

# FREEDOM OF INFORMATION REDACTION SHEET

Highfields Academy

Supplemental Funding Agreement

## Exemptions in full

n/a

## Partial exemptions

Personal Information has been redacted from this document under Section 40 of the Freedom of Information (FOI) Act.

Section 40 of the FOI Act concerns personal data within the meaning of the Data Protection Act 1998.

### Factors for disclosure

- further to the understanding of and increase participation in the public debate of issues concerning Academies.
- to ensure transparency in the accountability of public funds

### Factors for Withholding

- To comply with obligations under the Data Protection Act

### Reasons why public interest favours withholding information

Whilst releasing the majority of the **Highfields Academy Supplemental Funding Agreement** will further the public understanding of Academies. The whole of **the Supplemental Funding Agreement** cannot be revealed. If the personal information redacted was to be revealed under the FOI Act, Personal Data and Commercial interests would be prejudiced.



Department  
for Education

# **Mainstream academy and free school: supplemental funding agreement**

**April 2016**

# Contents

<b>SUMMARY SHEET</b>	<b>4</b>
Information about the Academy:	4
<b>1. ESTABLISHING THE ACADEMY</b>	<b>8</b>
Definitions and interpretation	8
The Academy	8
<b>2. RUNNING OF THE ACADEMY</b>	<b>9</b>
Teachers and staff	9
Pupils	9
SEN unit	9
Charging	9
Admissions	10
Curriculum	12
<b>3. GRANT FUNDING</b>	<b>13</b>
Calculation of GAG	13
Other relevant funding	15
<b>4. LAND</b>	<b>15</b>
<i>Version 2: existing leasehold site</i>	15
<b>5. TERMINATION</b>	<b>20</b>
Termination by either party	20
Termination Warning Notice	20
Termination by the Secretary of State after inspection	21
Termination by the Secretary of State	22
Funding and admission during notice period	22

Notice of intention to terminate by Academy Trust	22
Effect of termination	25
<b>6. OTHER CONTRACTUAL ARRANGEMENTS</b>	<b>26</b>
Annexes	26
The Master Agreement	26
General	26
<b>ANNEXES</b>	<b>29</b>
<b>7. PUPILS WITH SPECIAL EDUCATION NEEDS (SEN) AND DISABILITIES</b>	<b>29</b>
<b>8. ADMISSION OF PUPILS WITH SEN AND DISABILITIES</b>	<b>29</b>

## SUMMARY SHEET

### Information about the Academy:

<b>Name of Academy Trust</b>	Star Academy Trust Limited
<b>Company number</b>	10131046
<b>Date of Master Funding Agreement</b>	
<b>Name of academy</b>	Highfields Academy
<b>Opening date</b>	1 September 2016
<b>Type of academy (indicate whether academy or free school)</b>	Academy
<b>Religious designation</b>	N/A
<b>Wholly or partly selective</b>	N/A
<b>Name of predecessor school (where applicable)</b>	Highfields Community Primary School
<b>Capacity number</b>	210
<b>Age range</b>	4-11
<b>Number of sixth form places</b>	N/A
<b>Number of boarding places</b>	N/A
<b>SEN unit / Resource provision</b>	N/A
<b>Land arrangements (Version 1-7 or other)</b>	Version 2
<b>Address and title number of Land</b>	Cumberland Avenue, Nantwich, Cheshire, CW5 6HA

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 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.

- 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**



- 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 of 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

This Agreement was executed as a Deed on 23 AUGUST 2016

Executed on behalf of the Academy Trust by:

.....  
Director

and

.....  
Director

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) 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.



Department  
for Education

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