

## Annex – Excelsior Academy Funding Agreement

### Exemptions in full

Annex 5 – redacted in full – Section 43

### Other clauses

1. Memorandum and Articles of Association. Section 21 – accessible from Companies House <http://www.companieshouse.gov.uk/>

Factors for disclosure of Annex 5	Factors for Withholding
<ul style="list-style-type: none"> <li>• Further the understanding of an increase participation in the public debate of issues concerning Academies</li> <li>• To ensure transparency in the accountability of public funds</li> </ul>	<ul style="list-style-type: none"> <li>• DfES' commercial interests would be prejudiced</li> <li>• To reveal financial relationships between the SoS and the Academy Trust and others would prejudice the Department's ability to obtain maximum value for money in future agreements</li> </ul>

### Reasons why public interest favours withholding information

Whilst releasing the majority of the FA will further the public understanding of Academies the whole of the FA cannot be revealed. If **annex 5** were to be revealed under the Freedom of Information Act the DfES' commercial interests would be prejudiced, which could result in the less effective use of public money.

**Secretary of State for Education and Skills**

**and**

**West First Academy Trust Ltd**

**FUNDING AGREEMENT**

**relating to the provision of the Excelsior Academy, Newcastle-upon-Tyne**

# ACADEMIES

## FUNDING AGREEMENT

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## INTRODUCTION

- 1) This Agreement is made under section 482 of the Education Act 1996, as substituted by the Education Act 2002, between the Secretary of State for Education and Skills and the West First Academy Trust hereafter "the Academy Trust".
- 2) The Academy Trust is a charitable company incorporated in England and Wales, limited by guarantee with Registered No. 1113900
- 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) "Accounting Officer" - clause 67;
  - b) "admission arrangements" - clause 4 of Annex 2;
  - c) "annual letter of funding" - clause 61;
  - d) "GAG" - clauses 50-57;
  - e) "capital expenditure" - clause 36;
  - f) "the Academy" - clause 7
  - g) "the Academy Trust " - clause 1;
  - h) "EAG" - clauses 58-59;
  - i) "Financial Handbook" - clause 68;
  - j) "financial year" - clause 62;
  - k) "Governing Body" - clause 10
  - l) "recurrent expenditure" - clause 35;
  - m) "School Development Plan" - clause 13-15
  - n) "start up period" - clause 55a;
  - o) "the company" - clause 2;
  - p) "the Memorandum and Articles" - Annex 1
- 4) In this Agreement the following words and expressions shall have the following meanings:-
  - "LEA" means local education authority;
  - "headteacher" means the Principal of the Academy

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

“Agreement” means this agreement and its Annexes and a reference in the Agreement to a numbered clause or Annex is a reference to the clause or Annex of this Agreement bearing that number.

“Persons” includes a body of persons corporate or incorporate.

5) Questions arising on the interpretation of the arrangements in this funding agreement shall be resolved by the Secretary of State after consultation with the Academy.

6) Section 482 (1) of the Education Act 1996 as substituted states that -

"(1) The Secretary of State may enter into an agreement with any person under which -

- (a) that person undertakes to establish and maintain, and to carry on or provide for the carrying on of, an independent school in England with the characteristics mentioned in subsection (2), and such other characteristics as are specified in the agreement, and
- (b) the Secretary of State agrees to make payments to that person in consideration of those undertakings."

## **LEGAL AGREEMENT**

7) 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 to be known as the Excelsior Academy, Newcastle ("the Academy") and having such characteristics as are referred to in clauses 8 - 9, the Secretary of State agrees to make payments to the Academy Trust in accordance with the conditions and requirements set out in this Agreement. Any obligations imposed upon or powers given to the Academy by this agreement are also imposed upon the Academy Trust.

## **CHARACTERISTICS OF AN ACADEMY**

- 8) The characteristics of an Academy set down in section 482 (2) of the Education Act 1996 as substituted by the Education Act 2002, are that the school:
- a) has a broad curriculum with an emphasis on a particular subject area, or particular subject areas, specified in the agreement, and
  - b) provides education for pupils of different abilities and who are wholly or mainly drawn from the area in which the school is situated.

## **CONDITIONS OF GRANT**

### **General**

9) Section 482(4) of the Education Act 1996 provides for the agreement to specify

other conditions and requirements. These conditions in respect of the Academy are that:

- a) the school will be at the heart of its community, sharing facilities with other schools and the wider community;
- b) there will be assessment in the core subjects of the national curriculum at Key Stage 3, and the opportunity to study for external qualifications as defined by section 96 of the Learning and Skills Act 2000;
- c) the admissions policy and arrangements for the school will be consistent with admissions law, and the DfES Codes of Practice, for maintained schools;
- d) teachers will be required to have qualified teacher status; levels of pay and conditions of service for all employees will be the responsibility of the Governing Body;
- e) there will be an emphasis on the needs of the individual pupils including pupils with special educational needs (SEN) both those with and without statements of SEN;
- f) there will be no charge in respect of admission to the school and the school will only charge pupils where the law allows maintained schools to charge.

### **Governance**

- 10) The Academy will be governed by a governing body (“the Governing Body”) who are the directors of the company constituted under the Memorandum and Articles of the Academy Trust. The Governing Body shall exercise its powers and functions with a view to fulfilling a largely strategic role in the running of the school and shall consider any advice given by the headteacher. The Governing Body may exercise its powers and fulfil its functions through its servants or agents.
- 11) Subject to the Memorandum and Articles, and to this Agreement, the Governing Body may regulate its own procedure and that of any of its committees.

### **Conduct**

- 12) The Academy shall be conducted in accordance with:
  - a) the memorandum and articles of the company (attached as Annex 1 to this Agreement) which memorandum or articles shall not be amended by the Academy Trust without the explicit consent of the Secretary of State, such consent not to be unreasonably withheld;
  - b) all provisions by or under statute which confer rights or impose obligations on Academies;
  - c) the terms of this Agreement.

### **Development Plan and target setting**

- 13) The Academy shall draw up a School Development Plan each year in accordance



with a format and timetable to be advised by the Secretary of State. The School Development Plan shall, in particular:

- a) in accordance with a format and timetable to be advised by the Secretary of State set out plans for ensuring that all pupils are supported to reach the highest standards of which they are capable;
- b) describe the Academy's proposals to work with other schools and with the wider community.

14) The Academy shall set such targets in areas to be specified by the Secretary of State each year. The target areas for the initial year shall be:

- a) percentage of pupils achieving five or more GCSEs at grades A\* - C; and
- b) percentage of pupils achieving level 5 or above at Key Stage 3 in English, maths science and ICT.

15) The Academy shall consult the Secretary of State and the LEA in whose area it is situated each year before setting these targets and shall take into account but not be bound by any comments received from the Secretary of State and/or the LEA. The Academy shall set its targets in accordance with the timetable for target setting which applies to maintained schools.

### **Pupils**

16) The Academy is an all ability and inclusive school. The arrangements for:

- a) the admission of pupils to the Academy; and
- b) the admission of and support for pupils with Special Educational Needs and with disabilities (for pupils who have and who do not have statements of Special Educational Needs) (including the appointment of a responsible person);

are set out in Annexes 2 and 3 to this Agreement, together with the arrangements for making changes to such arrangements, including the requirement to secure the consent of the Secretary of State, such consent not to be unreasonably withheld. Arrangements for pupil exclusions are set out in Annex 4.

### **Teachers and other staff**

17) The Academy Trust shall not engage 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 -

- a) a qualified teacher within the meaning of regulations made under section 132 of the Education Act 2002 and registered with full registration with the General Teaching Council for England; or

b) otherwise eligible to do specified work in a maintained school under the Education (Specified Work and Registration) (England) Regulations 2003 (SI 2003/1663).

- 18) The Governing Body 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.
- 19) The Governing Body shall ensure that all employees other than teachers have access to the Local Government Pension Scheme.
- 20) It shall be the responsibility of the Governing Body to agree levels of pay and conditions of service with its employees, and to determine and employ such numbers of staff as may be appropriate. The Governing Body shall approve policies for:
  - a) staffing structure, and staff remuneration; and
  - b) staff discipline and performance management.

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

- 21) The curriculum provided by the Academy to pupils up to the age of 16 shall be broad and balanced with an emphasis on ICT with Business Enterprise. The core subjects of the National Curriculum must be taught to all pupils in years 7 - 11 except where, in the opinion of the principal, it is inappropriate for an individual pupil or groups of pupils to be taught one or more of those subjects.
- 22) The Academy shall make provision for the teaching of Religious Education and for a daily act of collective worship.
- 23) Subject to clause 25, provision shall 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, and having regard to the requirements of the Qualifications and Curriculum Authority's national framework for religious education in schools.
- 24) Subject to clause 25, the Academy shall comply with the requirements of section 70(1) of, and Schedule 20 to, the School Standards and Framework Act 1998 as if it were a community, foundation or voluntary school which does not have a religious character, except that the provisions of paragraph 4 of that Schedule do not apply. The Academy may apply to the Secretary of State for consent to be relieved of the requirement imposed by paragraph 3(2) of that Schedule, the Secretary of State's consent to such an application not to be unreasonably withheld or delayed.
- 25) Section 71(1) - (4) of the School Standards and Framework Act 1998 shall apply as if the Academy were a community, foundation or voluntary 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 at the Academy in accordance with clauses 23 and 24 respectively.
- 26) The Academy shall have regard to any guidance issued by the Secretary of State on

Sex and Relationship Education to ensure that children are protected from inappropriate teaching materials and they learn the nature of marriage and its importance for family life and for bringing up children.

### **Assessment**

- 27) The Academy shall register with the Qualifications and Curriculum Authority for the purposes of arranging for all eligible pupils to take part in the national curriculum assessment system at the end of the Key Stage 3 programmes of studies. This includes arranging for pupils to take the English, Maths and Science tests and for teacher assessments of pupils' performance in those subjects.
- 28) The Academy may not offer courses which lead to external qualifications, as defined in section 96 of the Learning and Skills Act 2000, unless they are either approved under section 98 of that Act, or, in respect of individual pupils, groups of pupils or all pupils in Key Stage 4, the Secretary of State gives specific consent for such courses to be offered.

### **School meals**

- 29) The Academy 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 them to do so. Subject to the provisions of clause 30 charges may be levied for lunches.
- 30) In relation to a pupil who is himself or whose parents are in receipt of benefits mentioned in section 512(3)B of the Education Act 1996 (or equivalent provision governing the entitlement to free school lunches of pupils at maintained schools), the Academy shall ensure that a school lunch is provided for such a pupil, which shall be provided free of charge.

### **Charging**

- 31) Sections 402 (Obligation to enter pupils for public examinations), 450 - 457 (charges), 459 (regulations about information about charges and school hours) and 460 (voluntary contributions), 461 (recovery of sums as civil debt) - 462 (Interpretation re charges) of the Education Act 1996 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 governing body of the Academy;
  - 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 may charge persons who are not registered pupils at the Academy for education provided or for facilities used by them at the Academy.

## **Provision of Information to parents and others**

32) The Academy shall publish a prospectus annually, shall send this on request (free of charge) to parents of pupils at the Academy and to the Secretary of State; and shall make it available for inspection by other persons at the Academy. The prospectus shall include details of admission arrangements and, except insofar as such information is published in a document known as a School Profile (which would accompany the prospectus) the following:

- a) details of the curriculum offered, of assessment arrangements and of the results of attainment tests and public examinations at school level, but this shall not include details of individual pupils' attainment and examination results;
- b) details of any religious affiliation of the school; policy on providing for children with SEN; arrangements for pupils with disabilities (as specified in Annex 3 to this agreement); pupil absence rates; and destination of school leavers; and
- c) such other information as the Governing Body may determine;
- d) any further information as set out in Schedule 3 of the Education (School Information) (England) Regulations 2002 (SI 2002/2897) as applies to maintained schools.

33) The prospectus shall be published in the school year immediately preceding the school year to which it relates and shall be published at least six weeks before the closing date for applying for a place.

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

### **General**

34) The Secretary of State shall pay grants under this Agreement towards capital and recurrent expenditure. Except with the Secretary of State's prior agreement, the Academy Trust shall not budget for expenditure in any 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 Trust shall commit the Secretary of State to paying any particular amount of grant.

35) "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 36. The Secretary of State shall pay two separate and distinct grants under the Agreement in respect of recurrent expenditure: General Annual Grant (GAG) and Earmarked Annual Grant (EAG).

## **CAPITAL GRANT**

36) "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;
- 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;
- 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 the 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 under the Agreement in respect of capital expenditure.

37) The Academy Trust has agreed with the Secretary of State the Capital Cost Spreadsheet attached as Annex 5 to the Agreement. The Capital Cost Spreadsheet shows the limit of the capital costs which the parties have agreed the Academy Trust may incur in order to establish the Academy. Annex 5 includes capital costs incurred prior to the execution of the Agreement and capital costs to be incurred after execution of the Agreement and before the Academy opens. The Academy opens on the first day that its pupils attend school at the Academy.

38) Annex 6A of the Agreement shows the capital expenditure incurred before execution of the Agreement. The Academy Trust has agreed with the Secretary of State the Capital Cash Flow Programme attached as Annex 6B to the Agreement which

shows the projected cashflow of capital expenditure by the Academy Trust after execution of the Agreement.

- 39) Both parties recognise that as the project develops it may be necessary to revise costs in the Capital Cost Spreadsheet (Annex 5) and to move costs between spreadsheet elements in order to ensure that the project remains within its approved budget. Where the Academy Trust wishes to make such adjustments of over £10,000, it must submit the requested adjustment with the reasons for it to the Secretary of State for approval.
- 40) Where the Academy Trust foresees a significant change in the timing of capital expenditure, that is a change to the figures in Annex 6B of over £100,000, a revised Capital Cash Flow Programme must be submitted to the Secretary of State for approval. The Academy Trust must ensure that no pattern of spending is allowed to develop which cannot be contained within the approved capital expenditure limits. The Secretary of State must be informed immediately if any danger of any of the capital costs set out in Annex 5 being exceeded is foreseen so that steps can be taken to rectify the situation and ensure that the project remains within its capital cash limit.

#### **Capital Expenditure Necessary to Establish the Academy**

- 41) The Secretary of State and the Academy Trust hereby agree that the Academy will be constructed/refurbished in accordance with the architect's drawings and specification on materials set out at Annex 6D of the Agreement and that:
- a. the amount of capital expenditure necessary to establish the Academy is £37,882,943 million ("the Cash Limit"). The Cash Limit includes capital expenditure incurred for the purposes of or in connection with the establishment of the Academy prior to the date of this agreement as described in Annexes 6A and 6B;
  - b. the Secretary of State will bear £35,882,943 million of the cash limit and the Academy Trust will bear £2 million of the cash limit;
  - c. the arrangements (including timing) for payments for these costs are set out in clause 44 and Annex 6B of the Agreement. Payment by the Secretary of State will be dependent on his approval of the matters set out in Annex 7 to the Agreement;
  - d. if the costs finally incurred for the purposes set out in clause 41(a) above are less than the cash limit, the costs borne by the Secretary of State shall be reduced accordingly and the Academy Trust shall pay the same amount as indicated in clause 41(b);
  - e. if at any stage it appears that the costs incurred for the purposes set out in clause 41(a) are likely to exceed the cash limit, the parties to the Agreement shall urgently consider how to reduce those costs, if necessary by amending the specification of the Academy;

- f. if the costs incurred for the purposes set out in clause 41(a) exceed the cash limit these additional costs shall be the responsibility of the Academy Trust except that the Secretary of State shall contribute up to 80% of any agreed necessary additional costs the need for which could not reasonably have been foreseen at the time the cash limit was set;
- g. if the parties agree that additional capital expenditure to establish the Academy, other than that specified in clause 41(a) may be incurred then the parties shall divide such additional costs between them in such proportions as may be agreed between them. No such additional expenditure is to be incurred without prior agreement in writing between the parties.

### **Other Capital Expenditure**

42) Any capital expenditure during the life of this Agreement beyond the cash limit referred to in clause 41(a) on which grant payments are sought from the Secretary of State will require the specific agreement of the Secretary of State. Such consent shall not be unreasonably withheld. Unless the Academy Trust undertakes to meet such capital costs entirely itself such approved costs as are incurred will be shared in a proportion to be agreed between the Secretary of State and the Academy Trust in relation to, and having regard to the nature of, each such capital project. Notwithstanding the preceding sentence, the proportion contributed by the Secretary of State will not be expected to exceed the proportion mentioned in clause 41(f) save that any capital expenditure required in order to meet the requirements of legislation enacted or made after the date of this Agreement shall be funded at least to the percentage referred to in clause 41(f) by the Secretary of State.

### **Conditions on Capital Grant**

- 43) Any payment of capital grant under the Agreement is subject to the fulfilment of the following conditions:
- a. such grants are used to provide accommodation constructed and equipped to standards agreed by the Secretary of State as described in Annex 7, or to defray other expenditure approved by the Secretary of State;
  - b. the payment of such grants is subject to 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.

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

44) Capital grant will be paid monthly by the Secretary of State to the Academy Trust. Each month the Academy Trust must submit a claim for grant to the Secretary of State in the notified format with supporting invoices and certificates as requested by the Secretary of State from time to time. Capital grant will be paid within 21 days from the day on which a claim for grant is received if the claim is in the proper format, supported by the appropriate documentation and the conditions on its

payment set out at clause 43 are complied with. If a dispute arises as to whether a grant claim is acceptable or not both parties undertake to attempt to resolve it in good faith.

### **Implementation Grant**

- 45) The Secretary of State shall pay grant (known as “implementation grant”) towards the establishment of the Academy. Implementation grant covers the recurrent expenditure that the parties agree is necessary to establish and open the Academy.
- 46) The Academy Trust shall prepare and submit to the Secretary of State for approval an Implementation Budget showing recurrent costs to be incurred before the Academy opens and for which grant is sought. The approved Implementation Budget Cashflow is attached as Annex 6C to the Agreement and shows the limits of the recurrent expenditure and the projected cashflow which the parties have agreed the Academy Trust is permitted to incur in order to establish the Academy.
- 47) Both parties recognise that as the project develops it may be necessary to revise individual costs in the Implementation Budget and to move costs between budget headings in order to ensure that the project remains within its approved budget. Where the Academy Trust wishes to make such an adjustment of over £10,000, the reason for the change and a revised Implementation Budget must be submitted to the Secretary of State for approval.

### **Arrangements for Payment of Implementation Grant**

- 48) The Secretary of State will pay implementation grant in accordance with the approved Implementation Budget. Payments will be made by monthly instalments. The Academy Trust shall submit to the Secretary of State by the 10<sup>th</sup> of each month a grant claim in a form specified by the Secretary of State. If the grant claim is acceptable the Secretary of State undertakes to pay the amount due by the 25<sup>th</sup> of the month. If a dispute arises over whether a grant claim or part of it is acceptable, both parties undertake to attempt to resolve the dispute in good faith.
- 49) Any amount of approved implementation grant in respect of which the expenditure has not been incurred by the Academy Trust, by the date on which the Academy opens, will lapse and no implementation grant will be payable in respect of that part of the approved implementation budget. Any amount of implementation grant which has been paid but remains unexpended on relevant expenditure by the date on which the Academy opens will, without prejudice to any other mode of recovery, be taken into account in determining the total amount of grant to be paid to the Academy after it has opened. Any amount of implementation grant which is found to have been used on ineligible expenditure will, without prejudice to any other mode of recovery, be taken into account in determining the total amount of grant to be paid to the Academy.

### **General Annual Grant**

- 50) General Annual Grant will be paid by the Secretary of State to the Academy Trust in order to cover the normal running costs of the Academy. These costs 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 educational support staff, administrative and clerical staff and manual and premises related staff);
- c. employees' expenses;
- d. the purchase, maintenance, repair and replacement of teaching and learning materials and other educational equipment including books, stationery, ICT equipment and software, sports and laboratory equipment and materials, 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;
- 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.

51) Subject to clauses 54 to 56, GAG for each financial year of the Academy Trust will be the total of the following areas of funding;

- a. Formula Funding: Funding comparable to the level of funding which would be provided through the funding formula of the LEA in whose area the Academy is situated, to a maintained school which had all of the Academy's relevant characteristics, including its number of pupils;

- b. LEA Holdback: Funding representing a proportion of the LEA Education Budget money which the LEA would be able to retain, from the non-delegated elements of the Schools Block and the relevant items in the LEA Block, if the Academy were a maintained school. The proportion which this funding will represent will be based on the elements of the LEA's Section 52 Budget Return which are relevant to the Academy.
- c. Specialist Schools Allowance: Funding equivalent to that which a maintained school with the Academy's characteristics would receive in respect of their participation in the specialist schools programme;

52) The GAG for the Academy will also include the following areas of funding for as long as they are necessary and equivalent funding is provided to maintained schools:

- a. LGPS contributions: Whilst it is necessary for the Academy to incur extra costs in order to be a member of the LGPS scheme due to having a small number of employees partaking in the scheme, the Secretary of State will pay an extra amount of grant in respect of these costs each financial year. Both parties acknowledge that new ways of working are being explored to lessen these costs and if these are successful this element of GAG will reduce or cease accordingly;
- b. School Standards Grant: Whilst this direct grant for maintained schools (Direct Grant to Schools) is paid by DfES, the Academy will receive an equivalent amount as part of its GAG each financial year;
- c. Teachers Threshold Payments: Whilst maintained schools receive a separate grant from DfES in respect of teachers threshold payments, the Academy will receive funding on the same basis as maintained schools for all of its teachers which are entitled to threshold payments.
- d. Relevant New Grants for Maintained Schools: Where the Secretary of State starts to pay new grants (which are not standards fund grants) for specific programmes in maintained schools which are relevant to Academies, the Academy will receive funding on a similar basis.

53) The basis of the pupil number count for the purposes of determining the Academy's GAG will be the Governing Body's estimate in November for numbers on roll in the following September. The basis of the GAG calculation, including any annual re-pricing which may be necessary, will be set out in the annual letter of funding except that the level of Teachers Threshold Payments will not be included in the letter and will depend on the information provided by the Academy in that financial year regarding how many teachers are entitled to the payments and at what level.

54) The Secretary of State reserves the right to make in year adjustments to the level of GAG payable to the Academy Trust in the following circumstances:

- a. pupil numbers are 10% or more below estimates;
- b. pupil numbers are 5% or more above estimates;

- c. additional grants relevant to the Academy are made by the Secretary of State to maintained schools.

The Academy Trust should notify the Secretary of State if at any stage in the year pupil numbers vary from the estimates by the amounts set out in clause 54(a) or (b). The Secretary of State will base his assessment of the variation of pupil numbers on information provided by the Academy Trust and data from the school census' in September and January each year. The adjustments to the level of GAG may be in respect of any element of the GAG.

55) The Secretary of State recognises that:

- a. in relation to Academies which open with intakes representing only a proportion of the final planned size of the Academy, payments based simply upon the number of pupils present are unlikely to be sufficient to meet the Academy's needs in the years before all age groups are present at their planned size (the "start-up period") because of a lack of economies of scale. The Secretary of State undertakes to pay an appropriately larger GAG in the start-up period than would be justified solely on the basis of the methods set out in clauses 51 and 52, in order to enable the Academy to operate effectively. The Academy will make a bid to the Secretary of State for this addition to GAG, based upon need and providing appropriate supporting evidence;
- b. in relation to Academies which open with pupils transferred from one or more LEA-maintained schools which have closed, additional GAG resources will be required to take account of transitional costs including any costs associated with supporting the integration of pupils from the closed schools and - where necessary - to offer a dual curriculum.

56) During the start-up period or during the period when year groups are present who have transferred from a predecessor school or schools, the Secretary of State will pay a further element of GAG additional to that calculated in accordance with the methods set out in clauses 51 and 52 to allow the Academy to:

- a. purchase a basic stock of teaching and learning materials (including library books, text books, software, stationery, science equipment and equipment for physical education) and other consumable materials;
- b. meet the costs associated with the recruitment and induction of additional teaching and other staff.

After the start-up period these costs will be met through the ordinary GAG.

57) The Secretary of State recognises that if he serves notice of intention to terminate this Agreement under clause 88 the intake of new pupils during the 7 year notice period is likely to decline and that in such circumstances payments based simply upon 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 in the notice period

than would be justified solely on the basis of the methods set out in clauses 51 and 52, in order to enable the Academy to operate effectively.

### **Earmarked Annual Grant**

58) Earmarked Annual Grant 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 is free to determine how best to use each of its EAGs within the scope of the grant set out in the relevant funding letter.

59) Where the Academy Trust is seeking a specific EAG in relation to any financial year, it shall submit a letter outlining its proposals and the reasons for its request to the Academies Division, Sanctuary Buildings, Great Smith Street, London SW1P3BT, by 15<sup>th</sup> February preceding the financial year in question.

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

60) The Secretary of State shall notify the Academy Trust in December preceding the start of each financial year of the GAG and EAG figures which, subject to Parliamentary approval, the Secretary of State plans for that year and of the assumptions and figures on which these are based.

61) The amount of GAG for an Academy financial year will be determined annually by the Secretary of State. The amount of GAG will be notified to the Academy Trust in a funding letter not later than 1 April preceding that 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 Teacher Threshold Payments whilst that grant is paid as a separate payment that will be notified later in the year on a date to be agreed. Amounts of EAG will be notified to the Company according to an agreed programme.

62) For the purposes of this Agreement, the Academy's financial year shall be deemed to run from September to August, in order to align it to the school academic year. 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**

63) The Secretary of State shall meet a proportion of the costs arising from the inclusion of Academies in the Schedules to the Redundancy Payments (Continuity of Employment in Local Government) (Modification) Order 1999. The Secretary of State shall meet the costs of the employee's prior eligible service and the Academy Trust shall meet the costs of service in the Academy. The Academy shall seek the Secretary of State's consent for these redundancies, such consent not to be unreasonably withheld, before committing to the redundancies.

- 64) The Secretary of State may meet costs incurred by the Academy Trust in connection with the transfer of employees from a predecessor school under the Transfer of Undertakings (Protection of Employment) Regulations 1981. 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.
- 65) The Academy Trust may also receive funding from LEAs in respect of the provision detailed in statements of special educational needs for pupils attending the Academy in accordance with the provisions of Section 483A of the Education Act 1996 and regulations made under that section. The Academy shall ensure that all provision detailed in statements of SEN is provided for such pupils.
- 66) The Academy Trust should also receive funding from the LEA in whose area it is located, from the Standards Fund. The scheme under which the Standards Fund money is to be distributed by the Secretary of State to LEAs and schools will permit LEAs to receive grants on behalf of Academies in the same way as they can do for maintained schools. The Academy must use any grants received under the Standards Fund in accordance with any conditions specified in relation to that grant. Grants paid to the Academy Trust from the Standards Fund are not paid under this Agreement.

### **Financial and Accounting Requirements**

- 67) The headteacher shall be the Academy's Accounting Officer. The Accounting Officer will be personally responsible to the Trustees for ensuring regularity and propriety, and for the economic, efficient and effective use of resources (i.e. ensuring value for money), and administration of the financial affairs of the Academy. The Accounting Officer may delegate or appoint others, such as a Finance Director, to assist in carrying out these responsibilities.
- 68) The Academy shall abide by the provisions within the Academies Financial Handbook, as published by the Department for Education and Skills 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.
- 69) The formal budget plan must be approved each year by the Governing Body.
- 70) Any payment of grant by the Secretary of State is subject to his being satisfied as to the fulfilment by the Academy of the following conditions:
- a) that in its conduct and operation the Academy shall apply financial and other controls which conform with the requirements both of propriety and of good financial management;
  - b) that 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) that such financial statements are published at the end of each financial year (as defined in clause 62) in such form and manner as the Secretary of State may reasonably direct and a copy sent to him by 31 December each year. These should carry an audit report stating that, in the opinion of the auditors, the statements show a true and fair view of the Academy affairs and that the grants were used for the purposes intended;
  - d) that the Academy prepares and files with the Companies Registry such annual accounts as are required by the Companies Act 1985;
  - e) that a statement of the accounting policies used is sent to the Secretary of State with the financial statements;
  - f) that the Academy 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;
  - g) (i) that the Academy prepares and files with the Charity Commission annual accounts prepared in accordance with the Statement of Recommended Practice;  
(ii) the governing body shall comply with their obligation under the Charities Act 1993 (or any statutory re-enactment or modification of that Act) with regard to the preparation of an annual report and its transmission to the Charity Commissioners;
  - h) The Governing Body shall secure that the Academy's accounts are audited annually by independent auditors appointed under arrangements approved by the Secretary of State.
- 71) 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 to standards determined by the Secretary of State and to make recommendations for improving the financial management of the Academy.
- 72) The books and accounts and all relevant records, files and reports of the Academy including those relating to financial controls, shall be open at all reasonable times to officials of the Department for Education and Skills and the National Audit Office and to contractors retained by the Department for Education and Skills or the National Audit Office for inspection or the carrying out of value for money studies; and the Academy 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.
- 73) The Governing Body shall submit indicative budgets to the Secretary of State not later than by 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 year including cash donations and gifts in kind from sources other than GAG, EAG and grants from the Secretary of

State towards capital expenditure, distinguishing between income from public funds including the national lottery and income from other sources;

- b) a statement of proposed recurrent expenditure for that financial year;
- c) a statement of proposed capital expenditure for that financial year.

74) With the exception of grant covered by clause 74c below, the Academy will be permitted to carry forward savings from GAG from one year to the next:

- a) equivalent to 2% of the total GAG received in the preceding year, which it may use for any of the purposes for which GAG is paid including all expenditure permitted under sub-clause (b) below;
- b) equivalent to a further 10% of the total GAG received in that year, or such higher figure as may from time to time be agreed, which it may use on the upkeep and improvement of premises including the costs of equipment and routine repairs and maintenance and on capital expenditure;
- c) Any additional grant provided over and above that set out in clause 51 and 52 and made in accordance with clause 55 and 56, may be carried forward without limitation or deduction until the start up period or the circumstances set out in clauses 55 and 56 come to an end.

75) Any savings of GAG not allowed under clause 74 will be taken into account in the payment of subsequent grant.

76) The Governing Body may also accumulate funds from private sources or public sources other than grant 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 grant from the Secretary of State shall be separately identified in the balance sheet.

77) The Academy Trust shall not, without the prior written consent of the Secretary of State which shall not be unreasonably withheld or delayed:

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

78) Each discovered loss of an amount exceeding the amount set out in the annual letter of funding, and arising from suspected theft or fraud, shall be reported by the Governing Body to the Secretary of State at the earliest opportunity.

79) It is the responsibility of the Governing Body to ensure that the Academy balances its budget from year to year.

## **Borrowing Powers**

80) The Academy Trust shall not run an overdraft beyond such amount (to cover irregularities in cash flow) as may from time to time be both approved by the Academy Trust in General Meeting and in writing by the Secretary of State, such approval by the Secretary of State not to be unreasonably delayed or withheld, and subject to any conditions he may reasonably impose. The Academy Trust shall not borrow except with the written consent of the Secretary of State against future years' current grant, or by using as collateral assets purchased wholly or partly out of monies provided by the Secretary of State. The Academy Trust shall not borrow against land and buildings transferred to it for less than the market price from an LEA or trustees of a voluntary aided school. Provided always that nothing in this clause shall prevent the Academy Trust from borrowing (whether by way of overdraft or otherwise) prior to the opening of the Academy nor from borrowing where such borrowing is made necessary by the failure of the Secretary of State to make in a timely fashion payments (whether of GAG or EAG or otherwise) agreed to be made by him under this Agreement.

## **DISPOSAL OF ASSETS**

81) 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 at nil or nominal consideration and which were previously used for the purposes of a school or where transferred from an LEA; the value of which assets shall be disregarded.

82) The sale, or disposal by other means, or reinvestment of proceeds from the disposal, of a capital asset by an Academy Trust shall require the consent of the Secretary of State where:

- a) the Secretary of State paid capital grant in excess of £20,000 for the asset; or
- b) the asset was transferred to the Academy Trust from a Local Education Authority for no or nominal consideration

such consent not to be unreasonably withheld or delayed. Furthermore, reinvestment exceeding £1m or with other special features will be subject to Parliamentary approval.

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, where the asset was acquired by the Academy Trust at market value. 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 a Local Education Authority 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 Local Education Authority 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 will have regard to any representations from the Academy Trust and the Local Education Authority from which the asset was transferred before giving a consent under this clause.

85) Except with the consent of the Secretary of State, the Academy Trust shall not dispose of assets for a consideration less than the best that can reasonably be obtained.

## **TERMINATION**

86) Subject to prior termination of this agreement under clauses 88 - 94, the Secretary of State shall continue payments in respect of current expenditure for a period of not less than seven years.

87) Either party may give seven years written notice of its intention to terminate this Agreement, such notice to expire on 31 August in any year.

88) If the Secretary of State is of the opinion that the Academy no longer has the characteristics set out in clause 8 or that the conditions and requirements set out in clauses 9 - 33 are not being met, or is otherwise in 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 he considers the Academy no longer has the characteristics set out in clause 8 or is not meeting the conditions and requirements of clauses 9 - 33 or is otherwise in breach of the provisions of this Agreement;
- b) specify the measures needed to remedy the situation;
- c) specify the date by which these measures are to be implemented; and
- d) state the form in which the Governing Body is to provide its response and the date by which it must be provided.

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

91) If a response is received by the date specified in clause 89d, the Secretary of State shall consider it, and any representations made by the Governing Body, and shall, within 3 months of its receipt, indicate that:

- a) he is content with the response and that the measures which he specified are being implemented; or
- b) he is content, subject to any further measures he specifies being implemented by a specified date or any 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 satisfied, and that he will proceed to terminate the Agreement.

92) In the circumstances of clause 91c the Secretary of State shall notify the Governing Body why he believes that he cannot be satisfied and, if so requested by the Governing Body within thirty days from such notification, he shall meet a deputation from the members and governors of the Academy 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 clause 8 or does not and will not meet the conditions and requirements set out in clauses 9 - 33 or does not and will not otherwise comply with the provisions of this Agreement, he shall give the Governing Body twelve months written notice of his termination of this Agreement.

93) If the Secretary of State has cause to serve a notice on the Governing Body under s.165 of the Education Act 2002 and the matters specified in the notice are not remedied, the period of twelve months notice referred to in clause 90 may be shortened to a period deemed appropriate by the Secretary of State.

94) 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; or
- d) the Academy Trust has a receiver (and manager with the exception of Receivers and 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 restraint, 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) the Academy Trust has a petition presented to any Court for its winding up or for an administration order; or

h) the Academy has ceased to operate as a Academy (except where such cessation occurs temporarily by reason of an event of Force Majeure).

“Business Days” in this clause, means any day other than a Saturday, a Sunday, Christmas Day, Good Friday or a day which is a bank holiday within the meaning of the Banking and Financial Dealings Act 1971.

### **Effect of Termination**

- 95) In the event of termination of this agreement, however occurring, the school shall cease to be an Academy.
- 96) If the Secretary of State terminates this Agreement for reasons other than that the Academy no longer has the characteristics set out in clause 8, or is no longer meeting the conditions and requirements set out in clauses 9 - 33 or is otherwise in breach of the provisions of this Agreement, the Secretary of State shall indemnify the Academy Trust.
- 97) The amount of any such indemnity shall be determined by the Secretary of State having 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.
- 98) The amounts and categories of expenditure incurred by the Academy Trust in consequence of the termination of the 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.
- 99) In the event of the termination of this Agreement however occurring the Secretary of State shall procure that his nominee shall resign as a member of the Academy Trust and shall co-operate in making any associated amendments to the Academy Trust Articles of Association.
- 100) Subject to clause 101, on the termination of this agreement, however occurring, the Academy Trust shall repay to the Secretary of State a sum in respect of the capital contribution made by him under clauses 41-42 above. The amount to be repaid to the Secretary of State shall be a percentage of the value of the assets belonging to the Academy Trust 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.
- 101) The Secretary of State may waive in whole or in part the repayment due under the above clause if:
- a) The Academy Trust is unable to realise the market value of land or premises because they are returned to the Local Education Authority at less than market value; or
  - b) The Academy Trust obtains his permission to invest the proceeds of sale for its

charitable objects; or

- c) The Secretary of State directs all or part of the repayment to be paid to the Local Education Authority.

102) If any land or premises of the Academy were acquired from a Local Education Authority by a scheme under Schedule 35A of the Education Act 1996 or otherwise at less than the market price, and the Secretary of State does not make a scheme as provided for in Schedule 35A (Paragraph 8) of the Education Act 1996, the Academy Trust may dispose of its interest in that land or premises but only with the consent of the Secretary of State, who shall have regard to any representations from the Academy Trust and the Local Education Authority from which the land was transferred before giving or withholding that consent.

## **GENERAL**

103) 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) targets, including those set in accordance with the provisions of clause 14;
- d) teaching staff including numbers, qualifications, experience, salaries, and teaching loads;
- e) class sizes;
- f) outreach work with other schools and the local community;
- g) operation of the admission criteria and over subscription arrangements for the Academy including numbers of applications for places and the number and characteristics of pupils accepted for admission;
- h) numbers of pupils excluded (including permanent and fixed term exclusions);
- i) levels of authorised and unauthorised attendance;
- j) the Academy's charging and remissions policies and the operation of those policies;
- k) organisation, operation and building management;
- l) financial controls; and
- m) membership and proceedings of the governing body.

104) The Governing Body 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 Governing Body with such information as they may reasonably require of him for the running of the Academy.

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

- 105) The Governing Body shall allow access to the premises of the Academy at any reasonable time to DfES officials. All records, files and reports relating to the running of the Academy shall be available to them at any reasonable time. The Governing Body shall provide the Department in advance with papers relating to all meetings of the Governing Body of the Academy and of members of the Academy. Two DfES officials shall be entitled to attend and to speak at all such meetings, but shall withdraw from any discussion of the Academy's relationship with the Secretary of State or any discussion of bids for funding to the Secretary of State. The Academy shall take any steps which are required to secure its compliance with the obligations imposed by this clause of the agreement.
- 106) The Academy shall ensure that:
- i) the agenda for every meeting of the Governing Body;
  - ii) the draft minutes of every such meeting, if they have been approved by the person acting as chairman of that meeting;
  - iii) the signed minutes of every such meeting; and
  - iv) any report, document or other paper considered at any such meeting,
- are made available for inspection at the Academy and, as soon as is reasonably practicable, sent to the DfES.
- 107) There may be excluded from any item required to be made available and sent to the DfES by virtue of clause 106, 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
  - c) any matter which, by reason of its nature, the Governing Body are satisfied should remain confidential.

### **Notices**

- 108) 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 Governing Body at [set out name and address] or such other addressee/address as may be notified in writing from time to time by the Academy and, in the case of a notice or communication from the Academy to the Secretary of State to Head of Academies Division, Department for Education and Skills, 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.
- 109) This Agreement may be amended in writing at any time by agreement between the Secretary of State and the Academy Trust.

- 110) The service by the Secretary of State of a notice of termination under any clause of this Agreement shall not prejudice the ability of the Academy (if it wishes to do so) during the notice period to admit pupils in accordance with the provisions of clause 16 and Annex 2 to this Agreement and to receive GAG and EAG in respect of them.
- 111) 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 period of this Agreement.

This document is executed as a Deed on: 1<sup>st</sup> August 2006 *date*

EXECUTED as a Deed of the West First Academy Trust

Irvine Laidlaw

.....

*Director*

Peter Fair

.....

Director/Company Secretary

*In the presence of: - [Project Manager's or other witness's Signature]*

Name...John Buchanan.....

Address...24 Station Road.....

.....Killgarn.....

.....Stirling.....

.....G63 9NU.....

The Corporate Seal of the Secretary of State for Education and Skills hereunto affixed was authenticated by-

C. J. Davies

1<sup>st</sup> August 2006

**Authorised by the Secretary of State for Education and Skills**

## **ANNEX 2**

### **THE ADMISSION OF PUPILS TO THE EXCELSIOR ACADEMY, NEWCASTLE**

1. This document sets out the admission arrangements for the Excelsior Academy, Newcastle. These arrangements are without prejudice to the provisions of Annex 3 to this agreement. The document forms an Annex to the Funding Agreement between the Excelsior Academy, Newcastle and the Secretary of State. Any changes to the arrangements set out in this document must be approved in advance by the Secretary of State.
2. The Academy will comply with all relevant provisions of the statutory codes of practice (the School Admissions Code of Practice and the School Admission Appeals Code of Practice) as they apply at any given time to maintained schools and with the law on admissions as it applies to maintained schools. Reference in the codes to admission authorities shall be deemed to be references to the governing body of the Academy. In particular, the Academy will take part in the Admissions Forum set up by Newcastle Local Authority (LA) and have regard to its advice; and will participate in the co-ordinated admission arrangements operated by Newcastle LA.
3. Notwithstanding these arrangements, the Secretary of State may direct the Excelsior Academy to admit a named pupil to the Academy on application from a LA. Before doing so the Secretary of State will consult the Academy.

#### **I: ADMISSION ARRANGEMENTS APPROVED BY SECRETARY OF STATE**

4. The admission arrangements for the Excelsior Academy, Newcastle for the year 2008/2009 and, subject to any changes approved by the Secretary of State, for subsequent years are:
  - a) The Excelsior Academy has an agreed admission number of 300 pupils. The Excelsior Academy will accordingly admit at least 300 pupils in the relevant age group each year if sufficient applications are received;
  - b) The Excelsior Academy may set a higher admission number as its Published Admission Number for any specific year. Before setting an admission number higher than its agreed admission number, the Excelsior Academy will consult those listed at paragraphs 18-19 below. Pupils will not be admitted above the Published Admission Number unless exceptional circumstances apply and such circumstances shall be reported to the Secretary of State.

#### **Process of application**

5. Applications for places at the Academy will be made in accordance with LA's co-ordinated admission arrangements and will be made on the Common Application Form (CAF) provided and administered by Newcastle LA. The Excelsior Academy will use the following timetable for applications each year (exact dates within the months may vary from year to year) which, whenever possible, will fit in with the common timetable agreed by the Newcastle Admissions Forum or LA:
  - a) September - The Excelsior Academy will publish in its prospectus information



about the arrangements for admission, including oversubscription criteria, for the following September (e.g. in September 2007 for admission in September 2008). This will include details of open evenings and other opportunities for prospective pupils and their parents to visit the school. The Excelsior Academy will also provide information to the LA for inclusion in the composite prospectus, as required;

- b) September/October - The Excelsior Academy will provide opportunities for parents to visit the Academy;
- c) November - CAF to be completed and returned to the LA to administer
- d) LA sends applications to Academy
- e) Academy sends list of pupils to be offered places to LA
- f) February - LA applies agreed scheme for own schools, informing other LEAs of offers to be made to their residents.
- g) 1<sup>st</sup> March offers made to parents.

### **Consideration of applications**

6. The Excelsior Academy will consider all applications for places. Where fewer than 300 applications are received, the Excelsior Academy will offer places to all those who have applied.

### **Procedures where the Excelsior Academy is oversubscribed**

7. Where the number of applications for admission is greater than the published admissions number, applications will be considered against the following criteria and applied in the order in which they are set out below:

- a) Pupils with statements of Special Educational Needs where the Excelsior Academy is named
- b) Children in public care (looked-after children);
- c) Where the child attends a designated 'feeder' school (See Appendix A for details);
- d) Where the child who does not attend a designated 'feeder' school will have a brother or sister in attendance at the school at the date of admission;
- e) Where the child has a special medical condition. A medical certificate is required if the application is to be considered on this basis and will be referred to the Health Authority for guidance – the Governing Body of the Academy must be satisfied that there is a specified medical reason which makes attendance at the Excelsior Academy essential;

- f) The measure of the straight-line distance from the Academy to the home address of the child. Available places will be allocated to those applicants living nearest to the Academy.

If (c), (d) or (e) is oversubscribed, places in those criteria will be allocated to those living nearest the Academy based upon the measure of the straight-line distance from the Academy to the home address of the child.

### **Operation of waiting lists**

8. Subject to any provisions regarding waiting lists in the LA's co-ordinated admission scheme, the Academy will operate a waiting list. Where in any year the Excelsior Academy receives more applications for places than there are places available, a waiting list will operate until a month after the admission date. This will be maintained by the Excelsior Academy and it will be open to any parent to ask for his or her child's name to be placed on the waiting list, following an unsuccessful application.

9. Children's position on the waiting list will be determined solely in accordance with the oversubscription criteria set out in paragraphs 7a - e of this Annex. Where places become vacant they will be allocated to children on the waiting list in accordance with the oversubscription criteria.

### **Arrangements for appeals panels**

10. Parents will have the right of appeal to an Independent Appeal Panel if they are dissatisfied with an admission decision of the Excelsior Academy. The Appeal Panel will be independent of the Academy. The arrangements for Appeals will be in line with the Code of Practice on School Admission Appeals published by the Department for Education and Skills as it applies to Foundation and Voluntary Aided schools. The determination of the appeal panel will be made in accordance with the Code of Practice on School Admission Appeals and is binding on all parties. The Academy should prepare guidance for parents about how the appeals process will work and provide parents with a named contact who can answer any enquiries parents may have about the process.

### **Arrangements for admission to post 16 provision**

11. The maximum number of post 16 places is 300. The Excelsior Academy will publish specific criteria in relation to minimum entrance requirements for the range of courses available based upon GCSE grades or other measures of prior attainment.

12. There will be a right of appeal to the Independent Appeals Panel for unsuccessful applicants.

### **Arrangements for admitting pupils to other year groups, including to replace any pupils who have left the Excelsior Academy**

13. Subject to any provisions in the LA's co-ordinated admission arrangements relating to applications submitted for years other than the normal year of entry, the Academy must consider all such applications and if the year group applied for has a

place available, admit the child. If more applications are received that there are places available, the oversubscription criteria shall apply. Parents whose application is turned down are entitled to appeal.

### **Arrangements for admission of pupils as the Excelsior Academy builds to its full capacity**

14. The Excelsior Academy will open on 1 September 2008 with a Published Admission Number relating solely to pupils in Year 7 and, where relevant, Year 12. Pupils in subsequent Years will have been transferred automatically from the predecessor school, West Gate Community School, which will close on 31 August 2008.

15. During the period from 1 September 2008 to July 2012 there will not be a Published Admission Number against which to consider applications for admission to all Year groups. Initially there will be four such Year groups reducing by one in each subsequent academic year.

16. Admission to Year groups without a Published Admission Number will be based upon the size of teaching groups already existing in the Excelsior Academy and the efficient use of resources.

17. There will be a right of appeal to the Independent Appeal Panel for unsuccessful applicants.

## **II: ANNUAL PROCEDURES FOR DETERMINING ADMISSION ARRANGEMENTS**

### **Consultation**

18. The Excelsior Academy shall consult each year on its proposed admission arrangements.

19. The Excelsior Academy will consult by 1 March:

- a) Newcastle LA;
- b) Any other admission authorities for primary and secondary schools located within the relevant area for consultation set by the LA;
- c) Any other governing body for primary and secondary schools (as far as not falling within paragraph (b)) located within the relevant area for consultation.

### **Determination and publication of admission arrangements**

20. Following consultation, the Excelsior Academy will consider comments made by those consulted. The Excelsior Academy will then determine its admission arrangements by 15 April of the relevant year and notify those consulted what has been determined.

### **Publication of admission arrangements**

21. The Excelsior Academy will publish its admission arrangements each year once these have been determined, by:

- a) copies being sent to primary and secondary schools in Newcastle LA;
- b) copies being sent to the offices of Newcastle LA;
- c) copies being made available without charge on request from the Academy;
- d) copies being sent to public libraries in the area of Newcastle LA for the purposes of being made available at such libraries for reference by parents and other persons.

22. The published arrangements will set out:

- a) the name and address of the Academy and contact details;
- b) a summary of the admissions policy, including oversubscription criteria;
- c) a statement of any religious affiliation;
- d) numbers of places and applications for those places in the previous year; and
- e) arrangements for hearing appeals.

### **Representations about admission arrangements**

23. Where any of those bodies that were consulted, or that should have been consulted, make representations to the Excelsior Academy about its admission arrangements, the Excelsior Academy will consider such representations before determining the admission arrangements. Where the Academy has determined its admission arrangements and notified all those bodies whom it has consulted and any of those bodies object to the Academy's admission arrangements they can make representations to the Secretary of State. The Secretary of State will consider the representation and in so doing will consult the Excelsior Academy. Where he judges it appropriate, the Secretary of State may direct the Excelsior Academy to amend its admission arrangements.

24. Those consulted have the right to ask the Excelsior Academy to increase its proposed Published Admissions Number for any year. Where such a request is made, but agreement cannot be reached locally, they may ask the Secretary of State to direct the Excelsior Academy to increase its proposed Published Admissions Number. The Secretary of State will consult the Excelsior Academy and will then determine the Published Admission Number.

25. In addition to the provisions at paragraphs 34 and 35 above, the Secretary of State may direct changes to the Excelsior Academy's proposed admission arrangements and, in addition to the provisions above, the Secretary of State may direct changes to the proposed Published Admissions Number.

### **Proposed changes to admission arrangements by the Excelsior Academy after arrangements have been published**

26. Once the admission arrangements have been determined for a particular year and published, the Excelsior Academy will propose changes only if there is a major change of circumstances. In such cases, the Excelsior Academy must notify those consulted under paragraph 18 – 19 above of the proposed variation and must then apply to the Secretary of State setting out:

- a) the proposed changes;
- b) reasons for wishing to make such changes;
- c) any comments or objections from those entitled to object.

**Need to secure Secretary of State’s approval for changes to admission arrangements**

27. The Secretary of State will consider applications from the Excelsior Academy to change its admission arrangements only when the Excelsior Academy has notified and consulted the proposed changes as outlined at 19 - 20 above.

28. Where the Excelsior Academy has consulted on proposed changes the Excelsior Academy must secure the agreement of the Secretary of State before any such changes can be implemented. The Excelsior Academy must seek the Secretary of State’s approval in writing, setting out the reasons for the proposed changes and passing to him any comments or objections from other admission authorities/other persons.

29. The Secretary of State can approve, modify or reject proposals from the Excelsior Academy to change its admission arrangements.

30. Records of applications and admissions shall be kept by the Excelsior Academy for a minimum period of ten years and shall be open for inspection by the Secretary of State.

## **Appendix A**

### **Feeder Primary Schools to the Excelsior Academy, Newcastle**

- Atkinson Road Primary
- Broadwood Primary
- Canning Street Primary
- Delaval Primary
- Hawthorn Primary
- Moorside Primary
- South Benwell Primary
- Westgate Hill Primary
- Wingrove Primary
- St Paul's C of E Primary

## **Annex 3**

### **Arrangements for pupils with SEN and disabilities at the Excelsior Academy, Newcastle**

#### **Duty to have regard to the Code of Practice and other guidance**

1. The Academy shall have regard to the Special Educational Needs Code of Practice (2001) and any guidance issued by the Secretary of State relating to sections 316 and 316A of the Education Act 1996. Any changes to be made to the provisions set out in this document must be approved in advance by the Secretary of State.

#### **Duties in relation to pupils with SEN**

2. The governors of the Academy shall designate a person, who may be the headteacher, the chair of governors or another governor as appropriate, who shall be the responsible person for the purposes of the following duties in relation to pupils with SEN.

3. The governors of the Academy shall:

- use their best endeavours, in exercising their functions in relation to the school, to secure that, if any registered pupil has special educational needs, the special educational provision which the pupil's learning difficulty calls for is made;
- secure that, where the responsible person has been informed by the local education authority that a registered pupil has special educational needs, those needs are made known to all who are likely to teach the pupil;
- secure that the teachers in the school are aware of the importance of identifying, and providing for, those registered pupils who have special educational needs; and
- consult the local education authority and the governing bodies of other schools in the area, to the extent that this is necessary for co-ordinating provision for pupils with SEN.

4. Where a child who has special educational needs is being educated in the Academy, those concerned with making special educational provision for the child shall secure, so far as is reasonably practicable and is compatible with:

- (a) the child receiving the special educational provision which his learning difficulty calls for,
- (b) the provision of efficient education for the children with whom he will be educated,
- (c) the efficient use of resources and
- (d) that the child engages in the activities of the school together with children who do not have SEN.

5. The Academy prospectus shall include details of the governing body's policy for pupils with SEN and in particular shall include the information specified in Schedule 1 to the Education (Special Educational Needs) (Information) Regulations 1999 as amended or re-enacted from time to time. It shall also include 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; and the facilities provided to assist access to the Academy by disabled pupils (disabled pupils meaning pupils who are disabled for the purposes of the Disability Discrimination Act 1995).

## **Admissions**

6. The Academy shall ensure that pupils with SEN are admitted on an equal basis with others in accordance with its admissions policy.

7. Where a local education authority proposes to name the Academy in a statement of SEN made in accordance with section 324 of the Education Act 1996, the Academy shall consent to being named, except where admitting the child would be incompatible with the provision of efficient education for other children; and where no reasonable steps may be made to secure compatibility. In deciding whether a child's inclusion would be incompatible with the efficient education of other children, the Academy shall have regard to the relevant guidance issued by the Secretary of State to maintained schools.

8. In the event of any disagreement between the Academy and the local education authority over the proposed naming of the Academy in a statement, the Academy may ask the Secretary of State to determine whether the Academy should be named. The Secretary of State's determination shall, subject only to any right of appeal which any parent or guardian of the child may have to the Special Educational Needs and Disability Tribunal (SENDIST), be final.

9. If a parent or guardian of a child in respect of whom a statement is maintained by the local education authority appeals to SENDIST either against the naming of the Academy in the child's SEN statement or asking the Tribunal to name the Academy, then the decision of the Tribunal on any such appeal shall be binding and shall, if different from that of the Secretary of State under paragraph 7 above, be substituted for the Secretary of State's decision.

10. Where the Academy has consented to be named in a child's statement of SEN, or the Secretary of State or SENDIST have determined that it should be named, the Academy shall admit the child notwithstanding any provision of Annex 2 of this agreement.



## **ANNEX 4 EXCELSIOR ACADEMY, NEWCASTLE**

### **Serious incidents of misbehaviour leading to fixed period or permanent exclusion**

1. In discharging their duties the Head and Governors of the Excelsior Academy will have regard to the Secretary of State's guidance on exclusions<sup>1</sup> as if the Academy were a maintained school, except that:

- references to the maintaining LA in paragraph 26(c) of the guidance should be construed as a references to the LA in which an excluded child is resident;
- the Academy, and not the LA, is responsible for making arrangements for independent appeal panels to hear appeals against permanent exclusions where the governors do not direct reinstatement (see paragraph 35 and part 5 of the guidance, and below);
- the governors are not expected to seek the advice of an LA officer when considering an exclusion (paragraph 73 of the guidance), although an LA officer may attend any meeting to consider an exclusion at the request of a parent; and
- part 8 of the guidance (arrangements for money to follow pupils who have been permanently excluded from school) does not apply.

#### Constitution and conduct of independent appeal panels

2. The Academy will be responsible for carrying out the functions assigned to the LA in part 5 of the guidance with regard to the management of the appeal procedure. Appeals panels must be impartial and constituted in accordance with the detailed provisions of paragraphs 95-97 of the guidance. The Academy will arrange suitable training for appeal panel members and clerks.

3. The appeal panel's decision is final and binding on the Academy. A parent may seek a judicial review of a panel's decision. A parent may not, however, appeal to the Commissioner for Local Administration (the Local Government Ombudsman) about maladministration because the Commissioner's remit is limited to considering the conduct of appeal panels constituted by LAs.

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<sup>1</sup> References in this annex to the Secretary of State's guidance are to "Improving Behaviour and Attendance: Guidance on Exclusion from Schools and Pupil Referral Units", which is published on the DfES website at: <http://www.teachernet.gov.uk/wholeschool/behaviour/exclusion/guidance/>. The guidance may be subject to amendment, and the Academy is required to have regard to the guidance as it stands at any given time.