

# Mainstream academy and free school: supplemental funding agreement

December 2020 v7

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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	Only applies where the Academy has an SEN unit or Resourced Provision		✓
2.E	Only applies where there was a predecessor independent school		✓
2.E.1	Only applies to free Schools with nursery provision	✓	
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		✓

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

Name of Academy Trust	Melrose Learning Trust
(and Temporary Site)	Billingham, TS22 5BX
Playing fields title number: CE180704	Buildings: [Unregistered land – Information TBC]

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):

Clause No.	Descriptor	Applied	Not used
	converters)		
3.1.1	Only applies to Free schools with nursery provision	✓	
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	✓	

# 1. ESTABLISHING THE ACADEMY

- 1.A This Agreement made between the Secretary of State for Education and Melrose Learning Trust is supplemental to the master funding agreement made between the same parties and dated 24 March 2015, as varied by a deed of variation dated 26 November 2020 (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 Priors Will Church of England Primary School.

"**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.

"**Funded Hours**" means the current applicable government funded entitlement to free childcare.

"**Guidance**" means guidance issued by or on behalf of the Secretary of State, as amended from time to time.

"**SEN**" means special educational needs and has 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

**SEN Unit or Resourced Provision**

2.B The planned capacity of the Academy is 540 and the age range is 3-11, plus nursery provision of **TBC** places. For the avoidance of doubt, notwithstanding that an individual applicant's age might be outside the specified age range of the Academy, the Academy is not prevented from considering an application made by the child's Parent(s) in order to comply with the relevant paragraph of the Schools Admissions Code ('Admission of children outside their normal age group'), to request that the child be admitted to the school outside of the child's normal age group. Where such a request is agreed, the child should be educated in an existing year group. The Academy will be an all ability inclusive mixed sex school.

**Pupils**

2.A.2 The Academy Trust must designate a staff member at the Academy as responsible for promoting the educational achievement of registered pupils at the Academy who are being looked after by an LA, or are no longer looked after by an LA because of an adoption, special guardianship or child arrangements order, or because they have been adopted from 'state care' outside England and Wales, and in doing so must comply with the law, regulations and Guidance that apply to maintained schools. The Academy Trust must ensure the designated person undertakes appropriate training and has regard to any Guidance.

act in accordance with and hereby agrees to be bound by section 124AA of the School Standards and Framework Act 1998 ("SSFA"), so far as those provisions apply to, and as if the Academy Trust were, a voluntary controlled or foundation school designated by an order under section 69(3) of the SSFA as a school having a religious character. For the avoidance of doubt, the Academy Trust agrees and acknowledges that section 124AA of the SSFA shall not therefore apply to it in relation to the persons referred to at (a) and (b) above.

employment or a contract for services,

- 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 a 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 The Academy is an Academy designated with a Church of England religious character. The relevant religious authority is Church of England.
- 2.N Not used.
- 2.O Not used.
- 2.P The Academy Trust must make arrangements to ensure an independent appeals panel is established for the Academy and its clerk and members are trained to act in accordance with the Codes. The Academy Trust must ensure that parents and 'relevant children' (as described in the Codes) are informed of their 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 Independent Appeal Panel is binding on all parties.
- 2.P.1 The Academy Trust will treat any decision of an Independent Appeal Panel constituted further to arrangements made by the admission authority of a

- 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.Y.
- 2.W Not used.
- 2.X Not used.
- 2.Y Subject to clause 2.V, the requirements for religious education and collective worship are as follows:
  - a) subject to paragraph 3 of Schedule 19 to the School Standards and Framework Act 1998, which will apply as if the Academy were a foundation school or voluntary controlled school with a religious character, 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;
  - b) the Academy Trust must comply with section 70(1) of, and Schedule 20 to, the School Standards and Framework Act 1998 as if the Academy were a foundation school with a religious character or a voluntary school, and as if references to "the required collective worship" were references to collective worship in accordance with the tenets and practices of the Academy's specified religion or religious denomination;
  - c) the Academy Trust must ensure that the quality of the religious education given to pupils at the Academy and the contents of the Academy's collective worship, given in accordance with the tenets and

Curriculum



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.

3.I.1. For the avoidance of doubt, the pupil number count for the purposes of determining GAG excludes nursery provision pupils. Clauses 3.A-3.I must be read with this exclusion in mind.

### 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

*registered without a written consent signed by the Secretary of State for Education, of Sanctuary Buildings, Great Smith Street, London SW1P 3BT;*

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

#### **Obligations of the Academy Trust**

- 4.B The Academy Trust must keep the Land clean and tidy and make good any damage or deterioration to the Land. The Academy Trust must not do anything to lessen the value or marketability of the Land without the Secretary of State's consent.
- 4.C The Academy Trust must comply with the Lease and promptly enforce its rights against the Landlord.
- 4.D The Academy Trust must not, without the Secretary of State's consent:
  - a) terminate, vary, surrender, renew, dispose of or agree any revised rent under the Lease;
  - b) grant any consent or licence; or
  - c) create or allow any encumbrance; or
  - d) part with or share possession or occupation; or

**Breach of Lease**

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

**Property notices**

- d) must, in the case of previously unregistered land, within 14 days after acquiring the Land or, if later, after signing this Agreement, apply to register a Class C(iv) land charge in the Land Charges Registry, and send the Secretary of State a copy of the relevant entry within 7 days after the registration has been completed. If the Secretary of State considers that the Academy Trust has not complied with this clause, he may apply to secure the registration.
  - c) must not, without the Secretary of State's consent, apply to disapply, modify or remove the Option Notice, whether by itself, a holding company, a subsidiary company, or a receiver, administrator or liquidator acting in the name of the Academy Trust, and
  - b) if it has not registered the Option Notice, agrees that the Secretary of State may apply to register it using Form UN1;
- the Option Notice registered and promptly confirming to the Secretary of State when this has been done;

- 4.L For the purposes of clause 4.J:
  - a) a **basic need** will arise when the forecast demand for pupil places in the area where the Academy is situated is greater than the existing capacity to provide them;
  - b) a **parental need** will arise when the Department for Education 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.
- 4.M If the Academy Trust cannot use all or part of the Land as the permanent site of the Academy but the Secretary of State agrees not to terminate this Agreement on that basis, the Secretary of State may notify the Academy Trust that he intends to exercise the Option to transfer the Land for nil consideration to himself or his nominee.
- 4.N On or following the issue of a Termination Notice, the Secretary of State may give notice that he intends to exercise his rights under clause 4.E. Any such notice is without prejudice to his right to exercise any other rights available to him.

- 5.G In deciding whether to give notice of his intention to terminate under clause the date by which the Academy Trust must make any representations.
- the Secretary of State may serve a Termination Warning Notice, specifying
- b) the Academy requires significant improvement
- or
- a) special measures are required to be taken in relation to the Academy;
- 5.F If the Chief Inspector gives notice to the Academy Trust that:

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

- clause 5.D) he may serve a Termination Notice.
- specified under clauses 5.C(a) and (b) (and any further action specified under
- not completed the action required in the Termination Warning Notice as
- to the Termination Warning Notice as specified under clause 5.C(c), or has
- 5.E If the Secretary of State considers that the Academy Trust has not responded
- which it must be completed.
- specify further action which the Academy Trust must take, and the date by
- Notice. The Secretary of State may amend the Termination Warning Notice to
- Trust which he receives by the date specified in the Termination Warning
- 5.D The Secretary of State will consider any representations from the Academy
- or confirm that it agrees to undertake the specified action.
- c) the date by which the Academy Trust must make any representations,
- b) the date by which the action must be completed; and
- a) the action the Academy Trust must take;
- 5.C A Termination Warning Notice served under clause 5.B will specify:
- e) the Academy is Coasting provided he has notified the Academy Trust
- that it is Coasting.

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



## 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 The Secretary of State agrees that this Agreement shall be interpreted in a way which is compatible with the provisions of clauses 20-20F and 23A-G (if used) of the Church Supplemental Agreement dated [SITE] and made between (1) the Secretary of State; (2) the Academy Trust; (3) [SITE]



.....

affixed to this deed is authenticated by:

**THE SECRETARY OF STATE FOR EDUCATION**

The Corporate Seal of

Name: MARSOE E BURDIS  
Address: 24, BALGONAL CLOSE  
GREAT WUMLEY  
DURHAM  
DH3 4SU

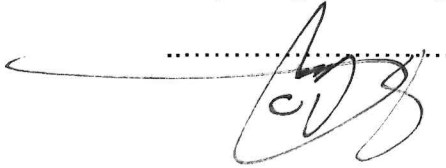
Witness

in the  
presence of

.....  


Company Secretary

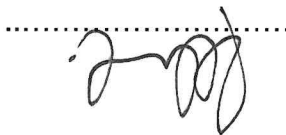
OR

.....  


Director

Director

and

.....  


Executed on behalf of the Academy Trust by:

This Agreement was executed as a Deed on

[DATE]

“EHC Plan” means an education, health and care plan made under section 37 of the Children and Families Act 2014.

The Children and Families Act 2014 imposes duties directly on Academies in respect of pupils with SEN, 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 Academy Trust must admit the pupil if such a determination is pending. The Secretary of State’s determination as to whether the LA acted unreasonably will be final, subject to any right of appeal which a pupil (who is over compulsory school age) or parent of the pupil may have to the First-tier Tribunal (Special Educational Needs and Disability) or the Upper Tribunal Administrative Appeals Chamber.

## **ANNEXES**

### **Annex A**

## **ADMISSION OF CHILDREN AND YOUNG PEOPLE WITH EDUCATION, HEALTH AND CARE PLANS**

