



Department  
for Education

# **Special academy and free school: Kisharon School single funding agreement**

**March 2018 v3**

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## SUMMARY

### Information about the Academy: Kisharon School

<b>Name of Academy Trust</b>	Kisharon Academy Trust
<b>Company number</b>	09018917
<b>Name of academy</b>	Kisharon School
<b>Opening date</b>	10 August 2018
<b>Type of academy (indicate whether academy or free school)</b>	Free School
<b>Name of predecessor school (where applicable)</b>	Kisharon Day School
<b>Planned number of places</b>	72
<b>Age range</b>	4-19
<b>Number of sixth form places</b>	0
<b>Number of residential places</b>	0
<b>Land arrangements (Version 1-8 or other)</b>	Version 3
<b>Address and title number of Land</b>	Finchley Road, London, NW11, 7HB
<b>Contact details for the Chair of Trustees</b>	Chair of Trustees, Kisharon Academy Trust, 333 Edgware Road, London, NW9, 6TD

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

<b>Clause No</b>	<b>Descriptor</b>	<b>Applied</b>	<b>Not used</b>
1.20	Only applies to free schools and new provision academies	X	
2.11	Only applies to free schools or new provision admitting pupils without a statement of SEN or EHC plan		X
2.23	Only applies where there was a predecessor independent school or non-maintained special school	X	
2.23A	Only applies to residential academies		X
2.35 to 2.47	Only applicable to free schools or new provision academies that admit pupils without a statement of SEN or EHC plan		X
2.48	Does not apply to free schools (unless there was a predecessor independent school or non-maintained special school), or new provision academies	X	
2.49	Only applies to free schools or new provision academies that admit pupils without a statement of SEN or EHC plan		X
3.17 to 3.22	Only applicable to free schools and new provision academies that admit pupils without a statement of SEN or EHC plan		X
3.23	Clause does not apply to academy converters and new provision academies	X	
3.33	Only applies to full sponsored and intermediate sponsored academies with approved Academy Action Plans		X
3.34	Clause does not apply to free schools (unless there was a predecessor independent school or non-maintained special school), or new provision academies	X	
4.5	Clause applies where the academy has 16-19 provision	X	

Clause No	Descriptor	Applied	Not used
4.5A	Only applies to free schools	X	
4.11	Clause to be included where relevant circumstances apply – and only in relation to academy converters		X
4.16	Clause only applies where a Start-Up period applies to the academy	X	
6.1 – 6.4	Clauses do not apply to free schools and new provision academies		X
7.6A	Only applies to a residential academies/free schools		X
7.8	Only applies to sponsored academies		X
7.15	Clause applies to free schools and may be applied to new provision academies		X
7.16	Clause applies to free schools and may be applied to new provision academies	X	
7.17	Clause applies to free schools and may be applied to new provision academies	X	
7.18	Clause applies to free schools and may be applied to new provision academies		X
7.19	Clause applies to free schools and may be applied to new provision academies		X
7.20	Clause applies to free schools and may be applied to new provision academies	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
Termination of the FA or delay opening of the school within a specific timescale based on the school having the prospective number of pupils in place. Not used as school is opening on or around the same day as the completion of the Funding Agreement.	7.15		X
Linked to clause 7.15 describing prospective pupils	7.18		X
Only applies if planning consent is outstanding	7.19		X

# **1 ESTABLISHING THE ACADEMY**

## **Introduction to this agreement**

- 1.1. This Agreement is between the Secretary of State for Education (the “**Secretary of State**”) and Kisharon Academy Trust (the “**Academy Trust**”), and is an academy agreement as defined by section 1 of the Academies Act 2010.
- 1.2. The Academy Trust is a company limited by guarantee incorporated in England and Wales with company number 09018917. The Academy Trust is a charity and its directors are the Charity Trustees of the Academy Trust.
- 1.3. In order for the Academy Trust to establish and run an independent school in England, according to the provisions of the Academies Act 2010, to be known as Kisharon School (the “**Academy**”) which is specially organised to make special educational provision for pupils with SEN, and in order for the Secretary of State to make payments to the Academy Trust, the Academy Trust must meet the requirements in this Agreement.
- 1.4. In this Agreement these capitalised words and expressions will have the following meanings:

“**Academies Financial Handbook**” means the document with that title published by the ESFA and amended from time to time, on behalf of the Secretary of State.

“**Academy Financial Year**” means the year from 1 September to 31 August, or a different period notified in writing by the Secretary of State.

“**Articles**” means the Academy Trust’s articles of association.

“**Business Day**” means any day other than a Saturday, Sunday, Christmas Day, Good Friday or any day which is a bank holiday with the meaning given to that expression in the Banking and Financial Dealings Act 1971.

“**Charity Trustees**” means the directors of the Academy Trust, who are responsible for the general control and management of the administration of the Academy Trust.

**“Chief Inspector”** means Her Majesty’s Chief Inspector of Education, Children’s Services and Skills.

**“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.

**“Control”** means the power of an organisation or individual (‘A’) to ensure that the affairs of another organisation are conducted in accordance with A’s wishes, whether through share ownership or voting power, by agreement, because of powers conferred by articles of association or any other document, or otherwise; and **“Controls”** will be construed accordingly.

**“DfE”** and the expression **“Department”** means the Department for Education or any successor Department which has responsibility for schools.

**“ESFA”** means the Education and Skills Funding Agency.

**“EHC plan”** means an Education, Health and Care plan made under section 37(2) of the Children and Families Act 2014.

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

**“Independent School Standards”** means the independent school standards prescribed under section 157 of the Education Act 2002.

**“LA”** means a local authority.

**“Parents”** means parents<sup>1</sup> or guardians.

**“Predecessor School”** means the school which the Academy has replaced, where applicable.

**“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) publicly funded land as defined in paragraph 22(3) of Schedule 1 to the Academies Act 2010.

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<sup>1</sup> Parent has the meaning set out in section 576 of the Education Act 1996

“**Pupil Premium**” means an amount equivalent to the pupil premium as defined in the School and Early Years Finance (England) Regulations 2013.

Any reference to “**Secretary of State**” includes a reference to the ESFA acting on the Secretary of State’s behalf.

“**Secretary of State’s consent**” means the Secretary of State’s specific, prior written consent, which will not be unreasonably withheld or delayed.

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

“**Statement of SEN**” means a statement made under section 324 of the Education Act 1996;

“**Start-Up Period**” means up to 7 Academy Financial Years and covers the period up to and including the first Academy Financial Year in which the Academy can offer its planned places as set down in clause 2.10, whichever is the shorter.

“**Statement of SEN**” means a statement made under section 324 of the Education Act 1996.

“**Teaching Staff**” means teachers and the principal or head teacher employed at the Academy.

“**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.

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

1.6. A reference in this Agreement to any party or body includes its successors.

1.7. Any words following the terms ‘include’, ‘including’ or ‘in particular’ are by way of illustration, not limitation.

- 1.8. A reference in this Agreement to land includes any buildings or structures on the land.
- 1.9. References to this Agreement include any and all annexes.
- 1.10. Where any legislation, legal requirement or published guidance is referred to, unless otherwise stated, the following terms should be interpreted as follows:
- a) the “school” refers to the Academy;
  - b) the “head teacher” may refer to the Academy’s head teacher or principal;
  - c) the Academy Trust will be deemed to be the “responsible authorities”; and
  - d) references to registered pupils will be treated as references to registered pupils at the Academy.
- 1.11. References in this Agreement to any named legislation, legal requirement or published guidance, should be taken to include any amendment to or replacement of it.
- 1.12. If any questions arise about how this Agreement should be interpreted, the answer will be decided by the Secretary of State, after discussion with the Academy Trust.

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

- 1.13. The Academy Trust must ensure that the Academy meets the requirements in section 1A of the Academies Act 2010.
- 1.14. The Academy Trust must ensure special educational provision is made at the Academy for one or more categories of SEN. These categories may include,

but are not limited to Severe Learning Difficulties (SLD), Profound and Multiple Learning Difficulties (PMLD), and Autistic Spectrum Disorder (ASD).

- 1.15. The Academy Trust may not refuse to admit a child whose statement of SEN or EHC plan names the Academy on the sole basis that some, or all, of the child's SEN do not feature in the categories referred to in clause 1.14 of this agreement
- 1.16. To the extent that it is compatible with the Academy Trust fulfilling its charitable purpose of advancing education in the United Kingdom for the public benefit, the Academy Trust must ensure that the Academy is at the heart of its community, promoting community cohesion and sharing facilities with other schools and the wider community.
- 1.17. The Academy Trust must conduct the Academy within the terms and requirements of:
  - a) the Articles;
  - b) any legislation or legal requirement that applies to academies, including the Independent School Standards and legislation about meeting the needs of pupils with SEN and disabilities;
  - c) the Academies Financial Handbook, as stated in clauses 4.6–4.8; and
  - d) this Agreement.
- 1.18. The Academy Trust must, as soon as is reasonable, establish an appropriate mechanism for receiving and managing donations for the purpose of its aims as specified in the Articles.
- 1.19. The Academy Trust agrees to be bound by the prohibition against discrimination in section 85 of the Equality Act 2010.
- 1.20. The Academy Trust must ensure that so far as is reasonably practicable and consistent with 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.

1.21. The Academy Trust is not required to publish information under this Agreement if to do so would breach its obligations under the Data Protection Act 1998.

1.22. Not used.

1.23 Not used.

1.24 Not used.

1.25 Not used.

### **Academy opening date**

1.26. The Academy Trust will open the Academy on 10 August 2018.

### **Governance**

1.27. The Academy will be governed by a board comprising the Charity Trustees of the Academy Trust (the “**Board of Charity Trustees**”).

1.28. The Board of Charity Trustees must have regard to any Guidance on the governance of Academy Trusts.

1.29. The Academy Trust must provide to the Secretary of State the names of all new or replacement Charity Trustees and members of the Academy Trust, stating whether they have been appointed or elected, the date of their appointment or election and, where applicable, the name of the Charity Trustee or member they replaced as soon as is practicable and in any event within 14 days of their appointment or election.

1.30. The Academy Trust must not appoint any new or replacement Charity Trustees or members until it has first informed them, and they have agreed, that their names will be shared with the Secretary of State to enable him to assess their suitability.

- 1.31. The Academy Trust must not amend or remove the provisions in its Articles relating to the appointment or election or the resignation or removal of Charity Trustees or members (“**the Governance Articles**”) without the Secretary of State’s consent.
- 1.32. Before any change to the Governance Articles is proposed the Academy Trust must give notice to the Secretary of State of:-
- a) the proposed amendment or removal; and
  - b) the reason for it.
- 1.33. If the Secretary of State consents to the proposed changes, the Academy Trust shall approve any changes to the Articles as soon as reasonably practicable and provide the Secretary of State with a copy of the amended Articles and the resolution(s) approving them.

## **2. RUNNING OF THE ACADEMY**

### **Length of school day and year**

- 2.A1 The Academy Trust is responsible for setting the dates when the school terms and holidays are to begin and end, and the times of schools sessions.

### **Teachers and staff**

- 2.1 In complying with the Independent School Standards, the Academy Trust must require enhanced Disclosure and Barring Service (“**DBS**”) certificates as appropriate for members of staff, supply staff, members of the Academy Trust, individual Charity Trustees and the chair of the Board of Charity Trustees.
- 2.2 The Academy Trust must promptly submit to the Secretary of State, on request, the information contained in any enhanced DBS certificate that it receives.
- 2.3 Subject to clause 2.4 the Academy Trust must not employ anyone under a contract of employment or for services to plan and prepare lessons and courses for pupils, teach pupils, and assess and report on pupils’ development, progress and attainment (“**specified work**”), who is not either:

- a) a qualified teacher within the meaning of regulations made under section 132 of the Education Act 2002; or
- b) otherwise eligible to do specified work under the Education (Specified Work)(England) Regulations 2012 (SI 2012/762), which for the purpose of this clause must be construed as if the Academy were a maintained school.

2.4 Clause 2.3 will not apply to anyone who:

- a) transferred to the employment of the Academy Trust by virtue of the Transfer of Undertakings (Protection of Employment) Regulations 2006;
- b) immediately prior to the transfer, was employed to do specified work; and
- c) immediately before transferring, was not:
  - i. a qualified teacher within the meaning of regulations made under section 132 of the Education Act 2002 and fully registered with the appropriate body, or
  - ii. eligible to do specified work under the Education (Specified Work)(England) Regulations 2012 (SE 2012/762)

(“**transferred staff member**”). The Academy Trust must ensure that any transferred staff member that carries out specified work and does not meet the requirements of clause 2.3(a) or 2.3(b), meets those requirements as soon as possible.

2.5 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 issued by the Secretary of State.

- 2.6 Teachers' pay and conditions of service are the responsibility of the Academy Trust.
- 2.7 The Academy Trust must ensure that all teachers employed at the Academy have access to the Teachers' Pension Scheme and, in so doing, must comply with the requirements of this scheme and with Fair Deal for staff pensions guidance published by HM Treasury.
- 2.8 The Academy Trust must ensure that all affected staff employed in the Academy other than teachers have access to the Local Government Pension Scheme in line with that Scheme's main regulations being the Local Government Pension Scheme Regulations 2013 and the Local Government Pension Scheme (Transitional Provisions, Savings and Amendment) Regulations 2014. Access to the Scheme must also be in accordance with HM Treasury's published guidance on New Fair Deal which sets out how pensions issues are to be dealt with when staff are compulsorily transferred from the public sector to independent providers. These requirements don't apply if an individual chooses to opt out of the Scheme in line with the relevant legal provisions.
- 2.9 Where a member of the Teaching Staff employed at the Academy applies for a teaching post at another academy, a maintained school, or a further education institution, the Academy Trust must at the request of the board of governors or Academy Trust of that other educational institution:
  - a) advise in writing whether or not, in the previous two years, there have been any formal capability considerations or proceedings for that teacher at the Academy or the Predecessor School;
  - b) give written details of the concerns which gave rise to any such consideration of that teacher's capability, the duration of the proceedings and their outcome.

## **Places and Pupils**

- 2.10 The planned number of places at the Academy is 72 places in the age range 4-19.
- 2.11 Not used.
- 2.12 The Academy Trust must ensure that the Academy meets the needs of individual pupils.
- 2.13 The Academy Trust must seek approval from the Secretary of State where it considers there is a need to increase the planned number of places stated in clause 2.10. The requirements of this Agreement may then be amended by agreement between the Secretary of State and the Academy Trust.

### **School meals**

- 2.14 The Academy Trust must provide school lunches and free school lunches in accordance with the provisions of sections 512(3) and 512ZB(1) of the Education Act 1996 as if references in sections 512 and 512ZB to a local authority were to the Academy Trust and as if references to a school maintained by the local authority were to the Academy.
- 2.15 The Academy Trust must comply with school food standards legislation as if it were a maintained school.
- 2.16 Where the Academy Trust provides milk to pupils, it must be provided free of charge to pupils who would be eligible for free milk if they were pupils at a maintained school.

### **Pupil Premium**

- 2.17 For each Academy Financial Year the Academy Trust must publish, on the Academy's website, information about:
- a) the amount of Pupil Premium allocation that it will receive during the Academy Financial Year;
  - b) what it intends to spend its Pupil Premium allocation on;
  - c) what it spent its Pupil Premium allocation on in the previous Academy Financial Year; and

- d) the impact of the previous year's Pupil Premium allocation on educational attainment.

2.18 For each Academy Financial Year the Academy Trust must, where applicable, publish, on the Academy's website, information about:

- a) the amount of year 7 literacy and numeracy catch-up premium grant that it will receive during the Academy Financial Year;
- b) what it intends to spend its year 7 literacy and numeracy catch-up premium grant on;
- c) what it spent its year 7 literacy and numeracy catch-up premium grant on in the previous Academy Financial Year; and
- d) the impact of the previous year's year 7 literacy and numeracy catch-up premium grant on educational attainment, and how that effect was assessed.

## **Charging**

2.19 The Academy Trust must comply with sections 402, 450-457 and 459-462 of the Education Act 1996 with regard to public examinations, charging, providing information, inviting voluntary contributions and recovering civil debts, as if the Academy were a maintained school.

2.20 There must be no charge for admission to or attendance at the Academy and the Academy will only charge pupils where the law allows maintained special schools to charge.

2.21 Clause 2.20 does not prevent the Academy Trust receiving funds from an LA in respect of the admission and attendance of a pupil to the Academy.

2.22 Notwithstanding clause 2.20, the Academy Trust may charge people who are not registered pupils at the Academy for education provided or use of facilities.

2.23 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 Visas and Immigration.

2.23A Not used.

### **Admissions**

- 2.24 Except as set out in clauses 2.26 – 2.33 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.
- 2.25 Except where clauses 2.11 and 2.36 apply and any relevant provisions of the Children and Families Act 2014 apply, the Academy Trust may not admit a child to the school unless a statement of SEN or EHC plan naming the Academy or the predecessor school is maintained for that child.
- 2.26 The Academy Trust must admit all children with a Statement of SEN naming the Academy.
- 2.27 The Academy Trust must have regard to the Special Educational Needs Code of practice 2001 when dealing with statements of SEN.

- 2.28 Where the LA sends the Academy Trust a draft statement with a proposal that the Academy is named in the final statement, the Academy Trust must respond within 15 working days unless the time period falls within a school holiday that is longer than two weeks in which case the Academy Trust should respond within 15 working days of the end of the school holiday.
- 2.29 In its response the Academy Trust must either:
- a. consent to being named in the final statement or
  - b. explain why it believes that admitting the child would be incompatible with the provision of efficient education for other children and the efficient use of resources, including why no reasonable steps could secure compatibility. In doing so, the Academy Trust must have regard to the relevant legislation and Code of Practice. 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. The final decision as to whether to name the Academy falls to the LA.
- 2.30 If the Academy Trust considers that the LA should not have named the Academy in the statement of SEN, 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 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.
- 2.31 If a parent of a child for whom the LA maintains a statement appeals to the First-tier Tribunal (Special Educational Needs and Disability) or the Upper Tribunal Administrative Appeals Chamber, 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.

- 2.32 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.
- 2.33 Clauses 2.26 to 2.32 only apply insofar as the relevant provisions of the Children and Families Act 2014 relating to SEN and disability do not apply to Academies and Free Schools.
- 2.34 Not used.
- 2.35 Not used.
- 2.36 Not used.
- 2.37 Not used.
- 2.38 Not used.
- 2.39 Not used.
- 2.40 Not used.
- 2.41 Not used.
- 2.42 Not used.
- 2.43 Not used.
- 2.44 Not used.
- 2.45 Not used.
- 2.46 Not used.
- 2.47 Not used.
- 2.48 Pupils on roll in a Predecessor School which was a maintained, a non-maintained special or independent school will transfer automatically to the Academy on opening. All children already offered a place at that Predecessor School must be admitted to the Academy

## **Exclusions**

2.49 Not used.

## **Curriculum**

2.50 The curriculum is the responsibility of the Academy Trust.

2.51 The Academy Trust must ensure that the curriculum provided to pupils up to the age of 16 is balanced and broadly based, and includes English, mathematics, science and, subject to clauses 2.51A and 2.51B, the Academy Trust must provide for the teaching of religious education and for a daily act of collective worship at the Academy;

2.51A. Subject to clause 2.51B, 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;

2.51B. The Academy Trust must comply with regulation 5A of the Education (Special Educational Needs)(England)(Consolidation) Regulations 2001 as if the Academy were a community or foundation special school, and as if references to “Religious Education” or “Religious Worship” in that regulation were references to religious education and religious worship provided by the Academy in accordance with clause 2.51A.

2.52 The Academy Trust must publish on the Academy’s website information about its curriculum, including:

- a) the content of the curriculum;
- b) its approach to the curriculum;
- c) where applicable, the names of any phonics or reading schemes in operation for Key Stage 1;
- d) where applicable, the GCSE options and other Key Stage 4 qualifications, or other future qualifications specified by the Secretary of State, offered by the Academy; and

- e) how parents (including parents of prospective pupils) can obtain more information about the Academy's curriculum.
- 2.53 The Academy Trust must not allow any view or theory to be taught as evidence-based if it is contrary to established scientific or historical evidence and explanations. This clause applies to all subjects taught at the Academy.
- 2.54 The Academy Trust must provide for the teaching of evolution as a comprehensive, coherent and extensively evidenced theory.
- 2.55 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.
- 2.56 The Academy Trust must ensure the Academy actively promotes the fundamental British values of democracy, the rule of law, individual liberty, and mutual respect and tolerance of those with different faiths and beliefs.
- 2.57A The Academy Trust must ensure the Academy promotes principles that support equality of opportunity for all.
- 2.57 The Academy Trust must, where practical, provide for the teaching of religious education and for acts of collective worship at the Academy.
- 2.58 Subject to clause 2.59:
- 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 the requirements of regulation 5A of the Education (Special Educational Needs)(England)(Consolidation) Regulations 2001 as if it were a maintained special school.
- 2.59. The Academy Trust must comply with regulation 5A of the Education (Special Educational Needs)(England)(Consolidation) Regulations 2001 as if the Academy were a community or foundation special school, and as if references

to “Religious Education” and to “Religious Worship” in that section were references to the religious education and religious worship provided by the Academy in accordance with clause 2.58.

- 2.60. The Academy Trust agrees that, where the Academy is listed in the register of Independent Schools as having a religious ethos, paragraph 5(b) of Schedule 11 of the Equality Act 2010 shall not apply to the Academy.
- 2.61. The Academy Trust must have regard to any Guidance, further to section 403 of the Education Act 1996, on sex and relationship education to ensure that children at the Academy are protected from inappropriate teaching materials and that they learn the nature of marriage and its importance for family life and for bringing up children. The Academy Trust must also have regard to the requirements in section 405 of the Education Act 1996, as if the Academy were a maintained school.
- 2.62. The Academy Trust must ensure that careers guidance is provided at the Academy, in accordance with the requirements on maintained schools in the Education Act 1997.

### **Assessment**

- 2.63. The Academy Trust must:
- a) ensure that pupils are entered for examinations in line with the requirements on maintained schools in section 402 of the Education Act 1996;
  - b) comply with the relevant Guidance, as it applies to maintained schools, to ensure that pupils at the Academy take part in assessments, and in teacher assessments of pupils’ performance;
  - c) report on assessments as the Secretary of State requires, or provide any information on assessments, on the same basis that maintained schools are required to provide the information;
  - d) for all Key Stages, allow monitoring and moderation of the Academy’s assessment arrangements as required by the Secretary of State.

- 2.64. Unless specifically approved in writing by the Secretary of State, the Academy Trust must not use General Annual Grant (GAG) to offer any course of education or training which leads to a qualification, if that qualification is not approved by the Secretary of State for the purpose of section 96 of the Learning and Skills Act 2000.
- 2.65. Unless informed by the Secretary of State that alternative information must be published, the Academy Trust must ensure that, where appropriate, the following information is published on the Academy's website:
- a) where applicable, the Academy's most recent Key Stage 2 results as published by the Secretary of State in the School Performance Tables, broken down as follows:
    - i. "% achieving Level 4 or above in reading, writing and maths";
    - ii. "% making expected progress in reading", "% making expected progress in writing", and "% making expected progress in maths";
    - iii. in relation to reading, "% achieving Level 5 or above";
    - iv. in relation to writing, "% achieving Level 5 or above"; and
    - v. in relation to maths, "% achieving Level 5 or above";
  - b) where applicable, the Academy's most recent Key Stage 4 results as published by the Secretary of State in the School Performance Tables, broken down as follows:
    - i. "% achieving 5+ A\* - C GCSEs (or equivalent) including English and maths GCSEs";
    - ii. "% achieving the English Baccalaureate"; and
    - iii. "% of pupils making expected progress";
  - c) information about where and how parents (including parents of prospective pupils) can access the most recent report about the Academy published by the Chief Inspector; and

- d) information about where and how parents (including parents of prospective pupils) can access the School Performance Tables published by the Secretary of State.

2.66. The Secretary of State may direct the Academy to participate in international education surveys under the Education Act 1996, as if it were a maintained school.

### 3. **GRANT FUNDING**

#### **Recurrent Expenditure grants**

- 3.1. The Secretary of State will pay grants towards Recurrent Expenditure and may pay grants towards Capital Expenditure for the Academy.
- 3.2. “**Recurrent Expenditure**” means any money spent on the establishment, conduct, administration and maintenance of the Academy which does not fall within Capital Expenditure.
- 3.3. In respect of Recurrent Expenditure, the Secretary of State will pay **General Annual Grant (“GAG”)**, and may additionally pay **Earmarked Annual Grant (“EAG”)**. These are two separate and distinct grants.
- 3.4. Except with the Secretary of State’s consent, the Academy Trust must not make commitments to spending which have substantial implications for future grant. No decision by the Academy Trust will commit the Secretary of State to paying any particular amount of grant.

#### **Capital Grant**

- 3.5. The Secretary of State may pay a grant (“**Capital Grant**”) to the Academy Trust for the purpose of spending on items of Capital Expenditure.
- 3.6. “**Capital Expenditure**” means expenditure on:
  - a) acquiring land and buildings;
  - b) erecting, enlarging, improving or demolishing any building including any fixed plant, installation, wall, fence or other structure, or any playground or hard standing;

- c) installing electrical, mechanical or other services other than necessary repairs and maintenance due to normal wear and tear;
- d) buying vehicles;
- e) installing and equipping premises with furnishings and equipment, other than necessary repairs and maintenance due to normal wear and tear;
- f) installing and equipping premises with computers, networking for computers, operating software and ICT equipment, other than necessary updates or repairs and maintenance due to normal wear and tear;
- g) providing and equipping premises, including playing fields and other facilities for social activities and physical recreation other than necessary repairs and maintenance due to normal wear and tear;
- h) works of a permanent character other than the purchase or replacement of minor day-to-day items;
- i) any major repairs or replacements which are specified as capital expenditure in any grant letter relating to them;
- j) such other items (whether like or unlike any of the foregoing) of a substantial or enduring nature which the Secretary of State agrees are capital expenditure for the purposes of this Agreement;
- k) professional fees properly and reasonably incurred in connection with the provision of any of the above; and
- l) VAT and other taxes payable on any of the above.

3.7. Any Capital Grant funding that may be made available to the Academy Trust will be notified to it by the Secretary of State.

3.8. The Academy Trust must spend Capital Grant only on items of Capital Expenditure approved by the Secretary of State and in accordance with conditions specified by the Secretary of State. Further, the Academy Trust must provide evidence that it has obtained all planning and other consents

required for any proposed building and infrastructure development to be funded using Capital Grant.

- 3.9. In order to receive payments of Capital Grant, the Academy Trust must provide supporting invoices and certificates in the format specified by the Secretary of State.
- 3.10. The Academy Trust must provide an account of Capital Grant received, and associated spending on Capital Expenditure using Capital Grant, in the Academy Trust's financial statements and any other financial reports or returns that the Secretary of State may require.
- 3.11. If in its use of Capital Grant the Academy Trust does not comply with this Agreement or any of the conditions specified by the Secretary of State, or the project does not accord with the original specification or has not been completed, the Secretary of State may at his discretion not make any further payments of Capital Grant and require the Academy Trust to repay all or part of the Capital Grant.

### **General Annual Grant (GAG)**

- 3.12. The Secretary of State will pay GAG to the Academy Trust as a contribution to the Academy's normal running costs or capital expenditure, including:
  - a) teachers' salaries and related costs (including pension contributions, full- and part-time teaching staff and payments in respect of seconded teachers);
  - b) non-teaching staff salaries and related costs (including pension contributions);
  - c) employees' expenses;
  - d) buying, maintaining, repairing and replacing teaching and learning materials and other educational equipment, including books and stationery;

- e) buying, maintaining, repairing and replacing other assets including ICT equipment and software, sports equipment and laboratory equipment and materials;
- f) examination fees;
- g) repairs, servicing and maintenance of buildings (including redecoration, heating, plumbing and lighting); maintenance of grounds (including boundary fences and walls); insurance; cleaning materials and contract cleaning; water and sewerage; fuel and light (including electricity and gas); rents; rates; purchase, maintenance, repairs and replacement of furniture and fittings;
- h) medical equipment and supplies;
- i) staff development (including in-service training);
- j) curriculum development;
- k) the costs of providing school meals for pupils (including the cost of providing free school lunches to pupils who are eligible to receive them), and any discretionary grants to pupils to meet the cost of pupil support, including support for pupils with SEN or disabilities;
- l) administration; and
- m) establishment expenses and other institutional costs.

3.13. GAG for each Academy Financial Year for the Academy will include:

- a) funding equivalent to that which would be received by a maintained special school with similar characteristics, determined by the Secretary of State and taking account of the number of pupils and/or places at the Academy;
- b) funding to cover necessary functions which would be carried out by the relevant LA if the Academy were a maintained special school, such funding to be determined by the Secretary of State;

- c) payment of any additional specific grants made available to maintained special schools, where the Academy meets the criteria for those grants, and at the Secretary of State's discretion; and
- d) funding for any other costs to the Academy which the Secretary of State considers necessary.

3.14. The Academy Trust must use GAG only for maintaining, carrying on, managing and developing an Academy specially organised to make special education provision for pupils with Special Educational Needs in accordance with this Agreement, except where the Secretary of State has given specific consent for the Academy Trust to use GAG for another charitable purpose.

3.15. In particular, the Academy Trust must not use GAG for:

- a) education and training for adults who are not pupils of the Academy, other than staff professional development and governance training and development;
- b) nursery provision for which parents are charged a fee;
- c) nursery provision to children outside the Academy's age range in clause 2.10;
- d) Children's Centres; or
- e) any additional cost of providing sport and leisure facilities for a purpose not permitted in clause 3.14.

### **Calculation of GAG**

3.16. The Secretary of State will determine GAG for the Academy for each Academy Financial Year, taking into account relevant factors.

3.17. Not used.

3.18. Not used.

3.19. Not used.

3.20. Not used.

- 3.21. Not used.
- 3.22. Not used.
- 3.23. The Secretary of State may pay a further element of GAG to the Academy Trust during the Start-Up Period to meet additional costs which cannot otherwise be met from GAG.
- 3.24. The Secretary of State recognises that if a Termination Notice or a Termination Warning Notice is served, the intake of new pupils during the notice period may decline and therefore payments based on the number of places related to 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.

#### **Earmarked Annual Grant (EAG)**

- 3.25. The Secretary of State may pay EAG to the Academy Trust for specific purposes, agreed between the Secretary of State and the Academy Trust, and described in the relevant funding letter. The Academy Trust must spend EAG only in accordance with that letter.
- 3.26. Where the Academy Trust is seeking a specific EAG for any Academy Financial Year, it must send a letter to the DfE outlining its proposals and the reasons for the request.

#### **Arrangements for paying GAG and EAG**

- 3.27. Before each Academy Financial Year, the Secretary of State will notify the Academy Trust of the GAG and EAG amounts which, subject to parliamentary approval, the Secretary of State plans for that Academy Financial Year and how they have been calculated.
- 3.28. The amount of GAG for an Academy Financial Year will be decided annually by the Secretary of State, and notified to the Academy Trust in a funding letter sent before the relevant Academy Financial Year begins (the "**Annual Letter of Funding**").

- 3.29. Amounts of EAG will be notified to the Academy Trust wherever possible in the Annual Letter of Funding or as soon as is practicable afterwards.
- 3.30. The Annual Letter of Funding will, as well as stating the grant amounts, set out how they have been calculated. It will not include grants which cannot be calculated in time because there is not enough information, or for other administrative reasons. Any such grants will be notified as soon as practicable.
- 3.31. The Secretary of State will pay GAG in monthly instalments on or before the first day of each month (“the relevant month”). The detailed arrangements for payment will be set out in the Annual Letter of Funding, or an equivalent.
- 3.32. If GAG or EAG is miscalculated:
- a) because of a mistake by the Secretary of State, which leads to an underpayment to the Academy Trust, the Secretary of State will correct the underpayment in the same or subsequent Academy Financial Years;
  - b) because the Academy Trust provided incorrect information, which leads to an underpayment to the Academy Trust, the Secretary of State may correct the underpayment in the same or subsequent Academy Financial Years;
  - c) for any reason which results in an overpayment to the Academy Trust, the Secretary of State may recover any overpaid grant in the same or subsequent Academy Financial Years, having considered all the relevant circumstances and taking into account any representations from the Academy Trust.

### **Other relevant funding**

- 3.33. Not used.
- 3.34. 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 for such a payment unless the Secretary of State confirms in writing that it will be paid.

- 3.35. The Academy Trust may receive additional funding from an LA under an agreement with that LA for the provision of support for pupils with SEN who require high levels of such support. The Academy Trust must ensure that all support required under that agreement is provided for those pupils.

#### **4. FINANCIAL AND ACCOUNTING REQUIREMENTS**

##### **General**

- 4.1. In order for the Secretary of State to provide grant funding to the Academy Trust, the Academy Trust must be fulfilling the financial and reporting requirements in this Agreement.
- 4.2. In its conduct and operation, the Academy Trust must apply financial and other controls which meet the requirements of regularity, propriety and value for money.
- 4.3. The Academy Trust must appoint an accounting officer and must notify the Secretary of State of that appointment. The Academy Trust must assign to the accounting officer the responsibilities of the role set out in the Academies Financial Handbook and HM Treasury's publication 'Managing Public Money'.
- 4.4. The Academy Trust must abide by the obligations of, and have regard to the guidance for, charities and charity trustees issued by the Charity Commission and, in particular, the Charity Commission's guidance on 'Protecting Charities from Harm'. Any references in this document which require charity trustees to report to the Charity Commission should instead be interpreted as reporting to the body or person prescribed as the principal regulator under the Charities Act 2011.
- 4.5. The Academy Trust must comply with the 16 to 19 Funding Guidance published by the Secretary of State in respect of its provision for pupils above

compulsory school age until the academic year in which they reach the age of 19.

- 4.5A If the Secretary of State pays any grant to or on behalf of the Academy Trust which includes an amount to cover VAT, the Academy Trust shall, having paid the VAT, promptly submit a VAT reclaim application to Her Majesty's Revenue and Customs (HMRC). Any failure by the Academy Trust to submit a VAT reclaim application to HMRC, or to pursue the application diligently, or to repay any reclaimed amount to the Secretary of State as soon as reasonably practicable following receipt will be taken into account by the Secretary of State in:
- a) calculating and paying any subsequent grant to the Academy Trust; or
  - b) adjusting GAG payable to the Academy Trust in subsequent Academy Financial Years.

#### **Application of the Academies Financial Handbook**

- 4.6. In relation to the use of grant paid to the Academy Trust by the Secretary of State, the Academy Trust must follow the requirements of, and have regard to the guidance in, the Academies Financial Handbook.
- 4.7. The Academy Trust must have adequate insurance cover or opt in to the Department's arrangements as set out in the Academies Financial Handbook.
- 4.8. The Academy Trust must submit information about its finances to the Secretary of State in accordance with the Academies Financial Handbook, or as otherwise specified by the Secretary of State.

#### **Budgeting for funds**

- 4.9. The Academy Trust must balance its budget from each Academy Financial Year to the next. For the avoidance of doubt, this does not prevent the Academy Trust from:
- a) subject to clause 4.14, carrying a surplus from one Academy Financial Year to the next; or

- b) carrying forward from previous Academy Financial Years sufficient cumulative surpluses on grants from the Secretary of State to meet an in-year deficit on such grants in a subsequent financial year, in accordance with clauses 4.14-4.17; or
  - c) incurring an in-year deficit on funds from sources other than grants from the Secretary of State in any Academy Financial Year, provided it does not affect the Academy Trust's responsibility to ensure that the Academy balances its overall budget from each Academy Financial Year to the next.
- 4.10. The Academy Trust may spend or accumulate funds from private sources or public sources, other than grants from the Secretary of State. Any surplus from private or public sources other than grants from the Secretary of State must be separately identified in the Academy Trust's accounts.
- 4.11. Not used.
- 4.12. The Academy Trust's budget must be approved for each Academy Financial Year by the Board of Charity Trustees.
- 4.13. The approved budget must be submitted to the Secretary of State in a form, and by a date, to be notified by the Secretary of State.

### **Carrying forward of funds**

- 4.14. At the end of any Academy Financial Year the Academy Trust may carry forward unspent GAG from previous Academy Financial Years without limit (unless a limit is specified in the Academies Financial Handbook, or otherwise specified in writing by the Secretary of State, in which case that limit will apply).
- 4.15. The Academy Trust must use any GAG carried forward only for the purposes of GAG as set out in this Agreement, or otherwise as specified in the Academies Financial Handbook or in writing by the Secretary of State.

- 4.16. Any additional grant made in accordance with clause 3.23 for the Start-Up Period may be carried forward, without limitation or deduction, until the Start-Up Period ends.
- 4.17. Any additional grant made in accordance with clause 3.24, for a period after the Secretary of State has served a Termination Notice or a Termination Warning Notice, may be carried forward without limitation or deduction until the circumstances set out in clause 3.24 cease to apply, or the Academy closes.
- 4.18. Any unspent grant not allowed to be carried forward under clauses 4.14-4.17 may be taken into account in the payment of subsequent grant.

#### **Annual accounts and audit**

- 4.19. The Academy Trust must prepare and file with Companies House the annual reports and accounts required by the Companies Act 2006.
- 4.20. In addition, the Academy Trust must prepare its annual reports and accounts for each Academy Financial Year:
- a) in accordance with the Charity Commission's 'Accounting and Reporting by Charities: Statement of Recommended Practice', as if the Academy Trust were a registered charity; and
  - b) additionally as the Secretary of State directs.
- 4.21. The Academy Trust's accounts must be audited annually by independent auditors appointed in line with the Academies Financial Handbook.
- 4.22. The accounts must carry an audit report stating whether, in the auditors' opinion, the accounts show a true and fair view of the Academy Trust's affairs. The accounts must also be accompanied by such other audit reports, relating to the use of grants and other matters, as the Secretary of State directs.
- 4.23. The Academy Trust's annual report must include the names of all members of the Academy Trust who served during the year.

- 4.24. The Academy Trust's annual reports and accounts, and the auditor's reports, must be submitted to the Secretary of State by 31 December each Academy Financial Year, or as otherwise specified by the Secretary of State.
- 4.25. The Academy Trust must publish on its website its annual reports and accounts, current memorandum of association, Articles and Funding Agreement and the names of its Charity Trustees and members. The Secretary of State may also publish the Academy Trust's annual reports and accounts, and the audit report, as he sees fit.

### **Keeping financial records**

- 4.26. The Academy Trust must keep proper accounting records. Statements of income and expenditure, statements of cash flow and balance sheets must be produced in such form and frequency as the Secretary of State directs.

### **Access to financial records**

- 4.27. The books of accounts and all relevant records, files and reports of the Academy Trust, including those relating to financial controls, must be open at all reasonable times to officials of the DfE and the National Audit Office, and to their agents and contractors, for inspection or carrying out value for money assessments. The Academy Trust must give those officials and contractors reasonable assistance with their enquiries. For the purposes of this clause 'relevant' means in any way relevant to the provision and use of grants provided by the Secretary of State under this Agreement.
- 4.28. The Secretary of State may, at his expense, instruct auditors to report to him on the adequacy and effectiveness of the Academy Trust's accounting systems and internal controls to standards determined by the Secretary of State, and to make recommendations for improving the Academy Trust's financial management.

### **Acquiring and disposing of Publicly Funded Assets**

- 4.29. In relation to Publicly Funded Assets, the Academy Trust must not, without the Secretary of State's consent:

- a) acquire or dispose of freehold land; or
- b) take up or grant a lease of land; or
- c) dispose of any other class of capital asset,

except as expressly permitted in the Academies Financial Handbook and subject to Part 3 of Schedule 1 to the Academies Act 2010.

4.30. The Academy Trust must give the Secretary of State 30 days' notice of its intention to take any of the actions in clause 4.29 (a) – (c), regardless of whether the Secretary of State's consent is required.

#### **Retaining proceeds from the disposal of capital assets**

4.31. Except as permitted in the Academies Financial Handbook, if the Academy Trust sells capital assets which were acquired or enhanced wholly or partly using payments made by or on behalf of HM Government, the Academy Trust must pay to the Secretary of State, at his request, an amount of the sale proceeds equivalent to the proportion of the original cost of the acquisition or enhancement which was met by or on behalf of HM Government.

4.32. If the Academy Trust sells a capital asset which was transferred to it for no or nominal consideration from an LA, the Predecessor School or the Predecessor School's foundation, the Academy Trust must, if required by the Secretary of State, pay all or part of the sale proceeds to the LA or to the Secretary of State, taking into account the amount of the proceeds to be reinvested by the Academy Trust.

#### **Transactions outside the usual planned range**

4.33. In relation to Publicly Funded Assets, the Academy Trust must not, without the Secretary of State's consent:

- a) give any guarantees, indemnities or letters of comfort, except such as are given in normal contractual relations; or
- b) write off any debts or liabilities owed to it; or

- c) offer to make any special payments as defined in HM Treasury's publication 'Managing Public Money' (including ex gratia payments, staff severance payments and compensation payments)

if the value of those transactions would be above any threshold specified in the Academies Financial Handbook.

- 4.34. The Academy Trust must give the Secretary of State 30 days' notice, (or such shorter period as the Secretary of State may agree) of its intention to take any of the actions in clause 4.33 (a) – (c), regardless of whether the Secretary of State's consent is required.
- 4.35. The Academy Trust must promptly notify the Secretary of State of any loss arising from suspected theft or fraud in line with the requirements in the Academies Financial Handbook, or otherwise specified by the Secretary of State.

### **Borrowing**

- 4.36. Except as permitted in the Academies Financial Handbook, the Academy Trust must not borrow against Publicly Funded Assets, or so as to put Publicly Funded Assets at risk, without the Secretary of State's consent.

## **5. LAND CLAUSES**

### **Version 3: existing site held under church supplemental agreement or lease from private site trustees**

The parties' rights and obligations in respect of the Land are set out in the Supplemental Agreement dated 10 August\_2018 and made between (1) the Secretary of State; (2) the Academy Trust; (3) The Trustees of the Kisharon Charitable Trust. For the purposes of this clause, Land has the meaning given in the Supplemental Agreement.

## **6. COMPLAINTS**

- 6.1. Not used.
- 6.2. Not used.

6.3. Not used.

6.4. Not used.

## **7. TERMINATION**

### **Termination by either party**

7.1. 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**

7.2. 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
- 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 by a breakdown of discipline.
- e) the Academy is coasting provided he has notified the Academy Trust that it is coasting.

7.3. A Termination Warning Notice served under clause 7.2 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.

7.4. 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.

- 7.5. If the Secretary of State considers that the Academy Trust has not responded to the Termination Warning Notice as specified under clause 7.3(c), or has not completed the action required in the Termination Warning Notice under clauses 7.3(a) and (b) (and any further action specified under clause 7.4) he may serve a Termination Notice.

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

- 7.6. 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.

- 7.6A Not used.

- 7.7. If the Secretary of State has served a Termination Warning Notice under clause 7.6 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.

- 7.8. Not used.

### **Termination by the Secretary of State**

- 7.9. If the Secretary of State has determined that the Academy will be removed from the Register of Independent Schools and no appeal against the determination is pending, he may serve a Termination Notice.
- 7.10. The Secretary of State may serve a Termination Notice if any of the following events occurs, or if he considers that there is a serious risk that any of them may occur:
- a) the Academy Trust calls a formal or informal meeting of its creditors or enters into any formal or informal composition or arrangement with its creditors; or
  - b) the Academy Trust proposes a voluntary arrangement within section 1 of the Insolvency Act 1986; or
  - c) the Academy Trust cannot pay its debts within the meaning of section 123 of the Insolvency Act 1986 with, for the purposes of this clause, section 123 (1)(a) of this Act having an effect as if £10,000 were substituted for £750. The Academy Trust will not be considered unable to pay its debts for the purposes of this clause if it is contesting any such demand in good faith ; or
  - d) the Academy Trust has a receiver and manager (except those appointed by the Charity Commission under the Charities Act 2011), administrator or administrative receiver appointed over all or part of its undertakings, assets or income; or
  - e) any distraint, execution or other process is levied or enforced on any of the Academy Trust's property and is not paid out, withdrawn or discharged within 15 business days; or
  - f) the Academy Trust has passed a resolution for its winding up; or
  - g) an order is made for the winding up or administration of the Academy Trust.

7.11. The Academy Trust must promptly notify the Secretary of State, with an explanation of the circumstances, after receiving any petition which may result in an order for its winding up or administration.

7.12. If

- a) Any Charity Trustee or member of the Academy Trust refuses to consent to any checks required under this Agreement, or as otherwise requested by the Secretary of State; or
- b) The Secretary of State determines that any Charity Trustee or member of the Academy Trust is unsuitable,

the Secretary of State may:

- i. direct the Academy Trust to ensure that the Charity Trustee or member resigns or is removed within 42 days, failing which the Secretary of State may serve a Termination Notice; or
- ii. serve a Termination Notice.

7.13. For the purposes of clause 7.12 a Charity Trustee or member of the Academy Trust will be “unsuitable” if that Charity Trustee or member:

- a) has been convicted of an offence;
- b) has been given a caution in respect of an offence;
- c) is subject to a relevant finding in respect of an offence; or
- d) has engaged in relevant conduct,

as a result of which, the Secretary of State considers that that Charity Trustee or member is unsuitable to take part in the management of the Academy.

7.14. For the purposes of clause 7.13:

- a) a Charity Trustee or member of the Academy Trust will be subject to a “relevant finding” in respect of an offence if:

- i. that Charity Trustee or member has been found not guilty of the offence by reason of insanity;
  - ii. that Charity Trustee or member has been found to be under a disability and to have done the act charged against them in respect of the offence; or
  - iii. a court outside the United Kingdom has made a finding equivalent to that described in paragraphs (i) and (ii) above.
- b) “relevant conduct” is conduct by a Charity Trustee or member of the Academy Trust which is:
  - i. aimed at undermining the fundamental British values of democracy, the rule of law, individual liberty and mutual respect and tolerance of those with different faiths and beliefs; or
  - ii. found to be in breach of professional standards by a professional body; or
  - iii. so inappropriate that, in the opinion of the Secretary of State, it makes that Charity Trustee or member unsuitable to take part in the management of the Academy.

7.15. Not used.

7.16. 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.

7.17. 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.

7.18. Not used.

7.19. Not used.

7.20. 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 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 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.

### **Change of Control**

7.21. The Secretary of State may at any time, subject to clause 7.22, serve a Termination Notice if there is a change:

- a) in the Control of the Academy Trust; or

- b) in the Control of a legal entity that Controls the Academy Trust.
- 7.22. Where a person ('P') is a member or director of a body corporate (as a corporation sole or otherwise) by virtue of an office, no change of Control arises merely by P's successor becoming a member or director in P's place.
- 7.23. The Academy Trust must promptly notify the Secretary of State if there is a proposed or actual change of Control of the Academy Trust, or of a legal entity that Controls the Academy Trust.
- 7.24. When notifying the Secretary of State under clause 7.23, the Academy Trust must seek his agreement that, if he is satisfied with the change of Control, he will not exercise his right to terminate this Agreement under clause 7.21.

#### **Funding and admission during notice period**

- 7.25. If the Secretary of State serves a Termination Notice under clause 7.1, 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.
- 7.26. If the Secretary of State serves a Termination Warning Notice or a Termination Notice otherwise than under clause 7.1, 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.

#### **Effect of Termination**

- 7.27. 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.
- 7.28. Subject to clauses 7.29 and 7.30, if the Secretary of State terminates this Agreement under clause 7.1, he will indemnify the Academy Trust. If the Secretary of State terminates this Agreement otherwise than under clause 7.1, he may at his discretion indemnify or compensate the Academy Trust.
- 7.29. 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.

7.30. 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 7.28, 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.

7.31. 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 7.31(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.

7.32. The Secretary of State may:

- a) waive all or part of the repayment due under sub-clause 7.31(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.

## **8. OTHER CONTRACTUAL ARRANGEMENTS**

### **Information**

- 8.1. The Academy Trust must promptly provide to the Secretary of State any information that he requests about the Academy Trust or the Academy, which he regards as necessary to fulfil his role and responsibilities.
- 8.2. The Secretary of State will give the Academy Trust any information it reasonably requires of him for the running of the Academy.

### **Access by the Secretary of State's Officers**

- 8.3. The Academy Trust must allow DfE officials to enter the Academy at any reasonable time. All records, files and reports relating to the running of the Academy must be available to them at any reasonable time. Two DfE officials may attend and speak at any meetings of the Board of Charity Trustees or any other meetings of Charity Trustees of the Academy Trust, but will withdraw from any discussion of the Academy's or the Academy Trust's relationship with the Secretary of State or any discussion of bids for funding to the Secretary of State.
- 8.4. The following documents must be provided to the Secretary of State or any person nominated by the Secretary of State on request:
  - a) the agenda for every meeting of the Board of Charity Trustees or any committee to which it delegates any of its functions;
  - b) the draft minutes of every such meeting, if they have been approved by the chairman of that meeting;
  - c) the signed minutes of every such meeting; and
  - d) any report, document or other paper considered at any such meeting.
- 8.5. The Academy Trust may exclude from items provided under clause 8.4 any content relating to:
  - a) a named teacher or other person employed, or proposed to be employed, at the Academy;

- b) a named pupil at, or candidate for admission to, the Academy; and
- c) any matter which, the Academy Trust reasonably believes should remain confidential.

**Notices**

8.6. A notice or communication to a party in connection with this Agreement:

- a) must be in writing (excluding email, except where agreed in advance) and in English;
- b) must be delivered by hand or sent by pre-paid first-class post or other next working day delivery service;
- c) will be deemed to have been received:
  - i. if delivered by hand, at the time when a delivery receipt is signed or when the notice is left at the address in paragraph (d), or
  - ii. if posted, at 9.00 am on the second working day after posting; and
- d) must be sent to the party for the attention of the contact and at the address listed as follows (or to a different contact or address previously notified to the sending party, the change taking effect five business days after deemed receipt of the notice):

<b>Name of party</b>	<b>Position of contact</b>	<b>Address</b>
Secretary of State	Head of Academies Division	Department for Education, Sanctuary Buildings, Great Smith Street, London SW1P 3BT
Academy Trust	Chair of Trustees	Kisharon Academy Trust 333 Edgware Road London NW9 6TD

**General provisions**

- 8.7. The Academy Trust cannot assign this Agreement.
- 8.8. 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 it), 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.
- 8.9. Termination of this Agreement will not affect the accrued rights, remedies, obligations or liabilities of the parties to this Agreement existing at termination.
- 8.10. This Agreement may be executed in any number of counterparts, each of which when executed and delivered will constitute a duplicate original, but all of which will together constitute the same agreement.
- 8.11. 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) will 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.

This Agreement was executed as a Deed on

2018

Executed on behalf of the **KISHARON ACADEMY TRUST** by:

.....

**Director**

In the presence of

.....

**Witness**

Name:

Address:

The Corporate Seal of

**THE SECRETARY OF STATE FOR EDUCATION**

affixed to this deed is authenticated by:

.....

**Duly Authorised**



Department  
for Education

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