



Department
for Education

Wolverhampton Vocational Training Centre: supplemental funding agreement

19 March 2015

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SUMMARY

Information about the Academy:

Name of Academy Trust	Central Learning Partnership Trust
Company number	07827368
Date of Master Funding Agreement	19 March 2015
Name of Academy	Wolverhampton Vocational Training Centre
Opening date	7 September 2015
Type of Academy (indicate whether academy or free school)	16-19 Academy (FS)
Name of predecessor institution (where applicable)	N/A
Capacity number	50
Age range	16-19
Number of boarding places	N/A
Land arrangements (Version 1-7 or other)	7 (with DCLG as landlord)
Address and title number of Land	The former Tarmac Headquarters, off Millfields Road, Wolverhampton WV4 6JP

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.E	Only applies where there was a predecessor institution		x
2.G	Clause does not apply to free schools (unless there was a predecessor institution), or new provision academies		x
3.G	Clause relating to Start-up only applies in some cases (does not apply to academy converters)	x	
3.I	Clause only applies to full sponsored and intermediate sponsored academies with approved Academy Action Plans		x
3.J	Clause does not apply to free schools (unless there was a predecessor institution), or new provision academies		x
5.I	Clause only applies to sponsored academies		x
5.K	Clause applies to free schools and may be applied to new provision academies	x	
5.L	Clause applies to free schools and may be applied to new provision academies	x	
5.M	Clause applies to free schools and may be applied to new provision academies	x	
5.N	Clause applies to free schools and may be applied to new provision academies	x	
5.O	Clause applies to free schools and may be applied to new provision academies	x	

Please confirm whether additional clauses have been included (e.g. PFI clauses which will be supplied by your project lead if needed)

Descriptor	Clause No.	Applied	Not used

1. ESTABLISHING THE ACADEMY

1.A This Agreement made between the Secretary of State for Education and Central Learning Partnership Trust is supplemental to the master funding agreement made between the same parties dated 19 March 2015 (the “**Master Agreement**”).

Definitions and interpretation

1.B Except as expressively 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 Wolverhampton Vocational Training Centre.

“**Awarding organisations**” means organisations referred to as such by Ofqual.

References to “**educational institution**” shall where the context so admits be references to the Academy.

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

“**Individualised Learner Record**” is a dataset that collects information on learners and their learning in the Further Education system in England

“**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.

“**Predecessor Institution**” means the educational institution which the Academy has replaced, where applicable.

“**Start-Up Period**” means a period of two Academy Financial Years (and for the avoidance of doubt the calculation of student number count provided at clause 3F

will be used for the third academic year in which the Academy is open, and for each year thereafter).

“Students with a statement of SEN or EHC plan” means those students, with a statement of SEN or EHC plan, admitted under clauses 2.K to 2.U.

“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 16 to 19 Academy as defined in clause 1.4 of the Master Agreement, specially organised to make special educational provision for students with SEN.

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 7 September 2015.

1.I The Academy Trust agrees that, prior to the Academy opening date, the Academy is an institution for the purposes of the Chief Inspector’s duties under section 118(2) and 125 of the Education and Inspections Act 2006 and accordingly, the Chief Inspector may inspect the Academy before that date.

1.J The Academy Trust must ensure that so far as is reasonably practicable and consistent with this Agreement and the Equality Act 2010, the policies and practices adopted by the Academy (in particular regarding curriculum, uniform and school food) enable students of all faiths and none to play a full part in the

life of the Academy, and do not disadvantage students 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.K Further to clause 1.13 of the Master Agreement, the following conditions and requirements must also apply in relation to the Academy:
- a) The Academy Trust must ensure that learning takes place in safe, healthy and supportive environments, which meet the needs of students;
 - b) The Academy Trust must comply with all relevant statutory requirements and the most recent policies and national minimum standards, including those in relation to financial health and/or control, which may be issued by DfE, EFA, awarding organisations and the Chief Inspector, including but not limited to, those published on the relevant body's website.
- 1.L The Academy Trust must ensure that the Academy meets the requirements in section 1A of the Academies Act 2010.
- 1.M 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: MLD, SLD, ASD, ADHD.
- 1.N The Academy Trust may not refuse to admit a student whose statement of SEN or EHC plan names the Academy on the sole basis that some, or all, of the student's SEN do not feature in the categories referred to in clause 1.M of this agreement.

2. RUNNING OF THE ACADEMY

Teachers and staff

2.A Subject to clause 2.A.1 the Academy Trust must not employ anyone under a contract of employment or for services to plan and prepare lessons and courses for students, teach students, and assess and report on students' 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.1 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.

2.A.2 Not used.

Pupils

2B The planned capacity of the Academy is 50 in the age range 16-19.

2C The Academy Trust must ensure that the Academy meets the needs of individual students, including students with learning difficulties and disabilities.

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

2E Where secondary education is provided to persons of compulsory school age by the Academy, the Academy Trust shall secure that, except when a teacher is present in the room, no education is provided to a person who has attained the age of nineteen years in a room in which any persons of compulsory school age are for the time being receiving secondary education. A teacher will be considered to be present in the room at a particular time even though no teacher is present if:

- a) it would be impracticable to secure the presence of a teacher in a room at that time; and
- b) the absence of a teacher at that time has not lasted more than five minutes.

Charging

2.F The Academy will only make charges where institutions within the further education sector are permitted to as set out in the current 16 to 19 Funding

Guidance published by the Secretary of State, or such guidance on 16 to 19 funding issued by the Secretary of State as may from time to time be applicable.

2.G Not used.

Admissions

2.H The Academy will be an educational institution principally concerned with providing full-time or part-time education suitable to the requirements of persons over compulsory school age but under 19 whose requirements for:

- a) the admission of students to the Academy;
- b) the admission to the Academy and support for students with learning difficulties and with disabilities; and
- c) student exclusions,

are set out in written policies to be agreed by the Secretary of State prior to the signing of this agreement. Such policies to be fair, objective and transparent, and formulated in accordance with the Academy Trust's legal powers and duties in relation to 16 to 19 provision.

2.I In respect of any policies agreed in accordance with clause 2.G, the Secretary of State agrees that the Academy Trust may vary the policies subject to the Academy Trust informing the Secretary of State of any variation to the policies in writing as soon as reasonably practicable; and

2.J The Academy Trust agrees to vary the policies as may become necessary to comply with changes to future legislation and/or as the Secretary of State may require.

2.K Except as set out in clauses 2.L – 2.T below, the Children and Families Act 2014 imposes duties directly on Academies in respect of students with special educational needs, including the admission of students 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.L Except where clause 2.R applies, the Academy Trust may not admit a student to the Academy unless a statement of SEN or EHC plan naming the Academy is maintained for that child.

2.M The Academy Trust may admit a student to the Academy if:

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

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

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

2.N Subject to clause 2.M(a), the Academy Trust may allow the student to remain at the Academy:

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

b) until a statement is made.

2.O Where the LA intends to name the Academy in a statement of SEN, and has served a copy of the proposed statement of SEN (amended statement of

SEN) upon the Academy Trust, the Academy Trust must respond, in writing, to the LA's proposal within 15 days of receipt of the notice.

- 2.P The Academy Trust must consent to being named, except where admitting the student would be incompatible with the provision of efficient education for other students; and where no reasonable steps may be made to secure compatibility. The Academy Trust must have regard to relevant guidance issued by the Secretary of State to maintained schools when making its determination.
- 2.Q If the Academy Trust determines that admitting the student would be incompatible with the provision of efficient education, it must notify the LA that it does not agree that the Academy should be named in the student's statement of SEN. This notice must set out all the facts and matters the Academy Trust relies upon in support of its consideration that:
- a) admitting the student would be incompatible with efficiently educating other students; and
 - b) the Academy Trust cannot take reasonable steps to secure this compatibility.
- 2.R The Academy Trust must admit a student to the Academy, where a LA maintains a statement of SEN for a student under section 324 of the Education Act 1996 which names the Academy, even if they consider the Academy should not have been named in the student's statement of SEN.
- 2.S Where the Academy Trust considers that the Academy should not have been named in a student's statement of SEN, they may ask the Secretary of State to determine that the LA has acted unreasonably in naming the Academy and to make an order directing the LA to amend the student's statement of SEN by removing the name of the Academy. Where the Secretary of State makes an order to this effect, the Academy Trust will cease to be under an obligation to admit the student from the date of the Secretary of State's Order, or from such date as the Secretary of State specifies. In specifying a date the Secretary of State must take into account both the welfare of the student in

question and the degree of difficulty caused to the Academy by the student's continued admission.

- 2.T Where the Secretary of State determines that a LA has acted reasonably in naming the Academy in a student's statement of SEN, the Academy Trust must continue to admit the student until the Academy ceases to be named in the statement of SEN.
- 2.U Clauses 2.K – 2.T only apply in so far as the relevant provisions of the Children and Families Act 2014 relating to SEN and disability do not apply to Academies and Free Schools.

Curriculum

- 2.V Clause 2.22 of the Master Agreement will not apply to this Academy. The Academy Trust must ensure that the curriculum provided by the Academy is suitable to the requirements of students and can include vocational, social, physical and recreational training.
- 2.W The Academy Trust must provide for:
- a) the teaching of religious education for any student at the Academy wishing to receive it; and
 - b) an act of collective worship, which students at the Academy may attend at an appropriate time, on at least one day each week during which the Academy is open.

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 The Secretary of State recognises that if a Termination Notice or a Termination Warning Notice is served, 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.

4. **LAND**

"Land" means the land at the former Tarmac Headquarters, off Millfields Road, Wolverhampton WV4 6JP which is for the purposes of identification shown edged purple on the plan attached to this Agreement and, being the land demised by the Lease.

"Lease" means the lease or other occupational agreement between the Academy Trust and the Secretary of State for Communities and Local Government (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.

"Temporary Site" means such of the land at Upper Villiers Street, Wolverhampton WV2 4UH which the Academy Trust is permitted to occupy by Westcroft School for the temporary purposes of the Academy.

Restrictions on Land transfer

4.A The Academy Trust must:

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

"No disposition of the registered estate by the proprietor of the registered estate is to be registered without a written consent signed by

the Secretary of State for Education, of Sanctuary Buildings, Great Smith Street, London SW1P 3BT;

- b) take any further steps required to ensure that the Restriction is entered on the proprietorship register;
- c) promptly confirm to the Secretary of State when the Restriction has been registered;
- d) if it has not registered the Restriction, allow the Secretary of State to do so in its place; and
- e) not, without the Secretary of State's consent, apply to disapply, modify, cancel or remove the Restriction, whether by itself, a holding company, a subsidiary company, or a receiver, administrator or liquidator acting in the name of the Academy Trust.

Obligations of the Academy Trust

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

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

- a) terminate, renew, vary, surrender, dispose of or agree any revised rent under the Lease; or
- b) grant any consent or licence; or
- c) create or allow any encumbrance; or
- d) part with or share possession or occupation; or
- e) enter into any onerous or restrictive obligations,

in respect of all or part of the Land or the Temporary Site where applicable.

- 4.D The Academy Trust must obtain the Secretary of State's consent before taking any action, including the service of any notice or waiver of any condition, under any contract relating to the acquisition of the Land.
- 4.E If the Academy Trust is, or if it is reasonably foreseeable that it will be, in material breach of the Lease, the Academy Trust must immediately give written notice to the Secretary of State stating what the breach is and what action the Academy Trust has taken or proposes to take to remedy it, including timescales where appropriate.
- 4.F After notifying the Secretary of State under clause 4.E, the Academy Trust must:
- a) promptly give the Secretary of State all the information he asks for about the breach;
 - b) allow the Secretary of State to take all necessary action, with or instead of the Academy Trust, to remedy or prevent the breach, and
 - c) use its best endeavours to help the Secretary of State to remedy or prevent the breach.
- 4.G If the Academy Trust has not entered into the Lease by 30 June 2015 the Secretary of State may serve a Termination Notice.

Property Notices

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

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

Option

- 4.I Not used.

Option Notice

- 4.J Not used.

Surrender of the Lease

- 4.K The Academy Trust agrees that on termination for whatever cause or in circumstances where the Academy Trust is unable to use all or part of the Land, the Academy Trust will surrender the Lease forthwith.

Land not used for the purposes of the Academy

- 4.L 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 require the Academy Trust to surrender the license for nil consideration pursuant to clause 4.K.

Sharing the Land

- 4.M If:
 - a) the Academy does not reach its planned capacity, as stated in clause 2.B, within 2 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.

4.N 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 capacity,

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.O 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 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.P For the purposes of clause 4.N:

- a) **a basic need** will arise when the forecast demand for pupil places in the area where the Academy is situated is greater than the existing capacity to provide them;
- b) **a parental need** will arise when the DfE is actually aware of an additional demand for pupil places in the area where the Academy is situated, following representations from parents in that area; and
- c) **planned capacity** has the meaning given in clause 2.B.

5. TERMINATION

Termination by either party

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

Termination Warning Notice

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

- a) the Academy Trust has breached the provisions of this Agreement or the Master Agreement; or
- b) the standards of performance of pupils at the Academy are unacceptably low; or
- c) there has been a serious breakdown in the way the Academy is managed or governed; or
- d) the safety of pupils or staff is threatened, including due to breakdown of discipline.

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 has made a report under section 124(4)(a) or 125(4)(a) of the Education and Inspections Act 2006 and stated that he does not consider the education or training inspected in the Academy to be of a quality adequate to meet the reasonable needs of those receiving it, 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 serve a Termination Warning Notice 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 at any time before the Academy opens, the total number of prospective students who have accepted offers of places to attend the Academy in September 2015 is less than 15, the Secretary of State may:
- a) require the Academy Trust not to open the Academy until 15 prospective students have accepted offers of places to attend the Academy; or
 - b) serve a Termination Notice
- 5.K If at any time after the Academy has opened, the Secretary of State considers that the Academy is not financially viable because of low student numbers, then he may:
- a) serve a Termination Warning Notice; or
 - b) serve a Termination Notice
- and for the purposes of this clause and clause 5J “prospective student” and “students” means those prospective students or students who have statements of SEN or EHC plans that name the Academy.
- 5.L If both parties agree that the Academy is not financially viable because of low student numbers, they may jointly terminate this Agreement after agreeing the precise terms of termination.
- 5.M If full planning permission (including where relevant listed building consent) in respect of the Land has not been obtained by 31.1.16, the Secretary of State may serve a Termination Notice.
- 5.N If at any time before the Academy Trust relocates from the Temporary Site to the Land, the Secretary of State considers that:
- a) the Academy would, on opening, provide an unacceptably low standard of education; or

- b) the safety of pupils or staff at the Academy would, on opening, be threatened; or
- c) the staff employed at the Academy are unsuitable; or
- d) there is a serious breakdown in the way the Academy Trust is being managed or governed; or
- e) the buildings and other structures on the Land are unsuitable or the Academy Trust has not obtained Building Regulations approval,

he may either:

- A. require the Academy Trust:
 - i. not to relocate the Academy from the Temporary Site to the Land; or
 - ii. not to admit pupils of a particular age range, to be determined by the Secretary of State; or
 - iii. not to use any building or other structure on the Land,

until each relevant matter in paragraphs (a) to (e) above has been resolved to the Secretary of State's satisfaction; or

- B. serve a Termination Notice.

Funding and admission during notice period

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

5.P 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 students 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.Q 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.R 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 at the end of the then current Academy Financial Year.
- 5.S 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.T 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.U 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.V 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.W 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.X 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 to 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.Y 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.Z 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.AA 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.BB 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.CC 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.DD 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 19 March 2015

Executed on behalf of the **Central Learning Partnership Trust** by:


.....

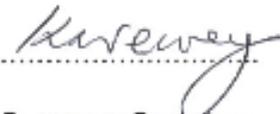
Director

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

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) to 40 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.