

**CFBT SCHOOLS TRUST**

**MASTER FUNDING AGREEMENT**

**19 August 2011**

# **CfBT SCHOOLS TRUST**

## **ACADEMIES**

### **MASTER 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 CfBT Schools Trust (the “Company”).
- 2) The Company is a company incorporated in England and Wales, limited by guarantee with registered Company number 07468210.
- 3) The Company intends to establish and maintain, and to carry on or provide for the carrying on of a number of Academies in accordance with this Agreement and the Supplemental Agreements.
- 4) This Agreement and the Supplemental Agreements will apply in respect of an Academy from such time as a Supplemental Agreement relating to that Academy shall have been entered into between the Secretary of State and the Company.
- 5) 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 73;
  - b) "Academy Financial Year" - clause 67;
  - c) “Accounting Officer” – clause 72;
  - d) "Annual Letter of Funding" - clause 66;
  - e) "GAG" – clause 36;
  - f) "Capital Expenditure" - clause 37;
  - g) “Capital Grant” – clause 37;
  - h) "EAG" - clause 36;
  - i) “Local Governing Body” – clause 15;
  - j) “Recurrent Expenditure” – clause 36;

k) "Start-up Period" – clause 56;

6) In this Agreement the following words and expressions shall have the following meanings:-

"Additional Trustees" means Trustees who may be appointed by the Secretary of State following a warning notice in accordance with the Articles of Association;

"Academy" – an Academy in respect of which a Supplemental Agreement has been entered into between the Secretary of State and the Company and the expression "Academies" shall refer to all or any of such Academies;

"admission requirements" – are annexed to the relevant Supplemental Agreement;

"this Agreement" means this agreement and its annexes and a reference in this Agreement to a numbered clause or annex is a reference to the clause or annex of this Agreement bearing that number or letter as the same may be amended or supplemented from time to time;

"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;

"DfE" means Department for Education;

"Further Trustees" means Trustees who may be appointed by the Secretary of State under the Articles of Association if a Special Measures Termination Event, as defined in the relevant Supplemental Agreement, occurs or if the Secretary of State is satisfied that a Member or Trustee of the Company is not a suitable person;

"Principal" means the head teacher of an Academy;

"Principal Regulator" means the body or person appointed as the Principal Regulator under the Charities Act 2006;

."LA" means the Local Authority in the area in which the relevant Academy is situated;

"Memorandum" and "Articles" means the Memorandum and Articles of Association of the Company 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;

references to "school" shall where the context so admits be references to an Academy;

"relevant qualification" has the same meaning as that given to the expression in section 96 of the Learning and Skills Act 2000;

"SEN" means Special Educational Needs;

"Supplemental Agreement" means an agreement supplemental to this Agreement to be entered into by the Secretary of State and the Company pursuant to which the Company agrees to establish and maintain, and to carry on or provide for the carrying on, and the Secretary of State agrees to fund, an Academy in accordance with the terms and conditions of that Supplemental Agreement and this Agreement. For the avoidance of doubt, 'Supplemental Agreement' includes any variations of such agreement executed by deed by the Secretary of State and the Company.

- 7) The Interpretation Act 1978 shall apply for the interpretation of this Agreement and any Supplemental Agreement as it applies for the interpretation of an Act of Parliament.
- 8) Expressions defined in this Agreement shall have the same meaning where used in any Annex to this Agreement or Supplemental Agreement.
- 9) Questions arising on the interpretation of the arrangements in this Agreement shall be resolved by the Secretary of State after consultation with the Company.

10) 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."

10A) This Agreement supersedes and replaces the agreement dated 21/12/2010 entered into between the Secretary of State for Education (1) and the Company (2) ("the Original Master Agreement") which from the date of this Agreement shall have no further effect.

## **LEGAL AGREEMENT**

11) In consideration of the Company undertaking to establish and maintain, and to carry on or provide for the carrying on of, of a number of independent schools in England having such characteristics as are referred to in clause 12, the Secretary of State agrees to make payments to the Company in accordance with the conditions and requirements set out in this Agreement and Supplemental Agreements. If it is agreed between the Secretary of State and the Company that the Company will establish and maintain, and to carry on or provide for the carrying on of an Academy, the parties will enter into a Supplemental Agreement in relation to that Academy. For the avoidance of doubt:

a) any obligations imposed upon or powers given to an Academy by this Agreement or any Supplemental Agreement are also imposed upon the Company; and

b) insofar as any provisions in this Agreement conflict with any provisions in a Supplemental Agreement the relevant provisions of the Supplemental Agreement shall prevail over the relevant provisions of this Agreement.

## **CHARACTERISTICS OF AN ACADEMY**

- 12) The characteristics of an Academy set down in Section 1(6) of the Academies Act 2010, are that:
- a) The school has a curriculum satisfying the requirements of section 78 of EA 2002 (balanced and broadly based curriculum)
  - b) If the school provides secondary education, its curriculum for the secondary education has an emphasis on a particular subject area, or particular subject areas, specified in the Agreement;
  - c) Subject to Section 6(4) of the Academies Act in relation to selective Academies, the school provides education for pupils of different abilities<sup>1</sup>
  - d) the school provides education for pupils who are wholly or mainly drawn from the area in which the school is situated.

## **CONDITIONS OF GRANT**

### General

- 13) Other conditions and requirements in respect of an Academy, unless specified otherwise in a Supplemental Agreement or its Annexes, 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, subject to clause 30 (d);
  - c) the admissions policy and arrangements for the school will be in accordance with admissions law, and the DfE Codes of Practice, as they apply to maintained schools;

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<sup>1</sup> This clause will not apply to any Supplemental Funding Agreement entered into in relation to an Academy which is a “selective school” within the meaning of Section 6[4] of the Academies Act 2010

d) teachers' levels of pay and conditions of service for all employees will be the responsibility of the Company;

e) there will be an emphasis on the needs of the individual pupils including pupils with special education 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.

g) the Company 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.

## **Governance**

14) Each Academy will be governed by the Company. The Company 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.

15) The Company shall establish, for each Academy, an Advisory Body, whose role shall be to provide advice to the Company in relation to the functioning of that Academy. The role of the Advisory Body and the membership of it shall be for the Company to decide, but the Company will, as a minimum, ensure that:

a) a minimum of two parents of a pupil at the Academy (to be elected by the parents of registered pupils of the Academy) shall be a member of the Advisory Body;

b) up to two employees at the Academy (to be elected by employees of the Academy) shall be a member of the Advisory Body;

c) any advice of the Advisory Body is brought to the attention of the Trustees of the Company;

d) to the extent that the Company may, in accordance with the Articles, choose to establish a Local Governing Body, then the Company may additionally constitute the Advisory Body as the Academy's Local Governing Body.

## **Conduct**

16) Each Academy shall be conducted in accordance with:

a) the Articles, which shall not be amended by the Company without the written 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 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 and the relevant Supplemental Agreement, provided that insofar as any provisions in this Agreement conflict with any provisions in a Supplemental Agreement the relevant provisions of the Supplemental Agreement will prevail over the relevant provisions of this Agreement.

## **Criminal Records Bureau Checks**

17) The Company shall comply with the requirements of paragraph 4 of the Schedule to the Education (Independent School Standards) (England) Regulations 2003 (as amended) 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 Trustees and the Chair of the Local Governing Body.

## **Pupils**

18) Each Academy will, subject to Section 6 (3) of the Academies Act 2010, will be an all ability inclusive school, whose requirements for:

- a) the admission of pupils to an Academy are set out in the relevant annex to the Supplemental Agreement;
- b) the admission to the Academy of and support for pupils with SEN and with disabilities (for pupils who have and who do not have statements of SEN) are set out in Annex B to this Agreement;
- c) pupil exclusions are set out in Annex C to this Agreement.

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

18A) The Company will in respect of each 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 a local authority 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 Trustees of the Company.

### **Teachers and other staff**

19) Subject to clause 20, the Company 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 relevant Academy were a maintained school.

20) Clause 19 does not apply to anyone who:

- a) was transferred to the employment of the Company by virtue of the Transfer of Undertakings (Protection of Employment) Regulations 2006; and
- 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 Company shall use its best endeavours to ensure that any transferred staff member who undertakes specified work and does not meet the requirements of either clause 20(a) or clause 20(b) meets such requirements as soon as possible.

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

22) The Company shall ensure that all employees at their Academies other than teachers ("Non-teaching Staff") have access to either the Local Government Pension Scheme in accordance with the Local Government Pension Scheme (Administration) Regulations 2008 [SI 2008/239] ("the Regulations"), where the Regulations require this, or such other pension benefits as those Regulations, or any legislation which may in the future replace the Regulations, require for Non-teaching Staff.

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

23) The curriculum provided by each Academy to pupils up to the age of 16 shall be broad and balanced. The specialism for each Academy in relation to its secondary curriculum will be set out in the relevant Supplemental Agreement.

24) The Company shall ensure that the broad and balanced curriculum includes English, Mathematics and Science.

25) The Company shall make provision for the teaching of religious education and for a daily act of collective worship at each Academy.

26) Where an Academy is designated with a religious character<sup>2</sup> in accordance with section 124B of the School Standards and Framework Act 1998 or further to section 6(8) of the Academies Act 2010:

- a) subject to clause 28, the Company shall ensure that provision is made for Religious Education to be given to all pupils at the Academy in accordance with the tenets of the specified religion or religious denomination of the Academy;
- b) subject to clause 28, the Company shall comply with the requirements of section 70(1) of, and Schedule 20 to, the School Standards and Framework Act 1998 as if the Academy were a foundation school with a religious character or a voluntary school, and as if references to 'the required collective worship' were references to collective worship in accordance with the tenets and practices of the specified religion or religious denomination of the Academy;
- c) the Company shall ensure that the quality of Religious Education given to pupils at the Academy and the contents of the Academy's collective worship given in accordance with the tenets and practice of the specific religion or religious denomination are inspected. Such inspection shall be conducted by a person chosen by the Company and the Academy shall secure that such inspection shall comply with the requirements set out in any statutory provision and regulations as if the Academy were a foundation of voluntary school which has been designated under section 69(3) of the School Standards and Framework Act 1998 as having a religious character.

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<sup>2</sup> Alternative provisions are available and would be potentially appropriate for non-denominational faith schools.

27) Where an Academy has not been designated with a religious character in accordance with section 124B of the School Standards and Framework Act 1998 or further to Section 6(8) of the Academies Act 2010:

a) subject to clause 28, the Company shall ensure that 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;

b) subject to clause 28, the Company shall ensure that the Academy complies 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.

28) Section 71(1) – (6) and (8) of the School Standards and Framework Act 1998 shall apply as if each 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 by each Academy in accordance with clauses 26 or 27 as appropriate.

29) The Company shall have regard to any guidance issued by the Secretary of State on sex and relationship education to ensure that children at each 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.

### **Assessment**

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

a) The Company 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 Company shall report to any body on assessments under clause 30 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 Company will submit each Academy to monitoring and moderation of its assessment arrangements as prescribed by the Secretary of State.

d) The Company may not offer courses at any Academy which lead to relevant qualifications unless the Secretary of State gives specific approval for such courses.

### **International Education Surveys**

30A) In relation to the Academy only, the Secretary of State may, by notice in writing to the Company, require the Company to participate in an international education survey and the Company 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.

### **Exclusions Agreement**

31) From 1 April 2009, the Company shall, if invited to do so by an LA, enter into an agreement in respect of an Academy with that LA, which has the effect that where:

a) the Company admits a pupil to the Academy who has been permanently excluded from a maintained school, the Academy itself or another Academy with whom the LA has a similar agreement; or

b) the Company permanently excludes a pupil from the Academy

payment will flow between the Company and the LA in the same direction and for the same amount that it would, were the Academy a maintained school, under Regulations made under section 47 of the School Standards and Framework Act 1998 relating to the addition or deduction of a maintained school's budget following a permanent exclusion or the admission of a permanently excluded pupil. At the date of this Agreement, the applicable Regulation is Regulation 23 of the School Finance (England) Regulations 2008.

### **School Meals**

32) The Company shall, if requested to do so by or on behalf of any pupils at any Academy, provide school lunches for those pupils unless it would be unreasonable for it to do so. Subject to the provisions of clause 33 charges may be levied for lunches, but the Company shall otherwise fund the cost of such school lunches from its GAG.

33) 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 Company shall ensure that a school lunch is provided for such a pupil free of charge to be funded out of the Company's GAG.

### **Charging**

34) 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 (including, for the avoidance of doubt, any secondary legislation made further to those provisions) shall be deemed to apply to each Academy with the following modifications:

- a) references to any maintained school shall be treated as references to an Academy;
- b) references to registered pupils shall be treated as references to registered pupils at an Academy;

- c) references to the governing body or the local education authority shall, in each case, be treated as references to the Company;
- 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 Company may charge persons who are not registered pupils at an Academy for education provided or for facilities used by them at that Academy.

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

### **General**

35) The Secretary of State shall pay grants towards Recurrent Expenditure and may pay grants towards Capital Expenditure for each Academy. Except with the Secretary of State's prior agreement, the Company shall not budget for its expenditure in any Academy Financial Year in excess of expected income. The Company 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 Company shall commit the Secretary of State to paying any particular amount of grant.

36) "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 37. 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**

37) "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 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 Company in respect of Capital Expenditure.

38) Where an 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.

39) Any Capital Expenditure incurred in respect of each 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.

40) Any payment of Capital Grant to the Company 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 Company 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**

41) Capital Grant will be paid by the Secretary of State to the Company 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. 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 40 are complied with. 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 Company so much of the claim as shall not be in dispute.

### **Implementation Grant<sup>3</sup>**

42) "Implementation Grant" means payments towards Recurrent Expenditure incurred for the establishment of an Academy prior to it opening.

43) The Secretary of State may enter into an agreement with a third party ("Project Management Company") for the provision of project management services to assist in the establishment of an Academy. Where such an agreement has been entered into, the Secretary of State shall pay Implementation Grant to the Project Management Company in accordance with that agreement.

44) If the Secretary of State has indicated that Implementation Grant will be payable, the Company shall prepare and submit to the Secretary of State a budget, for each Academy, showing expected Recurrent Expenditure to be incurred by the Company before the Academy opens and for which grant is sought. This budget must either be agreed to or modified by the Secretary of State as he considers appropriate ("Approved Implementation Budget").

45) Both parties recognise that as the project develops it may be necessary to revise individual costs in an Approved Implementation Budget and to move costs between budget headings in order to ensure that the project remains within its approved budget. Where the Company wishes to make such an adjustment of over £10,000, the reason for the change and a revised budget must be submitted to the Secretary of State for approval.

46) The Secretary of State will pay Implementation Grant to the Company on the basis of claims for grant submitted to the Secretary of State in accordance with the Approved Implementation Budget and in the notified format with supporting invoices, receipts and documents as required by the Secretary of State. If the grant claim is acceptable, the Secretary of State undertakes to pay the amount due within 21 days from the day on which it was received. 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.

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<sup>3</sup> Note that the Secretary of State will not pay Implementation Grant pursuant to these clauses in

47) Any amount in the Approved Implementation Budget in respect of which the expenditure has not been incurred by the Company by the date on which the applicable 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 applicable 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 Company in respect of the applicable Academy after that Academy 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 Company.

### **General Annual Grant**

48) GAG will be paid by the Secretary of State to the Company in order to cover the normal running costs of each 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;

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relation to (a) schools applying to convert further to the Academies Act 2010 and (b) Academies which do not replace existing state-funded provision.

- 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.

49) Subject to clauses to 57-58, GAG for each Academy Financial Year for each Academy will be the total of the following areas of funding;

- a) Formula Funding: Funding equivalent to the level of funding which would be provided through the funding formula of the LA to a maintained school which had all of that Academy's relevant characteristics, including its number of pupils;
- b) Local Authority Central Spend Equivalent: Funding representing a proportion of the LA Education Budget money which the LA would be able to retain, from the non-delegated elements of the Schools Budget and the relevant items in the LA

Budget, if that Academy were a maintained school. The proportion which this funding will represent will be based on the elements of the LA's Section 251 Budget Return which are relevant to that Academy.

c) Specialist Schools Allowance: Funding equivalent to that which a maintained school with that Academy's characteristics would receive in respect of their participation in the specialist schools programme. In the year of conversion, this may continue to be paid by the Local Authority;

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

- a) funding for matters for which it is necessary for that 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 schools, where the relevant Academy meets the requisite conditions and criteria necessary for a maintained school to receive these grants.

51) Subject to clause 52, the basis of the pupil number count for the purposes of determining GAG for an Academy Financial Year for an Academy will be in the first year of conversion, the same basis as that used by the Local Authority for determining the budget share of the predecessor maintained school as adjusted by numbers counted in any subsequent Schools Census, as determined by the Secretary of State. In subsequent years the basis of the pupil count will be as determined by the Secretary of State.

52) Once the conditions specified in clause 53 have been satisfied with respect to an Academy for the Academy Financial Year for which funding is being calculated, the basis of the pupil number count for the purpose of determining GAG for that Academy will be:

- a) for the pupil number count for pupils in Year 11 and below, the Schools Census for the January preceding the Academy Financial Year in question; and

b) for the pupil number count for pupils in Year 12 and above, the formula which for the time being is in use for maintained schools for the calculation of pupil numbers for pupils in Year 12 and above for the purpose of calculating their level of funding.

53) For the purpose of clause 52, the conditions are:

- a) all planned Year-groups will be present at the Academy (that is, all the pupil cohorts relevant to the age-range of the Academy will have some pupils present); and
- b) the total number of pupils as measured in the Schools Census for the preceding January is 90% or more of the planned final size of the Academy, as specified in the Academy's Supplemental Agreement.
- c) The Secretary of State had determined that the basis shall be as provided for in Clause 52.

54) For any Academy Financial Year in which GAG for an Academy has been calculated in accordance with clause 51, no adjustment shall be made to the following Academy Financial Year's formula funding element of GAG for that Academy to recognise variation from the pupil count basis used.

55) For any Academy Financial Year in which GAG for an Academy is calculated in accordance with clause 52, no adjustment will be made to the formula funding element in the following Academy Financial Year's formula funding element of GAG unless the Company demonstrates to the satisfaction of the Secretary of State that there has been a significant impact on costs, such as an extra class. For any other element of GAG the Secretary of State may make adjustments to recognise a variation in pupil numbers from that used to calculate the element of grant in question; the basis of these will be set out in the annual letter of funding.

56) 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 Academy Financial 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 may 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 49-55, in order to enable the Academy to operate effectively.<sup>4</sup> The Company shall 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 maintained schools which have closed, additional GAG resources may 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. If the Secretary of State has indicated that such additional GAG will be payable, the Company will make a bid for this addition to GAG based upon need and providing appropriate supporting evidence.

57) 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 49-55 to allow the relevant 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.

58) The Secretary of State recognises that if he serves notice of intention to terminate a Supplemental Agreement under that agreement, or if the Company does

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<sup>4</sup> The Start-up Period is not applicable to schools applying to convert further to the Academies Act

so, the intake of new pupils during the notice period is likely to decline and that in such circumstances payments based simply upon the number of pupils attending the relevant Academy are unlikely to be sufficient to meet the Academy's needs during the notice period. The Secretary of State may undertake to pay a reasonable and appropriately larger GAG with respect to that Academy in the notice period than would be justified solely on the basis of the methods set out in clauses 49-55 or as set out in the relevant Supplemental Agreement, in order to enable the Academy to operate effectively.

59) The Secretary of State also recognises that if this Agreement or a Supplemental Agreement is terminated for any reason by either party the number of pupils at the relevant Academy or Academies 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.

60) Subject to clause 79, GAG paid by the Secretary of State in respect of an Academy shall only be spent by the Company towards the normal running costs of that Academy.

### **Earmarked Annual Grant**

61) Earmarked Annual Grant ("EAG") shall be paid by the Secretary of State to the Company 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 Company and as described in the relevant funding letter. The Company shall only spend EAG in accordance with the scope, terms and conditions of the grant set out in the relevant funding letter.

62) Where the Company 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 at an address notified from time to time.

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

63) The Secretary of State shall notify the Company at a date preceding the start of each Academy Financial Year of the GAG and EAG figures in respect of each 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.

64) 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 Company.

65) If GAG or EAG is calculated incorrectly because the Company 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 Company.

66) The amounts of GAG for an Academy Financial Year will be determined annually by the Secretary of State. The amount of GAG for each Academy for the initial Academy Financial Year will be notified to the Company in a funding letter at a date preceding that year. For subsequent years the amount of GAG will be notified to the Company in a funding letter not later than 1 April preceding that Academy Financial Year (the "Annual Letter of Funding"). The Annual Letter of Funding will not include the amount that the Company 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 Company wherever possible in the Annual Letter of Funding or as soon as practicable thereafter.

67) For the purposes of this Agreement, an Academy 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**

68) -Subject to the Company first obtaining the Secretary of State's consent to make the relevant redundancies, which consent shall not be unreasonably withheld or delayed, 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 except in relation to schools applying to convert further to section 3 of the Academies Act 2010 and Academies which do not replace a state-funded educational institution that has been or is to be discontinued<sup>5</sup>. (For the avoidance of doubt, an Academy does not replace a state-funded educational institution if it provides education for pupils of a wider range of ages than the state-funded educational institution.) The Secretary of State shall, except in relation to schools applying to convert further to section 3 of the Academies Act 2010 and Academies which do not replace a state-funded educational institution that has been or is to be discontinued, meet the costs of the employees' prior eligible service, being service prior to the opening of the Academy, and the Company will meet the costs of service after the opening of the Academy.

69) The Secretary of State may meet costs incurred by the Company in connection with the transfer of employees from any predecessor school under the Transfer of

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<sup>5</sup> An Academy does not replace a state-funded educational institution if it provides education for

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 Company 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.

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

71) The Company may also receive grant funding for each Academy from the relevant LA's Standards Fund. The extent of any grant funding received by the Academy Trust from the Local Authority may be equivalent to that which a Local Authority would pay to a maintained school using grant monies paid to it by the Secretary of State. Grants paid to the Company from the Standards Fund are not paid under this Agreement.

## **FINANCIAL AND ACCOUNTING REQUIREMENTS**

### **General**

72) The Company shall appoint an Accounting Officer and shall notify the Secretary of State of that appointment.

73) In relation to the use of grant paid to the Company by the Secretary of State, the Company shall abide by the requirements of and have regard to the guidance in the Academies Financial Handbook published by the DfE and amended from time to time and as modified to take account of the fact that the Company manages more than one Academy, which sets out in detail provisions for the financial management of each 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.

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pupils of a wider range of ages than the state-funded educational institution.

74) The formal budget plan must be approved each Academy Financial Year by the Trustees of the Company.

75) Any payment of grant by the Secretary of State in respect of each Academy is subject to his being satisfied as to the fulfilment by the Company 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 Company shall prepare its financial statements, Trustees' report, Annual Accounts and its Annual Return in accordance with the Statement of Recommended Practice as if the Company was a non-exempt Charity and/or in such form or manner as the Secretary of State may reasonably direct and shall file these with the Secretary of State and the Principal Regulator by 31 December 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 Company's affairs and that the grants were used for the purposes intended;
- e) the Company shall ensure that its accounts are audited annually by independent auditors appointed under arrangements approved by the Secretary of State;
- f) the Company prepares and files with the Companies Registry such annual accounts as are required by the Companies Act 2006;

- g) the Company 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 Trustees of the Company;
- h) the Company 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 each Academy is situated;

76) 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 Company to standards determined by the Secretary of State and to make recommendations for improving the financial management of the Company.

77) The books of accounts and all relevant records, files and reports of the Company 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 Company 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.

78) Provided that the Secretary of State shall have provided details of the GAG and EAG at least six weeks beforehand, the Company shall submit indicative budgets relating to each 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 relevant 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.

79) At the beginning of any Academy Financial Year the Company may hold unspent GAG for any Academy from previous Academy Financial Years amounting to up to 12% 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. This carried forward amount may be used as follows:

- a) equivalent of up to 2% of the total GAG payable in the Academy Financial Year just ended may be used by the Company for any of the purposes for which GAG is paid, whether for the purposes of the relevant Academy or for the purposes of any other Academy;
- b) equivalent of up to 12% of the total GAG payable in the Academy Financial Year just ended, or such higher figure as may from time to time be agreed, minus any amount used under sub-clause (a) above, may be used on the upkeep and improvement of premises, including the costs of equipment and routine repairs and maintenance of the relevant Academy, and on capital expenditure relating to the relevant Academy.

80) Notwithstanding clause 79, any additional grant provided over and above that set out in clauses 49-55 and made in accordance with clauses 56-58 may be carried forward without limitation or deduction until the Start-up Period or the circumstances set out in clause 58 come to an end.

81) Any savings of GAG not allowed to be carried forward under clauses 79-80 will be taken into account in the payment of subsequent grant.

82) The Company may also accumulate funds from private sources or public sources other than grants from the Secretary of State for application to the benefit of an

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 Company's balance sheet.

83) The Company 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 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.

84) The Company shall provide 30 days notice to the Secretary of State, whether or not the circumstances require the Secretary of State's consent, 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.

85) 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 Company to the Secretary of State at the earliest opportunity.

86) It is the responsibility of the Company to ensure that each Academy balances its budget from Academy Financial Year to Academy Financial Year. For the avoidance of doubt, this does not prevent the Company 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 Company's responsibility to ensure that the Company balances its overall budget from Academy Financial Year to Academy Financial Year.

86A) The Company shall abide by the requirements of and have regard to the guidance in the Protecting Charities from Harm ('the compliance toolkit') published by the Charity Commission and amended from time to time. 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**

87) The Company 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 Company 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 Company 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.

88) The Company 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 87 above.

### **Disposal of Assets**

89) Where the Company 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 Company 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.

90) The sale or disposal by other means, or reinvestment of proceeds from the disposal, of a capital asset by the Company 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 £20,000 for the asset; or
- b) the asset was transferred to the Company from an LA for no or nominal consideration.

91) 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 £1,000,000 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.

92) 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 Company. In this event, the Company 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 Company for its charitable purposes.

93) 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 Company 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 Company. The

Secretary of State will have regard to any representations from the Company and the LA from which the asset was transferred before giving consent under this clause.

94) Except with the consent of the Secretary of State, the Company 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.

95) The Company 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 94 above.

## **TERMINATION**

### **General**

96) This Agreement shall commence on the date hereof and continue until terminated in accordance with clause 97 or until all Supplemental Agreements have terminated.

97) The Secretary of State may at any time by notice in writing terminate this Agreement and each of the Supplemental Agreements forthwith on the occurrence of any of the following events:-

a) the Company 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 Company proposes a voluntary arrangement within Section 1 of the Insolvency Act 1986 (as amended); or

c) the Company 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 Company 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 Company; or

d) the Company 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 Company's property and is not paid out, withdrawn or discharged within fifteen Business Days; or

f) the Company has passed a resolution for its winding up; or

g) an order is made for the winding up or administration of the Company.

97A) The Company 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 Company and shall provide an explanation to the Secretary of State of the circumstances giving rise to the service of such a petition.

97B) If the Secretary of State is satisfied that any Trustee or Member of the Company or any member of an Advisory Body and/or a Local Governing Body is not a suitable person he may:

(a) in relation to such a Trustee or Member of the Company serve notice in writing on the Company requiring the Company to procure the resignation or removal of the person(s) within 42 days; and if the Company fails to procure the said resignation or removal within the time specified, the Secretary of State may:

(i) by notice terminate this Agreement forthwith or may provide up to 12 months' notice in writing to terminate this Agreement; or

(ii) appoint such Further Trustees as he thinks fit and/or provide up to 12 months' notice in writing to terminate this Agreement and each of the Supplemental Agreements;

(b) in relation to such a member of an Advisory Body and/or a Local Governing Body who has been appointed by the Company, serve notice in writing on the Company requiring the Company to procure the resignation or removal of the person(s) from the relevant Advisory and/or Local Governing Body within 21 days; and if the Company fails to procure the said resignation or removal within the time specified, the Secretary of State may by notice terminate the Supplemental Agreement applicable to the Academy which the relevant member serves ("the Relevant Supplemental Agreement") forthwith or may provide up to 12 months' notice in writing to terminate the Relevant Supplemental Agreement;

98) If, following the exercise of the Secretary of State's powers to appoint Additional Trustees or Further Trustees, pursuant to the Articles of Association the Members pass an ordinary or special resolution to remove one or more of those Additional or Further Trustees appointed by the Secretary of State, the Secretary of State may give the Company 12 months, or such lesser period as he considers appropriate in the circumstances, written notice to terminate this Agreement or, as the Secretary of State may in his absolute discretion decide, any of the Supplemental Funding Agreements.

99) Following the Members passing a resolution as described in clause 98, the Secretary of State's right to terminate this Agreement under clause 98 shall cease if he removes one or more Additional Trustees or Further Trustees and fails to replace at least one Additional Trustee or Further Trustee within 30 days of their removal resulting in there being no remaining Additional Trustee or Further Trustee on the governing body of the Company.

### **Effect of Termination**

100) 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 Company and shall co-operate in making any associated amendments to the Articles of Association.

## **GENERAL**

### **Information**

101) 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, any 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) 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;
- g) numbers of pupils excluded (including permanent and fixed term exclusions);
- h) levels of authorised and unauthorised attendance;
- i) charging and remissions policies and the operation of those policies;
- j) organisation, operation and building management;
- k) financial controls;
- l) compliance with the requirements and guidance in the Protecting Charities From Harm ('compliance toolkit') published by the Charity Commission and amended from time to time; and

m) membership and proceedings of the Company and the Local Governing Body.

102) The Company 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 Company with such information as it may reasonably require of him for the running of an Academy.

102A) (i) The Company shall provide to the Secretary of State the name of any new or replacement Member or Trustee of the Company or any new or replacement member of an Advisory Body and/or a Local Governing Body whether such a person has been appointed or elected, together with the date of such an appointment or election and, where applicable, the name of the Member, Trustee or member of an Advisory Body and/or a Local Governing Body such a person replaces as soon as is practicable and in any event within 14 days of the appointment or election of such a person.

(ii) In this regard, the Company shall not appoint any new or replacement Members or Trustees of the Company or any new or replacement members of an Advisory Body and/or a Local Governing Body until it has first (a) notified such persons that their name shall be shared with the Secretary of State and (b) explained to the new or replacement Members or Trustees of the Company or the new or replacement members of an Advisory Body and/or a Local Governing Body that the reason their name is being shared with the Secretary of State is to enable the Secretary of State to assess their suitability.

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

103) The Company shall allow access to the premises of any Academy at any reasonable time to DfE officials. All records, files and reports relating to the running of the Company and each Academy shall be available to them at any reasonable time. The Company shall provide the Secretary of State in advance with papers relating to each Academy prepared for meetings of the Local Governing Body, of the Company's Trustees and of the Members of the Company. Two DfE officials shall be entitled to attend and to speak at all such meetings, but shall withdraw from any discussion of an Academy's or the Company's relationship with the Secretary of State or any discussion of bids for funding to the Secretary of State. The Company

shall take any steps which are required to secure its compliance with the obligations imposed by this clause of this Agreement.

104) The Company shall ensure that:

- a) the agenda for every meeting of the relevant Local Governing Body and the Company's Trustees;
- 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 relevant Academy and, as soon as is reasonably practicable, sent to the Secretary of State.

105) 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 104, any material relating to:

- a) a named teacher or other person employed, or proposed to be employed, at any Academy;
- b) a named pupil at, or candidate for admission to, any Academy; and
- c) any matter which, by reason of its nature, the Company is satisfied should remain confidential.

## **Notices**

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

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

### **Appointment of Additional or Further Trustees by the Secretary of State**

108) The Secretary of State undertakes to the Company not to exercise the powers under the Articles to appoint Additional Trustees or Further Trustees in the following circumstances:-

- a) if the matters giving rise to the appointment of the Additional or Further Trustees relate, in the reasonable opinion of the Secretary of State, to the affairs of only one Academy; and
- b) if the Company has delegated, and continues to delegate, to a Local Governing Body of such Academy all decisions and powers that the Secretary of State reasonably considers are necessary to enable such Local Governing Body to address the matters that gave rise to the appointment of the Additional or Further Trustees and to ensure that the relevant Local Governing Body is capable of properly conducting the affairs of the relevant Academy on the Company's behalf; and
- c) if the Company replaces such members of the Local Governing Body and/or appoints additional members of that Local Governing Body as, in either case, the Secretary of State may by notice in writing to the Company specify; and
- d) provided that such delegation is not subsequently revoked or, without the prior written consent of the Secretary of State, varied in any material respect.

## **General**

108A) This Agreement shall not be assignable by the Company.

109) The Secretary of State and the Company recognise the difficulties in catering in this Agreement and the Supplemental Agreements for all the circumstances which may arise in relation to the Academies 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 Academies throughout the currency of this Agreement.

This Agreement was executed as a Deed on 19 August 2011

Executed on behalf of **CfBT Schools Trust** by:

*W Woodcock* ..... *B. Adderley* .....

**Trustee**

**Trustee**

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

*Mary Pooley* .....



**Duly Authorised**

THE COMPANIES ACT 2006

A COMPANY LIMITED BY GUARANTEE

AND NOT HAVING A SHARE CAPITAL

ARTICLES OF ASSOCIATION

OF

CfBT SCHOOLS TRUST

COMPANY NUMBER: 07468210

THE COMPANIES ACT 2006

A COMPANY LIMITED BY GUARANTEE AND NOT HAVING A SHARE  
CAPITAL

ARTICLES OF ASSOCIATION

OF

CfBT SCHOOLS TRUST

INTERPRETATION

1. In these Articles:-

- a. "the Academies" means all the schools referred to in Article 5(h) and established by the Company (and "Academy" shall mean any one of those schools);
- b. "Academy Financial Year" means the financial year of the Company
- c. "Academy Trustees" means the Trustees appointed pursuant to Articles 51-52 and Academy Trustee shall mean any one of those Trustees;
- d. "Additional Trustees" means the Trustees appointed pursuant to Article 61 and 61A;
- e. "the Articles" means these Articles of Association of the Company;
- f. "Chief Executive Officer" means such person as may be appointed by the Trustees as the Chief Executive Officer of the Company;
- g. "Chief Inspector" means Her Majesty's Chief Inspector of Education, Children's Services and Skills or his successor;
- h. "clear days" in relation to the period of a notice means the period excluding the day when the notice is given or deemed to be given and the day on which it is given or on which it is to take effect;
- i. "the Company" means save as otherwise defined at Article 6.9 the company intended to be regulated by these Articles and referred to in Article 2;

- j. “the Trustees” means save as otherwise defined at Article 6.9 the directors of the Company (and “Trustee” means any one of those directors);
- k. “financial expert” means an individual, company or firm who is authorised to give investment advice under the Financial Services and Markets Act 2000;
- l. “Further Trustees” means the Trustees appointed pursuant to Article 62 ;
- m. “Headteacher Trustees” means the Trustees appointed pursuant to Articles 52A-52B and Headteacher Trustee shall mean any one of those Trustees;
- n. “the LAs” means all the local authorities covering the areas in which the Academies are situated (and “the LA” shall mean any one of these local authorities);
- o. “Local Authority Associated Persons” means any person associated with any local authority within the meaning given in section 69 of the Local Government and Housing Act 1989;
- p. “Local Governing Bodies” means the committees appointed pursuant to Articles 100-104 (and “Local Governing Body” means any one of these committees );
- q. “Member” means a member of the Company and someone who as such is bound by the undertaking contained in Article 8 ;
- r. “the Memorandum” means the Memorandum of Association of the Company;
- s. “Office” means the registered office of the Company;
- t. “Principal Regulator” means the body or person appointed as the Principal Regulator under the Charities Act 2006;
- u. “Principal Sponsor” means CfBT Education Trust, a company limited by guarantee and registered as a charity with number 270901, a subscriber to the Memorandum and Articles;

- v. "Principals" means the head teachers of the Academies (and "Principal" means any one of these head teachers);
- w. "Relevant Funding Agreements" means the agreement or agreements entered into by the Company and the Secretary of State under section 1 of the Academies Act 2010 for the establishment of each Academy, including any variation or supplemental agreements thereof;
- x. "the seal" means the common seal of the Company if it has one;
- y. "Secretary" means the secretary of the Company or any other person appointed to perform the duties of the secretary of the Company, including a joint, assistant or deputy secretary;
- z. "Secretary of State" means the Secretary of State for Education or successor;
- aa. "Sponsor Trustees" means the Trustees appointed in accordance with Article 50 and "Sponsor Trustee" shall mean any one of these Trustees;
- bb. "teacher" means a person employed under a contract of employment or a contract for services or otherwise engaged to provide his services as a teacher at one or more Academies;
- cc. "the United Kingdom" means Great Britain and Northern Ireland;
- dd. words importing the masculine gender only shall include the feminine gender. Words importing the singular number shall include the plural number, and vice versa;
- ee. subject as aforesaid, words or expressions contained in these Articles shall, unless the context requires otherwise, bear the same meaning as in the Companies Act 2006, as appropriate;
- ff. any reference to a statute or statutory provision shall include any statute or statutory provision which replaces or supersedes such statute or statutory provision including any modification or amendment thereto.

2. The Company's name is CfBT Schools Trust (and in this document it is called

**“the Company”**).

3. The Company’s registered office is to be situated in England and Wales.

## OBJECTS

4. Subject to Article 4.1, the Company’s objects (**“the Objects”**) are specifically restricted to the following: to advance for the public benefit education in the United Kingdom, in particular but without prejudice to the generality of the foregoing by establishing, maintaining, carrying on, managing and developing schools (**“the Academies”**); offering a broad and balanced curriculum.

- 4.1 In the event that the Company establishes, maintains, carries on, manages and develops Academies which are designated with a religious character, such Academy shall be conducted in accordance with the tenets, practices and teachings of the designated religion.

5. In furtherance of the Objects but not further or otherwise the Company may exercise the following powers:-

- (a) to draw, make, accept, endorse, discount, execute and issue promissory notes, bills, cheques and other instruments, and to operate bank accounts in the name of the Company;

- (b) to raise funds and to invite and receive contributions provided that in raising funds the Company shall not undertake any substantial permanent trading activities and shall conform to any relevant statutory regulations;

- (c) to acquire, alter, improve and (subject to such consents as may be required by law) to charge or otherwise dispose of property;

- (d) subject to Article 6 below to employ such staff, as are necessary for the proper pursuit of the Objects and to make all reasonable and necessary provision for the payments of pensions and superannuation to staff and their dependants;

- (e) to establish or support, whether financially or otherwise, any charitable trusts, associations or institutions formed for all or any of the Objects;

- (f) to co-operate with other charities, other independent and maintained schools, voluntary bodies and statutory authorities operating in furtherance of the Objects and to exchange information and advice with them;
- (g) to pay out of funds of the Company the costs, charges and expenses of and incidental to the formation and registration of the Company;
- (h) to establish, maintain, carry on, manage and develop the Academies at locations to be determined by the Trustees;
- (i) to offer scholarships, exhibitions, prizes and awards to pupils and former pupils, and otherwise to encourage and assist pupils and former pupils;
- (j) to provide educational facilities and services to students of all ages and the wider community for the public benefit;
- (k) to carry out research into the development and application of new techniques in education in particular in relation to the areas of curricular specialisation of each of the Academies and to their approach to curriculum development and delivery and to publish the results of such research, and to develop means of benefiting from application of the experience of industry, commerce, other schools and the voluntary sector to the education of pupils in academies;
- (l) subject to such consents as may be required by law and/or by any contract entered into by or on behalf of the Company, to borrow and raise money for the furtherance of the Objects in such manner and on such security as the Company may think fit;
- (m) to deposit or invest any funds of the Company not immediately required for the furtherance of its objects (but to invest only after obtaining such advice from a financial expert as the Trustees consider necessary and having regard to the suitability of investments and the need for diversification);
- (n) to delegate the management of investments to a financial expert, but only on terms that:

- (i) the investment policy is set down in writing for the financial expert by the Trustees;
  - (ii) every transaction is reported promptly to the Trustees;
  - (iii) the performance of the investments is reviewed regularly with the Trustees;
  - (iv) the Trustees are entitled to cancel the delegation arrangement at any time;
  - (v) the investment policy and the delegation arrangement are reviewed at least once a year;
  - (vi) all payments due to the financial expert are on a scale or at a level which is agreed in advance and are notified promptly to the Trustees on receipt; and
  - (vii) the financial expert must not do anything outside the powers of the Trustees;
- (o) to arrange for investments or other property of the Company to be held in the name of a nominee company acting under the control of the Trustees or of a financial expert acting under their instructions, and to pay any reasonable fee required;
- (p) to provide indemnity insurance to cover the liability of Trustees which by virtue of any rule of law would otherwise attach to them in respect of any negligence, default, breach of trust or breach of duty of which they may be guilty in relation to the Company: Provided that any such insurance shall not extend to any claim arising from any act or omission which the Trustees knew to be a breach of trust or breach of duty or which was committed by the Trustees in reckless disregard of whether it was a breach of trust or breach of duty or not and provided also that any such insurance shall not extend to the costs of any unsuccessful defence to a criminal prosecution brought against the Trustees in their capacity as Trustees;

- (q) to establish subsidiary companies to carry on any trade or business for the purpose of raising funds for the Company;
- (r) to amalgamate with or acquire or undertake all of any of the property, liabilities and engagements of any body having objects wholly or in part similar to those of the Company;
- (s) to do all such other lawful things as are necessary for or are incidental to or conducive to the achievement of the Objects.

6.1 The income and property of the Company shall be applied solely towards the promotion of the Objects.

6.2 Except as provided below, none of the income or property of the Company may be paid or transferred directly or indirectly by way of dividend bonus or otherwise by way of profit to any member of the Company. Nonetheless a member of the Company who is not also a Trustee may:

- a) benefit as a beneficiary of the Company;
- b) be paid reasonable and proper remuneration for any goods or services supplied to the Company;
- c) be paid rent for premises let by the member of the Company if the amount of the rent and other terms of the letting are reasonable and proper; and
- d) be paid interest on money lent to the Company at a reasonable and proper rate, such rate not to exceed 2 per cent per annum below the base lending rate of a UK clearing bank selected by the Trustees, or 0.5%, whichever is the higher.

6.3 Trustee may benefit from any indemnity insurance purchased at the Company's expense to cover the liability of the Trustees which by virtue of any rule of law would otherwise attach to them in respect of any negligence, default or breach of trust or breach of duty of which they may be guilty in relation to the Company: Provided that any such insurance shall not extend to any claim arising from any act or omission which Trustees knew to be a breach of trust or breach of duty or

which was committed by the Trustees in reckless disregard to whether it was a breach of trust or breach of duty or not and provided also that any such insurance shall not extend to the costs of any unsuccessful defence to a criminal prosecution brought against Trustees in their capacity as directors of the Company.

6.4 A company, which has shares listed on a recognised stock exchange and of which any one Trustee holds no more than 1% of the issued capital of that company, may receive fees, remuneration or other benefit in money or money's worth from the Company.

6.5 A Trustee may at the discretion of the Trustees be reimbursed from the property of the Company for reasonable expenses properly incurred by him or her when acting on behalf of the Company, but excluding expenses in connection with foreign travel.

6.6 No Trustee may:

- (a) buy any goods or services from the Company;
- (b) sell goods, services, or any interest in land to the Company;
- (c) subject to the provisions of Articles 6.7 and 6.8, be employed by, or receive any remuneration from the Company (other than the Chief Executive Officer whose employment and/or remuneration is subject to the procedure and conditions in Article 6.8);
- (d) receive any other financial benefit from the Company;

unless:

- (i) the payment is permitted by Article 6.7 and the Trustees follow the procedure and observe the conditions set out in Article 6.8; or
- (ii) the Trustees obtain the prior written approval of the Charity Commission and fully comply with any procedures it prescribes.

6.7 Subject to Article 6.8, a Trustee may:

- a) Receive a benefit from the Company in the capacity of a beneficiary of the Company.
- b) Be employed by the Company or enter into a contract for the supply of goods or services to the Company, other than for acting as a Trustee.
- c) Receive interest on money lent to the Company at a reasonable and proper rate not exceeding 2% per annum below the base rate of a clearing bank to be selected by the Trustees, or 0.5%, whichever is the higher.
- d) Receive rent for premises let by the Trustee to the Company if the amount of the rent and the other terms of the lease are reasonable and proper.

6.8 The Company and its Trustees may only rely upon the authority provided by Article 6.7 if each of the following conditions is satisfied:

- (a) The remuneration or other sums paid to the Trustee do not exceed an amount that is reasonable in all the circumstances.
- (b) The Trustee is absent from the part of any meeting at which there is discussion of:
  - i) his or her employment, remuneration, or any matter concerning the contract, payment or benefit; or
  - ii) his or her performance in the employment, or his or her performance of the contract; or
  - iii) any proposal to enter into any other contract or arrangement with him or her or to confer any benefit upon him or her that would be permitted under Article 6.7; or
  - (iv) any other matter relating to a payment or the conferring of any benefit permitted by Article 6.7.
- (c) The Trustee does not vote on any such matter and is not to be counted when calculating whether a quorum of Trustees is present at the meeting.
- (d) Save in relation to employing or contracting with the Chief Executive Officer (a Trustee pursuant to Article 57) the other Trustees are satisfied that it is in

the interests of the Company to employ or to contract with that Trustee rather than with someone who is not a Trustee. In reaching that decision the Trustees must balance the advantage of employing a Trustee against the disadvantages of doing so (especially the loss of the Trustee's services as a result of dealing with the Trustee's conflict of interest).

- (e) The reason for their decision is recorded by the Trustees in the minute book.
- (f) A majority of the Trustees then in office have received no such payments or benefit.

6.9 In Articles 6.2-6.9:

- (a) "company" shall include any company in which the Company:
  - holds more than 50% of the shares; or
  - controls more than 50% of the voting rights attached to the shares; or
  - has the right to appoint one or more Trustees to the Board of the company.
- (b) "Trustee" shall include any child, stepchild, parent, grandchild, grandparent, brother, sister or spouse of the Trustee or any person living with the Trustee as his or her partner
- (c) The employment or remuneration of a Trustee includes the engagement or remuneration of any firm or company in which the Trustee is:
  - (i) a partner;
  - (ii) an employee;
  - (iii) a consultant;
  - (iv) a director;
  - (v) a member; or
  - (vi) a shareholder, unless the shares of the company are listed on a recognised stock exchange and the Trustee holds less than 1% of the

issued capital.

7. The liability of the members of the Company is limited.
8. Every member of the Company undertakes to contribute such amount as may be required (not exceeding £10) to the Company's assets if it should be wound up while he or she is a member or within one year after he or she ceases to be a member, for payment of the Company's debts and liabilities before he or she ceases to be a member, and of the costs, charges and expenses of winding up, and for the adjustment of the rights of the contributories among themselves.
9. If the Company is wound up or dissolved and after all its debts and liabilities (including any under section 483 of the Education Act 1996) have been satisfied there remains any property it shall not be paid to or distributed among the members of the Company, but shall be given or transferred to some other charity or charities having objects similar to the Objects which prohibits the distribution of its or their income and property to an extent at least as great as is imposed on the Company by Article 6 above, chosen by the members of the Company at or before the time of dissolution and if that cannot be done then to some other charitable object.
10. No alteration or addition shall be made to or in the provisions of the Memorandum or Articles of Association without the written consent of the Secretary of State.
11. No alteration or addition shall be made to or in the provisions of the Memorandum or Articles of Association which would have the effect (a) that the Company would cease to be a company to which section 60 of the Companies Act 2006 applies; or (b) that the Company would cease to be a charity.

## MEMBERS

12. The Members of the Company shall comprise:
  - a. The Principal Sponsor;
  - b. 1 person appointed by the Secretary of State, in the event that the Secretary

of State appoints a person for this purpose;

c. The Chairman of the Trustees; and

d. any person appointed under Article 16 ;

13. Each of the persons entitled to appoint Members in Article 12 shall have the right from time to time by written notice delivered to the Office to remove any Member appointed by them and to appoint a replacement Member to fill a vacancy whether resulting from such removal or otherwise.

14. If any of the persons entitled to appoint Members in Article 12:

a) in the case of an individual, die or become legally incapacitated;

b) in the case of a corporate entity, cease to exist and are not replaced by a successor institution;

c) becomes insolvent or makes any arrangement or composition with their creditors generally; or

d) ceases to be a Member;

their right to appoint Members under these Articles shall vest in the remaining Members.

15. Membership will terminate automatically if:

a) a Member (which is a corporate entity) ceases to exist and is not replaced by a successor institution;

b) a Member (which is an individual) dies or becomes incapable by reason of mental disorder, illness or injury of managing and administering his or her own affairs; or

c) a Member becomes insolvent or makes any arrangement or composition with that Member's creditors generally.

16. The Members may agree unanimously in writing to appoint such additional

Members as they think fit and may unanimously (save that the agreement of the Member(s) to be removed shall not be required) in writing agree to remove any such additional Members.

17. Every person nominated to be a Member of the Company shall either sign a written consent to become a Member or sign the register of Members on becoming a Member.
18. Any Member may resign provided that after such resignation the number of Members is not less than one. A Member shall cease to be one immediately on the receipt by the Company of a notice in writing signed by the person or persons entitled to remove him under Articles 13 or 16 provided that no such notice shall take effect when the number of Members is less than one unless it contains or is accompanied by the appointment of a replacement Member.

#### GENERAL MEETINGS

19. The Company shall hold an Annual General Meeting each year in addition to any other meetings in that year, and shall specify the meeting as such in the notices calling it; and not more than fifteen months shall elapse between the date of one Annual General Meeting of the Company and that of the next. Provided that so long as the Company holds its first Annual General Meeting within eighteen months of its incorporation, it need not hold it in the year of its incorporation or in the following year. The Annual General Meeting shall be held at such time and place as the Trustees shall appoint. All general meetings other than Annual General Meetings shall be called General Meetings.
20. The Trustees may call general meetings and, on the requisition of Members pursuant to the provisions of the Companies Act 2006, shall forthwith proceed to convene a general meeting in accordance with that Act. If there are not within the United Kingdom sufficient Trustees to call a general meeting, any Trustee or any Member of the Company may call a general meeting.

#### NOTICE OF GENERAL MEETINGS

21. General meetings shall be called by at least fourteen clear days' notice but a

general meeting may be called by shorter notice if it is so agreed by a majority in number of Members having a right to attend and vote and together representing not less than 90% of the total voting rights at that meeting.

The notice shall specify the time and place of the meeting and the general nature of the business to be transacted and, in the case of an Annual General Meeting, shall specify the meeting as such. The notice shall also state that the Member is entitled to appoint a proxy.

The notice shall be given to all the Members, to the Trustees and auditors.

22. The accidental omission to give notice of a meeting to, or the non-receipt of notice of a meeting by, any person entitled to receive notice shall not invalidate the proceedings at that meeting.

#### PROCEEDINGS AT GENERAL MEETINGS.

23. No business shall be transacted at any meeting unless a quorum is present. A Member counts towards the quorum by being present either in person or by proxy. Two persons entitled to vote upon the business to be transacted, each being a Member or a proxy of a Member or a duly authorised representative of a Member organisation shall constitute a quorum.
24. If a quorum is not present within half an hour from the time appointed for the meeting, or if during a meeting a quorum ceases to be present, the meeting shall stand adjourned to the same day in the next week at the same time and place or to such time and place as the Trustees may determine.
25. The chairman, if any, of the Trustees or in his absence some other Trustee nominated by the Trustees shall preside as chairman of the meeting, but if neither the chairman nor such other Trustee (if any) be present within fifteen minutes after the time appointed for holding the meeting and willing to act, the Trustees present shall elect one of their number to be chairman and, if there is only one Trustee present and willing to act, he shall be the chairman.
26. If no Trustee is willing to act as chairman, or if no Trustee is present within fifteen minutes after the time appointed for holding the meeting, the Members

present and entitled to vote shall choose one of their number to be chairman.

27. A Trustee shall, notwithstanding that he is not a Member, be entitled to attend and speak at any general meeting.
28. The chairman may, with the consent of a majority of the Members at a meeting at which a quorum is present (and shall if so directed by the meeting), adjourn the meeting from time to time and from place to place, but no business shall be transacted at any adjourned meeting other than the business which might properly have been transacted at the meeting had the adjournment not taken place. When a meeting is adjourned for fourteen days or more, at least seven clear days' notice shall be given specifying the time and place of the adjourned meeting and the general nature of the business to be transacted. Otherwise it shall not be necessary to give any such notice.
29. A resolution put to the vote of the meeting shall be decided on a show of hands unless before, or on the declaration of the result of the show of hands, a poll is duly demanded. Subject to the provisions of the Companies Act 2006, a poll may be demanded:-
  - (a) by the chairman; or
  - (b) by any Members having the right to vote at the meeting.
  - (c) by a Member or Members representing not less than one-tenth of the total voting rights of all the Members having the right to vote at the meeting.
30. Unless a poll is duly demanded a declaration by the chairman that a resolution has been carried or carried unanimously, or by a particular majority, or lost, or not carried by a particular majority and an entry to that effect in the minutes of the meeting shall be conclusive evidence of the fact without proof of the number or proportion of the votes recorded in favour of or against such resolution.
31. The demand for a poll may be withdrawn, before the poll is taken, but only with the consent of the chairman. The withdrawal of a demand for a poll shall not invalidate the result of a show of hands declared before the demand for the poll was made.

32. A poll shall be taken as the chairman directs and he may appoint scrutineers (who need not be Members) and fix a time, date and place for declaring the results. The result of the poll shall be deemed to be the resolution of the meeting at which the poll was demanded.
33. A poll demanded on the election of the chairman or on a question of adjournment shall be taken immediately. A poll demanded on any other question shall be taken either immediately or at such time and place as the chairman directs not being more than thirty days after the poll is demanded. The demand for a poll shall not prevent continuance of a meeting for the transaction of any business other than the question on which the poll is demanded. If a poll is demanded before the declaration of the result of a show of hands and the demand is duly withdrawn, the meeting shall continue as if the demand had not been made.
34. No notice need be given of a poll not taken immediately if the date, time and place at which it is to be taken are announced at the meeting at which it is demanded. In other cases at least seven clear days' notice shall be given specifying the time and place at which the poll is to be taken.
35. A resolution in writing agreed by such number of members as required if it had been proposed at a general meeting shall be as effectual as if it had been passed at a general meeting duly convened and held provided that a copy of the proposed resolution has been sent to every member. The resolution may consist of several instruments in the like form each agreed by one or more Members.

#### VOTES OF MEMBERS

36. On the show of hands every Member present in person and on a poll every Member present in person or by proxy shall have the following votes:
  - (a) the Principal Sponsor, five votes
  - (b) the person appointed by the Secretary of State, one vote;
  - (c) any persons appointed under Article 16, one vote each; and

(d) the chairman of the Trustees, one vote.

37. Not used.

38. No Member shall be entitled to vote at any general meeting unless all moneys then payable by him to the Company have been paid.

39. No objections shall be raised to the qualification of any person to vote at any general meeting except at the meeting or adjourned meeting at which the vote objected to is tendered, and every vote not disallowed at the meeting shall be valid. Any objection made in due time shall be referred to the chairman whose decision shall be final and conclusive.

40. An instrument appointing a proxy shall be in writing, signed by or on behalf of the appointer and shall be in the following form (or in a form as near thereto as circumstances allow or in any other form which is usual or which the Trustees may approve) -.

“I/We, ....., of ....., being a Member/Members of the above named Company, hereby appoint ..... of ....., or in his absence, ..... of ..... as my/our proxy to vote in my/our name[s] and on my/our behalf at the annual general meeting/ general meeting of the Company to be held on .....20[ ], and at any adjournment thereof.

Signed on ..... 20[ ]”

41. Where it is desired to afford Members an opportunity of instructing the proxy how he shall act the instrument appointing a proxy shall be in the following form (or in a form as near thereto as circumstances allow or in any other form which is usual or which the Trustees may approve)-

“I/We, ....., of ....., being a Member/Members of the above-named Company, hereby appoint .... of ....., or in his absence, ..... of ....., as my/our proxy to vote in my/our name[s] and on my/our behalf at the annual general meeting/ general meeting of the Company, to be held on .... 20[ ], and at any adjournment thereof.

This form is to be used in respect of the resolutions mentioned below as follows:

Resolution No. 1 \*for \* against

Resolution No. 2 \*for \* against.

- Strike out whichever is not desired.

Unless otherwise instructed, the proxy may vote as he thinks fit or abstain from voting.

Signed on .... 20[ ]”

42. The instrument appointing a proxy and any authority under which it is signed or a copy of such authority certified by a notary or in some other way approved by the Trustees may -

(a) be deposited at the office or at such other place within the United Kingdom as is specified in the notice convening the meeting or in any instrument of proxy sent out by the Company in relation to the meeting not less than 48 hours before the time for holding the meeting or adjourned meeting at which the person named in the instrument proposes to vote, or

(b) in the case of a poll taken more than 48 hours after it is demanded, be deposited as aforesaid after the poll has been demanded and not less than 24 hours before the time appointed for the taking of the poll;

(c) where the poll is not taken forthwith but is taken not more than 48 hours after it was demanded, be delivered at the meeting at which the poll was demanded to the chairman or to the Secretary or to any Trustee;

and an instrument of proxy which is not deposited or delivered in a manner so permitted shall be invalid.

43. A vote given or poll demanded by proxy or by the duly authorised representative of a corporation shall be valid notwithstanding the previous determination of the authority of the person voting or demanding a poll unless

notice of the determination was received by the Company at the office or at such other place at which the instrument of proxy was duly deposited before the commencement of the meeting or adjourned meeting at which the vote given or the poll demanded or (or in the case of a poll taken otherwise than on the same day as the meeting or adjourned meeting) the time appointed for taking the poll.

44. Any organisation which is a Member of the Company may by resolution of its board of directors or other governing body authorise such person as it thinks fit to act as its representative at any meeting of the Company, and the person so authorised shall be entitled to exercise the same powers on behalf of the organisation which he represents as that organisation could exercise if it were an individual Member of the Company.

## TRUSTEES

45. The number of Trustees shall be not less than three but (unless otherwise determined by ordinary resolution) shall not be subject to any maximum.
46. Subject to Articles 48-49 and 63, the Company shall have the following Trustees:
  - a. at least 3 Sponsor Trustees, appointed under Article 50;
  - b. the Academy Trustee;
  - c. the Headteacher Trustee;
  - d. the Chief Executive Officer;
  - e. any Additional Trustees, if appointed under Articles 61, 61A or 67A;
  - f. any Further Trustees, if appointed under Article 62 or 67A ;
  - g. Up to 2 Trustees, if appointed by the Secretary of State in accordance with the terms of any of the relevant funding agreements following the provision of a notice by the Company to terminate that relevant funding agreement.
47. The Company may also have any co-opted Trustee appointed under Article 58.
48. The first Trustees shall be those persons named in the statement delivered

pursuant to sections 9 and 12 of the Companies Act 2006. .

49. Future Trustees shall be appointed or elected, as the case may be, under these Articles.

#### SPONSOR TRUSTEES

50. The Principal Sponsor shall appoint the Sponsor Trustees.

#### ACADEMY TRUSTEES

51. Subject to Article 52, one of the chairs of the Local Governing Bodies shall be an Academy Trustee as long as he remains in office as such.

52. If the number of Academies exceeds one, the chairs of the Local Governing Bodies shall elect one person from amongst their number to be the Academy Trustee for as long as he remains chair of the Local Governing Body. The Trustees shall make all necessary arrangements for, and determine all other matters relating to, the election of the Academy Trustees in accordance with this Article. Any election of the Academy Trustees which is contested shall be held by secret ballot.

#### HEADTEACHER TRUSTEES

- 52A Subject to Article 52B, one of the Headteachers of the Academies shall be a Headteacher Trustee.

- 52B. If the number of Academies exceeds one, the headteachers of the Academies shall elect one person from amongst their number to be the Headteacher Trustee. The Trustees shall make all necessary arrangements for, and determine all other matters relating to, the election of the Headteacher Trustees in accordance with this Article. Any election of the Headteacher Trustees which is contested shall be held by secret ballot.

#### PARENT TRUSTEES

53. Not used.

54. Not used.

55. Not used.

56. Not used.

#### CHIEF EXECUTIVE OFFICER

57. The Chief Executive Officer shall be a Trustee for as long as he remains in office as such.

#### CO-OPTED TRUSTEES

58. The Trustees may appoint up to 3 co-opted Trustees. A 'co-opted Trustee' means a person who is appointed to be a Trustee by being co-opted by Trustees who have not themselves been so appointed. The Trustees may not co-opt an employee of the Company as a Co-opted Trustee if thereby the number of Trustees who are employees of the Company would exceed one third of the total number of Trustees including the Chief Executive Officer.

#### APPOINTMENT OF ADDITIONAL TRUSTEES

59. The Secretary of State may give a warning notice to the Trustees where—

(a) he is satisfied—

- i) that the standards of performance of pupils at any of the Academies are unacceptably low, or
- ii) that there has been a serious breakdown in the way any of the Academies are managed or governed, or
- iii) that the safety of pupils or staff of any of the Academies is threatened (whether by a breakdown of discipline or otherwise).

60 For the purposes of Article 59 a 'warning notice' is a notice in writing by the Secretary of State to the Company delivered to the Office setting out—

- a) the matters referred to in Article 59;
  - b) the action which he requires the Trustees to take in order to remedy those matters; and
  - c) the period within which that action is to be taken by the Trustees ('the compliance period').
61. The Secretary of State may appoint such Additional Trustees as he thinks fit if the Secretary of State has:
- (a) given the Trustees a warning notice in accordance with Article 59; and
  - (b) the Trustees have failed to comply, or secure compliance, with the notice to the Secretary of State's satisfaction within the compliance period.
- 61A The Secretary of State may also appoint such Additional Trustees where following an Inspection by the Chief Inspector in accordance with the Education Act 2005 (an "Inspection") an Academy receives an Ofsted grading (being a grade referred to in The Framework for School Inspection or any modification or replacement of that document for the time being in force) which amounts to a drop, either from one Inspection to the next Inspection or between any two Inspections carried out within a 5 year period, of two Ofsted grades. For the purposes of the foregoing, the grade or description received by the predecessor school as defined in the Relevant Funding Agreement on any inspection shall not be regarded as the grade or assessment received by the Academy, which replaces it, on any inspection.
62. The Secretary of State may also appoint such Further Trustees as he thinks fit if:
- (a) a Special Measures Termination Event (as defined in the relevant Relevant Funding Agreement) occurs in respect of the Academy;
  - (b) he is satisfied that any Trustee or Member of the Company is not a suitable person and he exercises his powers further to clause 97B of the Master Funding Agreement; or

(c) the Secretary of State considers it necessary to appoint such further Trustees to enable the Company to secure a permanent site in respect of any particular Academy if the Company has been unable to do so and the Supplemental Funding Agreement for that Academy provides the Secretary of State with the power to appoint such further Trustees.

63. Within 5 days of the Secretary of State appointing any Additional or Further Trustees in accordance with Articles 61, 61A or 62, any Sponsor Trustees holding office immediately preceding the appointment of such Trustees, shall resign immediately and the Principal Sponsor's power to appoint Trustees under Article 50 shall cease.

#### TERM OF OFFICE

64. The term of office for any Trustee shall be 4 years, save that this time limit shall not apply to the Chief Executive Officer. Subject to remaining eligible to be a particular type of Trustee, any Trustee may be re-appointed or re-elected.

#### RESIGNATION AND REMOVAL

65. A Trustee shall cease to hold office if he resigns his office by notice to the Company (but only if at least three Trustees will remain in office when the notice of resignation is to take effect).

66. A Trustee shall cease to hold office if he is removed by the person or persons who appointed him or, in the case of the Headteacher Trustee or the Chief Executive Officer, ceases to be employed by the Company.

67. Where a Trustee resigns his office or is removed from office, the Trustee or, where he is removed from office, those removing him, shall give written notice thereof to the Secretary.

67A. Where an Additional or Further Trustee appointed pursuant to Articles 61, 61A or 62 ceases to hold office as a Trustee for any reason, other than being removed by the Secretary of State, the Secretary of State shall be entitled to appoint an Additional or Further Trustee in his place.

## DISQUALIFICATION OF TRUSTEES

68. No person shall be qualified to be a Trustee unless he is aged 18 or over at the date of his appointment. No current pupil of any of the Academies shall be a Trustee.
69. A Trustee shall cease to hold office if he becomes incapable by reason of mental disorder, illness or injury of managing or administering his own affairs.
70. A Trustee shall cease to hold office if he is absent without the permission of the Trustees from all their meetings held within a period of six months and the Trustees resolve that his office be vacated.
71. A person shall be disqualified from holding or continuing to hold office as a Trustee if—
  - (a) his estate has been sequestrated and the sequestration has not been discharged, annulled or reduced; or
  - (b) he is the subject of a bankruptcy restrictions order or an interim order.
72. A person shall be disqualified from holding or continuing to hold office as a Trustee at any time when he is subject to a disqualification order or a disqualification undertaking under the Company Trustees Disqualification Act 1986 or to an order made under section 429(2)(b) of the Insolvency Act 1986 (failure to pay under county court administration order).
73. A Trustee shall cease to hold office if he ceases to be a Trustee by virtue of any provision in the Companies Act 2006 or is disqualified from acting as a trustee by virtue of section 72 of the Charities Act 1993 (or any statutory re-enactment or modification of that provision).
74. A person shall be disqualified from holding or continuing to hold office as a Trustee if he has been removed from the office of charity trustee or trustee for a charity by an order made by the Charity Commission or the High Court on the grounds of any misconduct or mismanagement in the administration of the charity for which he was responsible or to which he was privy, or which he by

his conduct contributed to or facilitated.

75. A person shall be disqualified from holding or from continuing to hold office as a Trustee at any time when he is:
- (a) included in the list kept by the Secretary of State under section 1 of the Protection of Children Act 1999; or
  - (b) disqualified from working with children in accordance with section 35 of the Criminal Justice and Court Services Act 2000 or
  - (c) barred from regulated activity relating to children (within the meaning of section 3(2)(a) of the Safeguarding Vulnerable Groups Act 2006)
76. A person shall be disqualified from holding or continuing to hold office as a Trustee if he is a person in respect of whom a direction has been made under section 142 of the Education Act 2002 or is subject to any prohibition or restriction which takes effect as if contained in such a direction.
77. A person shall be disqualified from holding or continuing to hold office as a Trustee where he has, at any time, been convicted of any criminal offence, excluding any that have been spent under the Rehabilitation of Offenders Act 1974 as amended, and excluding any offence for which the maximum sentence is a fine or a lesser sentence except where a person has been convicted of any offence which falls under section 72 of the Charities Act 1993.
78. After the first Academy has opened, a person shall be disqualified from holding or continuing to hold office as a Trustee if he has not provided to the chairman of the Trustees a criminal records certificate at an enhanced disclosure level under section 113B of the Police Act 1997 before appointment or as soon as practicable thereafter. In the event that the certificate discloses any information which would in the opinion of either the chairman or the Chief Executive Officer confirm their unsuitability to work with children that person shall be disqualified. If a dispute arises as to whether a person shall be disqualified, a referral shall be made to the Secretary of State to determine the matter. The determination of the Secretary of State shall be final.

79. Where, by virtue of these Articles a person becomes disqualified from holding, or continuing to hold office as a Trustee; and he is, or is proposed, to become such a Trustee, he shall upon becoming so disqualified give written notice of that fact to the Secretary.
80. Articles 68-79 and Articles 97-98 also apply to any member of any committee of the Trustees, including a Local Governing Body, who is not a Trustee.

#### SECRETARY TO THE TRUSTEES

81. The Secretary shall be appointed by the Trustees for such term, at such remuneration and upon such conditions as they may think fit; and any Secretary so appointed may be removed by them. Notwithstanding this Article, the Trustees may, where the Secretary fails to attend a meeting of theirs, appoint any one of their number or any other person to act as Secretary for the purposes of that meeting.

#### CHAIRMAN AND VICE-CHAIRMAN OF THE TRUSTEES

82. The Trustees shall each school year, at their first meeting in that year, elect a chairman and a vice-chairman from among their number. A Trustee who is employed by the Company shall not be eligible for election as chairman or vice-chairman.
83. Subject to Article 84, the chairman or vice-chairman shall hold office as such until his successor has been elected in accordance with Article 85.
84. The chairman or vice-chairman may at any time resign his office by giving notice in writing to the Secretary. The chairman or vice-chairman shall cease to hold office if—
- (a) he ceases to be a Trustee;
  - (b) he is employed by the Company;
  - (c) he is removed from office in accordance with these Articles; or
  - (d) in the case of the vice-chairman, he is elected in accordance with these

Articles to fill a vacancy in the office of chairman.

85. Where by reason of any of the matters referred to in Article 84, a vacancy arises in the office of chairman or vice-chairman, the Trustees shall at their next meeting elect one of their number to fill that vacancy.
86. Where the chairman is absent from any meeting or there is at the time a vacancy in the office of the chairman, the vice-chairman shall act as the chair for the purposes of the meeting.
87. Where in the circumstances referred to in Article 86 the vice-chairman is also absent from the meeting or there is at the time a vacancy in the office of vice-chairman, the Trustees shall elect one of their number to act as a chairman for the purposes of that meeting, provided that the Trustee elected shall not be a person who is employed by the Company.
88. The Secretary shall act as chairman during that part of any meeting at which the chairman is elected.
89. Any election of the chairman or vice-chairman which is contested shall be held by secret ballot.
90. The Trustees may remove the chairman or vice-chairman from office in accordance with these Articles.
91. A resolution to remove the chairman or vice-chairman from office which is passed at a meeting of the Trustees shall not have effect unless—
  - i) it is confirmed by a resolution passed at a second meeting of the Trustees held not less than fourteen days after the first meeting; and
  - ii) the matter of the chairman's or vice-chairman's removal from office is specified as an item of business on the agenda for each of those meetings.
92. Before the Trustees resolve at the relevant meeting on whether to confirm the resolution to remove the chairman or vice-chairman from office, the Trustee or Trustees proposing his removal shall at that meeting state their reasons for

doing so and the chairman or vice-chairman shall be given an opportunity to make a statement in response.

## POWERS OF TRUSTEES

93. Subject to provisions of the Companies Act 2006, the Memorandum and the Articles and to any directions given by special resolution, the business of the Company shall be managed by the Trustees who may exercise all the powers of the Company. No alteration of the Memorandum or the Articles and no such direction shall invalidate any prior act of the Trustees which would have been valid if that alteration had not been made or that direction had not been given. The powers given by this Article shall not be limited by any special power given to the Trustees by the Articles and a meeting of Trustees at which a quorum is present may exercise all the powers exercisable by the Trustees.
94. In addition to all powers hereby expressly conferred upon them and without detracting from the generality of their powers under the Articles the Trustees shall have the following powers, namely:
- (a) to expend the funds of the Company in such manner as they shall consider most beneficial for the achievement of the Objects and to invest in the name of the Company such part of the funds as they may see fit and to direct the sale or transposition of any such investments and to expend the proceeds of any such sale in furtherance of the Objects;
  - (b) to enter into contracts on behalf of the Company.
95. In the exercise of their powers and functions, the Trustees may consider any advice given by the Chief Executive Officer and any other executive officer.
96. Any bank account in which any money of the Company is deposited shall be operated by the Trustees in the name of the Company. All cheques and orders for the payment of money from such an account shall be signed by at least two signatories authorised by the Trustees.

## CONFLICTS OF INTEREST

97. Any Trustee who has or can have any direct or indirect duty or personal interest (including but not limited to any Personal Financial Interest) which conflicts or may conflict with his duties as a Trustee shall disclose that fact to the Trustees as soon as he becomes aware of it.
- 97A. A Trustee must absent himself from any discussions of the Trustees in which it is possible that a conflict will arise between his duty to act solely in the interests of the Company and any duty or personal interest (including but not limited to any Personal Financial Interest).
98. For the purpose of Article 97 and 97A, a Trustee has a Personal Financial Interest in the employment or remuneration of, or the provision of any other benefit to, that Trustee as permitted by and as defined by Articles 6.5-6.9.
- 98A. The Trustees' duty under the Companies Act 2006 to avoid a conflict of interest shall not apply to any conflict of interest arising from or in connection with agreements between the Company and the Principal Sponsor (or any group company of the Principal Sponsor) for the supply of services to support the operation of the Company and the provisions of Article 97A shall not apply in the event of any such conflict (save that if the conflict gives rise to a Personal Financial Interest, Article 97A shall continue to apply).

## THE MINUTES

99. The minutes of the proceedings of a meeting of the Trustees shall be drawn up and entered into a book kept for the purpose by the person acting as Secretary for the purposes of the meeting; and shall be signed (subject to the approval of the Trustees) at the same or next subsequent meeting by the person acting as chairman thereof. The minutes shall include a record of:
- (a) all appointments of officers made by the Trustees; and
  - (b) all proceedings at meetings of the Company and of the Trustees and of committees of Trustees including the names of the Trustees present at each such meeting.

## COMMITTEES

100. Subject to these Articles, the Trustees:

- a) may appoint separate committees to be known as Local Governing Bodies for each Academy; and
- b) may establish any other committee.

101. Subject to these Articles, the constitution, membership and proceedings of any committee shall be determined by the Trustees. The establishment, terms of reference, constitution and membership of any committee of the Trustees shall be reviewed at least once in every twelve months. The membership of any committee of the Trustees may include persons who are not Trustees, provided that (with the exception of the Local Governing Bodies) a majority of members of any such committee shall be Trustees. Except in the case of a Local Governing Body, no vote on any matter shall be taken at a meeting of a committee of the Trustees unless the majority of members of the committee present are Trustees.

102. not used

103. not used

104. The functions and proceedings of the Local Governing Bodies shall be subject to regulations made by the Trustees from time to time.

## DELEGATION

105. The Trustees may delegate to any Trustee, committee (including any Local Governing Body), the Chief Executive Officer or any other holder of an executive office, such of their powers or functions as they consider desirable to be exercised by them. Any such delegation shall be made subject to any conditions the Trustees may impose, and may be revoked or altered.

106. Where any power or function of the Trustees has been exercised by any committee (including any Local Governing Body), any Trustee, the Chief Executive Officer or any other holder of an executive office, that person or committee shall report to the Trustees in respect of any action taken or decision

made with respect to the exercise of that power or function at the meeting of the Trustees immediately following the taking of the action or the making of the decision.

#### CHIEF EXECUTIVE OFFICER AND PRINCIPALS

107. The Trustees shall appoint the Chief Executive Officer and the Principals of the Academies. The Trustees may delegate such powers and functions as they consider are required by the Chief Executive Officer, the Principals and any other senior managers for the internal organisation, management and control of the Academies (including the implementation of all policies approved by the Trustees and for the direction of the teaching and curriculum at the Academies).

#### MEETINGS OF THE TRUSTEES

108. Subject to these Articles, the Trustees may regulate their proceedings as they think fit.

109. The Trustees shall hold at least three meetings in every school year. Meetings of the Trustees shall be convened by the Secretary. In exercising his functions under this Article the Secretary shall comply with any direction—

- a. given by the Trustees; or
- b. given by the chairman of the Trustees or, in his absence or where there is a vacancy in the office of chairman, the vice-chairman of the Trustees, so far as such direction is not inconsistent with any direction given as mentioned in (a).

110. Any three Trustees may, by notice in writing given to the Secretary, requisition a meeting of the Trustees; and it shall be the duty of the Secretary to convene such a meeting as soon as is reasonably practicable.

111. Each Trustee shall be given at least seven clear days before the date of a meeting –

- i) notice in writing thereof, signed by the Secretary, and sent to each Trustee at the address provided by each Trustee from time to time; and

ii) a copy of the agenda for the meeting;

provided that where the chairman or, in his absence or where there is a vacancy in the office of chairman, the vice-chairman, so determines on the ground that there are matters demanding urgent consideration, it shall be sufficient if the written notice of a meeting, and the copy of the agenda thereof are given within such shorter period as he directs.

112. The convening of a meeting and the proceedings conducted thereat shall not be invalidated by reason of any individual not having received written notice of the meeting or a copy of the agenda thereof.

113. A resolution to rescind or vary a resolution carried at a previous meeting of the Trustees shall not be proposed at a meeting of the Trustees unless the consideration of the rescission or variation of the previous resolution is a specific item of business on the agenda for that meeting.

114. A meeting of the Trustees shall be terminated forthwith if—

(a) the Trustees so resolve; or

(b) the number of Trustees present ceases to constitute a quorum for a meeting of the Trustees in accordance with Article 117 , subject to Article 119 .

115. Where in accordance with Article 114 a meeting is not held or is terminated before all the matters specified as items of business on the agenda for the meeting have been disposed of, a further meeting shall be convened by the Secretary as soon as is reasonably practicable, but in any event within seven days of the date on which the meeting was originally to be held or was so terminated.

116. Where the Trustees resolve in accordance with Article 114 to adjourn a meeting before all the items of business on the agenda have been disposed of, the Trustees shall before doing so determine the time and date at which a further meeting is to be held for the purposes of completing the consideration of those items, and they shall direct the Secretary to convene a meeting

accordingly.

117. Subject to Article 119 the quorum for a meeting of the Trustees, and any vote on any matter thereat, shall be any three Trustees, or, where greater, any one third (rounded up to a whole number) of the total number of Trustees holding office at the date of the meeting. If the Secretary of State has appointed Additional or Further Trustees then a majority of the quorum must be made up of Additional or Further Trustees.

118. The Trustees may act notwithstanding any vacancies in their number, but, if the numbers of Trustees is less than the number fixed as the quorum, the continuing Trustees may act only for the purpose of filling vacancies or of calling a general meeting.

119. The quorum for the purposes of—

(a) any vote on the removal of a Trustee in accordance with Article 66;

(b) any vote on the removal of the chairman of the Trustees in accordance with Article 90;

shall be any two-thirds (rounded up to a whole number) of the persons who are at the time Trustees entitled to vote on those respective matters.

120. Subject to these Articles, every question to be decided at a meeting of the Trustees shall be determined by a majority of the votes of the Trustees present and voting on the question. Every Trustee shall have one vote.

121. Subject to Articles 117-119, where there is an equal division of votes, the chairman of the meeting shall have a casting vote in addition to any other vote he may have.

122. The proceedings of the Trustees shall not be invalidated by

a. any vacancy among their number; or

b. any defect in the election, appointment or nomination of any Trustee.

123. A resolution in writing, signed by at least two thirds of the Trustees entitled to receive notice of a meeting of Trustees or of a committee of Trustees, shall be valid and effective as if it had been passed at a meeting of Trustees or (as the case may be) a committee of Trustees duly convened and held. Such a resolution may consist of several documents in the same form, each signed by one or more of the Trustees.

123A. For the purposes of Article 123, a resolution which is approved by email in accordance with this Article 123A shall be deemed to have been made in writing provided that, following receipt of a response on any resolution from each of the Trustees, the Secretary shall circulate a further email to all of the Trustees confirming whether the resolution has been formally approved by the Trustees in accordance with this Article.

124. Subject to Article 125, the Trustees shall ensure that a copy of

- a. the agenda for every meeting of the Trustees;
- 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, as soon as is reasonably practicable, made available at every Academy to persons wishing to inspect them.

125. There may be excluded from any item required to be made available in pursuance of Article 124, any material relating to—

- a. a named teacher or other person employed, or proposed to be employed, at any Academy;
- b. a named pupil at, or candidate for admission to, any Academy; and
- c. any matter which, by reason of its nature, the Trustees are satisfied should remain confidential.

126. Any Trustee shall be able to participate in meetings of the Trustees by telephone or video conference provided that:
- a. he has given notice of his intention to do so detailing the telephone number on which he can be reached and/or appropriate details of the video conference suite from which he shall be taking part at the time of the meeting at least 48 hours before the meeting;
  - b. the Trustees have access to the appropriate equipment. If after all reasonable efforts it does not prove possible for the person to participate by telephone or video conference the meeting may still proceed with its business provided it is otherwise quorate.

#### PATRONS AND HONORARY OFFICERS

127. The Trustees may from time to time appoint any person whether or not a Member of the Company to be a patron of the Company or to hold any honorary office and may determine for what period he is to hold such office.

#### THE SEAL

128. The seal, if any, shall only be used by the authority of the Trustees or of a committee of Trustees authorised by the Trustees. The Trustees may determine who shall sign any instrument to which the seal is affixed and unless otherwise so determined it shall be signed by a Trustee and by the Secretary or by a second Trustee.

#### ACCOUNTS

129. Accounts shall be prepared in accordance with the relevant Statement of Recommended Practice as if the Company was a non-exempt charity and shall file these with the Secretary of State and the Principal Regulator by 31 December each Academy Financial Year.

#### ANNUAL REPORT

130. The Trustees shall prepare their Annual Report in accordance with the Statement of Recommended Practice as if the Company were a non-exempt

charity and shall file these with the Secretary of State and the Principal Regulator by 31 December each Academy Financial Year.

## ANNUAL RETURN

131. The Trustees shall comply with their obligations under Part 24 of the Companies Act 2006 (or any statutory re-enactment or modification of that Act) with regard to the preparation of an annual return and its transmission to the Registrar of Companies and in accordance with the Statement of Recommended Practice as if the Academy Trust were a non-exempt charity and to the Secretary of State and to the Principal Regulator by 31 December each Academy Financial Year.

## NOTICES

132. Any notice to be given to or by any person pursuant to the Articles (other than a notice calling a meeting of the Trustees) shall be in writing or shall be given using electronic communications to an address for the time being notified for that purpose to the person giving the notice. In these Articles, "Address" in relation to electronic communications, includes a number or address used for the purposes of such communications.

133. A notice may be given by the Company to a Member either personally or by sending it by post in a prepaid envelope addressed to the Member at his registered address or by leaving it at that address or by giving it using electronic communications to an address for the time being notified to the Company by the member. A Member whose registered address is not within the United Kingdom and who gives to the Company an address within the United Kingdom at which notices may be given to him, or an address to which notices may be sent using electronic communications, shall be entitled to have notices given to him at that address, but otherwise no such Member shall be entitled to receive any notice from the Company.

134. A Member present, either in person or by proxy, at any meeting of the company shall be deemed to have received notice of the meeting and, where necessary, of the purposes for which it was called.

135. Proof that an envelope containing a notice was properly addressed, prepaid and posted shall be conclusive evidence that the notice was given. Proof that a notice contained in an electronic communication was sent in accordance with guidance issued by the Institute of Chartered Secretaries and Administrators shall be conclusive evidence that the notice was given. A notice shall be deemed to be given at the expiration of 48 hours after the envelope containing it was posted or, in the case of a notice contained in an electronic communication, at the expiration of 48 hours after the time it was sent.

## INDEMNITY

136. Subject to the provisions of the Companies Act 2006 every Trustee or other officer or auditor of the Company shall be indemnified out of the assets of the Company against any liability incurred by him in that capacity in defending any proceedings, whether civil or criminal, in which judgment is given in favour or in which he is acquitted or in connection with any application in which relief is granted to him by the court from liability for negligence, default, breach of duty or breach of trust in relation to the affairs of the Company.

## RULES

137. The Trustees may from time to time make such rules or bye laws as they may deem necessary or expedient or convenient for the proper conduct and management of the Company and for purposes of prescribing classes of and conditions of membership, and in particular but without prejudice to the generality of the foregoing, they may by such rules or bye laws regulate:

- a. the admission and classification of Members of the Company (including the admission of organisations to membership) and the rights and privileges of such Members, and the conditions of membership and the terms on which Members may resign or have their membership terminated and the entrance fees, subscriptions and other fees or payments to be made by Members;
- b. the conduct of Members of the Company in relation to one another, and to the Company's servants;

- c. the setting aside of the whole or any part or parts of the Company's premises at any particular time or times or for any particular purpose or purposes;
- d. the procedure at general meetings and meetings of the Trustees and committees of the Trustees and meetings of the Local Governing Bodies in so far as such procedure is not regulated by the Articles;
- e. generally, all such matters as are commonly the subject matter of company rules.

138. The Company in general meeting shall have power to alter, add or to repeal the rules or bye laws and the Trustees shall adopt such means as they think sufficient to bring to the notice of Members of the Company all such rules or bye laws, which shall be binding on all Members of the Company. Provided that no rule or bye law shall be inconsistent with, or shall affect or repeal anything contained in, the Memorandum or the Articles.

#### AVOIDING INFLUENCED COMPANY STATUS

139. Notwithstanding the number of Members from time to time, the maximum aggregate number of votes exercisable by Local Authority Associated Persons shall never exceed 19.9% of the total number of votes exercisable by Members in general meeting and the votes of the other Members having a right to vote at the meeting will be increased on a pro-rata basis.

140. No person who is a Local Authority Associated Person may be appointed as a Trustee if, once the appointment had taken effect, the number of Trustees who are Local Authority Associated Persons would represent 20% or more of the total number of Trustees. Upon any resolution put to the Trustees, the maximum aggregate number of votes exercisable by any Trustees who are Local Authority Associated Persons shall represent a maximum of 19.9% of the total number of votes cast by the Trustees on such a resolution and the votes of the other Trustees having a right to vote at the meeting will be increased on a pro-rata basis.

141. No person who is a Local Authority Associated Person is eligible to be appointed to the office of Trustee unless his appointment to such office is authorised by the local authority to which he is associated.
142. If at the time of either his becoming a Member of the Company or his first appointment to office as a Trustee any Member or Trustee was not a Local Authority Associated Person but later becomes so during his membership or tenure as a Trustee he shall be deemed to have immediately resigned his membership and/or resigned from his office as a Trustee as the case may be.
143. If at any time the number of Trustees or Members who are also Local Authority Associated Persons would (but for Articles 139 to 142 inclusive) represent 20% or more of the total number of Trustees or Members (as the case may be) then a sufficient number of the Trustees or Members (as the case may be) who are Local Authority Associated Persons shall be deemed to have resigned as Trustees or Members (as the case may be) immediately before the occurrence of such an event to ensure that at all times the number of such Trustees or Members (as the case may be) is never equal to or greater than 20% of the total number of Trustees or Members (as the case may be). Trustees or Members (as the case may be) who are Local Authority Associated Persons shall be deemed to have resigned in order of their appointment date the most recently appointed resigning first.
144. The Members will each notify the Company and each other if at any time they believe that the Company or any of its subsidiaries has become subject to the influence of a local authority (as described in section 69 of the Local Government and Housing Act).

**Arrangements for pupils with Special Educational Needs ('SEN') and disabilities at the Academies**

**Duties in relation to pupils with SEN**

1. The Directors of the Company must, in respect of each Academy, comply with all of the duties imposed upon the governing bodies of maintained schools in:
  - Part 4 of the Education Act 1996 as amended from time to time<sup>6</sup>;
  - The Education (Special Educational Needs) (Information) Regulations 1999 as amended from time to time;
  - The Education (Special Educational Needs Co-ordinators) (England) (Amendment) Regulations 2008 as amended from time to time<sup>7</sup>.
2. Notwithstanding any provision in this Agreement, the Secretary of State may (whether following a complaint made to him or otherwise) direct the Company to comply with an obligation described in this Annex where the Company has failed to comply with any such obligation.
3. Where a child who has SEN is being educated in an Academy, those concerned with making special educational provision for the child must secure that the child engages in the activities of the school together with children who do not have SEN, 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, and
  - (c) the efficient use of resources.
4. In addition to complying with the duties imposed upon the governing bodies of maintained schools set out in The Education (Special Educational Needs) (Information) Regulations 1999 (as amended from time to time) the Company must ensure that the website for each Academy 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; 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 Equality Act 2010<sup>8</sup>).

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<sup>6</sup> Currently these duties are in sections 313 (Duty to have regard to the Special Educational Needs Code of Practice 2001); 317 (Duties in relation to pupils with special educational needs), 317A (Duty to advise parents that special educational provision is being made); and 324(5)(b) (Duty to admit the child where a school is named in the statement).

<sup>7</sup> These Regulations are amended by The Education (Special Educational Needs Co-ordinators) (England) (Amendment) Regulations 2009 (SI 2009 No 1387).

<sup>8</sup> For the meaning of 'disabled', see section 6 of the Equality Act 2010.

## **Admissions**

5. The Company must ensure that for each Academy pupils with SEN are admitted on an equal basis with others in accordance with the Academy's admissions policy.
6. Where a local authority ("LA") proposes to name the Academy in a statement of SEN made in accordance with section 324 of the Education Act 1996, it must give the Company written notice that it so proposes. Within 15 days of receipt of the LA's notice that it proposes to name the Academy in a statement, the Company must 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 Company must have regard to the relevant guidance issued by the Secretary of State to maintained schools.
7. If the Company determines that admitting the child would be incompatible with the provision of efficient education, it must, within 15 days of receipt of the LA's notice, notify the LA in writing that it does not agree that the Academy should be named in the pupil's statement. Such notice must set out all the facts and matters the Academy relies upon in support of its contention that: (a) admitting the child would be incompatible with efficiently educating other children; and (b) the Company cannot take reasonable steps to secure this compatibility.
8. After service by the Company on the LA of any notice (further to paragraph 7 above) stating that it does not agree with the LA's proposal that the Academy be named, the Company must seek to establish from the LA, as soon as is reasonably practicable, whether or not the LA agrees with the Company. If the LA notifies the Academy that it does not agree with the Company's response, and names the Academy in the child's statement, then the Company must admit the child to the school on the date specified in the statement or on the date specified by the LA.
9. Where the Company consider that the Academy should not have been named in a child's statement, they may ask the Secretary of State to determine that the LA has acted unreasonably in naming the Academy and to make an order directing the LA to reconsider.
10. 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 First-tier Tribunal (Special Educational Needs and Disability), be final.
11. If a parent or guardian of a child in respect of whom a statement is maintained by the local authority appeals to the First-tier Tribunal (Special Educational Needs and Disability) either against the naming of an Academy in the child's SEN statement or asking the Tribunal to name an 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 9 above, be substituted for the Secretary of

State's decision.

12. Where the Company, the Secretary of State or the First-tier Tribunal (Special Educational Needs and Disability) have determined that it should be named, the Company shall admit the child to the Academy notwithstanding any provision of Annex 1 of the Supplemental Agreement of that Academy.

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

1. Subject to the exceptions in paragraph 4, the Company shall act and shall ensure that the Principal of each Academy act in accordance with the law on exclusions as if each Academy were a maintained school. For this purpose, reference in the law on exclusions to the Head Teacher and Governing Body shall respectively be deemed to be the Principal and the Advisory Board of the relevant Academy.
2. Without limiting the generality of paragraph 1, the Company shall ensure that the local authority is informed of an exclusion decision in the same circumstances as required by a maintained school under the law on exclusions.
3. Subject to the exception in paragraph 4, the Company shall ensure that each Principal and the Local Governing Body of the Academy have regard to the Secretary of State's guidance on exclusions when excluding, or reviewing the exclusion of a pupil and in relation to any appeals or review process<sup>9</sup> as if each Academy were a maintained school.
4. The exceptions to the duties imposed under paragraphs 1 and 3 are:
  - the Company shall make arrangements for enabling appeals against, any decision of the Local Governing Body to permanently exclude a pupil in accordance with the functions assigned to the local authority. Any appeal panel will be impartial, constituted in accordance with the Secretary of State's guidance and any decision of such a panel will be binding on the Company.<sup>10</sup> The requirements in relation to appeals apply to the Company only to the extent that the local authority is required to carry out such functions for maintained schools under the law on exclusions.
  - the Local Governing Body is not expected to seek the advice of a local authority officer when considering an exclusion, although a local authority officer may attend any meeting to consider an exclusion at the request of a parent; and
  - subject to the Company's obligations under clause 32 of this Agreement relating to an agreement with the local authority on the flow of funds following

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<sup>9</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 DfE website at: <http://www.teachernet.gov.uk/wholeschool/behaviour/exclusion/2008guidance/>. The guidance may be subject to amendment, and each Academy is required to have regard to the guidance as it stands at any given time.

<sup>10</sup> A parent may seek a judicial review of a decision of an appeal/review panel relating to their child. A parent of a child excluded from an Academy may not complain to the Commissioner for Local Administration (the Local Government Ombudsman) about maladministration. This is because the Commissioner's remit is limited to considering the conduct of appeal panels constituted by Local Authorities.

an exclusion, the arrangements for money to follow pupils who have been permanently excluded from school does not apply.

**THIS AGREEMENT** made 19 August 2011.

**BETWEEN**

(1) **THE SECRETARY OF STATE FOR EDUCATION (“the Secretary of State”)**; and

(2) **CfBT Schools Trust (“the Company”)**

**IS SUPPLEMENTAL TO THE MASTER FUNDING AGREEMENT** made between the same parties and dated 19 August 2011 (the “**Master Agreement**”).

1 **DEFINITIONS AND INTERPRETATION**

1.1 Except as expressly provided in this Agreement words and expressions defined in the Master Agreement shall have the same meanings in this Agreement as were ascribed to them in the Master Agreement.

1.2 The following words and expressions shall have the following meanings:

“the Academy” means the All Saints Junior School to be established initially in the Downshire Room, All Saints Church Hall, Downshire Square, Reading, Berkshire, RG1 6NH and thereafter at the site currently known as August House, 6 Brownlow Road, Reading, RG1 6NP;

“Academy Financial Year” means the year from 1<sup>st</sup> September to 31<sup>st</sup> August in any year;

“Academy Funding Year” means the year from 1<sup>st</sup> September to 31<sup>st</sup> August in any year;

“Chief Inspector” means Her Majesty's Chief Inspector of Education, Children's Services and Skills or his successor;

“Further Trustees” means Trustees who may be appointed by the Secretary of State under the Articles of Association if a Special Measures Termination Event, as defined in this Supplemental Funding

Agreement, occurs or the Secretary of State considers it necessary to appoint such Trustees to enable the Company to secure a permanent site if the Company has been unable to do so;

“Insured Risks” means fire lightning explosion earthquake storm tempest flood subsidence landslip heave impact terrorism bursting or overflowing of water tanks and pipes earthquake damage by aircraft and other aerial devices or articles dropped there from riot and civil commotion labour disturbance and malicious damage and such other risks as the Company insures against from time to time subject in all cases to any exclusions or limitations as may from time to time be imposed by the insurers or underwriters;

“the Land” means the land (including for the avoidance of doubt all buildings, structures landscaping and other erections) situated at August House, 6 Brownlow Road, Reading RG1 6NP and registered as part of Title number BK431599 making up the permanent site of the Academy;

“the Lease” means the leasehold agreement between the Company and the Diocesan Trustees (Oxford) Limited in respect of the Temporary Site;

“the Temporary Site” means the land (including for the avoidance of doubt all buildings, structures landscaping and other erections) upon which the Academy is to be situated at the date of opening at the Downshire Room and ancillary space, All Saints Church Hall, Downshire Square, Reading, Berkshire, RG1 6NH;

“SENCO” means Special Educational Needs Co-ordinator; and

“Start-up period” means up to a maximum of four Academy Funding Years and covers the period both up to and including the first Academy Funding Year in which all age groups are present at the Academy (that is, all the pupil cohorts relevant to the age-range of the Academy will have some pupils present).

- 1.3 Reference in this Agreement to clauses and Annexes shall, unless otherwise stated, be to clauses and annexes of this Agreement.

## 2 **THE ACADEMY**

2.1 The Company will establish and maintain, and carry on or provide for the carrying on of the Academy in accordance with the Master Agreement and this Agreement except insofar as any provisions in this Agreement conflict with any provisions in the Master Agreement, in which case the provisions of this Agreement shall prevail over the relevant provisions in the Master Agreement.

2.2 The curriculum provided by the Academy to pupils shall be broad and balanced.

2.3 In relation to the Academy only, the Company 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:

- 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 authority shall, in each case, be treated as references to the Company; and
- d) references to the head teacher shall, in each case, be treated as references to the Principal of the Academy.

2.4 The requirements for the admission of pupils to the Academy are set out at Annex 1.

### **ACADEMY OPENING DATE**

2.5 The Academy shall open as a school on 1 September 2011.

2.6 The planned capacity of the Academy is 120 in the age range 7-11.

## **CRIMINAL RECORDS BUREAU CHECKS**

- 2.7 In relation to the Academy only, the Company shall, on receipt of information from the Criminal Records Bureau in response to an application for an enhanced criminal record certificate, on request from the Secretary of State or his agents, as soon as possible thereafter submit such information to the Secretary of State in accordance with section 124 of the Police Act 1997.

## **TEACHERS AND OTHER STAFF**

- 2.8 Subject to clause 2.9, and in relation to the Academy only, the Company shall, in accordance with any guidance which the Secretary of State may issue on the qualifications of teaching and other staff in Academies, employ anyone it deems is suitably qualified or is otherwise eligible 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.
- 2.9 Clause 2.8 does not apply to anyone who (a) is appointed as the SENCO by the Academy Trust under section 317(3A) of the Education Act 1996, who must meet the requirements set out in Regulation 3 of the Education (Special Educational Needs Co-ordinators)(England) Regulations 2008 (SI 2008/2945); or (b) is appointed as a designated teacher for looked after children further to clause 18A of the Master Agreement.

## **3 CAPITAL GRANT**

- 3.1 Pursuant to clause 38 of the Master Agreement, the Secretary of State may, in his absolute discretion provide Capital Expenditure funding in accordance with any arrangements he considers appropriate.

4 **GAG AND EAG**

4.1 The Secretary of State agrees to pay GAG and EAG to the Company in relation to the Academy in accordance with the Master Agreement, subject to clauses 4.2 to 4.10 below.

4.2 Subject to clauses 4.8-4.9, GAG for each Academy Funding Year for the Academy will include:

4.2.1 Funding equivalent to that which would be received by a maintained 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 at the Academy;

4.2.2 Funding for the cost of functions which would be carried out by the local authority if the Academy were a maintained school, such funding to be determined at the discretion of the Secretary of State;

4.2.3 Funding for matters for which it is necessary for the Academy to incur extra costs, to the extent that those costs are deemed in the discretion of the Secretary of State to be necessary; and

4.2.4 Payments equivalent to further, specific grants made available to maintained schools, where the Academy meets the requisite conditions and criteria necessary for a maintained school to receive these grants, such payments to be at the discretion of the Secretary of State.

4.3 Subject to clause 4.4, the basis of the pupil number count for the purposes of determining GAG for an Academy Funding Year for the Academy will be the Academy Trust's estimate each November for numbers on roll in the following September for the Academy.

4.4 Once the condition specified in clause 4.5 has been satisfied with respect to the Academy for the Academy Funding Year for which funding is being calculated, the basis of the pupil number count for the purpose of determining GAG for the Academy will be:

4.4.1 for the pupil number count for pupils in Year 11 and below, the

Schools Census for the January preceding the Academy Funding Year in question; and

- 4.4.2 for the pupil number count for pupils in Year 12 and above, the formula which for the time being is in use for maintained schools for the calculation of pupil numbers for pupils in Year 12 and above for the purpose of calculating their level of funding.
- 4.5 For the purpose of clause 4.4, the condition is satisfied when all planned Year-groups will be present at the Academy (that is, all the pupil cohorts relevant to the age-range of the Academy will have some pupils present).
- 4.6 For any Academy Funding Year in which GAG for the Academy has been calculated in accordance with clause 4.3, an adjustment will be made to the following Academy Funding Year's formula funding element of GAG for the Academy to recognise any variation from that estimate greater than or lower than 2.5%. The additional or clawed-back grant will be only that amount relevant to the number of pupils beyond the 2.5% variation.
- 4.7. For any Academy Funding Year in which GAG for the Academy is calculated in accordance with clause 4.4, no adjustment will be made to the equivalence funding element in the following Academy Funding Year's equivalence funding element of GAG unless the Academy Trust demonstrates to the satisfaction of the Secretary of State that there has been a significant impact on costs, such as an extra class. For any other element of GAG the Secretary of State may make adjustments to recognise a variation in pupil numbers from that used to calculate the element of grant in question; the basis of these will be set out in the Annual Letter of Funding or its equivalent.
- 4.8. The Secretary of State may pay further grant in the Start-up period, as determined and specified by him, for costs which cannot otherwise be met from GAG.
- 4.9. 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 simply upon the number of pupils attending the Academy are unlikely to be sufficient to meet the Academy's needs during the notice

period. In those circumstances, the Secretary of State may undertake 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 4.2-4.7, in order to enable the Academy to operate effectively.

- 4.10. For the avoidance of any doubt, the Secretary of State will not, in relation to the Academy, pay Implementation Grant, pursuant to clauses 42 to 47 of the Master Agreement.

#### **4A OTHER RELEVANT FUNDING**

4A.1 Not used.

4A.2 For the avoidance of any doubt, the Secretary of State will not, in relation to the Academy, meet any costs arising from the inclusion of Academies in the Schedules to the Redundancy Payments (Continuity of Employment in Local Government) (Modification) Order 1999, pursuant to clause 68 of the Master Agreement.

#### **5 TERMINATION**

5.1 Either party may give not less than seven Academy Financial Years' written notice to terminate this Agreement, such notice to expire on 31 August 2018 or any subsequent anniversary of that date.

5.2 If the Secretary of State is of the opinion that the Academy no longer has the characteristics set out in clause 12 of the Master Agreement or that the conditions and requirements set out in clauses 14-35 of the Master Agreement are not being met, or that the Company is otherwise in material breach of the provisions of this Agreement or the Master Agreement, the Secretary of State may give notice of his provisional intention to terminate this Agreement.

5.3 Any such notice shall be in writing and shall:

5.3.1 state the grounds on which the Secretary of State considers the Academy no longer has the characteristics set out in clause 12 of the Master Agreement or is not meeting the conditions and

requirements of clauses 13-34 of the Master Agreement or the Company is otherwise in material breach of the provisions of this Agreement or the Master Agreement;

5.3.2 specify the measures needed to remedy the situation or breach;

5.3.3. specify a reasonable date by which these measures are to be implemented; and

5.3.4 state the form in which the Company is to provide its response and a reasonable date by which it must be provided.

5.4 If no response is received by the date specified in accordance with clause 5.3.4, the Secretary of State may give the Company 12 months, or such lesser period as he considers appropriate in the circumstances, written notice to terminate this Agreement.

5.5 If a response is received by the date specified in accordance with clause 5.3.4, the Secretary of State shall consider it, and any representations made by the Company, and shall, within three months of its receipt, indicate that:

5.5.1. he is content with the response and/or that the measures which he specified are being implemented; or

5.5.2. he is content, subject to any further measures he reasonably specifies being implemented by a specified date or any evidence he requires that implementation of such measures have been successfully completed; or

5.5.3 he is not satisfied, that he does not believe that he can be reasonably satisfied, and that he will proceed to terminate the Agreement.

5.6 In the circumstances of clause 5.5.3 the Secretary of State shall notify the Company why he believes that he cannot be reasonably satisfied and, if so requested by the Company within thirty days from such notification, he shall meet a deputation including representatives from

Trustees of the Company and the Local Governing Body 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 12 of the Master Agreement or does not and will not meet the conditions and requirements set out in clauses 13-34 of the Master Agreement or the Company is in material breach of the provisions of this Agreement or the Master Agreement and such breach will not be remedied to his reasonable satisfaction, he shall give the Company twelve months written notice to terminate this Agreement.

- 5.7 If the Secretary of State has cause to serve a notice on the Company 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 5.6 may be shortened to a period deemed appropriate by the Secretary of State.
- 5.8 The Secretary of State shall, at a date preceding the start of each Academy Financial Year, provide to the Company an indication of the level of funding to be provided by the Secretary of State to the Company by way of GAG and EAG in the next following Academy Financial Year (the "**Indicative Funding**"). If the Company is of the opinion that, after receipt of the Indicative Funding for the next following Academy Financial Year (the "**Critical Year**") and of the taking into account all other resources available and likely to be available to the Academy, including such funds as are accumulated and held unspent by the applicable Academy set out in clause 79 of the Master Agreement and such other funds as are and likely to be available to the Academy from other academies operated by the Company ("**All Other Resources**"), it is likely that the cost of running the Academy during the Critical Year would cause the relevant Academy (if it were an independent company), on the basis of the Indicative Funding, to become insolvent (and for this reason only) then

the Company may give notice of its intention to terminate this Agreement at the end of the then current Academy Financial Year.

5.9 Any notice given by the Company under clause 5.8 shall be in writing and shall be served on the Secretary of State not later than 28 February preceding the Critical Year or, if the Secretary of State shall not have given notice of the Indicative Funding to the Company on or before the date specified in clause 5.8 above, within six weeks after the Secretary of State shall have done so. The notice must specify:

5.9.1 the grounds upon which the Company's opinion is based and include the evidence of those grounds and any professional accounting advice the Company has received and including a detailed statement of steps which the Company proposes to take with a view to ensuring that as soon as reasonably practicable the costs of running the Academy are reduced sufficiently to ensure that such costs are less than the Indicative Funding and All Other Resources and the period of time within which such steps will be taken; and

5.9.2 the shortfall in the Critical Year between the Indicative Funding and All Other Resources expected to be available to the Company to run the Academy and the projected expenditure on the Academy; and

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

5.10 Both parties undertake to use their best endeavours to agree whether or not the cost of running the Academy during the Critical Year would cause the relevant Academy (if it were an independent company), on the basis of the Indicative Funding and All Other Resources, to become insolvent. Both parties recognise that they will need to engage in a constructive dialogue at the time about how best to provide education for the pupils at the Academy and undertake to use their best endeavours to agree a practical solution to the problem.

- 5.11 If no agreement is reached by 30 April (or such other date as may be agreed between the parties) as to whether the cost of running the Academy during the Critical Year on the basis of the Indicative Funding and All Other Resources would cause the relevant Academy (if it were an independent company) to become insolvent, then that question shall be referred to an independent expert (the “**Expert**”) for resolution. The Expert’s determination shall be final and binding on both parties. The Expert shall be requested to specify in his determination the amount of the shortfall in funding (the “**Shortfall**”). The Expert shall be an insolvency practitioner with significant professional experience of educational institutions or academies. If the parties fail to agree upon the appointment of the Expert then the Expert shall be appointed by the President for the time being of the Institute of Chartered Accountants in England and Wales. The Expert’s fees shall be borne equally between the parties.
- 5.12 The Expert shall be required in reaching his determination to take account of advice from an educational specialist who is professionally familiar with the issues arising from the budget management of large schools. If the parties fail to agree upon the appointment of the educational specialist then the educational specialist shall be appointed by the Chairman for the time being of the Specialist Schools and Academies Trust. The educational specialist’s fees shall be borne equally between the parties.
- 5.13 If the Expert determines that the cost of running the Academy during the Critical Year would cause the relevant Academy (if it were an independent company), on the basis of the Indicative Funding and All Other Resources, to become insolvent, and the Secretary of State shall not have agreed to provide sufficient additional funding to cover the Shortfall, then the Company shall be entitled to terminate this Agreement, by notice expiring on 31 August prior to the Critical Year. Any such notice shall be given within 21 days after (a) the Expert’s determination shall have been given to the parties or (b), if later, the

Secretary of State shall have given written notice of his refusal to provide sufficient additional funding for the Academy to cover the Shortfall.

- 5.14 If the Company shall have given notice to terminate the Agreement under 5.13, the Secretary of State may by notice in writing to the Company require the Company to appoint up to two persons as Trustees of the Company in accordance with the Articles.
- 5.15 The Secretary of State may at any time by notice in writing terminate this Agreement forthwith if the Academy has ceased (except where such cessation occurs temporarily by reason of an event beyond the reasonable control of the Company) to operate as an Academy within the meaning of Section 1 of the Academies Act 2010.
- 5.16 A “Special Measures Termination Event Occurs” when:
  - 5.16.1. the Chief Inspector has given a notice to the Company 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
  - 5.16.2. the Chief Inspector has carried out a subsequent inspection of the Academy in accordance with the Education Act 2005 and has made 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
  - 5.16.3. the Secretary of State has requested the Company to deliver within 10 Business Days a written statement (a “Further Action Statement”) of the action the Company 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
  - 5.16.4. the Secretary of State, having considered the Further Action Statement, is not satisfied that any action proposed to be taken by the Company 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.

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

5.17.1. by notice in writing to the Company terminate this Agreement forthwith; or

5.17.2. subject to clause 108 of the Master Agreement, appoint such Further Trustees to the Company as he thinks fit in accordance with the Articles and/or may provide up to 12 months' notice in writing to terminate this Agreement.

5.18 In the event that the Secretary of State appoints Further Trustees in accordance with clause 5.17.2, 5.22.2 or 5.24.2, the Company must, upon the request of the Secretary of State, procure the resignation of the Trustees appointed in accordance with Article 50 of the Articles of Association.

5.19 If the Company has not obtained full planning permission (including where relevant listed building consent), in respect of the Land, by 23 December 2011, the Secretary of State may

5.19.1 give a warning notice to the Company. For the purposes of this clause "warning notice" means a notice in writing by the Secretary of State to the Company setting out the action which the Secretary of State requires the Company to take in order to obtain full planning permission (including where relevant listed building consent).

5.20 If at any time after the signing of this Agreement but prior to the Academy opening date, the Secretary of State is of the view that:

1. the Academy would, on opening, provide an unacceptably low standard of education; or
2. the safety of pupils or staff at the Academy would, on opening, be threatened; or

3. the staff employed at the Academy are unsuitable; or
4. the buildings and other structures on the Temporary Site are unsuitable, including but not limited to the failure to obtain Building Regulations Approval in respect of the Temporary Site if appropriate;

he may in writing either:

- 5.20.1 require the Company (i) not to open the Academy; and/or (ii) not to admit pupils of a particular age range, to be determined by the Secretary of State; and/or (iii) not to use any building or other structure on the Temporary Site until such time as the relevant matter or matters listed in 1. to 4. above has or have been resolved to the Secretary of State's satisfaction; or
  - 5.20.2 terminate this Agreement forthwith or provide such notice as he deems appropriate in the circumstances to terminate this Agreement.
- 5.21 If, at any time after the signing of this Agreement but prior to the Academy relocating to the Land, the Secretary of State is of the view that:
1. the safety of pupils or staff at the Academy would, relocating to the Land, be threatened; or
  2. the buildings and other structures on the Land are unsuitable, including but not limited to the failure to obtain Building Regulations Approval in respect of the Land if appropriate;

he may in writing either:

- 5.21.1 require the Company not to use any building or other structure on the Land until such time as the relevant matter or matters listed in 1. to 2. above has or have been resolved to the Secretary of State's satisfaction; or
- 5.21.2 terminate this Agreement forthwith or provide such notice as he

deems appropriate in the circumstances to terminate this Agreement.

5.22 If the Company has not completed its purchase of the Land by 23 December 2011, the Secretary of State may:

5.22.1 by notice terminate this Agreement forthwith or may provide such notice as he deems appropriate in the circumstances in writing to terminate this Agreement; or

5.22.2 appoint such Further Trustees as he thinks fit and/or provide up to 12 months' notice in writing to terminate this Agreement.

5.23 If by 23 December 2011,, it becomes clear that the purchase of the Land will not be completed, the Secretary of State may direct the Company to enter into negotiations in respect of securing an alternative permanent site the Secretary of State considers suitable for the needs of the Academy;

5.24 If, having been directed under 5.23 to enter into negotiations, the Company has not secured an interest in that alternative permanent site to the satisfaction of the Secretary of State by 1 February 2012, the Secretary of State may:

5.24.1 by notice terminate this Agreement forthwith or may provide such notice as he deems appropriate in the circumstances in writing to terminate this Agreement; or

5.24.2 appoint such Further Trustees as he thinks fit and/or provide up to 12 months' notice in writing to terminate this Agreement.

5.25 The Company agrees that before taking any steps to terminate, vary, surrender or dispose of the Lease it shall seek and obtain the prior written consent of the Secretary of State, not to be unreasonably withheld or delayed.

5.26 The Company agrees that before taking any steps, including but not limited to the service of any notice or waiver of any condition, under any contractual arrangement entered into in respect of the acquisition of the legal interest in the Land, it shall seek and obtain the prior written consent of the Secretary of State, not to be unreasonably withheld or delayed.

## **6 EFFECT OF TERMINATION**

6.1 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.

6.2 Subject to clause 6.3, if the Secretary of State terminates this Agreement for reasons other than that a Special Measure Termination Event occurs, the Academy no longer has the characteristics set out in clause 12 of the Master Agreement, or is no longer meeting the conditions and requirements set out in clauses 13-34 of the Master Agreement or that the Company is otherwise in material breach of the provisions of this Agreement or the Master Agreement, the Secretary of State shall indemnify the Company.

6.3 The amount of any such indemnity shall be determined by the Secretary of State having regard to any representations made to him by the Company, and shall be paid at such times and in such manner as the Secretary of State may reasonably think fit.

6.4 The categories of expenditure incurred by the Company in consequence of the termination of the Agreement in respect of which the Secretary of State shall indemnify the Company 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.

6.5 Subject to clause 6.6, on the termination of this Agreement however occurring, the Company shall in respect of any of its capital assets at the date of termination:

6.5.1 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

6.5.2 if the Secretary of State confirms that a transfer under clause 6.5.1 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.

6.6 The Secretary of State may waive in whole or in part the repayment due under clause 6.5.2 if:

6.6.1 The Company obtains his permission to invest the proceeds of sale for its charitable objects; or

6.6.2 The Secretary of State directs all or part of the repayment to be paid to the local authority..

6.7 If any land or premises of the Academy were acquired by the Company from a local authority by a scheme under Paragraph 1 of Schedule 1 of the Academies Act 2010 or otherwise at less than the market value of the land at the date of acquisition, and the Secretary of State does not make a scheme as provided for in Paragraph 6 of Schedule 1 of the

Academies Act 2010, the Company 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 Company and the LA from which the land was transferred before giving or withholding that consent.

## **6A LAND**

### **Restrictions on Land transfer**

6A.1 Recognising that it is or will be receiving land at nil consideration (which for the purposes of this transaction shall include leases granted at a peppercorn rent) from or on behalf of the Secretary of State, the Company:

6A.1.1 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*

6A.1.2 shall take any further steps required to ensure that the restriction referred to in clause 6A.1.1 is entered on the proprietorship register;

6A.1.3 shall provide the Secretary of State with confirmation of the entry of the restriction referred to in clause 6A.1.1 as soon as practicable after it receives notification from the Land Registry;

6A.1.4 in the event that it has not registered the restriction referred to in clause 6A.1.1, hereby consents to the entering of the restriction

referred to in 6A.1.1 in the register by the Secretary of State (under section 43(1)(b) of the Land Registration Act 2002); and

6A.1.5 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 6A.1.1 or 6A.1.4 above, whether by itself, a holding company, a subsidiary company, or a receiver, administrator or liquidator acting in the name of the Company.

### **Obligations on the Company**

6A.2 The Company shall observe and comply with its obligations under the Lease and shall promptly enforce its rights against the Landlord under the Lease.

6A.3 If the Company is in material breach, or if it is reasonably foreseeable that the Company will be in material breach, of the provisions of the Lease, it shall forthwith give written notice to the Secretary of State specifying the exact nature of the breach or reasonably foreseeable breach and such notice shall set out the steps taken or to be taken by the Company to remedy the breach or reasonably foreseeable breach and shall, where appropriate, include the timescales relating to any remedial action.

6A.4 The Company will at its own cost provide all information reasonably required by the Secretary of State in respect of any material breach or reasonably foreseeable material breach as referred to in clause 6C.

6A.5 Following the receipt by the Secretary of State of the written notice under clause 6A.3, the Company shall permit the Secretary of State to take all such steps in conjunction with or instead of the Company as may be necessary to remedy or prevent the material breach referred to in the said notice. The Company shall, in such circumstances, use all reasonable endeavours to assist the Secretary of State to remedy or prevent such material breach.

## **Repair and Upkeep**

6A.6 The Company shall keep the Land and / or the Temporary Site clean and tidy and make good any damage it causes to the Land and / or the Temporary Site and / or any deterioration to the condition of the Land and / or the Temporary Site that may arise from the date of this Agreement, save that in respect of the Temporary Site, the Company shall ensure that any actions undertaken in compliance with this clause shall be consistent with the terms of the Lease.

## **Insurance**

6A.7 The Company shall:-

- 6A.7.1 keep the Land insured with a reputable insurance office against loss or damage by the Insured Risks in the sum the Company is advised represents the reinstatement value of the Land from time to time;
- 6A.7.2 pay the premiums for insurance promptly as they become due and maintain in force the policies of insurance on the Land;
- 6A.7.3 following the incidence of damage to or destruction of the Land and subject to receipt of all necessary consents licences permissions and the like apply the proceeds of the policy of the insurance received for those purposes in rebuilding and reinstating the Land (provided that this clause should be satisfied if the Company provides premises not necessarily identical to the Land as the same existing prior to such damage or destruction occurring) as soon as may be reasonably practicable;
- 6A.7.4 produce to the Secretary of State a copy of the insurance policy whenever reasonably requested and the receipt for the last premium or other evidence of renewal and up to date details of the amount of cover (but no more often than once in any period of 12 months in both cases);

6A.7.5 not knowingly do anything whereby any policy of insurance relating to the Land may become void or voidable; and

6A.7.6 insure against liability in respect of property owners' and third party risks including occupiers liability.

### **Transfer of Land on Termination of Agreement**

6A.8 In recognition by the Company that it is or will be obtaining a legal interest in the Land, such acquisition being financed solely by the Secretary of State, the Company hereby grants and the Secretary of State hereby accepts an option, exercisable by the Secretary of State or his nominee, to acquire the said Land at nil consideration. The option hereby granted shall be exercisable (by notice in writing by or on behalf of the Secretary of State) on the termination of this Funding Agreement for whatever cause, provided that the Secretary of State has not enforced his rights under the charge entered into pursuant to clause 6A.11.1. On the exercise of this option, the Law Society's Standard Conditions of Sale for Commercial Property in force at the date of such exercise shall apply to the transaction and completion shall take place 28 days after such exercise.

6A.9 In further recognition by the Company that it is or will be obtaining a legal interest in the Land, such acquisition being financed solely by the Secretary of State, to protect the option granted under clause 6A.8, the Company:

6A.9.1 shall, within 28 days from the transfer to it of the Land, apply to the Land Registry in Form AN1 as prescribed by Rule 81 of the Land Registration Rules 2003 for a notice to be entered in the register (under section 34(3)(a) of the Land Registration Act 2002) to protect the option granted under clause 6A.8 and including a copy of this Agreement as evidence of that option;

- 6A.9.2 shall take any further steps required to ensure that the notice referred to in clause 6A.9.1 is entered on the proprietorship register;
- 6A.9.3 shall provide the Secretary of State with confirmation of the entry of the notice referred to in clause 6A.9.1 as soon as practicable after it receives notification from the Land Registry;
- 6A.9.4 in the event that it has not registered the notice referred to in clause 6A.9.1, hereby consents to the entering of the notice referred to in 6A.9.1 in the register by the Secretary of State (by application in Form UN1 under section 34(3)(b) of the Land Registration Act 2002); and
- 6A.9.5 shall not, without the consent of the Secretary of State, apply to dis-apply, modify or remove (by cancellation or otherwise) a notice entered in accordance with clause 6A.9.1 or 6A.9.4 above, whether by itself, a holding company, a subsidiary company, or a receiver, administrator or liquidator acting in the name of the Trust.

### **Charge**

- 6A.10.1 Subject to clause 6A.11.7, the Capital Expenditure as defined by clause 37 (a) and (b) of the Master Agreement, shall become immediately due and payable upon termination of this Agreement or upon any sale of the Land in whole or in part, whether or not such sale has been consented to by the Secretary of State, provided that the Company's liabilities in this respect shall not exceed the estimated (or actual) proceeds of sale of the Land.
- 6A.10.2 Where there are no actual proceeds of sale because the Land is not sold, the estimated proceeds of sale of the Land shall be as agreed between the Company and the Secretary of State and in the event that the parties are unable to agree this amount, they

shall jointly appoint an independent surveyor to determine the value of the same, whose decision shall be final and binding.

6A.11 In further recognition by the Company that it is or will be obtaining a legal interest in the Land, such acquisition being financed solely by the Secretary of State, the Company:

6A.11.1 will charge to the Secretary of State by way of a legal mortgage (in the form reasonably required by the Secretary of State) its interest in the Land, upon completion of the acquisition of said interest;

6A.11.2 shall, within 21 days from the entry into the charge referred to at 6A.11.1, register the charge with Companies House or if required by the Secretary of State use all reasonable endeavours to assist the Secretary of State to register the charge at Companies House, including signing and executing any documents, deeds and / or forms as required;

6A.11.3 shall, within 28 days from the entry into the charge referred to at 6A.11.1, apply to the Land Registry for the charge referred to in 6A.11.1 to be entered on the charges register, using forms AP1 (Rule 13 LRR 2003) and / or CH1 (Rule 103 LRR 2003) or such form as may be required by the Secretary of State;

6A.11.4 shall take any further steps required to ensure that the charge referred to in clause 6A.11.1 is entered on the charges register at both Companies House and the Land Registry;

6A.11.5 shall provide the Secretary of State with confirmation of the registration of the charge referred to in clause 6A.11.3 as soon as reasonably practicable after it receives notification from the Land Registry;

6A.11.6 in the event that it has not registered the charge as referred to in clause 6A.11.3, hereby consents to the registration of the

charge by the Secretary of State. To enable the Secretary of State to do so, the Company shall use all reasonable endeavours to assist the Secretary of State to register the charge, including signing and executing any documents, deeds and / or forms as required, specifically but not limited to providing the Secretary of State with the executed charge and completed AP1 / CH1 forms, and dealing with any requisitions raised by the Land Registry;

6A.11.7 in the event that, upon termination of this Agreement for whatever reason, the Secretary of State exercises his option and the legal interest in the Land is transferred to the Secretary of State or his nominee for nil consideration by the Company pursuant to clause 6A.8 of this Agreement, the Company's obligation to repay the Capital Expenditure as defined by clause 37(a) and (b) of the Master Agreement pursuant to clause 6A.10.1 shall be deemed to have been satisfied in full and the Secretary of State shall take all steps reasonably required to remove the charge registered with Companies House as against the Company and to remove the charge from the charges register at the Land Registry against the title for the Land; and

6A.11.8 in the event that, upon termination of this Agreement for whatever reason, the Company does repay all monies owing to the Secretary of State under clause 6A.10.1 of this Agreement to the satisfaction of the Secretary of State, whether or not as the result of an enforcement of the charge referred to at 6A.11.1, the Secretary of State shall, in respect of the charge registered pursuant to sub-clauses 6A.11.2 and 6A.11.3, take all steps reasonably required to remove the charge registered with Companies House as against the Company and to remove the charge from the charges register at the Land Registry against the title for the Land.

7     **ANNEX**

7.1    The Annex to this Agreement forms part of and is incorporated into this Agreement.

7A     **GENERAL**

7A.1   This Agreement shall not be assignable by the Company.

7A.2   The Secretary of State and the Company agree that, notwithstanding the termination of this Agreement, any obligation upon the Company and/or the Secretary of State expressed as arising upon the termination of this Agreement shall continue to subsist.

8     **THE MASTER AGREEMENT**

8.1    Except as expressly provided in this Agreement the Master Agreement shall continue in full force and effect.

9     **ENGLISH LAW**

9.1    This Agreement shall be governed by and interpreted in accordance with English law.

This Agreement was executed as a Deed on 19 August 2011

Executed on behalf of **CfBT Schools Trust** by:

*W Woodcock*      *B. Adderley*

**Trustee**

**Trustee**

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

*Mary Pooley*



**Duly Authorised**

**ANNEX TO THIS SUPPLEMENTAL AGREEMENT**  
**REQUIREMENTS FOR THE ADMISSION OF PUPILS TO THE**  
**ALL SAINTS JUNIOR SCHOOL**

**GENERAL**

1. This Annex may be amended in writing at any time by agreement between the Secretary of State and the Academy Trust.
2. The Academy Trust will act in accordance with, and will ensure that an Independent Appeal Panel is trained to act in accordance with, all relevant provisions of the School Admissions Code and the School Admission Appeals Code published by the Department for Education (“the Codes”) as they apply at any given time to maintained schools and with equalities law and the law on admissions as they apply to maintained schools. For this purpose, reference in the Codes or legislation to “admission authorities” shall be deemed to be references to the governing body of the Academy Trust.
3. Notwithstanding the generality of paragraph 2 of this Annex, the Academy Trust will take part in any mandatory Admissions Forum set up by the local authority (“LA”) in which they are situated and have regard to its advice; and will participate in the co-ordinated admission arrangements operated by the LA and the local Fair Access Protocol.
4. Notwithstanding any provision in this Annex, the Secretary of State may:
  - a. direct the Academy Trust to admit a named pupil to the All Saints Junior School on application from a LA. This will include complying with a School Attendance Order<sup>1</sup>. Before doing so the Secretary of State will consult the Academy Trust.
  - b. direct the Academy Trust to admit a named pupil to the All Saints Junior School if the Academy Trust has failed to act in accordance with this Annex or has otherwise failed to comply with applicable admissions and equalities legislation or the provisions of the Codes.
  - c. direct the Academy Trust to amend its admission arrangements where they fail to comply with the School Admissions Code or the Admission Appeals Code.

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<sup>1</sup> Local authorities are able to issue school attendance orders if a child is not attending school. These are legally binding upon parents. Such an order might, for instance, be appropriate where a child has a place at an Academy but his/her parents are refusing to send him/her to school. The order will require a parent to ensure his/her child attends a specified school.

5. The Academy Trust shall ensure that parents and 'relevant children<sup>2</sup>' will have the right of appeal to an Independent Appeal Panel if they are dissatisfied with an admission decision of the Academy Trust. The Independent Appeal Panel will be independent of the Academy Trust. The arrangements for appeals will comply with the School Admission Appeals Code published by the Department for Education as it applies to Foundation and Voluntary Aided schools. The determination of the appeal panel is binding on all parties.

### **Relevant Area**

6. Subject to paragraph 7, the meaning of "Relevant Area" for the purposes of consultation requirements in relation to admission arrangements is that determined by the local authority for maintained schools in the area in accordance with the Education (Relevant Areas for Consultation on Admission Arrangements) Regulations 1999.
7. If the Academy does not consider the relevant area determined by the local authority for the maintained schools in the area to be appropriate, it must apply to the Secretary of State by 1 August for a determination of the appropriate relevant area for the Academy, setting out the reasons for this view. The Secretary of State will consult the Academy and the LA in which the Academy is situated in reaching a decision.

### **Requirement to admit pupils**

8. Pupils on roll in any predecessor maintained or independent school will transfer automatically to the Academy on opening. All children already offered a place at any predecessor school will be admitted.
9. The Academy will:
  - a. subject to its right of appeal to the Secretary of State in relation to a named pupil, admit all pupils with a statement of special educational needs naming the Academy;
  - b. adopt admission oversubscription criteria that give highest priority to looked after children, in accordance with the relevant provisions of the School Admissions Code.

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<sup>2</sup> relevant children' means:

- a) in the case of appeals for entry to a sixth form, the child, and;
- b) in any other case, children who are above compulsory school age, or will be above compulsory school age by the time they start to receive education at the school.

**Oversubscription criteria, admission number, consultation, determination and objections.**

10. The Academy admission arrangements will include oversubscription criteria, and an admission number for each relevant age group<sup>3</sup>. The Academy will consult on its admission arrangements and determine them in line with the requirements within the School Admissions Code.
11. The Young People's Learning Agency (YPLA) or any successor to it may consider objections on the Secretary of State's behalf. The Academy Trust should therefore make it clear, when determining the Academy's admission arrangements, that objections should be submitted to the YPLA or any successor to it.
12. A determination of an objection by the YPLA or any successor to it on behalf of the Secretary of State, or by the Secretary of State will be binding upon the Academy.

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<sup>3</sup> 'Relevant age group' means 'normal point of admission to the school: for example, year R, Year 3, Year 7 and Year 12.