



Department
for Education

Mainstream academy and free school: supplemental funding agreement

April 2016

Contents

SUMMARY SHEET	4
Information about the Academy:	4
1. ESTABLISHING THE ACADEMY	8
Definitions and interpretation	8
The Academy	8
2. RUNNING OF THE ACADEMY	9
Teachers and staff	9
Pupils	9
SEN unit	9
Charging	9
Admissions	9
Curriculum	12
3. GRANT FUNDING	13
Calculation of GAG	14
Other relevant funding	15
4. LAND	15
5. TERMINATION	16
Termination by either party	16
Termination Warning Notice	16
Termination by the Secretary of State after inspection	17
Termination by the Secretary of State	17
Funding and admission during notice period	18
Notice of intention to terminate by Academy Trust	18
Effect of termination	20

6. OTHER CONTRACTUAL ARRANGEMENTS	21
Annexes	22
The Master Agreement	22
General	22
ANNEXES	24
7. PUPILS WITH SPECIAL EDUCATION NEEDS (SEN) AND DISABILITIES	24
8. ADMISSION OF PUPILS WITH SEN AND DISABILITIES	24
9. Removal of selection at wholly selective Academies.	25

SUMMARY SHEET

Information about the Academy:

Name of Academy Trust	King Edward VI Academy Trust Birmingham
Company number	10654935
Date of Master Funding Agreement	30 th August 2017
Name of academy	King Edward VI Handsworth Grammar School for Boys
Opening date	1 September 2017
Type of academy (indicate whether academy or free school)	Academy
Religious designation	N/A
Wholly or partly selective	Wholly selective
Name of predecessor school (where applicable)	Handsworth Grammar School
Capacity number	1000
Age range	11 to 18
Number of sixth form places	250
Number of boarding places	N/A
SEN unit / Resource provision	N/A
Land arrangements (Version 1-7 or other)	Version 3
Address and title number of Land	Handsworth Grammar School, Grove Lane, Birmingham, B21 9ET, title numbers WM886217, WM674693 and MM82633.

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		✓
2.A.1	Clause applies where an academy was previously a VC or foundation school designated with a religious character		✓
2.C, 2.D	Only applies where the academy has an SEN unit		✓
2.E	Only applies where there was a predecessor independent school		✓
2.G	Clause does not apply to free schools (unless there was a predecessor independent school), or new provision academies	✓	
2.M	Clause applies only to academies and free schools designated with a religious character		✓
2.N	Clause applies only to academies that were formerly wholly selective grammar schools	✓	
2.O	Clause applies only to academies that were formerly partially selective grammar schools		✓
2.T	Clause applies to free schools and new provision academies designated with a religious character		✓
2.W	Clause only applies where the academy is designated with a religious character		✓
2.X	Clause only applies where the academy has not been designated with a religious character	✓	
2.Y	Clause applies where an academy was previously a VC school or foundation school designated with a religious character		✓
2.Yc)	Sub-clause applies if the academy is designated with a denominational religious character – CE etc. rather than 'Christian'		✓
3.A – 3.F	Option 1 applies to converter and sponsored academies: if used delete option 2	✓	

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

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
Governance	2BB	✓	

1. ESTABLISHING THE ACADEMY

- 1.A This Agreement made between the Secretary of State for Education and King Edward VI Academy Trust Birmingham is supplemental to the master funding agreement made between the same parties and dated 30th August 2017 (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 King Edward VI Handsworth Grammar School for Boys.

“**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.

“**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.

“**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 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 September 2017.
- 1.I Not used

2. RUNNING OF THE ACADEMY

Teachers and staff

- 2.A Subject to clause 2.4 of the Master Agreement, 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 Not used

Pupils

- 2.B The planned capacity of the Academy is 1000 in the age range 11 to 18, including a sixth form of 250 places.

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 Not used
- 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 The Academy Trust may determine admission arrangements (subject to consultation in line with the Codes) that give priority for admission to children attracting the Pupil Premium, including the service premium (the “pupil premium admission criterion”), but not above looked-after children and previously looked-after children.
- 2.J Where the Academy Trust applies the pupil premium admission criterion, it must provide information in its admission arrangements about eligibility for the premiums.
- 2.K For the purposes of applying the pupil premium admission criterion only, sections 1.9(f) and 2.4(a) of the School Admissions Code do not apply insofar as they prevent admission authorities from giving priority to children according to the financial or occupational status of parents or using supplementary forms that ask for:
- a) any personal details about their financial status; or
 - b) whether parents are serving in the UK armed forces or were serving in the UK armed forces, and are exercising parental care and responsibility for the child in question.
- 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 Where the Academy is a former maintained grammar school designated as such under section 104 of the School Standards and Framework Act 1998 and the Education (Grammar School Designation) Order 1998, then it may continue to select its intake by reference to ability. Annex 9 sets out the procedures for removing selective arrangements.

2.O Not used.

2.P The Academy Trust must ensure that parents and 'relevant children' (as described in the **Codes**) have the 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 the agreed variations from the Codes specified at clause 2.K, 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 as quickly as possible.

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.

Governance

2.BB The Academy Trust shall establish for the Academy a Local Governing Body to which it may delegate any of its powers and functions in relation to the operation of the Academy. The role of the Local Governing Body and the membership of it shall be for the Academy Trust to decide, but the Academy Trust will ensure that the Academy operates in a way that honours the characteristics of the predecessor school and will as a minimum ensure that:

(a) A majority of the members of the Local Governing Body shall be appointed by The Charity Called Handsworth Grammar School (Charity Registration Number 528952) so as to outnumber all other members of the Local Governing Body by two; and

(b) a minimum of two parents of pupils at the Academy (to be elected by the parents of registered pupils of the Academy) shall be members of the Local Governing Body

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.

4. LAND

The parties' rights and obligations in respect of the Land are set out in the Supplemental Agreement or private lease dated _____ and made between (1) the Secretary of State; (2) the Academy Trust; and (3) the trustees of The Charity Called Handsworth Grammar School (Charity Registration Number 528952). For the purposes of this clause, Land has the meaning given in the Supplemental Agreement or private lease.

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.
- 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 Secretary of State will, before the start of each Academy Financial Year, provide the Academy Trust with a final funding allocation indicating the level of GAG and EAG to be provided in the next Academy Financial Year (the “**Funding Allocation**”).

5.S If the Academy Trust is of the opinion that, after receipt of the Funding Allocation for the next Academy Financial Year (the “**Critical Year**”) and after taking into account all other resources likely to be available to the Academy, including other funds that are likely to be available to the Academy from other academies operated by the Academy Trust (“**All Other Resources**”), it is likely that the cost of running the Academy during the Critical Year would cause the Academy Trust to become insolvent (and for this reason only) then the Academy Trust may give

written notice of its intention to terminate this Agreement on 31 August before the Critical Year.

- 5.T Any notice given by the Academy Trust under clause 5.S must be provided to the Secretary of State within six weeks of the Secretary of State issuing the Funding Allocation. The notice given by the Academy Trust under clause 5.S must specify:
- a) the grounds upon which the Academy Trust's opinion is based, including:
 - i. evidence of those grounds;
 - ii. any professional accounting advice the Academy Trust has received;
 - iii. a detailed statement of steps which the Academy Trust proposes to take to ensure that the running costs of the Academy are reduced such that costs are less than the Funding Allocation and All Other Resources, and the period of time within which such steps will be taken; and
 - b) the shortfall in the Critical Year between the Funding Allocation and All Other Resources expected to be available to the Academy Trust to run the Academy and the projected expenditure on the Academy; and
 - c) a detailed budget of income and expenditure for the Academy during the Critical Year (the "**Projected Budget**").
- 5.U Both parties will use their best endeavours to agree whether or not the cost of running the Academy during the Critical Year would cause the Academy Trust to become insolvent. Both parties recognise that they will need to engage in a constructive dialogue at the time about how best to provide education for the pupils at the Academy and use their best endeavours to agree a practical solution to the problem.
- 5.V If no agreement is reached by 30 April (or another date if agreed between the parties) as to whether the cost of running the Academy during the Critical Year would cause the Academy Trust to become insolvent, then that question will be referred to an independent expert (the "**Expert**") for resolution. The Expert's determination will be final and binding on both parties. The Expert will be requested to specify in his determination the amount of the shortfall in funding (the

“Shortfall”).

- 5.W The Expert will be an insolvency practitioner with significant professional experience of educational institutions or academies. If the parties fail to agree upon the appointment of the Expert then the Expert will be appointed by the President of the Institute of Chartered Accountants in England and Wales. The Expert’s fees will be borne equally between the parties.
- 5.X The Expert will be required in reaching his determination to take account of advice from an educational specialist who is professionally familiar with the issues arising from the budget management of schools. If the parties fail to agree upon the appointment of the educational specialist then the educational specialist will be appointed by the Chairman of the Specialist Schools and Academies Trust (or any successor or equivalent body). The educational specialist’s fees will be borne equally between the parties.
- 5.Y If the Expert determines that the cost of running the Academy during the Critical Year would cause the Academy Trust to become insolvent, and the Secretary of State will not have agreed to provide sufficient additional funding to cover the Shortfall, then the Academy Trust will be entitled to terminate this Agreement, by notice expiring on 31 August before the Critical Year. Any such notice will be given within 21 days after (a) the Expert’s determination will have been given to the parties or (b), if later, the Secretary of State will have given written notice of his refusal to provide sufficient additional funding for the Academy to cover the Shortfall.

Effect of termination

- 5.Z If this Agreement is terminated, the Academy will cease to be an Academy within the meaning of sections 1 and 1A of the Academies Act 2010.
- 5.AA Subject to clauses 5.BB and 5.CC, if the Secretary of State terminates this Agreement under clause 5.A, he will indemnify the Academy Trust. If the Secretary of State terminates this Agreement otherwise than under clause 5.A, he may at his discretion indemnify or compensate the Academy Trust.
- 5.BB The amount of any such indemnity or compensation will be determined by the Secretary of State, having regard to representations made to him by the Academy

Trust, and will be paid as and when the Secretary of State considers appropriate.

5.CC The categories of expenditure incurred by the Academy Trust in consequence of termination, for which the Secretary of State may indemnify the Academy Trust under clauses 5.AA, may include:

- a) staff compensation and redundancy payments;
- b) compensation payments in respect of broken contracts;
- c) expenses of disposing of assets or adapting them for other purposes;
- d) legal and other professional fees; and
- e) dissolution expenses.

5.DD If this Agreement is terminated, and the Academy Trust owns capital assets which have been partly or wholly funded by HM Government, the Academy Trust must, as soon as possible after the termination date:

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

5.EE The Secretary of State may:

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

6. OTHER CONTRACTUAL ARRANGEMENTS

Annexes

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

The Master Agreement

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

General

- 6.C The Academy Trust cannot assign this Agreement.
- 6.D Failure to exercise, or a delay in exercising, any right or remedy of the Secretary of State under this Agreement (including the right to terminate this Agreement), or a single or partial exercise of such a right or remedy, is not a waiver of, and does not prevent or restrict any initial or further exercise of, that or any other right or remedy.
- 6.E Termination of this Agreement will not affect the accrued rights, remedies, obligations or liabilities of the parties existing at termination.
- 6.F This Agreement may be executed in any number of counterparts, each of which when executed and delivered shall constitute a duplicate original, but all of which will together constitute the same agreement.
- 6.G This Agreement and any dispute or claim arising out of or in connection with it or its subject matter or formation (including non-contractual disputes or claims) shall be governed by and construed in accordance with the law of England and Wales, and submitted to the exclusive jurisdiction of the courts of England and Wales.
- 6.H Not used

This Agreement was executed as a Deed on 30th August 2017

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

[Redacted Signature]

Director

and

.....

Director

or

.....

Company Secretary

or

[Redacted Signature]

Witness

Name:

[Redacted Name]

Address:

[Redacted Address]

The Corporate Seal of

THE SECRETARY OF STATE FOR EDUCATION

affixed to this deed is authenticated by:



[Redacted Signature]

Duly Authorised

ANNEXES

7. PUPILS WITH SPECIAL EDUCATION NEEDS (SEN) AND DISABILITIES

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

“**EHC plan**” means an Education, Health and Care plan made under sections 37(2) 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 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.

7.B Not used

7.C Not used

7.D Not used.

8. ADMISSION OF PUPILS WITH SEN AND DISABILITIES

8.A The Academy Trust must for each of its Academies, subject to its right of appeal to the Secretary of State, admit all pupils with a statement of SEN naming the Academy.

8.B Where an LA proposes to name one of the Academies in a statement of SEN, it must give the Academy Trust written notice of this, stating why it considers that Academy to be suitable for the pupil in question. Within 15 days of receipt of the LA’s notice, the Academy Trust must consent to being named, except where admitting the child would be incompatible with the provision of efficient education for other children, and no reasonable steps could secure compatibility. In deciding

whether a child's inclusion would be incompatible with the efficient education of other children or the efficient use of resources, the Academy Trust must have regard to the relevant Guidance issued to maintained schools.

- 8.C If the Academy Trust decides that admitting the child would be incompatible with the provision of efficient education or the efficient use of resources, it must, within the 15 days, notify the LA in writing, giving its reasons for its decision.
- 8.D The Academy Trust must then seek to establish from the LA whether or not it agrees with this determination. 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.
- 8.E If in such case, the Academy Trust considers that the LA should not have named the Academy in the statement, 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 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), 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.

9 Removal of selection at wholly selective Academies.

Whereas the joint intention of the parties to this agreement through this Annex is to provide for the removal of selective admission arrangements by the Academy Trust and to replicate (once the school converts into an Academy) provisions in relation to group ballots as would have applied to the maintained school prior to this agreement, it is hereby agreed:

This annex applies to the Academy which, prior to its entering into Academy arrangements with the Secretary of State under section 1 of the Academies Act 2010, was designated as a grammar school¹ - and was part of a prescribed group of grammar schools ("prescribed group") as set out in Schedule 2 to the Education (Grammar School Ballots) Regulations 1998².

This Academy is in a prescribed group for the purposes of this Annex with whichever of the following schools are Academies:

- King Edward VI Camp Hill School for Boys
- King Edward VI Camp Hill School for Girls
- King Edward VI Five Ways School
- King Edward VI Handsworth School
- King Edward VI Aston School

Proposals by the Academy Trust to remove selection

1. Where an Academy Trust for a wholly selective Academy which was part of a prescribed group wishes to remove the Academy's selective admission arrangements it will follow the process set out below.
2. The Academy Trust will ballot all parents of registered pupils at the school on the question 'are you in favour of the Academy removing selection by ability and introducing admission arrangements which admit children of all abilities?'
3. If a simple majority of parents vote to remove selection, the Academy will determine admission arrangements that do not provide for selection by ability.
4. The ballot must allow parents a minimum of five weeks within which to vote. The ballot must be initiated prior to 25 January and the ballot result must be declared by 1 March in the determination year³.
5. If a ballot is in favour of the removal of selection, non selective admission arrangements must be determined by 15 April in the determination year.

¹ Under the Education (Grammar School Designation) Order 1998 – or subsequent designation orders made under section 104 of the School Standards and Framework Act 1998. Section 104 allowed for maintained schools which had selective admission arrangements at the beginning of 1997-98 school year, to be designated as grammar schools

² SI 1998/2876.

³ A 'determination year' is the Academy Financial Year *beginning two years before the Academy Financial Year which the admissions arrangements will be for* e.g. consultation to end in March 2011 and determination to be in April 2011 for admissions in September 2012

6. If a ballot does not vote in favour of the removal of selection the Academy Trust must retain the Academy's selective admission arrangements.

Parental Ballots to remove selection at an Academy which was part of a prescribed group.

7. The Ballot regulations prescribe that x school (the former name of this Academy) is grouped with the following schools:

- King Edward VI Camp Hill School for Boys
- King Edward VI Camp Hill School for Girls
- King Edward VI Five Ways School
- King Edward VI Handsworth School
- King Edward VI Aston School

and may be subject to a group ballot to remove selective admission arrangements at the prescribed group of schools.

8. The Academy is required to be grouped with any of these schools that become Academies. The Academy will conduct the ballots process jointly with the other Academies within the group or they will jointly agree to appoint a contractor to conduct the process on their behalf. The Academy will abide by the result of any grouped ballot in relation to the Academy group and will change its admission arrangements accordingly.

9. For the purposes of this Annex the "Academy group" consists of all of the prescribed group of schools which have converted to become an Academy.

Moratorium

10. Where the result of a group ballot is that the Academies in the group to which the ballot relates should retain selective admission arrangements, no further ballot shall be held or petition raised within the period of 5 years from the ballot result date for that group. This moratorium does not apply to the procedures in paragraphs 1-6 of this annex.

Petitions for a ballot -general

11. The following paragraphs govern the procedure for ballots to remove selection from Academies which were formerly designated as maintained grammar schools and were part of a prescribed group of schools.

12. Eligible parents for the relevant group of schools will first need to petition for the removal of selection. If a petition is valid then the Academy will be required to jointly conduct a ballot with other Academies within its group. If a ballot is successful the Academy will be required to remove selection in accordance with paragraph 5.

Restriction on publication of material etc relating to ballots

13. The same restrictions as apply to the governing body of a maintained school under section 107 of the School Standards and Framework Act 1998 shall be applied to the Academy Trust/proprietor of the Academy in relation to a ballot under this Annex.

Meaning of "eligible parent"

14. A parent is eligible to sign a petition and vote in a ballot if that person is a registered parent of a child who is a pupil at a feeder school for the prescribed group of Academies in respect of which the ballot is being held or the petition raised.

15. A parent of the following description is not an eligible parent

- a. a parent who is not an individual (such as a corporate parent);
- b. a parent who is resident outside the United Kingdom;
- c. if their child is over compulsory school age on the date in question;
- d. if, on the date in question their child is over the transfer age group for the Academy in question.

16. A parent's residence shall be determined by reference to the address contained in the list of parents returned to the relevant academies by the relevant feeder schools.

17. "Transfer age group" means the highest relevant age group for that Academy, disregarding any relevant age group in which the majority of the pupils admitted to the school are over compulsory school age.

Meaning of "feeder school"

18. The feeder schools for a group of Academies are each school from which at least 5 pupils have transferred to an Academy within the group or any predecessor grammar schools during the period consisting of the school year in question and the two preceding school years.

19. Any pupils who were over the age of the transfer age group for the Academy or its predecessor grammar school when they transferred to the Academy or its predecessor grammar school shall be disregarded.

Petitions for a Ballot

Petitions for a ballot—general

20. No ballot shall be held unless a request for a ballot is made by means of a petition relating to the prescribed group of Academies, and unless this petition is sent to the Academy Trust of each Academy in the prescribed group, the Secretary of State, and EFA.

21. If there is doubt over whether a ballot is necessary, the EFA or the Secretary of State will notify the Academy.

22. The Academy Trusts of each of the prescribed group of Academies, working jointly, and if there is a dispute, the Secretary of State or EFA, will determine whether a petition is a valid petition. A petition is valid if it complies with paragraphs 20-36.

23. A petition must be received by the Secretary of State, the EFA, and the Academy Trusts of each Academy in the prescribed group during a petition period. "Petition period" means the period from 1st September in one year to 31st July in the next year.

24. Subject to paragraph 27, a petition must be signed by a number of relevant eligible parents which, when taken together with the number of relevant eligible parents who have signed any previous petition relating to the group of Academies (or their predecessor maintained grammar schools) received by the Academy Trusts (or designated body as set out in regulation 3 of the Education (Grammar School Ballots) Regulations 1998 during the same petition period, is at least 20% of the eligible parent population, or is equal to a previous petition threshold where this has been set within the last five years.

25. Where in paragraph 24 above, a petition relates to the predecessor grammar schools, eligible parents who have signed that petition must agree to the petition going forward in relation to the ballot to remove selection at the group of Academies for their name to continue to count for that purpose.

26. Where an Academy has previously been required to determine the eligible parent population and set a petition threshold, this threshold shall remain in place for any petition received in the following five years.

27. If a parent signs a petition on a date before the beginning of the petition period in which the petition is received, the parent's signature shall be disregarded for the purposes of paragraph 24.

28. The question of whether an eligible parent is a "relevant" eligible parent shall be determined in accordance with paragraph 24.

29. If the same parent signs a petition more than once or signs more than one petition relating to the same prescribed group of Academies any petition period, any signature in excess of one shall be disregarded; and

30. Where a parent signs a petition but the information referred to in paragraph 34 is not included, or not included in a legible form, that parent's signature shall be disregarded.

31. The Academy (working jointly with other Academies within the group) will request a list of the names and addresses of relevant eligible parents from the feeder schools for the prescribed group of Academies. It will also request a list of eligible parents which may be made public to the petition organisers. Eligible parents must be asked for consent for their details to be used for the purpose of the ballot, and given the opportunity by the relevant feeder schools to remove their names from the public list if they do not want their details passed to petition organisers. The Academies will supply a copy of the public list of parents to any petition organiser who requests it.

Form of petition

32. A petition shall on each sheet state the group of Academies to which it relates

33. A petition shall, on each sheet, contain the following words:--

"We the undersigned, being eligible parents, seek a ballot on whether the listed Academies which select by academic ability should continue to do so."

34. In relation to each parent who signs a petition the following information shall be given—

- a. the first name, surname and address of the parent;
- b. the name of a child of that parent who is a pupil at a school which is a feeder school for the group of Academies to which the petition relates and who, at the date on which the petition is signed, is of compulsory school age; and
- c. the name of the school which the child named in the petition is attending; and
- d. the date on which the parent signs the petition.

35. The petition shall give the name and address of the person ("petition organiser") to whom notification should be given as to whether the petition is valid.

36. Where the Academy group has given the notification required by paragraph 35 that a valid petition has been received, any subsequent petition relating to the same group of Academies shall not be valid unless

- a. the subsequent ballot is in favour of retaining selective admission arrangements for those Academies; and
- b. no person signs it before the end of the moratorium period for the group of Academies.

Meaning of "relevant eligible parent" and "parent population"

37. A parent is a relevant eligible parent if the feeder school confirms he is an 'eligible parent' or if the Academy Trust is satisfied by other means that a parent is an 'eligible parent'.

38. Parent population means the total of eligible parents for the group of Academies.

Notification of result of petition

39. Where the petition is a valid petition the Academy shall work jointly with other Academies in the group to notify the persons referred to in paragraph 40 of this fact and that a ballot will be held.

40. The persons to be notified are—

- a. the local authority in which the group of Academies is situated;
- b. the Secretary of State and EFA
- c. the petition organiser(s);
- d. the governing body or proprietor of each feeder school for the group of Academies.

41. Where the petition is not a valid petition the Academy shall work jointly with other Academies in the group to notify the petition organiser and ask the petition organiser to inform other petitioners.

Ballots

Eligibility to vote in a ballot

42. The persons eligible to vote in a ballot are the persons who are "relevant eligible parents".

Question on which ballot is to be held

43. Each ballot paper shall include the following wording--

"Are you in favour of the **group of Academies/ all Academies listed** introducing admission arrangements which admit children of all abilities?

Place a cross (X) in the box of your choice.

YES	
-----	--

NO	
----	--

Ballots--supplementary

44. The Academy working jointly with other Academies in the group will ensure that ballot papers are sent to all parents who are eligible to vote for whom they have been provided with details by the relevant feeder schools. Academies will take all reasonable steps to ensure eligible parents are identified and given the opportunity to vote.

45. Each ballot shall be a secret postal ballot.

46. Each ballot paper shall include the name of the Academies to which it relates.

47. Each parent who falls within paragraph 42 shall have one vote (irrespective of the number of children which a parent may have and the number of schools they attend).

48. The Academy working jointly with other Academies in the group shall secure that the date by which ballot papers must be returned to them shall be—

- a. no later than 10 weeks from the date on which the Academies notified the persons in paragraph 40 that the petition is valid; and
- b. at least 5 weeks from the date on which ballot papers were sent to parents (or if ballot papers were sent on more than one date, the last such date).

49. Where the Academy working jointly with other Academies in the group has determined the result of a ballot it will forthwith notify the persons mentioned in paragraph 40 of that fact, and, where the ballot is in favour of retaining selective admission arrangements for the group of Academies, the date on which the moratorium period will expire.

Declaring a ballot void

50. Subject to paragraph 51 below the Secretary of State may declare a ballot void if it appears that—

- a. any requirement of this annex has been contravened
- b. persons other than those falling within paragraph 42 have purported to vote in the ballot;
- c. persons who fall within paragraph 42 have been prevented from voting or hindered from doing so freely in accordance with their own opinion by any other person; or
- d. material has been provided, or meetings have been held, in a manner which does not comply with the principles for the production of such material or the standards for the holding of such meetings or debates contained in the Ballot Information Code specified in Schedule 4 of the Education (Grammar School Ballots) Regulations 1998; and
- e. that voting in a ballot is likely to have been influenced to a significant extent as a result of any of those matters.

51. Paragraph 50 shall not apply unless before the date which is two weeks after the ballot result date any person or body referred to in paragraph 52 have requested the Secretary of State in writing to declare a ballot void; specifying the reason for such a request and the grounds on which the person or body considers the ballot should be declared void.

52. The persons or bodies mentioned in paragraph 51 are—

- a. the local education authority within which the group of Academies is located
- b. any of the Academies in the group of Academies or the governing body or proprietor of any feeder school for the group of Academies;
- c. any 20 or more parents who were eligible to vote in the ballot.

53. Where a request is received under paragraph 51, the Secretary of State shall notify each Academy in the prescribed group and the local authority.

54. Where a request is received under paragraph 51 but the Secretary of State determines not to declare a ballot void he shall notify the persons or body who made the request, the group of Academies to which the ballot relates, and the local authority.

55. Where the Secretary of State declares a ballot void he shall notify the persons mentioned in paragraph 40 of that fact.

56. Where the Secretary of State declares a ballot void, a fresh ballot shall be held and the date by which ballot papers must be returned is no later than 10 weeks from the date of the notification under paragraph 55 above.

Implementation of decision that an Academy should cease to have selective admission arrangements

57. In the case of a successful group ballot which includes the Academy, the Academy Trust will secure that its admission arrangements are revised so that the Academy no longer has selective admission arrangements.

- a. where the ballot result date is on or before 31st December in any school year – or where the Secretary of State has chosen not to declare a ballot void -, it will determine non selective admission arrangements by the date in paragraph 5 of this annex; and
- b. where the ballot result date is after 31st December in any school year, it will determine non selective admission arrangements in the following determination year, by the 15 April

Information to be given by the Academy

58. If—

- a. 10 or more persons jointly notify the Academy in writing that they are considering raising a petition; and
- b. the notification nominates one of those persons as the person to receive information from the Academy group,

the Academy shall, as soon as practicable and working jointly with other Academies in the group, give that person the following information

- c. the names of the feeder schools for the group of Academies and
- d. the transfer age groups for the Academies in question;
- e. the number of parents who would need to sign the petition for it to comply with paragraph 24;
- f. the words to be contained in a petition in accordance with paragraph 33;
- g. where requested, the details of eligible parents who have consented to those details being made available to petition organisers.

59. To the extent that either party to this Funding Agreement (including all Annexes) considers that the terms of this Annex do not replicate the relevant statutory provisions, so far as is possible, to apply group ballot provisions to the converted Academy, the parties agree: to make all such amendments to this Annex as may be required in order to achieve, so far as is possible, equivalent provision for the Academy post conversion as it would have had as part of a group of grammar schools subject to a group ballot.

Further, the parties agree that where a school which was part of the prescribed group of schools converts to become an Academy that Academy, subject to their Academy arrangements, shall be included in this group.



Department
for Education

© Crown copyright 2014

You may re-use this document/publication (not including logos) free of charge in any format or medium, under the terms of the Open Government Licence v2.0. Where we have identified any third party copyright information you will need to obtain permission from the copyright holders concerned.

To view this licence:

Visit: www.nationalarchives.gov.uk/doc/open-government-licence/version/2

email: psi@nationalarchives.gsi.gov.uk

We welcome feedback. If you would like to make any comments about this publication, please email AFSPD.feedback@education.gsi.gov.uk, quoting the title of this document. Specific project queries should be sent to the allocated project lead/lead contact.

About this publication:

enquiries www.education.gov.uk/contactus

download www.gov.uk/government/publications

Reference: DFE-00440-2014



Follow us on Twitter:
[@educationgovuk](https://twitter.com/educationgovuk)



Like us on Facebook:
facebook.com/educationgovuk