Department for Education

Mainstream academy and free school: supplemental funding agreement

December 2020 v7

Contents

Information about the Academy: 4

1. ESTABLISHING THE ACADEMY 9

Definitions and interpretation 9

The Academy 10

2. RUNNING OF THE ACADEMY 11

Teachers and staff 11

Pupils 11

SEN Unit or Resourced Provision 11

Charging 11

Admissions 12

3. GRANT FUNDING 15

Calculation of GAG 15

Other relevant funding 17

4. LAND 17

5. TERMINATION 23

Termination by either party 23

Termination Warning Notice 23

Termination by the Secretary of State after inspection 24

Termination by the Secretary of State 25

Funding and admission during notice period 27

Notice of intention to terminate by Academy Trust 27

Effect of termination 29

6. OTHER CONTRACTUAL ARRANGEMENTS 31

Annexes 31

The Master Agreement 31

General 31

ANNEXES 34

SUMMARY SHEET

Information about the Academy:

Name of Academy Trust	The Mead Educational Trust
Company number	09079258
Date of Master Funding Agreement	27 February 2019
Name of academy	Brook Mead Academy
Opening date	23 August 2021
Type of academy (indicate whether academy or free school)	Free School
Religious designation	N/A
Wholly or partly selective	N/A
Name of predecessor school (where applicable)	N/A
Capacity number (of statutory school age places) **(if the Academy has a nursery provision, please provide a breakdown of capacity for nursery pupils and statutory school age places)**	Temporary Site: 480 Permanent Site: 1500
Age range (including nursery provision where the nursery is part of the school)	11-16
Number of sixth form places	N/A
Number of boarding places	N/A
SEN unit / Resource provision	N/A
Land arrangements **(Version 1-8 or other)**	7
Academy and title number of Land (and Temporary Site)	Temporary Site: land at Britannia Car Park site, 11 St Augustine Road, Leicester LE3 5QS, being part of the land registered under title number LT29366 and shown edged red on the

	plan attached at Annex 1 Permanent Site: land known as Brook Mead Academy, Groby Road, Leicester being part of the land registered under title numbers LT393575 and LT393563 and shown edged red on the plan attached at Annex 2

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.A.1	Clause applies where an academy was previously a VC or foundation school designated with a religious character		X
2.C, 2.D	Only applies where the academy has an SEN unit or Resourced Provision		X
2.E	Only applies where there was a predecessor independent school		X
2.E.1	Only applies to free Schools with nursery provision		X
2.G	Clause does not apply to free schools (unless there was a predecessor independent school), or new provision academies		X
2.M	Clause applies only to academies and free schools designated with a religious character		X
2.N	Clause applies only to academies that were formerly wholly selective grammar schools		X
2.O	Clause applies only to academies that were formerly partially selective grammar schools		X

Clause No.	Descriptor	Applied	Not used
2.T	Clause applies to free schools and new provision academies designated with a religious character		X
2.W	Clause only applies where the academy is designated with a religious character but was not previously a VC school or foundation school designated with a religious character (in which case use clause 2.Y instead). Also use 2.W where an academy was previously a VC school but has gone through a significant change process to adopt VA characteristics in parallel with converting to an academy		X
2.X	Clause only applies where the academy has not been designated with a religious character	X	
2.Y	Clause only applies where an academy was previously a VC school or foundation school designated with a religious character and should be used instead of clause 2.W. Where an academy was previously a VC school but has gone through a significant change process to adopt VA characteristics in parallel with converting to an academy, use clause 2.W instead.		X
2.Yc)	Sub-clause applies if the academy is designated with a denominational religious character – CE etc. rather than 'Christian'		X
3.A – 3.F	Option 1 applies to converter and sponsored academies: if used delete option 2		X
3.A – 3.F	Option 2 applies to free schools and new provision academies: if used delete option 1	X	
3.H	Clause relating to Start-up only applies in some cases (does not apply to academy converters)	X	
3.I.1	Only applies to Free schools with nursery provision		X
3.J	Clause only applies to full sponsored and intermediate sponsored academies with		X

Clause No.	Descriptor	Applied	Not used
	approved Academy Action Plans		
3.K	Clause does not apply to free schools (unless there was a predecessor independent school), or new provision academies		X
5.G.1	Clause applies only to a boarding academy/free school.		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	
6.H	Clause only applies to schools which are designated with a Church of England or Roman Catholic character		X

Please identify any other variations from the model that apply to this academy (e.g. clauses relating to PFI, or any required because the multi academy trust includes academies designated with different religious characters, or a mixture of those designated with a religious character, and those which are not):

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

Descriptor	Clause No.	Applied	Not used

Descriptor	Clause No.	Applied	Not used

1. ESTABLISHING THE ACADEMY

1.A This Agreement made between the Secretary of State for Education and The Mead Educational Trust is supplemental to the master funding agreement made between the same parties and dated 27 February 2019 (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 Brook Mead Academy.

"**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

"**Start-Up Period**" means up to the first 5 Academy Financial Years of being open.

"**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 Free School as defined in clause 1.4 of the Master Agreement.

1.G The Academy Trust will establish and maintain the Academy in accordance with the Master Agreement and this Agreement.

1.H The Academy Trust will open the Academy on 23 August 2021.

1.I The Academy Trust must ensure that so far as is reasonably practicable and consistent with clause 2.X of this Agreement and the Equality Act 2010, the policies and practices adopted by the Academy (in particular regarding curriculum, uniform and school food) enable pupils of all faiths and none to play a full part in the life of the Academy, and do not disadvantage pupils 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.

2. RUNNING OF THE ACADEMY

Teachers and staff

2.A Subject to clause 2.A.2 and 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.

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 a LA, or are no longer looked after by a 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.

Pupils

2.B The planned capacity of the Academy is 1500 and the age range is 11-16. The Academy will be an all ability inclusive mixed sex school.

SEN Unit or Resourced Provision

2.C Not used.

2.D Not used.

Charging

2.E Not Used.

2.E.1 Not used.

Admissions

2.F Subject to clauses 2.K– 2.M the Academy Trust will act in accordance with, and will ensure that its Independent Appeal Panel is trained to act in accordance with, the School Admissions Code and School Admission Appeals Code published by the Department for Education (the "Codes") and all relevant admissions law as they apply to foundation and voluntary aided schools, and with equalities law. Reference in the Codes or legislation to "admission authorities" will be deemed to be references to the Academy Trust.

2.G Not used.

2.H The Academy Trust must participate in the local Fair Access Protocol. The Academy Trust must participate in the coordinated admission arrangements operated by the LA in whose area the Academy is situated. If the Academy is a free school, the Academy Trust is not required to participate in coordination for its first intake of pupils.

2.I Not used.

2.J Not used.

2.K Not used.

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 Not used.

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 appeal panel is binding on all parties.

2.P.1 Not used.

2.Q Subject to clause 2.R, the meaning of "**relevant area**" for the purposes of consultation requirements in relation to admission arrangements is that determined by the relevant LA for maintained schools in the area in accordance with the Education (Relevant Areas for Consultation on Admission Arrangements) Regulations 1999.

2.R If the Academy does not consider the relevant area determined by the LA for the maintained schools in the area to be appropriate, it must apply to the Secretary of State by 1 August before the academic year in question for a determination of the appropriate relevant area for the Academy, setting out the reasons for this view. The Secretary of State will consult the Academy Trust and the LA in whose area the Academy is situated in reaching a decision.

2.S The Office of the Schools Adjudicator ("OSA") will consider objections to the

Academy's admission arrangements (except objections against any agreed derogations from the provisions of the Codes specified in this funding agreement, 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 to give effect to the Adjudicator's decision within two months of the decision (or by 28 February following the decision, whichever is sooner), unless an alternative timescale is specified by the Adjudicator.

2.T Not used.

Curriculum

2.U The Academy Trust must provide for the teaching of religious education and a daily act of collective worship at the Academy.

2.V The Academy Trust must comply with section 71(1)-(6) and (8) of the School Standards and Framework Act 1998 as if the Academy were a community, foundation or voluntary school, and as if references to "religious education" and "religious worship" in that section were references to the religious education and religious worship provided by the Academy in accordance with clause 2.X.

2.W Not used.

2.X Subject to clause 2.V, **where the academy has not been designated with a religious character** (in accordance with section 124B of the School Standards and Framework Act 1998 or further to section 6(8) of the Academies Act 2010):

a) provision must be made for religious education to be given to all pupils at the Academy in accordance with the requirements for agreed syllabuses in section 375(3) of the Education Act 1996 and paragraph 2(5) of Schedule 19 to the School Standards and Framework Act 1998;

b) the Academy must comply with section 70(1) of, and Schedule 20 to, the School Standards and Framework Act 1998 as if it were a community school or foundation school without 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 comply with paragraph 2A of the Schedule to The Education (Independent School Standards) Regulations 2014 in relation to the provision of Relationships Education, Relationships and Sex Education and Health Education.

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

3.A Subject to clause 3.C, the basis of the pupil number count for the purposes of determining GAG for an Academy Financial Year will be the Academy Trust's most recent estimate provided in accordance with clause 3.B.

3.B The Secretary of State will, in advance of each Academy Financial Year for the Academy, request that the Academy Trust provides an estimate of the number of pupils on roll in the following September for the purposes of determining GAG for an Academy Financial Year. The Academy Trust must provide the requested estimate to the Secretary of State as soon as reasonably practicable.

3.C In the Academy Financial Year which immediately follows the Academy Financial Year in which all planned year groups will be present at the

Academy (that is, all the pupil cohorts relevant to the age range of the Academy will have some pupils present), the basis of the pupil number count for the purpose of determining GAG will no longer be the estimate provided in accordance with clause 3.B, but in that and all following Academy Financial Years will be determined in accordance with clause 3.F.

3.D For any Academy Financial Year in which GAG for the Academy has been calculated in accordance with clauses 3.A and 3.B, an adjustment may be made to the following Academy Financial Year's formula funding element of GAG for the Academy to recognise any variation from that estimate. The Secretary of State may for this purpose use the Census for the relevant month (determined at the Secretary of State's discretion) for the Academy Financial Year in question as a means of determining pupil numbers. The additional or clawed-back grant will be only the amount relevant to the number of pupils above or below that estimate.

3.E Not used

3.F For Academy Financial Years which immediately follow the Academy Financial Year in which all planned year groups will be present at the Academy, the basis of the pupil count for determining GAG will be:

a) for pupils in Year 11 and below, the Schools Census which is used to fund maintained schools for the financial year overlapping with the Academy Financial Year in question; and

c) 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 The Secretary of State may pay post opening grant to the Academy Trust during the Start-Up Period, in order to allow the Academy to:

a) purchase a basic stock of teaching and learning materials (including library books, textbooks, software, stationery, science equipment and equipment for physical education) and other consumable materials; and

b) meet the costs associated with the recruitment and induction of additional staff.

After the Start-Up Period these costs will be met through the ordinary GAG. The post opening grant allocation for the whole of the start-up period shall be specified prior to the academy's opening

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 Not used.

Other relevant funding

3.J Not used.

3.K Not used.

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

"**Permanent Land**" means the land known as Brook Mead Academy, Groby Road, Leicester, being part of the land registered under title numbers LT393575 and LT393563 and shown edged red on the plan attached at Annex 2 and demised by the Permanent Lease.

"**Permanent Lease**" means the lease, any subsequent variations to the lease or other occupational agreement between the Academy Trust and a third party (the "**Permanent Landlord**") under which the Academy Trust derives or will derive title to the Permanent Land.

"**Property Notice**" means any order, notice, proposal, demand or other requirement issued by any competent authority (including the Permanent Landlord and/or the Temporary Landlord unless the Temporary Landlord is the Secretary of State for Housing, Communities and Local Government) which materially affects the Academy Trust's ability to use the Permanent Land or the Temporary Land for the purposes of the Academy or any correspondence that affects the extent of the Permanent Land or the Temporary Land.

"Temporary Land" means the land at land at Britannia Car Park site, 11 St Augustine Road, Leicester LE3 5QS as edged red on the plan attached to this Agreement at Annex 1 and demised or to be demised by the Temporary Lease.

"**Temporary Lease**" means the lease, any subsequent variations to the lease or other occupational agreement between the Academy Trust and a third party (the "**Temporary Landlord**") under which the Academy Trust derives title or will derive title to the Temporary Land.

Restrictions on Permanent Land transfer

4.A The Academy Trust must:

a) within 28 days of the signing of this Agreement in circumstances where the Permanent Land is transferred to the Academy Trust prior to the date of this Agreement, or otherwise within 28 days of the transfer of the Permanent 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 Permanent Land:

"*No disposition of the registered estate by the proprietor of the registered estate, or by the proprietor of any registered charge, not being a charge registered before the entry of this restriction, 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 of the Academy Trust's title;

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 keep the Permanent Land and the Temporary Land clean and tidy and make good any damage or deterioration to the Permanent Land and the Temporary Land. The Academy Trust must not do anything to lessen the value or marketability of the Permanent Land or the Temporary

Land without the Secretary of State's consent. The Academy Trust must comply with the Permanent Lease and the Temporary Lease and promptly enforce its rights against the Permanent Landlord and, where the Temporary Landlord is not the Secretary of State for Housing, Communities and Local Government, the Temporary 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 Permanent Lease or, where the Temporary Landlord is not the Secretary of State for Housing, Communities and Local Government, the Temporary 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 Permanent Land or the Temporary Land Provided that that the Academy Trust may grant a licence or share occupation of part of the Permanent Land with a proprietor or proposed proprietor of an Academy or a body or individual providing services or facilities which are within the uses permitted by the Permanent Lease or the Temporary Lease and where no relationship of landlord and tenant arises as a result of such occupation.

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 Permanent Land or the Temporary Land.

4.E If the Academy Trust is, or if it is reasonably foreseeable that it will be, in material breach of the Permanent Lease or the Temporary 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 Permanent Lease by 1 September 2024 or the Temporary Lease by 1 September 2021, the Secretary of State may serve a Termination Notice.

4.H If any part of the property situated on the Permanent Land or the Temporary Land is damaged or destroyed by an insured risk and the Academy Trust receives the proceeds of insurance but it cannot apply those proceeds to rebuild or reinstate the property because it is impossible or impractical to do so, then the Academy Trust shall pay the insurance proceeds to the Secretary of State in full.

Property notices

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

a) send a copy of it (where not issued by the Secretary of State for Housing, Communities and Local Government in his capacity as the Temporary Landlord) 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.J The Academy Trust grants and the Secretary of State accepts an option (the "**Option**") to acquire the Permanent Land at nil consideration. The Secretary of State may exercise the Option in writing:

a) if this Funding Agreement is terminated for any reason;

b) at any time on or after the issue of a Termination Notice; or

c) if any of the conditions (a) to (c) in clause 4.M applies; or

d) if the Academy Trust cannot use all or part of the Permanent Land as the permanent site of the Academy under clause 4.L.

4.J.1 If the Option is exercised, completion will take place

a) 28 days after the exercise date where a Termination Notice has not been issued; or,

b) where a Termination Notice has been issued, the date specified in the Termination Notice as to when this Agreement shall terminate

and in either case in accordance with the Law Society's Standard Conditions of Sale for Commercial Property in force at that date.

Option notice

4.K The Academy Trust:

a) must, within 14 days after acquiring the Permanent Land or, if later, after signing this Agreement, apply to the Land Registry on Form AN1 (including a copy of this Agreement) for a notice of the Option (the "**Option Notice**") to be entered in the register, taking any further steps required to have the Option Notice registered and promptly confirming to the Secretary of State when this has been done;

b) if it has not registered the Option Notice, agrees that the Secretary of

State may apply to register it using Form UN1;

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

d) must, in the case of previously unregistered land, within 14 days after acquiring the Permanent 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 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.

Permanent Land not used for the purposes of the academy

4.L If the Academy Trust cannot use all or part of the Permanent 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 Permanent Land for nil consideration to himself or his nominee.

Sharing the Permanent Land

4.M If:

a) the Academy does not reach its planned capacity, as stated in clause 2.10, within 8 Academy Financial Years or

b) the Academy Trust or the Secretary of State serves notice to terminate this Agreement under clause 7.1 or

c) the Secretary of State considers that not all the Permanent Land is needed for the operation of the Academy at planned capacity,

the Academy Trust must share occupation of the Permanent 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 provided that the Secretary of State shall meet the necessary and reasonable legal costs incurred by the Academy Trust in connection with entering into any such arrangements under this clause.

Exercise of Rights

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.J or 4.K. Any such notice is without prejudice to his right to exercise any other rights available to him.

5. TERMINATION

Termination by either party

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

Termination Warning Notice

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

a) the Academy Trust has breached the provisions of this Agreement or the Master Agreement; or

b) the standards of performance of pupils at the Academy are unacceptably low; or

c) there has been a serious breakdown in the way the Academy is managed or governed; or

d) the safety of pupils or staff is threatened, including due to breakdown of discipline; or

e) the Academy is coasting provided he has notified the Academy Trust that it is coasting.

5.C A Termination Warning Notice served under clause 5.B will specify:

a) the action the Academy Trust must take;

b) the date by which the action must be completed; and

c) the date by which the Academy Trust must make any representations, or confirm that it agrees to undertake the specified action.

5.D The Secretary of State will consider any representations from the Academy Trust which he receives by the date specified in the Termination Warning Notice. The Secretary of State may amend the Termination Warning Notice to specify further action which the Academy Trust must take, and the date by which it must be completed.

5.E If the Secretary of State considers that the Academy Trust has not responded to the Termination Warning Notice as specified under clause 5.C(c), or has not completed the action required in the Termination Warning Notice as specified under clauses 5.C(a) and (b) (and any further action specified under clause 5.D) he may serve a Termination Notice.

Termination by the Secretary of State after inspection

5.F If the Chief Inspector gives notice to the Academy Trust that:

a) special measures are required to be taken in relation to the Academy; or

b) the Academy requires significant improvement

the Secretary of State may serve a Termination Warning Notice, specifying the date by which the Academy Trust must make any representations.

5.G In deciding whether to give notice of his intention to terminate under clause 5.F, the Secretary of State will have due regard to the overall performance of the Academy Trust.

5.G.1 Not used.

5.H If the Secretary of State has served a Termination Warning Notice under clause 5.F and:

a) has not received any representations from the Academy Trust by the date specified in the notice; or

b) having considered the representations made by the Academy Trust remains satisfied that this Agreement should be terminated;

he may serve a Termination Notice.

5.I Not used.

Termination by the Secretary of State

5.J If the Secretary of State has determined that the Academy will be removed from the Register of Independent Schools and no appeal against that determination is pending, he may serve a Termination Notice.

5.K If at any time before the Academy opens, the total number of prospective pupils excluding any pupils receiving nursery provision who have accepted offers of places to attend the Academy in August 2021 is less than 120, the Secretary of State may:

a) require the Academy Trust not to open the Academy until 120 prospective pupils have accepted offers of places to attend the Academy; or

b) serve a Termination Notice.

5.L If at any time after the Academy has opened, the Secretary of State considers that the Academy is not financially viable because of low pupil numbers, then he may:

a) serve a Termination Warning Notice; or

b) serve a Termination Notice.

5.M If both parties agree that the Academy is not financially viable because of low pupil numbers, they may jointly terminate this Agreement after agreeing the precise terms of termination.

5.N If full planning permission (including where relevant listed building consent) in respect of the Permanent Land has not been obtained by 22 March 2023, the Secretary of State may serve a Termination Notice.

5.O If at any time before the Academy opening date, 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 Permanent Land or the Temporary Land are unsuitable or the Academy Trust has not obtained Building Regulations approval,

he may either:

A. require the Academy Trust:

i. not to open the Academy; 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 Permanent Land or the Temporary 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.P If the Secretary of State serves a Termination Notice under clause 5.A, the Academy Trust may continue during the notice period to admit pupils to the Academy, and to receive GAG and EAG, in accordance with this Agreement.

5.Q If the Secretary of State serves a Termination Warning Notice or a Termination Notice otherwise than under clause 5.A, the Academy Trust may continue during the notice period to admit pupils to the Academy (unless the Secretary of State specifies otherwise), and to receive GAG and EAG, in accordance with this Agreement.

Notice of intention to terminate by Academy Trust

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

5.S If the Academy Trust is of the opinion that, after receipt of the Funding Allocation for the next Academy Financial Year (the "**Critical Year**") and after taking into account all other resources likely to be available to the Academy, including other funds that are likely to be available to the Academy from other academies operated by the Academy Trust ("**All Other Resources**"), it is likely that the cost of running the Academy during the Critical Year would cause the Academy Trust to become insolvent (and for this reason only) then the Academy Trust may give written notice of its intention to terminate this Agreement on 31 August before the Critical Year.

5.T Any notice given by the Academy Trust under clause 5.S must be provided to the Secretary of State within six weeks of the Secretary of State issuing the Funding Allocation. The notice given by the Academy Trust under clause 5.S must specify:

a) the grounds upon which the Academy Trust's opinion is based, including:

i. evidence of those grounds;

ii. any professional accounting advice the Academy Trust has received;

iii. a detailed statement of steps which the Academy Trust proposes to take to ensure that the running costs of the Academy are reduced such that costs are less than the Funding Allocation and All Other Resources, and the period of time within which such steps will be taken; and

b) the shortfall in the Critical Year between the Funding Allocation and All Other Resources expected to be available to the Academy Trust to run the Academy and the projected expenditure on the Academy; and

c) a detailed budget of income and expenditure for the Academy during the Critical Year (the "**Projected Budget**").

5.U Both parties will use their best endeavours to agree whether or not the cost of running the Academy during the Critical Year would cause the Academy Trust to become insolvent. Both parties recognise that they will need to engage in a constructive dialogue at the time about how best to provide education for the pupils at the Academy and use their best endeavours to agree a practical solution to the problem.

5.V If no agreement is reached by 30 April (or another date if agreed between the parties) as to whether the cost of running the Academy during the Critical Year would cause the Academy Trust to become insolvent, then that question will be referred to an independent expert (the "**Expert**") for resolution. The Expert's determination will be final and binding on both parties. The Expert will be requested to specify in his determination the amount of the shortfall in funding (the "**Shortfall**").

5.W The Expert will be an insolvency practitioner with significant professional

experience of educational institutions or academies. If the parties fail to agree upon the appointment of the Expert then the Expert will be appointed by the President of the Institute of Chartered Accountants in England and Wales. The Expert's fees will be borne equally between the parties.

5.X The Expert will be required in reaching his determination to take account of advice from an educational specialist who is professionally familiar with the issues arising from the budget management of schools. If the parties fail to agree upon the appointment of the educational specialist then the educational specialist will be appointed by the Chairman of the Specialist Schools and Academies Trust (or any successor or equivalent body). The educational specialist's fees will be borne equally between the parties.

5.Y If the Expert determines that the cost of running the Academy during the Critical Year would cause the Academy Trust to become insolvent, and the Secretary of State will not have agreed to provide sufficient additional funding to cover the Shortfall, then the Academy Trust will be entitled to terminate this Agreement, by notice expiring on 31 August before the Critical Year. Any such notice will be given within 21 days after (a) the Expert's determination will have been given to the parties or (b), if later, the Secretary of State will have given written notice of his refusal to provide sufficient additional funding for the Academy to cover the Shortfall.

Effect of termination

5.Z If this Agreement is terminated, the Academy will cease to be an Academy within the meaning of sections 1 and 1A of the Academies Act 2010.

5.AA Subject to clauses 5.BB and 5.CC, if the Secretary of State terminates this Agreement under clause 5.A, he will indemnify the Academy Trust. If the Secretary of State terminates this Agreement otherwise than under clause 5.A, he may at his discretion indemnify or compensate the Academy Trust.

5.BB The amount of any such indemnity or compensation will be determined by the Secretary of State, having regard to representations made to him by the Academy Trust, and will be paid as and when the Secretary of State

considers appropriate.

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

a) staff compensation and redundancy payments;

b) compensation payments in respect of broken contracts;

c) expenses of disposing of assets or adapting them for other purposes;

d) legal and other professional fees; and

e) dissolution expenses.

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

a) transfer a proportion of those capital assets, equal to the proportion of the original financial contribution made by HM Government, to a nominee of the Secretary of State to use for educational purposes; or

b) if the Secretary of State directs that a transfer under clause 5.DD(a) is not required, pay to the Secretary of State at the termination date (or, by agreement with the Secretary of State, at the date of their subsequent disposal) a sum equivalent to the proportion of the original financial contribution made by HM Government.

5.EE The Secretary of State may:

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

b) direct the Academy Trust to pay all or part of the sale proceeds to the relevant LA.

6. OTHER CONTRACTUAL ARRANGEMENTS

Annexes

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

The Master Agreement

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

General

6.C The Academy Trust cannot assign this Agreement.

6.D Failure to exercise, or a delay in exercising, any right or remedy of the Secretary of State under this Agreement (including the right to terminate this Agreement), or a single or partial exercise of such a right or remedy, is not a waiver of, and does not prevent or restrict any initial or further exercise of, that or any other right or remedy.

6.E Termination of this Agreement will not affect the accrued rights, remedies, obligations or liabilities of the parties existing at termination.

6.F This Agreement may be executed in any number of counterparts, each of which when executed and delivered shall constitute a duplicate original, but all of which will together constitute the same agreement.

6.G This Agreement and any dispute or claim arising out of or in connection with it or its subject matter or formation (including non-contractual disputes or claims) shall be governed by and construed in accordance with the law of England and Wales, and submitted to the exclusive jurisdiction of the courts of England and Wales.

6.H Not used.

Information Sharing with Local Authorities – Statutory Responsibilities

6.I The Academy Trust must provide:

a) the name, address and date of birth of the pupil or student;

b) the name and address of a parent of the pupil or student;

c) information in the institution's possession about the pupil or student (except if the pupil or student concerned (in the case of a pupil or student who has attained the age of 16) or a parent of the pupil or student concerned (in the case of a pupil or student who has not attained the age of 16) has instructed the Academy Trust not to provide information of that kind);

upon request under section 14 of the Education and Skills Act 2008 from a local authority (for the purpose of enabling or assisting it to exercise its functions under Part 1 of that Act); or

upon request under section 72 of that Act from a body providing services under sections 68 or 70(1)(b) of the Act (for the purposes of providing such services), the following information to that body.

Supplemental Funding Agreement – signature page
Brook Mead Academy, East Midlands and Humber

This Agreement was executed as a Deed on 29/01/ 2021

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

[redacted]

.....

Director

and

[redacted]

.....

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:

[redacted]

[redacted]

Duly Authorised

ANNEXES

7. ADMISSION OF CHILDREN AND YOUNG PEOPLE WITH EDUCATION, HEALTH AND CARE PLANS

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

7.A 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.

Department for Education

© Crown copyright 2020

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

To view this licence:

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

email: psi@nationalarchives.gsi.gov.uk

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

About this publication:

enquiries www.education.gov.uk/contactus

download www.gov.uk/government/publications

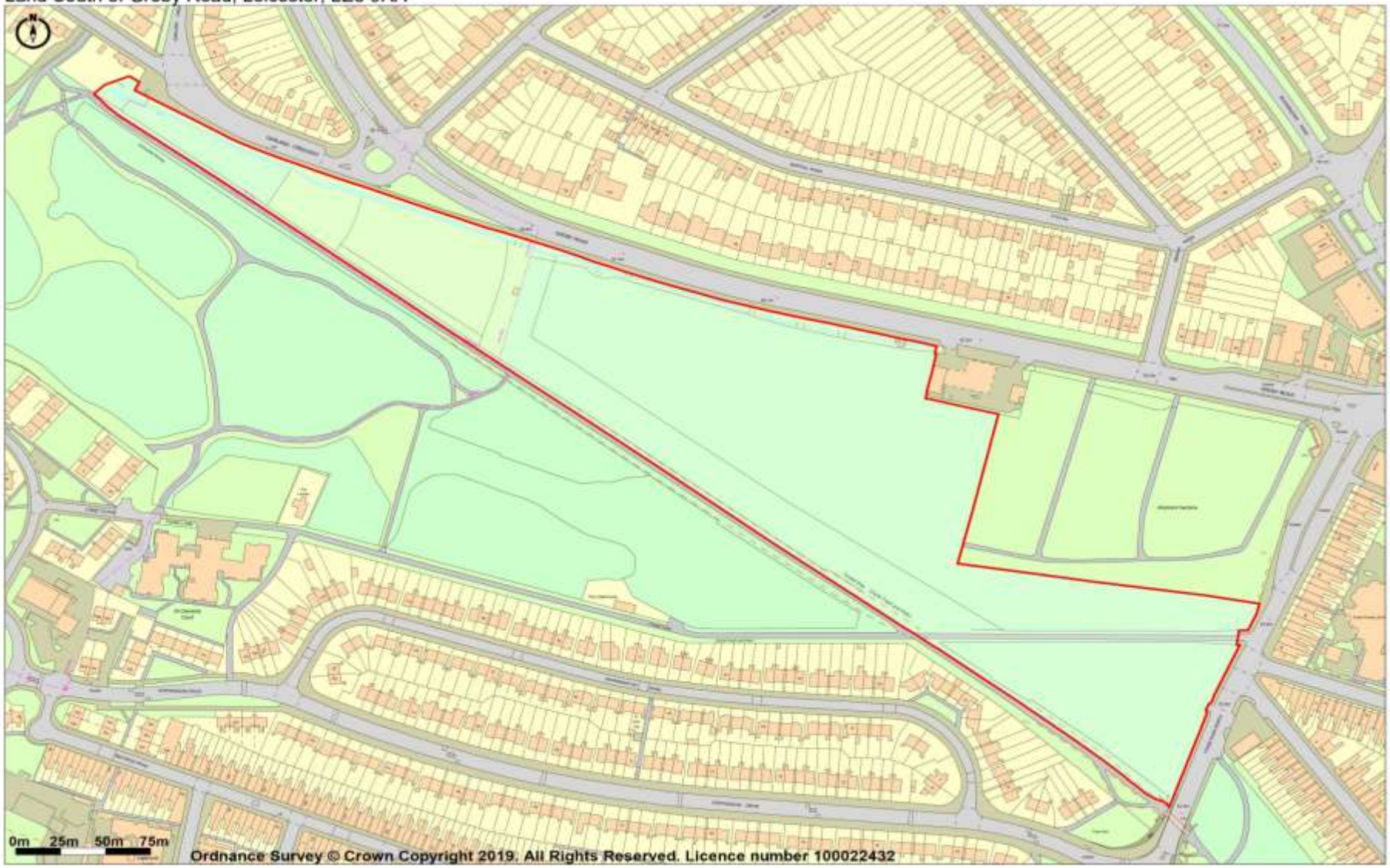
Reference: DfE-00214-2020

Follow us on Twitter: @educationgovuk

Like us on Facebook: facebook.com/educationgovuk

ANNEX 1 Britannia Car Park Site, St Augustine Road, Leicester, LE3 5QS

LEGAL\47450028v1

ANNEX 2

Land South of Groby Road, Leicester, LE3 9RA