

# Mainstream academy and free school: supplemental funding agreement

**April 2016** 

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# **SUMMARY SHEET**

# Information about the Academy:

Name of Academy Trust	Hamwic Education Trust
Company number	10749662
Date of Master Funding Agreement	24 May 2017
Name of academy	Hollybrook Infant School
Opening date	The Academy opened on 1 November 2012 and will be operated by the Academy Trust from 1 December 2017
Type of academy (indicate whether academy or free school)	Academy
Religious designation	NA
Wholly or partly selective	NA
Name of predecessor school (where applicable)	Hollybrook Infant School
Capacity number	180

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

Clause No.	Descriptor	Applied	Not used
1.1	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

Clause No.	Descriptor	Applied	Not used
3.A – 3.F	Option 1 applies to converter and sponsored academies: if used delete option 2		
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.		
5.1	Clause only applies to sponsored academies		

5.K Clause

# not):

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

Descriptor	Clause	Applied	Not used
	No.		

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 opened on 1 November 2012 and will be operated by the

Academy Trust from 1 Deceber 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 180 in the age range 4 to 7. The Academy will be an all ability inclusive school.

#### **SEN** unit

2.C Not used.

2.D Not used.

#### Charging

2.E Not used.

#### **Admissions**

- 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)

- 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"

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- a) provision must be made for religious education to be given to all pupils at the Academy in accordance with the requirements for agreed syllabuses in section 375(3) of the Education Act 1996 and paragraph 2(5) of Schedule 19 to the School Standards and Framework Act 1998;
- b) the Academy must comply with section 70(1) of, and Schedule 20 to, the School Standards and Framework Act 1998 as if it were a community, foundation or voluntary school which does not have a religious character, except that paragraph 4 of that Schedule does not apply. The Academy may apply to the Secretary of State for consent to be relieved of the requirement imposed by paragraph 3(2) of that Schedule.

#### 2.Y Not used.

- 2.Z The Academy Trust must have regard to any Guidance, further to section 403 of the Education Act 1996, on sex and relationship education to ensure that children at the Academy are protected from inappropriate teaching materials and that they learn the nature of marriage and its importance for family life and for bringing up children. The Academy Trust must also have regard to the requirements in section 405 of the Education Act 1996, as if the Academy were a maintained school.
- 2.AA The Academy Trust must prevent political indoctrination, and secure the balanced treatment of political issues, in line with the requirements for maintained schools set out in the Education Act 1996, and have regard to any Guidance.

#### 3. **GRANT FUNDING**

#### Calculation of GAG

3A-3D. Not used.

3.E The Secretary of State will calculate GAG based on the pupil count at the Academy. In order to calculate GAG for the Academy Financial Year in which the Academy opens, the pupil count will be determined on the same basis as

- that used by the relevant LA for determining the budget of the maintained Predecessor School.
- 3.F For Academy Financial Years after that referred to in clause 3.E, the basis of the pupil count for determining GAG will be:
  - 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

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**

"Land" means the freehold land at Hollybrook Infants School, Seagarth Close, Southampton, being the land registered with title number HP757156, which is to be the permanent site of the Academy.

"Property Notice" means any order, notice, proposal, demand or other requirement issued by any competent authority which materially affects the Academy Trust's

about it;

- allow the Secretary of State to take all necessary action, with or instead of the Academy Trust, to comply with it, and
- d) use its best endeavours to help the Secretary of State in connection with it.

#### **Sharing the Land**

#### 4.G Where:

- a) the Secretary of State identifies basic or parental need for additional places in the area in which the Academy is situated; and
- b) the Secretary of State then considers that not all the 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 leased to another Academy Trust, as the Secretary of State considers appropriate, for the purpose of that Academy Trust establishing and maintaining an educational institution on the Land.

4.H To the extent the Academy Trust and the Secretary of State agree to part of the Land being demised or leased in accordance with clause 4.G, the Academy Trust must use its best endeavours to procure all necessary consents in order to enable it to share occupation of the Land with the incoming Academy Trust and to provide the incoming Academy Trust with

- 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. <u>TERMINATION</u>

#### 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:
  - 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
  - there has been a serious breakdown in the way the Academy is managed or governed; or
  - 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:
  - 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

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:
  - 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

#### **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 0000887 0 595.25 842 reW\*nBT/F3 12 Tf1 0e incomp 842 reW\*nBT/F3

Academies and Free Schools.



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