

**SINGLE ACADEMY MODEL**  
**Special**

**KILTON THORPE SPECIALIST ACADEMY**

**FUNDING AGREEMENT**

# KILTON THORPE SPECIALIST ACADEMY

## FUNDING AGREEMENT

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## INTRODUCTION

- 1) This Agreement is made under section 1 of the Academies Act 2010 between the Secretary of State for Education ("the Secretary of State") and KILTON THORPE SPECIALIST ACADEMY(the "Academy Trust").
- 2) The Academy Trust is a Company incorporated in England and Wales, limited by guarantee with registered Company number 8299166.
- 3) The following expressions used in this Agreement have the respective meanings assigned to them by the numbered clauses of this Agreement referred to immediately after the reference to the expressions -
  - (a) "Academies Financial Handbook" - clause 64;
  - (b) "Accounting Officer" – clause 63;
  - (c) "Annual Letter of Funding" - clause 58;
  - (d) "Chief Inspector" means Her Majesty's Chief Inspector of Education, Children's Services and Skills or his successor;
  - (e) "GAG" – clause 44;
  - (f) "Capital Expenditure" - clause 39;
  - (g) "Capital Grant" – clause 39;
  - (h) "EAG" - clause 38;
  - (i) "Recurrent Expenditure" – clause 38;
- 4) In this Agreement the following words and expressions shall have the following meanings:-

"Academy Financial Year" means the year from 1<sup>st</sup> September to 31<sup>st</sup> August or such other period as the Secretary of State may from time to time specify by notice in writing to the Academy Trust;

"Additional Governors" means Governors who may be appointed by the Secretary of State under the Articles of Association.

"Business Day" means any day other than a Saturday, Sunday, Christmas

Day, Good Friday or a day which is a bank holiday with the meaning given to that expression in the Banking and Financial Dealings Act 1971;

“Control” in relation to a body corporate (“Entity”) means either the legal or beneficial ownership of 30 per cent or more of the issued shares in the Entity ordinarily having voting rights or the power of a person (“A”) otherwise to secure –

(a) either by means of the holding of shares in that Entity or having an interest conferring voting rights at general meetings of the membership of the Entity or of any other body corporate;

(b) by virtue of any powers conferred by the articles of association or other document regulating that Entity or any other Entity or partnership including, without limitation, the power to appoint or remove a majority of the governing body thereof, or

(c) by virtue of any agreement, understanding or arrangement between any person or persons,

that the affairs of the first-mentioned Entity are conducted in accordance with the wishes of A and “Controls” shall be construed accordingly;

“DfE” means Department for Education;

“Further Governors” means Governors who may be appointed by the Secretary of State under the Articles of Association if a Special Measures Termination Event, as defined in this Agreement, occurs;

“LA” means the Local Authority in the area in which the Academy is situated;

“the Land” means the publicly funded land (including for the avoidance of doubt all buildings, structures landscaping and other erections) situated at and known as Marshall Drive, Brotton of the land that is to be transferred to the Academy and registered under Title Number CE1702.

“Memorandum” and “Articles” means the Memorandum and Articles of Association of the Academy Trust for the time being in force, a copy of the current version of which is annexed to this Agreement as Annex A;

“parents” means parents or guardians;

“persons” includes a body of persons, corporate or incorporate;

“Principal” means the head teacher of the Academy;

“Principal Regulator” means the entity appointed as the Principal Regulator further to the Charities Act 2006;

references to “school” shall where the context so admits be references to the Academy;

“SEN” means Special Educational Needs;

The expressions “special educational needs” and “special educational provision” have the meaning set out in section 312 of the Education Act 1996.

- 5) The Interpretation Act 1978 shall apply for the interpretation of this Agreement as it applies for the interpretation of an Act of Parliament.
- 6) Expressions defined in this Agreement shall have the same meaning where used in any Annex to this Agreement.
- 7) Questions arising on the interpretation of the arrangements in this Agreement shall be resolved by the Secretary of State after consultation with the Academy Trust.
- 8) Section 1 (3) of the Academies Act 2010 states that:
  - (3) An Academy agreement is an agreement between the Secretary of State and the other party under which-
    - (a) the other party gives the undertakings in subsection (5), and
    - (b) the Secretary of State agrees to make payments to the other party in consideration of those undertakings.

## **LEGAL AGREEMENT**

- 9) In consideration of the Academy Trust undertaking to establish and maintain, and to carry on or provide for the carrying on of, an independent school in England to be known as the Kilton Thorpe Specialist Academy (“the Academy”) which is specially organised to make special educational provision for pupils with SEN, the Secretary of State agrees to make payments to the Academy Trust in accordance

with the conditions and requirements set out in this Agreement. For the avoidance of doubt, any obligations imposed upon or powers given to the Academy by this Agreement are also imposed upon the Academy Trust.

### **ACADEMY ARRANGEMENTS**

10) 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:

- (a) Specific Learning Difficulties
- (b) Severe Learning Difficulties
- (c) Profound and Multiple Learning Difficulties
- (d) Behavioural, Emotional and Social Difficulties
- (e) Autistic Spectrum Disorder
- (f) Visually Impaired
- (g) Hearing Impaired

11) The Academy Trust may not refuse to admit a child whose statement 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 10 of this agreement.

### **THE SEN OBLIGATIONS**

12) The Academy Trust must comply with all of the obligations imposed upon the governing bodies of maintained special schools in Chapter 1 of Part 4 of the Education Act 1996 and in Regulations in force at the date of this agreement or made from time to time under any provision in that Chapter (as amended from time to time).

13) Notwithstanding any provision in this Agreement, the Secretary of State may (whether following a complaint made to him or otherwise) direct the Academy Trust to comply with an obligation imposed by this Agreement where the Academy Trust has failed to comply with any such obligation.

14) The Academy Trust must ensure that the Academy's website includes details of the arrangements for the admission of disabled pupils; the steps taken to prevent

disabled pupils from being treated less favourably than other pupils; the facilities provided to assist access to the Academy by disabled pupils; and the plan prepared by the Academy Trust under paragraph 3 of Schedule 10 to the Equality Act 2010. Disabled pupils in this paragraph mean pupils who are disabled for the purposes of the Equality Act 2010.

## **ACADEMY OPENING DATE**

15) The Academy shall open as a school on 1 December 2012 replacing Kilton Thorpe School which shall cease to be maintained by the Local Authority on that date, which date shall be the conversion date within the meaning of the Academies Act 2010.

## **CONDITIONS OF GRANT**

### **General**

16) Other conditions and requirements in respect of the Academy are that:

- (a) the school will be at the heart of its community, promoting community cohesion and sharing facilities with other schools and the wider community;
- (b) there will be assessments of pupils' performance as they apply to maintained schools and the opportunity to study for relevant qualifications in accordance with clause 33 (d);
- (c) teachers' levels of pay and conditions of service for all employees will be the responsibility of the Academy Trust;
- (d) there will be no charge in respect of admission to the school and the school will only charge pupils where the law allows maintained special schools to charge;
- (e) the Academy Trust shall as soon as reasonably practicable establish an appropriate mechanism for the receipt and management of donations and shall use reasonable endeavours to procure donations through that mechanism for the purpose of the objects specified in the Articles.

16A) Clause 16(d) does not prevent the Academy Trust receiving funds from a local authority or a charity in respect of the admission of a pupil to the school

### **Governance**

17) The Academy will be governed by a governing body ("the Governing Body") who are the Directors of the company constituted under the Articles of the Academy



Trust.

18) The Governing Body shall have regard to (but for the avoidance of doubt shall not be bound by) any guidance as to the governance of academies that the Secretary of State may publish.

### **Conduct**

19) The Academy shall be conducted in accordance with:

- a) the Articles, which shall not be amended by the Academy Trust without the written consent of the Secretary of State, such consent not to be unreasonably withheld or delayed;
- b) all provisions by or under statute which confer rights or impose obligations on Academies including, without limitation, the independent schools standards prescribed under section 157 of the Education Act 2002 to the extent they apply to the Academy
- c) the terms of this Agreement.

### **Criminal Records Bureau Checks**

20) The Academy shall comply with the requirements of the Education (Independent School Standards) (England) Regulations 2010 (or such other regulations as may for the time being be applicable) in relation to carrying out enhanced criminal records checks, obtaining enhanced criminal records certificates and making any further checks, as required and appropriate for members of staff, supply staff, individual Governors and the Chair of the Governing Body.

### **Pupils**

21) The planned number of places at the Special Academy is 140 places in the age range three to nineteen years including a sixth form of 26 places. The planned number of places and the age ranges is/are not determinative of GAG. GAG for each Academy Funding Year will be determined by the Secretary of State in accordance with clauses 47 and 48.

21A) The Academy will be a special school whose requirements for:

- a) the admission of pupils to the Academy are set out in Annex B to this Agreement;
- b) pupil exclusions are set out in regulations made by virtue of section 51A of

the Education Act 2002 (as may be amended from time to time, and includes any successor provisions).

21B) Where the Academy Trust considers that there is a need to increase the planned number of places stated in clause 21, the Academy Trust must seek the approval (such approval not to be unreasonably withheld or delayed) of the Secretary of State and the requirements of this Agreement may be amended accordingly by agreement between the Secretary of State and the Academy Trust.

### **Designated Teacher for Looked After Children**

22) The Academy Trust will in respect of the Academy act in accordance with, and be bound by, all relevant statutory and regulatory provisions and have regard to any guidance and codes of practice issued pursuant to such provisions, as they apply at any time to a maintained school, relating to the designation of a person to manage the teaching and learning programme for children who are looked after by an LA and are registered pupils at the school. For the purpose of this clause, any reference to the governing body of a maintained school in such statutory and regulatory provisions, or in any guidance and code of practice issued pursuant to such provisions, shall be deemed to be references to the Governing Body of the Academy Trust.

### **Teachers and other staff**

23) Subject to clause 24, the Academy Trust shall not employ anyone under a contract of employment or for services to carry out planning and preparing lessons and courses for pupils, delivering lessons to pupils, assessing the development, progress and attainment of pupils, and reporting on the development, progress and attainment of pupils ("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 and Registration) (England) Regulations 2003 (SI 2003/1663), which for the purpose of this clause shall be construed as if the Academy were a maintained school.

24) Clause 23 does not apply to anyone who:

- a) was 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 prior to the transfer, was not:
  - (i) a qualified teacher within the meaning of regulations made under section 132 of the Education Act 2002 and registered with full registration with the appropriate body, or
  - (ii) eligible to do specified work under the Education (Specified Work and Registration) (England) Regulations 2003 (SI 2003/1663)

("transferred staff member"). The Academy Trust shall use its best endeavours to ensure that any transferred staff member who undertakes specified work and does not meet the requirements of clause 23(a) or clause 23(b) meets such requirements as soon as possible.

25) The Academy Trust shall ensure that all teachers employed at the Academy have access to the Teachers Pension Scheme and, in so doing, will comply with the statutory provisions underlying the scheme.

26) The Academy Trust shall ensure that all employees at the Academy other than teachers have access to the Local Government Pension Scheme.

**Curriculum, curriculum development and delivery and RE and collective worship**

27) The curriculum provided by the Academy to pupils up to the age of 16 shall be broad and balanced.

27A) The Academy Trust shall publish information in relation to its current curriculum provision. Such information shall include details relating to

- a) the content of the curriculum;
- b) its approach to the curriculum;
- c) the GCSE options (and other Key Stage 4 qualifications) offered by the Academy;

d) the names of any phonics or reading schemes in operation for Key Stage 1; and

e) how parents (including prospective parents) can obtain further information in relation to the Academy's curriculum.

27B) Subject to the requirements of clauses 27 to 32A, the curriculum will be the responsibility of the Academy Trust.

28) The Academy Trust shall ensure that the broad and balanced curriculum includes English, Mathematics and Science.

28A) Sections 42A (provision of careers guidance) and 45A (guidance as to discharge of duties) of the Education Act 1997 shall be deemed to apply to the Academy with the following modifications:

a) the Academy shall be treated as falling within the meaning of "a school" under section 42A (2);

b) the Academy Trust shall be deemed to be the "responsible authorities" for the purposes of subsection 42A(3); and

c) references to registered pupils shall be treated as references to registered pupils at the Academy

29) The Academy Trust shall, so far as practical, make provision for the teaching of religious education and for acts of collective worship at the Academy.

30) RE and collective worship

a) The Academy Trust shall ensure that the Academy complies with the requirements of regulation 5A of the Education (Special Educational Needs) (England) (Consolidation) Regulations 2001 as if it were a maintained special school.

b) Regulation 5A of the Education (Special Educational Needs) (England) (Consolidation) Regulations 2001 shall apply as if the Academy was 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.

31) Regulation 5A of the Education (Special Educational Needs) (England)

(Consolidation) Regulations 2001 shall apply 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 30.

32) The Academy Trust shall have regard to any guidance issued by the Secretary of State, 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 they learn the nature of marriage and its importance for family life and for bringing up children. The Academy Trust shall also have regard to the requirements set out in section 405 of the Education Act 1996 which shall apply to the Academy as if it were a maintained school.

32A) The Academy Trust agrees to act in accordance with Sections 406 (Political Indoctrination) and 407 (Duty to secure balanced treatment of political issues) of the Education Act 1996 as if it were a maintained school, subject to the following modifications:

- (h) references to any maintained school shall be treated as references to the Academy;
- (i) references to registered pupils shall be treated as references to registered pupils at the Academy;
- (j) references to the governing body or the local authority shall, in each case, be treated as references to the Academy Trust; and
- (k) references to the head teacher shall, in each case, be treated as references to the Principal of the Academy.

### **Assessment**

33) The Secretary of State will notify the appropriate body for assessment purposes about the Academy.

- a) The Academy Trust shall ensure that the Academy complies with any guidance issued by the Secretary of State from time to time to ensure that pupils take part in assessments and in teacher assessments of pupil's performance as they apply to maintained schools.

- b) The Academy Trust shall report to any body on assessments as the Secretary of State shall prescribe and shall provide such information as may be required by that body as applies to maintained schools.
- c) In respect of all Key Stages, the Academy Trust will submit the Academy to monitoring and moderation of its assessment arrangements as prescribed by the Secretary of State.

The Academy Trust may offer courses at the Academy which lead to relevant qualifications approved under sections 96 and 98 of the Learning and Skills Act 2000. To offer a course not so approved, the Academy Trust must seek a specific approval from the Secretary of State.]

### **School Meals**

- 34) The Academy Trust shall, if requested to do so by or on behalf of any pupils at the Academy, provide school lunches for those pupils unless it would be unreasonable for it to do so. Subject to the provisions of clause 35 charges may be levied for lunches, but the Academy Trust shall otherwise fund the cost of such school lunches from its GAG.
- 35) In relation to a pupil who is himself or whose parents are in receipt of benefits mentioned in section 512ZB of the Education Act 1996 (or equivalent provision governing the entitlement to free school lunches of pupils at maintained schools), the Academy Trust shall ensure that a school lunch is provided for such a pupil free of charge to be funded out of the Academy Trust's GAG.

### **Charging**

- 36) Sections 402 (Obligation to enter pupils for public examinations), 450 - 457 (charges), and 460 (voluntary contributions), 461 (recovery of sums as civil debt), 462 (Interpretation re charges) of the Education Act 1996 and obligations deriving from regulations made under section 459 of the Act (information about charges and school hours) (including, for the avoidance of doubt, any secondary legislation made further to those provisions) shall be deemed to apply to the Academy with the following modifications:
  - a) references to any maintained school shall be treated as references to the Academy;
  - b) references to registered pupils shall be treated as references to registered

- pupils at the Academy;
- c) references to the governing body or the local education authority shall, in each case, be treated as references to the Academy Trust;
  - d) the charging and remissions policies required to be determined under section 457, and any amendment thereto, shall require the approval of the Secretary of State; and
  - e) the Academy Trust may charge persons who are not registered pupils at the Academy for education provided or for facilities used by them at the Academy.

### **International Education Surveys**

- 36A) The Secretary of State may, by notice in writing to the Academy Trust, require the Academy Trust to participate in an international education survey and the Academy Trust shall, upon receipt of such notice, participate in that survey and provide to the Secretary of State or to those carrying out the survey all such assistance and information as may reasonably be required for the purposes of the Academy's participation in that survey.

### **Pupil Premium**

- 36B) The Academy Trust shall publish in each Academy Financial Year information in relation to:
- a) the amount of Pupil Premium allocation that it will receive during the Academy Financial Year;
  - b) on what it intends to spend the Pupil Premium allocation;
  - c) on what it spent its Pupil Premium in the previous Academy Financial Year;
  - d) the impact in educational attainment, arising from expenditure of the previous Academy Financial Year's Pupil Premium.

## **GRANTS TO BE PAID BY THE SECRETARY OF STATE**

### **General**

- 37) The Secretary of State shall pay grants towards Capital and Recurrent Expenditure for the Academy. Except with the Secretary of State's prior agreement, the Academy Trust shall not budget for its expenditure in any Academy Financial Year in excess of expected income. The Academy Trust shall not enter into commitments which are likely to have substantial implications for

future levels of grant, or for the period for which grant may be required. No decision by the Academy Trust shall commit the Secretary of State to paying any particular amount of grant.

38) "Recurrent Expenditure" means any expenditure on the establishment, conduct, administration and maintenance of the Academy which does not fall within the categories of capital expenditure set out at clause 39. The Secretary of State shall pay two separate and distinct grants in respect of Recurrent Expenditure: General Annual Grant ("GAG") and Earmarked Annual Grant ("EAG").

### **Capital Grant**

39) "Capital Expenditure" means expenditure on:

- a) the acquisition of land and buildings;
- b) the erection, enlargement, improvement or demolition of any building including fixed plant, installation, wall, fence or other structure, or any playground or hard standing;
- c) the installation of electrical, mechanical or other services other than necessary replacements, repairs and maintenance due to normal wear and tear;
- d) the purchase of vehicles and other self-propelled mechanical equipment;
- e) the installation and equipping of premises with furnishings and equipment, other than necessary replacements, repairs and maintenance due to normal wear and tear;
- f) the installation and equipping of premises with computers, networking for computers, operating software and information and communication technology equipment, other than necessary updates or necessary replacements, repairs and maintenance due to normal wear and tear;
- g) the provision and equipping of premises, including playing fields and other facilities for social activities and physical recreation other than necessary replacements, 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 constituting capital expenditure in any grant letter relating to them;
- j) such other items (whether of a like or dissimilar nature to any of the foregoing) of a substantial or enduring nature as the Secretary of State may



agree shall constitute capital expenditure for the purposes of this Agreement;

- k) all professional fees properly and reasonably incurred in connection with the provision of any of the above;
- l) VAT and other taxes payable on any of the above.

“Capital Grant” means grant paid to the Academy Trust in respect of Capital Expenditure.

40) Where the Academy is to open in new premises, or where existing premises are to be substantially refurbished or remodelled to enable the Academy to open in such premises, the Secretary of State, may, in his absolute discretion be responsible for meeting the incurred Capital Expenditure for that Academy. To that end, the Secretary of State will consider providing funding in accordance with any arrangements as he considers appropriate.

41) Any Capital Expenditure incurred in respect of the Academy on which Capital Grant payments are sought from the Secretary of State will require the specific prior written agreement of the Secretary of State, which agreement shall not be unreasonably withheld or delayed.

42) Any payment of Capital Grant to the Academy Trust under this Agreement is subject to the fulfilment of the following conditions:

- a) such grants are used solely to defray expenditure approved by the Secretary of State;
- b) the Academy Trust certifying and providing evidence that all planning and other consents necessary for the development and all related infrastructure to be completed have been obtained or put in place
- c) any other conditions that the Secretary of State may specify.

#### **Arrangements for Payment of Capital Grant**

43) Capital Grant will be paid by the Secretary of State to the Academy Trust on the basis of claims for grant submitted to the Secretary of State in the notified format with supporting invoices and certificates as required by the Secretary of State. If a dispute arises as to whether a claim is or is not acceptable both parties undertake to attempt to resolve it in good faith. In the event of such a dispute, the Secretary of State shall pay to the Academy Trust so much of the claim as shall not be in dispute.

## General Annual Grant

44) GAG will be paid by the Secretary of State to the Academy Trust as a contribution towards the normal running costs of the Academy. These will include, but are not limited to:

- a) teachers' salaries and related costs (including full and part time teaching staff and seconded teachers);
- b) non-teaching staff salaries and related costs (including pension contributions, educational support staff, administrative and clerical staff and manual and premises related staff);
- c) employees' expenses;
- d) the purchase, maintenance, repair and replacement:
  - (i) of teaching and learning materials and other educational equipment, including books, stationery and ICT equipment and software, sports equipment and laboratory equipment and materials;
  - (ii) of other supplies and services;
- e) examination fees;
- f) repairs, servicing and maintenance of buildings (including redecoration, heating, plumbing, lighting etc); maintenance of grounds (including boundary fences and walls); cleaning materials and contract cleaning; water and sewage; fuel and light (including fuel oil, solid and other fuel, electricity and gas); rents; rates; purchase, maintenance, repairs and replacement of furniture and fittings;
- g) insurance; provided that the Secretary of State shall not be obliged to pay GAG in relation to insurance to the extent that insurance and/or comparable arrangements are made available to the Academy Trust (whether at a cost to the Academy Trust or otherwise and whether made available by and/or on behalf of the Secretary of State or otherwise) save that, to the extent that such insurance and/or comparable arrangements as may be made available constitute a cost for the Academy Trust, the Secretary of State shall provide a contribution through GAG in relation to such cost;
- 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 meals to pupils who are eligible to receive them), and discretionary grants to pupils to meet the cost of pupil support, including support for pupils with special educational needs or disabilities (taking account of the fact that separate additional money will be available for pupils with statements of special educational needs);

- l) administration;
- m) establishment expenses and other institutional costs.

45) Subject to clauses 49 - 50, 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 notified in the Annual Letter of Funding or its equivalent, taking account of the number of pupils and/or places at the Academy;
- b) funding in respect of functions which would be carried out by the LA if the Academy were a maintained special school.

46) The GAG for each Academy Financial Year for the Academy will also include, payable on a basis equivalent to that applied to maintained special schools:

- a) funding for matters for which it is necessary for the Academy to incur extra costs, for as long as those costs are deemed necessary by the Secretary of State; and
- b) payments in respect of further, specific grants made available to maintained special schools, where the Academy meets the requisite conditions and criteria necessary for a maintained school to receive these grants

47) The Secretary of State will determine GAG for the Academy for each Academy Funding Year. The determination will be made taking into account relevant factors. Arrangements for this will be set out in the Annual Letter of Funding or its equivalent.

48) The Secretary of State may make provision, within his absolute discretion, for GAG to be adjusted in-year if the number of pupils attending the academy at specified dates exceeds or falls below thresholds specified by letter. Arrangements for this will be set out in the Annual Letter of Funding.

49) The Secretary of State recognises that a larger GAG may be appropriate to meet

additional costs during the start-up period, and may pay start-up grant, on a basis determined by him, during that period, the length of which will be stipulated in the Annual Letter of Funding.

- 50) The Secretary of State recognises that if he serves notice of intention to terminate this Agreement, the intake of new pupils during the notice period is likely to decline and that in such circumstances payments based on a number of places related to the number of pupils attending the Academy are unlikely to be sufficient to meet the Academy's needs during the notice period. The Secretary of State undertakes to pay a reasonable and appropriately larger GAG with respect to the Academy in the notice period than would be justified solely on the basis of the methods set out in clauses 45-47, in order to enable the Academy to operate effectively.
- 51) The Secretary of State also recognises that if this Agreement is terminated for any reason by either party the number of pupils at the Academy is likely to decline. In these circumstances both parties undertake to attempt to resolve issues arising from such termination in good faith and with the aim of protecting the interests and the education of the pupils at the Academy.
- 52) GAG paid by the Secretary of State shall only be spent by the Academy Trust towards the normal running costs of the Academy.

#### **Earmarked Annual Grant**

- 53) Earmarked Annual Grant ("EAG") shall be paid by the Secretary of State to the Academy Trust in respect of either recurrent or Capital Expenditure for such specific purposes as may from time to time be agreed between the Secretary of State and the Academy Trust and as described in the relevant funding letter. The Academy Trust shall only spend EAG in accordance with the scope, terms and conditions of the grant set out in the relevant funding letter.
- 54) Where the Academy Trust is seeking a specific EAG in relation to any Academy Financial Year, it shall submit a letter outlining its proposals and the reasons for its request to the Secretary of State or in accordance with arrangements notified by him at the time.

#### **Arrangements for Payment of GAG and EAG**

- 55) The Secretary of State shall notify the Academy Trust at a date preceding the

start of each Academy Financial Year of the GAG and EAG figures in respect of the Academy which, subject to Parliamentary approval, the Secretary of State plans for that Academy Financial Year and of the assumptions and figures on which these are based.

56) If GAG or EAG is calculated incorrectly due to a mistake of the Secretary of State then:

- a) if this leads to an underpayment of GAG, the Secretary of State will correct the underpayment in subsequent Academy Financial Years;
- b) if this leads to an overpayment of GAG, the Secretary of State reserves the right to recover any overpaid grant in subsequent Academy Financial Years, as appropriate, having considered all the relevant circumstances and taking into account any representations from the Academy Trust.

57) If GAG or EAG is calculated incorrectly because the Academy Trust provides incorrect information to the Secretary of State then;

- a) if this leads to an underpayment of GAG, the Secretary of State may correct the underpayment in subsequent Academy Financial Years;
- b) If this leads to an overpayment of GAG, the Secretary of State reserves the right to recover any overpaid grant in subsequent Academy Financial Years, as appropriate, having considered all the relevant circumstances and taking into account any representations from the Academy Trust.

58) The amounts of GAG for an Academy Financial Year will be determined annually by the Secretary of State. The amount of GAG for the Academy for the initial Academy Financial Year will be notified to the Academy Trust in a funding letter at a date preceding that year. For subsequent years the amount of GAG will be notified to the Academy Trust in a funding letter preceding that Academy Financial Year (the "Annual Letter of Funding"). The Annual Letter of Funding will not include the amount that the Academy Trust will receive in respect of grants for which information to enable timely calculation is not available or is incomplete; such grants will be notified as soon as practicable later in the year. Amounts of EAG will be notified to the Academy Trust wherever possible in the Annual Letter of Funding or as soon as practicable thereafter.

59) The Secretary of State undertakes to pay GAG in monthly instalments on or

before the twenty fifth day of each month, each such instalment to fund the salaries and other payroll costs for the relevant month of all monthly paid employees and all other costs payable during the next following month. The detailed arrangements for payment will be set out in the Annual Letter of Funding.

### **Other relevant funding**

60) Not used

61) The Secretary of State may meet costs incurred by the Academy Trust in connection with the transfer of employees from any predecessor school under the Transfer of Undertakings (Protection of Employment) Regulations 2006. Payment of grant in respect of such costs is to be agreed between the parties on a case by case basis and the Academy Trust shall not budget on the basis that it will receive any grant in respect of such costs unless it is specifically notified that such grant will be paid.

62) The Academy Trust may also receive funding from an LA in respect of the provision detailed in statements of SEN for pupils attending an Academy in accordance with the provisions of Section 483A of the Education Act 1996 and regulations made under that section. The Academy Trust shall ensure that all provision detailed in statements of SEN is provided for such pupils.

### **Financial and Accounting Requirements**

63) The Academy Trust shall appoint an Accounting Officer and shall notify the Secretary of State of that appointment.

64) In relation to the use of grant paid to the Academy Trust by the Secretary of State, the Academy Trust shall abide by the requirements of and have regard to the guidance in the Academies Financial Handbook authorised by the Secretary of State and amended from time to time, which sets out in detail provisions for the financial management of the Academy including guidance on financial systems and controls and accounting and reporting requirements, in so far as these are not inconsistent with any accounting and reporting requirements and guidance that it may be subject to by virtue of its being a charity.

65) The formal budget plan must be approved each Academy Financial Year by the Governing Body.

66) Any payment of grant by the Secretary of State in respect of the Academy is subject to his being satisfied as to the fulfilment by the Academy Trust of the following conditions:

- a) in its conduct and operation it shall apply financial and other controls which conform to the requirements both of propriety and of good financial management;
- b) arrangements have been made to maintain proper accounting records and that statements of income and expenditure and balance sheets may be produced in such form and frequency as the Secretary of State may from time to time reasonably direct;
- c) in addition to the obligation to fulfil the statutory requirements referred to in sub-clause f) below, the Academy Trust shall prepare its financial statements, Directors' report, Annual Accounts and its Annual Return for each Academy Financial Year in accordance with the Statement of Recommended Practice as if the Academy Trust was a non-exempt Charity and in such form or manner and by such a date as the Secretary of State may reasonably direct and shall file these with the Secretary of State and the Principal Regulator each Academy Financial Year;
- d) A statement of the accounting policies used should be sent to the Secretary of State with the financial statements and should carry an audit report stating that, in the opinion of the auditors, the statements show a true and fair view of the Academy Trust's affairs and that the grants were used for the purposes intended;
- e) the Academy Trust shall ensure that its accounts are audited annually by independent auditors appointed under arrangements approved by the Secretary of State;
- f) the Academy Trust prepares and files with the Companies Registry such annual accounts as are required by the Companies Act 2006;
- g) the Academy Trust shall publish on its website its Annual Accounts, Annual Report, Memorandum and Articles of Association, Funding Agreement and a list of the names of the Governors of the Academy Trust;
- h) the Academy Trust insures or procures insurance by another person of its assets in accordance with normal commercial practice or under the terms of any subsisting leases in respect of the leasehold interest of the site upon which the Academy is situated.

- 67) In addition, and at his expense, the Secretary of State may instruct auditors to report to him on the adequacy and effectiveness of the accounting systems and internal controls maintained by the Academy Trust to standards determined by the Secretary of State and to make recommendations for improving the financial management of the Academy Trust.
- 68) The books of accounts and all relevant records, files and reports of the Academy Trust including those relating to financial controls, shall be open at all reasonable times to officials of the DfE and the National Audit Office and to contractors retained by the DfE or the National Audit Office for inspection or the carrying out of value for money studies; and the Academy Trust shall secure that those officials and contractors are given 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.
- 69) The Academy Trust shall submit indicative budgets relating to the Academy to the Secretary of State by not later than 15 February before the start of each Academy Financial Year. Such budgets shall set out clearly the prospective income and expenditure of the Academy and shall differentiate, and give adequate details of:
- a) a statement of expected income for that Academy Financial Year including cash donations and gifts in kind from sources other than GAG, EAG and grants from the Secretary of State towards capital and revenue expenditure, distinguishing between income from public funds including the national lottery and income from other sources. Income from cash donations and gifts in kind from sources other than GAG, EAG and grants from the Secretary of State towards capital expenditure will not be taken into account by the Secretary of State in the calculation of GAG;
  - b) a statement of proposed recurrent expenditure for that Academy Financial Year;
  - c) a statement of proposed capital expenditure for that Academy Financial Year.
- 70) At the beginning of any Academy Financial Year the Academy Trust may hold unspent GAG from previous Academy Financial Years amounting to such percentage (if any) as the Secretary of State may specify by notice in writing to the Academy Trust prior to the beginning of that Academy Financial Year of the total GAG payable for the Academy in the Academy Financial Year just ended or such higher amount as may from time to time be agreed. The Academy Trust



shall use such carried forward amount for such purpose, or subject to such restriction on its use, as the Secretary of State may specify by notice in writing to the Academy Trust.

71) Notwithstanding clause 70, any additional grant provided over and above that set out in clauses 44-47 and made in accordance with clause 49 may be carried forward without limitation or deduction until the Start-up Period comes to an end.

72) Any savings of GAG not allowed to be carried forward under clauses 70-71 will be taken into account in the payment of subsequent grant.

73) The Academy Trust may also accumulate funds from private sources or public sources other than grants from the Secretary of State for application to the benefit of the Academy as it sees fit. Any surplus arising from private sources or public sources other than grants from the Secretary of State shall be separately identified in the Academy Trust's balance sheet.

74) The Academy Trust shall not, in relation to assets or property funded (whether in whole or in part) by the Secretary of State, without the prior written consent of the Secretary of State which shall not be unreasonably withheld or delayed:

- a) except such as are given in normal contractual relations, give any guarantees, indemnities or letters of comfort;
- b) write off any debts or liabilities owed to it above a value for the time being specified by the Secretary of State to be set out in the annual letter of funding, nor offer to make any ex gratia payments;
- c) make any sale or purchase of freehold property; or
- d) grant or take up any leasehold or tenancy agreement for a term exceeding three years.

75) The Academy Trust shall provide 30 days notice to the Secretary of State, whether or not the circumstances require the Secretary of State's approval, of its intention to:

- a) give any guarantees, indemnities or letters of comfort;
- b) write off any debts owed to it or offer to make any ex gratia payments;
- c) make any sale or purchase of freehold property; or
- d) grant or take up any leasehold or tenancy agreement for a term exceeding three years.

76) Each discovered loss of an amount exceeding the amount for the time being specified by the Secretary of State and arising from suspected theft or fraud, shall be reported by the Academy Trust to the Secretary of State at the earliest opportunity.

77) It is the responsibility of the Academy Trust to ensure that the Academy balances its budget from Academy Financial Year to Academy Financial Year. For the avoidance of doubt, this does not prevent the Academy Trust from:

- a) carrying a surplus from one Academy Financial Year to the next; or
- b) carrying forward from a previous Academy Financial Year or Academy Financial Years a sufficient surplus or sufficient cumulative surpluses on grants from the Secretary of State to meet an in-year deficit on such grants in a subsequent financial year; 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 Academy Financial Year to Academy Financial Year.

77A) The Academy Trust shall abide by the requirements of and have regard to the Charity Commission's guidance to charities and charity trustees and in particular the Charity Commission's guidance in the Protecting Charities from Harm ('the compliance toolkit'). Any references in this document which require charity trustees to report to the Charity Commission should instead be interpreted as references to report to the Principal Regulator.

### **Borrowing Powers**

78) The Academy Trust shall not borrow against or so as to put at risk property or assets funded (whether in whole or in part) by the Secretary of State without specific approval of the Secretary of State, such approval may only be granted in limited circumstances. The Academy Trust shall not operate an overdraft except to cover irregularities in cash flow. Such an overdraft, and the maximum amount to be borrowed, shall require approval by the Academy Trust in General Meeting and in writing by the Secretary of State, and shall be subject to any conditions which the Secretary of State may reasonably impose.

79) The Academy Trust shall provide 30 days' notice to the Secretary of State of its intention to borrow, whether or not such borrowing requires the Secretary of

State's approval under clause 78 above.

### **Disposal of Assets**

- 80) Where the Academy Trust acquires assets for a nil consideration or at an under value it shall be treated for the purpose of this Agreement as having incurred expenditure equal to the market value of those assets at the time that they were acquired. This provision shall not apply to assets transferred to the Academy Trust at nil or nominal consideration and which were previously used for the purposes of an Academy and/or were transferred from an LA, the value of which assets shall be disregarded.
- 81) The sale or disposal by other means, or reinvestment of proceeds from the disposal, of a capital asset by the Academy Trust shall require the consent of the Secretary of State, such consent not to be unreasonably withheld or delayed, where:
- a) the Secretary of State paid capital grant in excess of the value for the time being specified by the Secretary of State for the asset; or
  - b) the asset was transferred to the Academy Trust from an LA for no or nominal consideration.
- 82) Furthermore, reinvestment of a percentage of the proceeds of disposal of a capital asset paid for with a capital grant from the Secretary of State shall require the Secretary of State's consent in the circumstances set out above and reinvestment exceeding the value for the time being specified by the Secretary of State or with other special features will be subject to Parliamentary approval. The percentage of the proceeds for which consent is needed is the percentage of the initial price of the asset which was paid by capital grant from the Secretary of State.
- 83) This clause applies in the event, during the lifetime of this Agreement, of the disposal of a capital asset for which capital grant of any amount was paid by the Secretary of State, where the asset was acquired by the Academy Trust. In this event, the Academy Trust shall repay to the Secretary of State the same proportion of the proceeds of the disposal as equates with the proportion of the original cost met by the Secretary of State, unless the Secretary of State agrees to some or all of the proceeds being retained by the Academy Trust for its charitable purposes.

84) This clause applies in the event, during the lifetime of this Agreement, that the Secretary of State consents to the disposal of an asset which was transferred to the Academy Trust from an LA for no or nominal consideration. In this event the Secretary of State may give consent on the basis that all or part of the proceeds of the disposal should be made over to the LA from which the asset was transferred, taking into account the amount of the proceeds to be reinvested by the Academy Trust. The Secretary of State shall have regard to any representations from the Academy Trust and the LA from which the asset was transferred before giving consent under this clause.

85) Except with the consent of the Secretary of State, the Academy Trust shall not dispose of assets funded (whether in whole or in part) by the Secretary of State for a consideration less than the best price that can reasonably be obtained, such consent not to be unreasonably withheld or delayed.

86) The Academy Trust shall provide 30 days notice to the Secretary of State of its intention to dispose of assets for a consideration less than the best price that can reasonably be obtained, whether or not such disposal requires the Secretary of State's consent under clause 85 above.

## **TERMINATION**

87) Either party may give not less than seven Academy Financial Years' written notice to terminate this Agreement, such notice to expire on 31 August [ 2020 ] or any subsequent anniversary of that date.

88) If the Secretary of State is of the opinion that the Academy no longer has the characteristics set out in clauses 10 - 11 of this Agreement or that the conditions and requirements set out in clauses 12 - 36 of this Agreement are not being met, or that the Academy Trust is otherwise in material breach of the provisions of this Agreement, the Secretary of State may give notice of his provisional intention to terminate this Agreement.

89) Any such notice shall be in writing and shall:

- a) state the grounds on which the Secretary of State considers the Academy no longer has the characteristics set out in clauses 10 -11 of this Agreement or is not meeting the conditions and requirements of clauses 12 - 36 of this Agreement or the Academy Trust is otherwise in material breach of the provisions of this Agreement;

- b) specify the measures needed to remedy the situation or breach;
- c) specify a reasonable date by which these measures are to be implemented;  
and
- d) state the form in which the Academy Trust is reasonably required to provide its response and a reasonable date by which it must be provided.

90) If no response is received by the date specified in accordance with clause 89(d), the Secretary of State may give the Academy Trust 12 months, or such lesser period as he considers appropriate in the circumstances, written notice to terminate this Agreement.

91) If a response is received by the date specified in accordance with clause 89(d) the Secretary of State shall consider it, and any representations made by the Academy Trust, and shall, within three months of its receipt, indicate that:

- a) he is content with the response and/or that the measures which he specified are being implemented; or
- b) he is content, subject to any further reasonable measures he reasonably specifies being implemented by a specified date or any reasonable evidence he requires that implementation of such measures have been successfully completed; or
- c) he is not satisfied, that he does not believe that he can be reasonably satisfied, and that he will proceed to terminate this Agreement.

92) In the circumstances of clause 91(c) the Secretary of State shall notify the Academy Trust why he believes that he cannot be reasonably satisfied and, if so requested by the Academy Trust within thirty days from such notification, he shall meet a deputation including representatives from the Governing Body to discuss his concerns. If following such meeting he has good reasons for remaining satisfied that the Academy does not and will not have the characteristics set out in clauses 10 - 11 of this Agreement or does not and will not meet the conditions and requirements set out in clauses 12 - 36 of this Agreement or the Academy Trust is in material breach of the provisions of this Agreement and such breach will not be remedied to his reasonable satisfaction, he shall give the Academy Trust twelve months written notice to terminate this Agreement.

93) If the Secretary of State has cause to serve a notice on the Academy Trust under section 165 of the Education Act 2002 and a determination (from which all rights

of appeal have been exhausted) has been made that the Academy shall be struck off the Register of Independent Schools, the period of twelve months notice referred to in clause 92 may be shortened to a period deemed appropriate by the Secretary of State.

94) A "Special Measures Termination Event Occurs" when:

- a) the Chief Inspector gives a notice to the Academy Trust in accordance with section 13(3) of the Education Act 2005 (the "Special Measures Notice") stating that in his opinion special measures are required to be taken in relation to the Academy; and
- b) the Chief Inspector carries out a subsequent inspection of the Academy in accordance with the Education Act 2005 and makes a report in accordance with the Education Act 2005 stating that the Academy has made inadequate progress since the date of the Special Measures Notice; and
- c) the Secretary of State shall have requested the Academy Trust to deliver within 10 Business Days a written statement (a "Further Action Statement") of the action the Academy Trust proposes to take, and the period within which it proposes to take such action, or, if it does not propose to take any action, the reasons for not doing so; and
- d) the Secretary of State, having considered the Further Action Statement, is not satisfied that any action proposed to be taken by the Academy Trust is sufficient in all the circumstances, or, if no Further Action Statement shall have been given to the Secretary of State within the requested timeframe or otherwise.

95) If a Special Measures Termination Event occurs, the Secretary of State may:

- a) by notice in writing to the Academy Trust terminate this Agreement forthwith;  
or
- b) appoint such Further Governors to the Academy Trust as he thinks fit in accordance with the Articles and/or may provide up to 12 months' notice in writing to terminate this Agreement.

96) In the event that the Secretary of State appoints Further Governors in accordance with clause 95b), the Academy Trust must, upon the request of the Secretary of State, procure the resignation of the Governors appointed in accordance with the Article 50 of the Articles of Association.

- 97) The Secretary of State may at any time by notice in writing terminate this Agreement forthwith on the occurrence of any of the following events:-
- a) the Academy Trust calls a meeting of its creditors (whether formal or informal) or enters into any composition or arrangement (whether formal or informal) 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 is unable to pay its debts within the meaning of Section 123 of the Insolvency Act 1986 provided that, for the purposes of this clause, Section 123 (1)(a) of the Insolvency Act 1986 shall have effect as if the amount of £10,000 was substituted for £750. The Academy Trust shall not be deemed unable to pay its debts for the purposes of this clause if any such demand as is mentioned in the said Section is being contested in good faith by the Academy Trust; or
  - d) the Academy Trust has a receiver and manager (with the exception of Receivers and Managers or Interim Managers appointed by the Charity Commission under the Charities Act 1993 or any subsequent re-enactment of that Act), administrator or administrative receiver appointed over all or any 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 fifteen 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.
- 98) The Academy Trust shall notify the Secretary of State as soon as possible after receiving any petition which may result in an order for the winding up or administration of the Academy Trust and shall provide an explanation to the Secretary of State of the circumstances giving rise to the service of such a petition.
- 99) If, following the exercise of the Secretary of State's powers to appoint Additional Governors or Further Governors, pursuant to the Articles of Association the Members pass an ordinary or special resolution to remove one or more of those Additional or Further Governors appointed by the Secretary of State, the Secretary of State may give the Academy Trust 12 months, or such lesser period as he considers appropriate in the circumstances, written notice to terminate this

Agreement.

100) The Secretary of State's right to terminate this Agreement under clause 99 shall cease if he removes any of the Additional Governors or Further Governors which he has appointed pursuant to the Articles of Association.

#### **Change of Control of the Academy Trust**

100A) The Secretary of State may at any time by notice in writing, subject to clause 100C) below, terminate this Agreement forthwith (or on such other date as he may in his absolute discretion determine) in the event that there is a change:

(a) in the Control of the Academy Trust;

(b) in the Control of a legal entity that Controls the Academy Trust.

Provided that where a person ('P') is a member or director of the 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.

100B) The Academy Trust shall, as soon as it is reasonably practicable to do so after it has become aware of any change or proposed change of Control within the meaning of clause 100A), give written notice to the Secretary of State of such change or proposed change of Control.

100C) When notifying the Secretary of State further to clause 100B), the Academy Trust may seek the Secretary of State's agreement that, if he is satisfied that the person assuming Control is suitable, he will not in those circumstances exercise his right to terminate this Agreement further to clause 100A).

#### **Effect of Termination**

101) In the event of the termination of this Agreement however occurring the Secretary of State shall procure that his nominee (if any) shall resign as a member of the Academy Trust and shall co-operate in making any associated amendments to the Articles.

102) In the event of termination of this Agreement however occurring, the school shall cease to be an Academy within the meaning of Section 1 of the Academies Act 2010.



- 103) Subject to clause 104, if the Secretary of State terminates this Agreement for reasons other than that a Special Measures Termination Event occurs, that the Academy no longer has the characteristics set out in clauses 10 - 11 of this Agreement, or is no longer meeting the conditions and requirements set out in clauses 12 – 36B of this Agreement or that the Academy Trust is otherwise in material breach of the provisions of this Agreement, the Secretary of State shall indemnify the Academy Trust.
- 104) The amount of any such indemnity shall be determined by the Secretary of State having due regard to any representations made to him by the Academy Trust, and shall be paid at such times and in such manner as the Secretary of State may reasonably think fit.
- 105) The categories of expenditure incurred by the Academy Trust in consequence of the termination of this Agreement in respect of which the Secretary of State shall indemnify the Academy Trust include (but not by way of limitation), staff compensation and redundancy payments, compensation payments in respect of broken contracts, expenses of disposing of assets or adapting them for other purposes, legal and other professional fees, and dissolution expenses.
- 106) Subject to clause 107, on the termination of this Agreement however occurring, the Academy Trust shall in respect of any of its capital assets at the date of termination:
- a) promptly transfer a proportion of the assets to a person nominated by the Secretary of State, if the Secretary of State considers that all or some of those assets need to be used for educational purposes by that nominee. The proportion of the assets to be transferred shall be the same as the proportion of the capital contribution made by the Secretary of State to the original value of those assets, whether that contribution was made on the establishment of the Academy or later; or
  - b) if the Secretary of State confirms that a transfer under clause 106(a) is not required, promptly repay to the Secretary of State a sum equivalent to the percentage of the value of the assets at the date of termination, or, by agreement with the Secretary of State, at the date of subsequent disposal of those assets. Such percentage to be the same as the percentage of the capital contribution made by the Secretary of State to the original value of those assets, whether that contribution was made on the establishment of the Academy or later.

- 107) The Secretary of State may waive in whole or in part the repayment due under clause 106(b) if:
- a) The Academy Trust obtains his permission to invest the proceeds of sale for its charitable objects; or
  - b) The Secretary of State directs all or part of the repayment to be paid to the LA.
- 108) The sale or disposal by other means of publicly funded land held for the purposes of an Academy is now governed by Part 3 of Schedule 1 to the Academies Act 2010.

## **GENERAL**

### **Information**

- 109) Without prejudice to any other provision of this Agreement, the Secretary of State acting reasonably may from time to time call for information on, inter alia, the Academy's:
- a) curriculum;
  - b) arrangements for the assessment of pupils;
  - c) teaching staff including numbers, qualifications, experience, salaries, and teaching loads;
  - d) class sizes;
  - e) outreach work with other schools and the local community;
  - f) numbers of applications for places and the number and characteristics of pupils accepted for admission;
  - g) numbers of pupils excluded (including permanent and fixed term exclusions);
  - h) levels of authorised and unauthorised absence;
  - i) charging and remissions policies and the operation of those policies;
  - j) organisation, operation and building management;
  - k) financial controls; and
  - l) membership and proceedings of the Governing Body.
- 110) The Academy Trust shall make such information available to the Secretary of State, in such form and manner and at such times as may reasonably be required. The Secretary of State shall provide the Academy Trust with such information as it may reasonably require of him for the running of the Academy.

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

111) The Academy Trust shall allow access to the premises of the Academy at any reasonable time to DfE officials. All records, files and reports relating to the running of the Academy shall be available to them at any reasonable time. The Academy Trust shall provide the Secretary of State in advance with papers relating to the Academy prepared for meetings of the Governing Body and of the members of the Academy Trust. Two DfE officials shall be entitled to attend and to speak at all such meetings, but shall 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. The Academy Trust shall take any steps which are required to secure its compliance with the obligations imposed by this clause of this Agreement.

112) The Academy Trust shall ensure that:

- a) the agenda for every meeting of the Governing Body;
- b) the draft minutes of every such meeting, if they have been approved by the person acting as 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,

are made available for inspection by any interested party at the Academy and, as soon as is reasonably practicable, sent to the Secretary of State.

113) There may be excluded from any item required to be made available for inspection by any interested party and to be sent to the Secretary of State by virtue of clause 112, any material 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

any matter which, by reason of its nature, the Academy Trust is satisfied should remain confidential.

#### **Restrictions on Land Transfer**

113A) Recognising that they are or will be receiving publicly funded land at nil consideration (which for the purposes of this transaction shall include leases granted at a peppercorn rent) the Academy Trust:

- a) shall, within 28 days from the transfer to it of the Land, apply to the Land Registry for a restriction in the proprietorship register (under section 43(1)(a) of the Land Registration Act 2002 in Form RX1 as prescribed by Rule 91 and Schedule 4 of the Land Registration Rules 2003) in the following terms:

*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) shall take any further steps required to ensure that the restriction referred to in clause 113A(a) is entered on the proprietorship register,
- c) shall provide the Secretary of State with confirmation of the entry of the restriction referred to in clause 113A(a) as soon as practicable after it receives notification from the Land Registry,
- d) in the event that it has not registered the restriction referred to in clause 113A(a), hereby consents to the entering of the restriction referred to in 113A(a) in the register by the Secretary of State (under s. 43(1)(b) of the Land Registration Act 2002),
- e) shall not, without the consent of the Secretary of State, apply to dis-apply, modify or remove (by cancellation or otherwise) a restriction entered in accordance with clause 113A(a) or 113A(d) above, whether by itself, a holding company, a subsidiary company, or a receiver, administrator or liquidator acting in the name of the Trust.

## **Notices**

- 114) Any notice or other communication concerning this Agreement shall be sent, in the case of a notice or communication from the Secretary of State to the Academy Trust at its registered office or such other addressee/address as may be notified in writing from time to time by the Academy Trust and, in the case of a

notice or communication from the Academy Trust to the Secretary of State to Head of Academies Division, Department for Education, Sanctuary Buildings, Great Smith Street, London SW1P 3BT; or such other address as may be notified from time to time by the Secretary of State and where any such notice or communication is sent by post, unless the contrary is proved, it shall be deemed, subject to satisfactory proof of posting, to be effected at the time at which the letter would be received in the ordinary course of post.

- 115) The service by the Secretary of State of a notice of termination of this Agreement shall not prejudice the ability of the Academy Trust (if it wishes to do so) during the notice period to admit pupils to the Academy in accordance with the provisions of this Agreement and to receive GAG and EAG in respect of them.

### **Complaints**

115A) If a complaint is made about matters arising in whole or in part prior to the opening of the Academy, as referred to in clause 15 above, and all or part of that complaint was being or had been investigated by the Local Government Ombudsman under Part III of the Local Government Act 1974 ("Part III") or that complaint in whole or in part could have been investigated under Part III had the school the Academy replaced remained a maintained school, the Academy Trust:

- a) will abide by the provisions of Part III as though the Academy were a maintained school;
- b) agrees that the Secretary of State shall have the power to investigate the matter complained of as if it had taken place after conversion;
- c) agrees to act in accordance with any recommendation from the Secretary of State as though that recommendation had been made under Part III and the Academy were a maintained school.

115B) If the Secretary of State could have given an order and/or a direction under section 496 and/or section 497 of the Education Act 1996 to the governing body of the school the Academy replaced (as referred to in clause 11 above) and that order and/or direction related to matters occurring within the 12 months immediately prior to conversion, the Academy Trust agrees:

- a) the Secretary of State may give orders and/or directions to the Academy

Trust as though the Academy were a maintained school and sections 496 and 497 applied to the governing body of that maintained school;

- b) to act in accordance with any such order and/or direction from the Secretary of State.

**General**

116) This agreement shall not be assignable by the Academy Trust.

117) The Secretary of State and the Academy Trust recognise the difficulties in catering in this Agreement for all the circumstances which may arise in relation to the Academy and undertake in good faith to conduct such consultations as may from time to time be desirable in order to promote the interests of the Academy throughout the currency of this Agreement.

This Agreement was executed as a Deed on 7 December 2012

Executed on behalf of by:

.....  
**Director**

In the presence of:

Witness. IAN GIBSON

Address. GIBB CHAMBERS, 52 WESTGATE ROAD, NEWCASTLE UPON TYNE, NE15XL

Occupation. SOLICITOR.....]

The Corporate Seal of the Secretary of State for Education, hereunto affixed is authenticated by:



.....  
*[Handwritten signature]*

**Duly Authorised**

## ANNEXURE A