



Department  
for Education

# **16 to 19 academy and free school: supplemental funding agreement**

**February 2015**

# Contents

<b>SUMMARY</b>	<b>4</b>
Information about the Academy:	4
<b>1. ESTABLISHING THE ACADEMY</b>	<b>7</b>
Definitions and interpretation	7
The Academy	8
<b>2. RUNNING OF THE ACADEMY</b>	<b>9</b>
Teachers and staff	9
Pupils	10
Charging	11
Admissions	12
Curriculum	12
<b>3. GRANT FUNDING</b>	<b>13</b>
Calculation of GAG	13
Other relevant funding	14
<b>4. LAND</b>	<b>15</b>
<b>5. TERMINATION</b>	<b>19</b>
Termination by either party	19
Termination Warning Notice	19
Termination by the Secretary of State after inspection	20
Termination by the Secretary of State	21
Funding and admission during notice period	21
Notice of intention to terminate by Academy Trust	21
Effect of termination	23

<b>6. OTHER CONTRACTUAL ARRANGEMENTS</b>	<b>26</b>
Annexes	26
The Master Agreement	26
General	26
<b>7. PUPILS WITH SPECIAL EDUCATION NEEDS (SEN) AND DISABILITIES</b>	<b>29</b>
<b>8. ADMISSION OF STUDENTS WITH SEN AND DISABILITIES</b>	<b>29</b>

## **SUMMARY**

### **Information about the Academy:**

<b>Name of Academy Trust</b>	The Challenge Academy Trust
<b>Company number</b>	10689247
<b>Date of Master Funding Agreement</b>	28/4/2017
<b>Name of academy</b>	Priestley College
<b>Opening date</b>	1 May 2017
<b>Type of academy (indicate whether academy or free school)</b>	Sixth Form Academy
<b>Name of predecessor institution (where applicable)</b>	Priestley College
<b>Capacity number</b>	2250
<b>Age range</b>	16 plus
<b>Number of boarding places</b>	N/A
<b>Land arrangements (Version 1-7 or other)</b>	Version 1
<b>Address and title number of Land</b>	Priestley College, Loushers Lane, Warrington, Cheshire, WA4 6RD Title Number:CH435324

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

Clause No.	Descriptor	Applied	Not used
1.J	Only applies to free schools and new provision academies		X
2.F	Only applies where there was a predecessor institution	X	
2.G	Clause does not apply to free schools (unless there was a predecessor institution), or new provision academies	X	
3.G	Clause relating to Start-up only applies in some cases (does not apply to academy converters)		X
3.J	Clause only applies to full sponsored and intermediate sponsored academies with approved Academy Action Plans		X
3.K	Clause does not apply to free schools (unless there was a predecessor institution), or new provision academies		X
5.I	Clause only applies to sponsored academies		X
5.J	Clause applies to free schools and may be applied to new provision 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

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

Descriptor	Clause No.	Applied	Not used



## 1. ESTABLISHING THE ACADEMY

- 1.A This Agreement made between the Secretary of State for Education and The Challenge Academy Trust is supplemental to the master funding agreement made between the same parties and dated 28 April 2017 (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 known as Priestley College.

"**awarding organisations**" means organisations referred to as such by Ofqual.

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

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

"**SEN**" means Special Educational Needs and the expressions "**special educational needs**" and "**special educational provision**" have the meaning set out in sections 20(1) and 21(2) of the Children and Families Act 2014.

"**Publicly Funded Assets**" means (a) assets or property funded wholly or partly using payments made by or on behalf of the Secretary of State, and (b) ) the Land transferred to the Academy Trust from the Predecessor Institution.

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

**“Termination Notice”** means a notice sent by the Secretary of State to the Academy Trust, terminating this Agreement on the date specified in the notice.

**“Termination Warning Notice”** means a notice sent by the Secretary of State to the Academy Trust, stating his intention to terminate this Agreement.

1.D The Interpretation Act 1978 applies to this Agreement as it applies to an Act of Parliament.

1.E Reference in this Agreement to clauses and annexes will, unless otherwise stated, be to clauses and annexes to this Agreement.

### **The Academy**

1.F The Academy is a 16-19 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 Trust will open the Academy on 1 May 2017

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

1.J Not used.

1.K Further to clause 1.13 of the Master Agreement, the following conditions and requirements must also apply in relation to the Academy:

- a) The Academy Trust must ensure that learning takes place in safe, healthy and supportive environments, which meet the needs of students;
- b) The Academy Trust must comply with all relevant statutory requirements and the most recent policies and national minimum standards, including those in relation to financial health and/or control,



which may be issued by DfE, EFA, awarding organisations and the Chief Inspector, including but not limited to, those published on the relevant body's website.

## **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 students, teach students, and assess and report on students' development, progress and attainment.

**2.A.1** The Academy Trust must comply with the Further Education (Providers of Education)(England) Regulations 2006 (SI 2006/3199) as if the Academy were a further education institution subject to the following modifications:

- a) references to "a further education institution" or "the institution" shall be treated as references to the Academy, except in regulations 9(1)(b) and 19(2)(a)(ii) where they shall have their normal meaning;
- b) the Academy Trust is not obliged to comply with any of the requirements in relation to staff qualifications namely, in section 3(2), section 5(3); section 17(1) only in so far as it relates to section 18(3); section 22 only in so far as it relates to paragraph 4 of Part 1 of the Schedule. For the avoidance of doubt, the relevant staff qualification requirements do not need to be met by members of staff at the Academy; and
- c) references to "new member of staff" shall include individual Charity Trustees and the Chair of the Board of Charity Trustees and in respect of them:

- i. the obligation to carry out an enhanced disclosure and barring service check as provided for in section 5(5) will apply whether or not their position will involve a relevant activity;
- ii. the reference in section 6 to “considering his suitability for a position that will involve a relevant activity” will be treated as a reference to considering his suitability for a position as a Charity Trustee or Chair of the Board of Charity Trustees, as appropriate;
- iii. references to “beginning work at the further education institution” shall be treated as references to beginning work as a Charity Trustee or Chair of the Board of Charity Trustees, as appropriate;
- iv. where the Academy Trust is required to carry out an enhanced disclosure and barring service check in respect of the Chair of the Board of Charity Trustees it must be counter signed by the Secretary of State.

2.A.2 Further to Clause 2.8 (a) of the Master Agreement the Academy Trust must at the request of the board of governors or academy trust of that other educational institution advise in writing whether or not, in the previous two years, there has been any formal capability considerations or proceedings for that teacher at the Academy or the Predecessor School or Predecessor Institution.

## **Pupils**

- 2.B The planned capacity of the Academy is 2250 in the age range 16 to 19.
- 2.C The Academy Trust must ensure that the Academy meets the needs of individual students, including students with learning difficulties and disabilities.
- 2.A Where secondary education is provided to persons of compulsory school age by the Academy, the Academy Trust shall secure that, except when a teacher is present in the room, no education is provided to a person who has attained the age of nineteen years in a room in which any persons of compulsory school age are for the time being receiving secondary education. A teacher

will be considered to be present in the room at a particular time even though no teacher is present if:

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

2.D Not used.

### **Charging**

2.E The Academy will only make charges where institutions within the further education sector are permitted to as set out in the current 16 to 19 Funding Guidance published by the Secretary of State, or such guidance on 16 to 19 funding issued by the Secretary of State as may from time to time be applicable.

2.F The Academy Trust must charge fees for the full cost of the education provided at an Academy to non-European Economic Area students who:-

- a) have a valid United Kingdom visa the terms of which state that the relevant student cannot access non-fee paying education; or
- b) no longer have a valid United Kingdom visa allowing them to enter or remain in the United Kingdom but are applying to renew such a visa; and in each case
- c) transferred to the Academy from any predecessor institution.

If the Academy fails to charge these students, or is unable to recover fees by the end of the term for which they are due, it must report this to the Secretary of State who may inform the UK Border Agency.

2.F (1) Further to clause 2.16 of the Master Agreement there must be no charge for admission to or attendance at the Academy and the Academy will only charge



students where the law allows institutions within the further education sector to charge.

## **Admissions**

2.G The Academy will be an educational institution principally concerned with providing full-time or part-time education suitable to the requirements of persons over compulsory school age but under 19, at the start of the academic year (31 August) whose requirements for:

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

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

2.H In respect of any policies agreed in accordance with clause 2.G:

- a) The Secretary of State agrees that the Academy Trust may vary the policies subject to the Academy Trust informing the Secretary of State of any variation to the policies in writing as soon as reasonably practicable; and

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

## **Curriculum**

2.J Clause 2.22 of the Master Agreement will not apply to this Academy. The Academy Trust must ensure that the curriculum provided by the Academy is

suitable to the requirements of students and can include vocational, social, physical and recreational training.

- 2.K The Academy Trust must provide for the teaching of religious education for any student at the Academy wishing to receive it; and ensure that at an appropriate time, on at least one day each week during which the Academy is open, an act of collective worship is held which students at the Academy may attend.

### 3. **GRANT FUNDING**

#### **Calculation of GAG**

3A-3D Not used.

- 3.E The Secretary of State will calculate GAG based on the student count at the Academy using the 16-19 National Funding Formula, as set out in the Funding Guidance for Young People and published by the Secretary of State. In order to calculate GAG for the Academy Financial Year in which the Academy opens, the student count will be determined on the same basis as that used for determining the budget of the Predecessor Institution.

- 3.F For Academy Financial Years after that referred to in clause 2.E the basis of funding will be the 16 – 19 National Funding Formula. 3.F (i) Further to Clause 3.15 of the Master Agreement the Academy Trust must not use GAG for:

(a) the provision of prescribed higher education to students of the academy;  
or

(b) to fund apprenticeships.

- 3.F (ii) GAG for each Academy Financial Year for the Academy will include:

- a) funding in accordance with the national funding formula for the education and training of 16-19 year olds, determined by the Secretary of State and taking account of the number of students at the Academy;



- b) payment of any additional specific grants made available to institutions within the further education sector, where the Academy meets the criteria for those grants, and at the Secretary of State's discretion; and
- c) funding for any other costs to the Academy which the Secretary of State considers necessary.

3.G The Secretary of State may, at his discretion, adjust the basis of the student 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 student 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 students 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.

#### **Other relevant funding**

3.J Not used.

3.K Not used.

3.L Not used.

## Carrying forward of funds

- 3.M 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 has terminated 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, being the land registered at Priestley College, Loushers Lane, Warrington, Cheshire, WA4 6RD with title number CH435324[], 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 ability to use the Land for the purposes of the Academy.

### Restrictions on Land transfer

4.A The Academy Trust must:

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

*No disposition of the registered estate by the proprietor of the registered estate is to be registered without a written consent signed by the Secretary of State for Education, of Sanctuary Buildings, Great Smith Street, London SW1P 3BT;*

- b) take any further steps 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 not, without the Secretary of State's consent:
- a) grant any consent or licence; or
  - b) create or allow any encumbrance; or
  - c) part with or share possession or occupation; or
  - d) enter into any onerous or restrictive obligations,
- in respect of all or part of the Land.

### **Option**

- 4.D The Academy Trust grants and the Secretary of State accepts an option (the "**Option**") to acquire all or part of the Land at nil consideration. The Secretary of State may exercise the Option in writing on termination of this Agreement. If the Option is exercised, completion will take place 28 days after the exercise date in accordance with the Law Society's Standard Conditions of Sale for Commercial Property in force at that date.