stating what the breach is and what action the Academy Trust has taken or proposes to take to remedy it, including timescales where appropriate.
- 4.F After notifying the Secretary of State under clause 4.E, the Academy Trust must:
- a) promptly give the Secretary of State all the information he asks for about the breach;
  - b) allow the Secretary of State to take all necessary action, with or instead of the Academy Trust, to remedy or prevent the breach, and
  - c) use its best endeavours to help the Secretary of State to remedy or prevent the breach.
- 4.G Not used.

#### **Property Notices**

- 4.H If the Academy Trust receives a Property Notice, it must:
- a) send a copy of it to the Secretary of State within 14 days, stating how the Academy Trust intends to respond to it;
  - b) promptly give the Secretary of State all the information he asks for about it;
  - c) allow the Secretary of State to take all necessary action, with or instead of the Academy Trust, to comply with it, and

after registration has been completed. If the Secretary of State considers that the Academy Trust has not complied with this clause, he may apply to secure the registration.

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

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

#### **Sharing the Land**

4.L If:

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

the Academy Trust must share occupation of the Land with such other Academy as the Secretary of State considers appropriate and enter into any legal arrangements which the Secretary of State requires for this purpose.

### **5. TERMINATION**

#### **Termination by either party**

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

specified under clauses 5.C(a) and (b) (and any further action specified under clause 5.D) he may serve a Termination Notice.

**Termination by the Secretary of State after inspection**

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

- a) special measures are required to be taken in relation to the Academy;  
or
- b) the Academy requires significant improvement

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

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

5.G.1 Not used.

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

- a) has not received any representations from the Academy Trust by the date specified in the notice; or
- b) having considered the representations made by the Academy Trust remains satisfied that this Agreement should be terminated;

he may serve a Termination Notice.

5.I Not used.



- a) transfer a proportion of those capital assets, equal to the proportion of the original financial contribution made by HM Government, to a nominee of the Secretary of State to use for educational purposes; or
- b) if the Secretary of State directs that a transfer under clause 5.DD(a) is not required, pay to the Secretary of State at the termination date (or, by agreement with the Secretary of State, at the date of their subsequent disposal) a sum equivalent to the proportion of the original financial contribution made by HM Government.

5.EE The Secretary of State may:

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

## **6. OTHER CONTRACTUAL ARRANGEMENTS**

### **Annexes**

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

### **The Master Agreement**

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

### **General**

6.C The Academy Trust cannot assign this Agreement.

6.D Failure to exercise, or a delay in exercising, any right or remedy of the Secretary of State under this Agreement (including the right to terminate this Agreement), or a single or partial exercise of such a right or remedy, is not a

This Agreement was executed as a Deed on

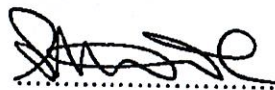
15/4/2019

Executed on behalf of the Academy Trust by:



Director

and



Director

or

.....

Company Secretary

or

.....

Witness

Name:

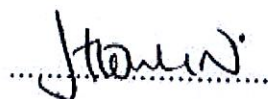
Address:

The Corporate Seal of

**THE SECRETARY OF STATE FOR EDUCATION**

affixed to this deed is authenticated by:





Duly Authorised

- 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





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