

**King's College London Maths School**

**MODEL 16 TO 19 FREE SCHOOL  
FUNDING AGREEMENT**

**March 2014**

# King's College London Maths School

## 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 King’s College London Maths School Trust (the “Academy Trust”).
- 2) The Academy Trust is a Company incorporated in England and Wales, limited by guarantee with registered Company number 08475184.
- 3) The following expressions used in this Agreement have the respective meanings assigned to them by the numbered clauses of this Agreement referred to immediately after the reference to the expressions -
  - a) “Academies Financial Handbook” - clauses 59 and 68;
  - b) “Accounting Officer” – clause 58;
  - c) "Annual Letter of Funding" - clause 53;
  - d) "GAG" – clause 41;
  - e) "Capital Expenditure" - clause 36;
  - f) “Capital Grant” – clause 36;
  - g) "EAG" - clause 48;
  - h) “Governing Body” – clause 13;
  - i) “Recurrent Expenditure” – clause 35.
- 4) In this Agreement the following words and expressions shall have the following meanings:-

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

“the Articles” means the Articles of Association of the Academy Trust for the time being in force;

“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;

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

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

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

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

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

that the affairs of the first-mentioned Entity are conducted in accordance with the wishes of A and ‘Control’ shall be construed accordingly;

“awarding organisations” means organisations referred to as such by Ofqual;

“EFA” means Education Funding Agency and any successor;

“Debt” means the amount equal to 100% of the Land Value;

“DfE” means Department for Education and any successor;

“Discharge Process”

means the removal of:

- i. the Legal Charge registered with Companies House as against the Academy Trust;
- ii. the Legal Charge from the charges register at the Land Registry against the title for the Land;
- iii. the restriction in the proprietorship register as referred to in 108B(a); and
- iv. the notice in the proprietorship register as referred to in 108F(a)

“Insured Risks” means fire, lightning, explosion, earthquake, storm, tempest, flood, subsidence, landslip, heave, impact, terrorism, bursting or overflowing of water tanks and pipes, 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 Academy Trust 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;

"LA" means the Local Authority in the area in which the 16 to 19 Academy is situated;

“the Land” means the land (including for the avoidance of doubt all buildings, structures landscaping and other erections) situated at and known as:

- (i) 5 Lambeth Walk London SE11 registered under title number TGL109717 and shown for the purpose of identification edged red on the plan attached as Annex B to this Agreement; and
- (ii) Part of the basement, ground and first floor offices and

parking spaces at 80 Kennington Road London SE11 which premises are shown for the purposes of identification edged black on the plan attached as Annex B to this Agreement.

together making up the permanent site of the Academy or the part of such land remaining in the ownership of the Academy Trust, following any disposal in accordance with clause 108I(c) ii or clause 108K;

“Land Value” means, at any time:-

(a) where there has been a disposal of the Land as a result of the enforcement of the Legal Charge by the Secretary of State, the proceeds of that disposal after payment of any necessary and reasonable costs incurred by the seller in connection with such disposal; or

(b) in any other case, the Market Value of the Land;

“Legal Charge” means the legal charge to be entered into within two weeks of the opening of the Academy by the Academy Trust in favour of the Secretary of State over the Land, in a form and substance satisfactory to the Secretary of State;

“the Leases” means the leasehold agreements or their equivalents between the Academy Trust and any third party (“the Landlord”) in respect of the Land;

“Market Value” the market value of the relevant part of the Land (as that term is defined or referred to in the RICS Appraisal and Valuation Manual (current edition) published by RICS), as determined by a professionally qualified independent valuer;

“Memorandum” means the Memorandum of Association of the Academy Trust;

“parents” means parents or guardians;

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

“Principal” means the head teacher of the 16 to 19 Academy;

“Principal Regulator” means the body or person appointed as the Principal Regulator under the Charities Act 2011;

“Rent” means a payment made by the Academy Trust to a third party pursuant to the Leases but subject to the terms of clause 56 of this Agreement;

references to “educational institution” shall where the context so admits be references to the 16 to 19 Academy;

references to “Secretary of State” shall where the context so admits be references to the EFA acting on the Secretary of State’s behalf;

“the Sponsors” means King’s College London;

“Start-up period” means a period of two Academy Financial Years (and for the avoidance of doubt the calculation of student number count provided for at clause 43B will be used for the third academic year in which the 16 to 19 Academy is open, and for each year thereafter).<sup>1</sup>

“the Sub-Lease” means the leasehold agreement or its equivalent between the Academy Trust and any third party (“the Sub Tenant”) in respect of the Land or any part of it;

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

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<sup>1</sup> When an institution will have a significant proportion of their students undertaking three year courses, DfE will consider requests for the start-up period to be three years.

Academy Trust.

8) Section 1 (3) of the Academies Act 2010 states that:

(3) An Academy agreement is an agreement between the Secretary of State and the other party under which-

(a) the other party gives the undertakings in subsection (5), and

(b) the Secretary of State agrees to make payments to the other party in consideration of those undertakings.

## **LEGAL AGREEMENT**

9) In consideration of the Academy Trust undertaking to establish and maintain, and to carry on or provide for the carrying on of, an educational institution in England to be known as the King's College London Maths School ("the 16 to 19 Academy") and meeting such requirements as are referred to in clause 10, the Secretary of State agrees to make payments to the Academy Trust in accordance with the conditions and requirements set out in this Agreement. For the avoidance of doubt, any obligations imposed upon or powers given to the Academy by this Agreement are also imposed upon the Academy Trust.

## **16 TO 19 ACADEMY REQUIREMENTS**

10) The 16 to 19 Academy requirements are those set down in Section 1B of the Academies Act 2010.

## **16 TO 19 ACADEMY OPENING DATE**

11) The 16 to 19 Academy shall open as an educational institution on 1 September 2014;

11A) The Academy Trust agrees that, prior to the 16 to 19 Academy opening date, the 16 to 19 Academy is an institution for the purposes of the Chief Inspector's duties under sections 118(2) and 125 of the Education and Inspections Act 2006 and, accordingly, the Chief Inspector may inspect the 16 to 19 Academy before that date.

## **CONDITIONS OF GRANT**

### **General**

12) Other conditions and requirements in respect of the 16 to 19 Academy are that:

a) the 16 to 19 Academy 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 the opportunity to study for qualifications in accordance with clause 29(d) and there will be assessment of students' performance appropriate to the qualifications studied;

c) the admissions policy and arrangements for the 16 to 19 Academy will be formulated in accordance with clause 17 of this agreement;

d) levels of pay and conditions of service for all staff, including teachers, at the 16 to 19 Academy will be the responsibility of the Academy Trust;

e) there will be an emphasis on the needs of the individual students including students with learning difficulties and disabilities;

f) not used.

g) there will be no charge to students (or their parents) in respect of admission to the 16 to 19 Academy and the 16 to 19 Academy is only permitted to charge where: (i) the law allows institutions within the further education sector to charge; and (ii) in accordance with clause 33 of this Agreement;

(h) the Academy Trust shall ensure that, so far as reasonably practicable, learning takes place in safe, healthy and supportive environments, which meet the needs of students; and

(i) the Academy Trust shall comply with all relevant statutory requirements

and the most recent policies and national minimum standards, including those in relation to financial health and/or control, which may from time to time be issued by DfE, EFA, awarding organisations and the Chief Inspector, including but not limited to, those published on the relevant body's website.

### **Governance**

13) The 16 to 19 Academy will be governed by a governing body ("the Governing Body") who are the Directors of the company constituted under the Articles of the Academy Trust.

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

### **Conduct**

15) The Academy Trust will conduct the 16 to 19 Academy in accordance with:

- a) the Articles;
- b) all provisions by or under statute which confer rights or impose obligations on 16 to 19 Academies;
- c) the terms of this Agreement.

### **Disclosure and Barring Service Checks and other checks**

16) The Academy Trust agrees to comply with any obligations that apply to it by virtue of provisions in the Safeguarding and Vulnerable Groups Act 2006 as may be amended from time to time in respect of, but not limited to, the performance of barred list checks.

16A) The Academy Trust agrees to act in accordance with the Further Education (Providers of Education) (England) Regulations 2006 (SI 2006/3199) as may be amended or replaced from time to time as if the 16 to 19 Academy were a further education institution and subject to the following modifications:

- a) references to “the governing body of a further education institution” or to “the governing body” shall be treated as references to the Academy Trust;
- b) references to “a further education institution” or “the institution” shall be treated as references to the 16 to 19 Academy, except in regulations 9(1)(b) and 19(2)(a)(ii) where they shall have their normal meaning;
- c) the Academy Trust shall not have to comply with any of the requirements in relation to relevant staff qualifications specified in regulation 3(2), namely: regulations 5(3); regulation 17(1) only in so far as it relates to regulation 18(3); regulation 22 only in so far as it relates to paragraph 4 of Part 1 of the Schedule; and regulation 23 only in so far as it relates to paragraph 2(3) of Part 2 of the Schedule. For the avoidance of doubt, the relevant staff qualification requirements do not need to be met by members of staff at the 16 to 19 Academy; and
- d) references to “new member of staff” shall include the Chair of the Governing Body and in respect of them:
  - (i) the obligation to carry out an enhanced criminal record check as provided for at regulation 5(5) will apply whether or not their position will involve a relevant activity;
  - (ii) the reference in regulation 6 to “considering his suitability for a position that will involve a relevant activity” will be treated as a reference to considering his suitability for a position as a Chair of the Governing Body;
  - (iii) references to “beginning work at the further education institution” shall be treated as references to beginning work as a Chair of the Governing Body.

iv) where the Academy Trust is required to carry out an enhanced criminal record check in respect of the Chair of the Governing Body it must be counter signed by the Secretary State.

16B) The Academy Trust shall, on receipt of a copy of an enhanced criminal record certificate, on request from the Secretary of State or his agents, as soon as possible thereafter submit information contained in the certificate to the Secretary of State in accordance with section 124 of the Police Act 1997.

### **Secondary education provided to persons of compulsory school age**

16C) Where secondary education is provided to persons of compulsory school age by the 16 to 19 Academy the Academy Trust shall secure that, except in such circumstances described in clause 16D, no education is provided to a person who has attained the age of nineteen years in a room in which any persons of compulsory school age are for the time being receiving secondary education.

16D)

(a) The circumstances referred to in clause 16C shall be that a teacher is present in the room.

(b) For the purposes of paragraph (a) a teacher shall be considered to be present in the room at a particular time even though no teacher is present if—

(i) it would be impracticable to secure the presence of a teacher in a room at that time, and

(ii) the absence of a teacher at that time has not lasted more than five minutes.

### **Students**

17) The planned capacity of the 16 to 19 Academy is 120 places in the age range 16-19. The 16 to 19 Academy will be an educational institution principally concerned with providing full-time or part-time education suitable to the requirements of persons over compulsory school age but under 19 whose requirements for:

- a) the admission of students to the 16 to 19 Academy;
- b) the admission to the 16 to 19 Academy of and support for students with learning difficulties and with disabilities; and
- c) student exclusions;

are set out in written policies. Such policies will be fair, objective and transparent, and will be formulated in accordance with the Academy Trust's legal powers and duties in relation to 16 to 19 provision and for the avoidance of doubt adherence to those policies forms part of this Agreement.

17B) The Secretary of State agrees that the Academy Trust may vary such policies subject to the Academy Trust informing the Secretary of State of any variation to the policies in writing as soon as reasonably practicable.

17C) The Academy Trust agrees to vary such policies as may become necessary to comply with changes to future legislation and/or as the Secretary of State may require.

### **Teachers and other staff**

18) Subject to clause 19, the Academy Trust 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 students, delivering lessons to students, assessing the development, progress and attainment of students, and reporting on the development, progress and attainment of students.

19) Not used.

20) The Academy Trust shall ensure that all teachers employed at the 16 to 19 Academy have access to the Teachers Pension Scheme and, in so doing, will comply with the statutory provisions underlying the scheme.

21) The Academy Trust shall ensure that all employees at the 16 to 19 Academy other than teachers (“Non-teaching Staff”) have access to the Local Government Pension Scheme in accordance with the Local Government Pension Scheme (Administration) Regulations 2008 [SI 2008/239] or such other regulations as may for the time being be applicable.

21A) Where a teacher employed at the 16 to 19 Academy applies for a teaching post at another Academy, maintained school, school maintained by a local authority, or institution within the further education sector, the Academy Trust must at the request of the governing body or Academy Trust of that other educational institution:

a) advise in writing whether or not, in the preceding two years, there has been any formal consideration of that teacher’s capability to perform their role at the 16 to 19 Academy; and

b) provide written details of the concerns which gave rise to any such consideration of that teacher’s capability, the duration of the proceedings and their outcome.

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

22) The curriculum provided by the 16 to 19 Academy should be suitable to the requirements of the students with a particular emphasis on mathematics and mathematical related subjects with the assistance of the Sponsors and can include vocational, social, physical and recreational training.

22A) The Academy Trust shall publish information in relation to its current curriculum provision. Such information shall include details relating to:

a) the content of the curriculum;

b) its approach to the curriculum;

c) the qualifications offered by the 16 to 19 Academy;

d) not used; and

e) how students and parents (including prospective students and parents) can obtain further information in relation to the 16 to 19 Academy's curriculum.

22B) Subject to the requirements of clauses 22, 22A and 24 to 28B, the curriculum will be the responsibility of the Academy Trust.

23)Not used.

24)The Academy Trust shall make provision for: (i) the teaching of religious education at the 16 to 19 Academy for any student attending the 16 to 19 Academy wishing to receive it; and (ii)\_ensuring that at an appropriate time on at least one day in each week during which the 16 to 19 Academy is open an act of collective worship is held at the 16 to 19 Academy which students receiving education at the 16 to 19 Academy may attend.

24A) The Academy Trust shall not make provision in the context of any subject for the teaching, as an evidence-based view or theory, of any view or theory that is contrary to established scientific and/or historical evidence and explanations.

24B) Where relevant to the curriculum, the Academy Trust shall make provision for the teaching of evolution as a comprehensive, coherent and extensively evidenced theory.

25)Not used.

26)Not used.

27)Not used.

28)Not used.

28A) Not used.

28B) The Academy Trust shall ensure that principles are promoted which support fundamental British values, including: respect for the basis on which the law is made and applied in England; respect for democracy and support for participation in the democratic processes; support for equality of opportunity for all; support and respect for the liberties of all within the law; and respect for and tolerance of different faiths and religious and other beliefs.

### **Assessment**

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

- a) The Academy Trust shall ensure that students at the 16 to 19 Academy take part in assessments of students' performance appropriate to the qualifications offered by the 16 to 19 Academy.
- b) Not used.
- c) Not used.
- d) The Academy Trust may offer:-
  - (i) any course of education or training at the 16 to 19 Academy which leads to a qualification that is approved by the Secretary of State for the purposes of section 96 of the Learning and Skills Act 2000; and
  - (ii) any course of education or training not falling within paragraph (i) if the Secretary of State gives his specific written approval for it.

29A) The Academy Trust shall ensure it publishes on its website such information in relation to the 16 to 19 Academy's performance as the Secretary of State may request in writing from time to time.

### **International Education Surveys**

29B) The Secretary of State may, by notice in writing to the Academy Trust,

require the Academy Trust to participate in an international education survey and the Academy Trust shall, upon receipt of such notice, participate in that survey and provide to the Secretary of State or to those carrying out the survey all such assistance and information as may reasonably be required for the purposes of the 16 to 19 Academy's participation in that survey.

30)Not used.

31)Not used.

32)Not used.

### **Charging**

33) The 16 to 19 Academy shall only be permitted to make charges in the circumstances that institutions within the further education sector are permitted to as set out in the current 16 to 19 Funding Guidance published by the Secretary of State, as amended from time to time, or such other guidance on 16 to 19 funding issued by the Secretary of State.

33A) Not used.

### **DURATION OF SCHOOL DAY AND YEAR**

33B) The duration of the school day and year will be the responsibility of the Academy Trust, and for the purpose of this paragraph "school" means the 16 to 19 Academy.

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

#### **General**

34)The Secretary of State shall pay grants towards Recurrent Expenditure and may pay grants towards Capital Expenditure for the 16 to 19 Academy.

Except with the Secretary of State's prior agreement, the Academy Trust shall not budget for its expenditure in any Academy Financial Year in excess of expected income (subject to clause 72). The Academy Trust shall not enter into commitments which are likely to have substantial implications for future levels of grant, or for the period for which grant may be required. No decision by the Academy Trust shall commit the Secretary of State to paying any particular amount of grant.

35) "Recurrent Expenditure" means any expenditure on the establishment, conduct, administration and maintenance of the 16 to 19 Academy which does not fall within the categories of capital expenditure set out at clause 36. The Secretary of State shall pay separate and distinct grants in respect of Recurrent Expenditure: General Annual Grant ("GAG"), Earmarked Annual Grant ("EAG") and where appropriate Additional Funding under clause 56.

### **Capital Grant**

36) "Capital Expenditure" means expenditure on:

- a) the acquisition of land and buildings;
- b) the erection, enlargement, improvement or demolition of any building including fixed plant, installation, wall, fence or other structure, or any playground or hard standing;
- c) the installation of electrical, mechanical or other services other than necessary replacements, repairs and maintenance due to normal wear and tear;
- d) the purchase of vehicles and other self-propelled mechanical equipment;
- e) the installation and equipping of premises with furnishings and equipment, other than necessary replacements, repairs and maintenance due to normal wear and tear;
- f) the installation and equipping of premises with computers, networking for computers, operating software and information and communication

technology equipment, other than necessary updates or necessary replacements, repairs and maintenance due to normal wear and tear;

- g) the provision and equipping of premises, including playing fields and other facilities for social activities and physical recreation other than necessary replacements, repairs and maintenance due to normal wear and tear;
- h) works of a permanent character other than the purchase or replacement of minor day-to day items;
- i) any major repairs or replacements which are specified as constituting capital expenditure in any grant letter relating to them;
- j) such other items (whether of a like or dissimilar nature to any of the foregoing) of a substantial or enduring nature as the Secretary of State may agree shall constitute capital expenditure for the purposes of this Agreement;
- k) all professional fees properly and reasonably incurred in connection with the provision of any of the above;
- l) VAT and other taxes payable on any of the above.

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

37) Where the Academy is to open in new premises, or where existing premises are to be substantially refurbished or remodelled to enable the 16 to 19 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 16 to 19 Academy. To that end, the Secretary of State will consider providing funding in accordance with any arrangements as he considers appropriate.

38) Any Capital Expenditure incurred in respect of the 16 to 19 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.

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

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

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

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

#### **General Annual Grant**

41) GAG will be paid by the Secretary of State to the Academy Trust in order to cover the normal running costs of the 16 to 19 Academy. These will include, but are not limited to:

- a) teachers' salaries and related costs (including full and part-time teaching staff and seconded teachers);
- b) non-teaching staff salaries and related costs (including pension contributions, educational support staff, administrative and clerical staff and manual and premises related staff);

- c) employees' expenses;
- d) the purchase, maintenance, repair and replacement:
  - (i) of teaching and learning materials and other educational equipment, including books, stationery and ICT equipment and software, sports equipment and laboratory equipment and materials;
  - (ii) of other supplies and services;
- e) examination fees;
- f) repairs, servicing and maintenance of buildings (including redecoration, heating, plumbing, lighting etc); maintenance of grounds (including boundary fences and walls); cleaning materials and contract cleaning; water and sewage; fuel and light (including fuel oil, solid and other fuel, electricity and gas); rents; rates; purchase, maintenance, repairs and replacement of furniture and fittings;
- g) insurance;
- h) medical equipment and supplies;
- i) staff development (including in-service training);
- j) curriculum development;
- k) discretionary grants to students to meet the cost of student support, including support for students with learning difficulties or disabilities (taking account of the fact that separate additional money will be available for students with learning difficulties or disabilities);
- l) administration;
- m) establishment expenses and other institutional costs.

42) Subject to clauses 44-45, GAG for each Academy Financial Year for the 16 to 19 Academy will include:

- a) Funding in accordance with the national funding formula for the education and training of 16-19 year olds, determined by the Secretary of State and notified in the Annual Letter of Funding or its equivalent, taking account of the number of students at the 16 to 19 Academy;
- b) Not used.
- c) Funding for matters for which it is necessary for the 16 to 19 Academy to incur extra costs, to the extent that those costs are deemed in the discretion of the Secretary of State to be necessary. The 16 to 19 Academy may incur extra costs due to the specialist nature of its curriculum set out in clause 22 and its outreach role. The Secretary of State may take any such extra costs into account when determining any funding under this clause 42 c); and
- d) Payments equivalent to further, specific grants made available to institutions within the further education sector, where the 16 to 19 Academy meets the requisite conditions and criteria necessary for an institution within the further education sector to receive these grants, such payments to be at the discretion of the Secretary of State.

43) During the “Start-up period” the basis of the student number count for the purposes of determining GAG for an Academy Financial Year for the 16 to 19 Academy will be the Academy Trust's estimate each year for numbers on roll in the following September for the 16 to 19 Academy, such estimate to be based on an objective assessment of student numbers and agreed with the Secretary of State.

43A) The Secretary of State shall in advance of each Academy Financial Year for the Academy, at such time or times as he shall determine, request that the Academy Trust provides an estimate of the number of students on roll in the following September for the 16 to 19 Academy for the purposes of determining GAG for an Academy Financial Year, and the Academy Trust shall provide the requested estimate (such estimate to be based on an objective assessment of numbers) to the Secretary of State as soon as reasonably practicable.

43B) After the “Start-up period” the arrangements for calculating the student number count for the purpose of determining GAG for the 16 to 19 Academy shall be those provided for in guidance on the national funding system published by the Secretary of State under section 15ZD of the Education Act 1996 for the relevant Academy Financial Year, in respect of persons who have reached the age of 16 but have not reached the age of 19, or are aged 19-24 and have a learning difficulty and/or disability and are the subject of a learning difficulty assessment.

43C) For any Academy Financial Year in which GAG for the 16 to 19 Academy has been calculated in accordance with clause 43, an adjustment may be made to the following Academy Financial Year's formula funding element of GAG for the 16 to 19 Academy to recognise any variation from that estimate. The Secretary of State may for the purpose of calculating any adjustment to the formula funding element of GAG under this clause, use the Individualised Learner Record for the Academy Financial Year in question as a means of determining student numbers in an Academy Financial Year. The additional or clawed-back grant will be only that amount relevant to the number of students above or below that estimate.

43D) For any Academy Financial Year in which GAG for the 16 to 19 Academy is calculated in accordance with clause 43B, no adjustment will be made to the equivalence funding element in the following Academy Financial Year's equivalence funding element of GAG. For any other element of GAG the Secretary of State may make adjustments to recognise a variation in student numbers from that used to calculate the element of grant in question; the basis of these will be set out in guidance on the national funding system published by the Secretary of State under section 15ZD of the Education Act 1996 for the relevant Academy Financial Year.

44) 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.

45) The Secretary of State recognises that if he serves notice of intention to terminate this Agreement, the intake of new students during the notice period is

likely to decline and that in such circumstances payments based simply upon the number of students attending the 16 to 19 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 16 to 19 Academy in the notice period than would be justified solely on the basis of the methods set out in clauses 42-43D, in order to enable the 16 to 19 Academy to operate effectively.

46) The Secretary of State also recognises that if this Agreement is terminated for any reason by either party the number of students at the 16 to 19 Academy is likely to decline. In these circumstances both parties undertake to attempt to resolve issues arising from such termination in good faith and with the aim of protecting the interests and the education of the students at the 16 to 19 Academy.

47) GAG paid by the Secretary of State shall only be spent by the Academy Trust towards the normal running costs of the 16 to 19 Academy.

### **Earmarked Annual Grant**

48) Earmarked Annual Grant ("EAG") may be paid by the Secretary of State to the Academy Trust in respect of either Recurrent Expenditure or Capital Expenditure for such specific purposes as may from time to time be agreed between the Secretary of State and the Academy Trust and as described in the relevant funding letter. The Academy Trust shall only spend EAG in accordance with the scope, terms and conditions of the grant set out in the relevant funding letter.

49) Where the Academy Trust is seeking a specific EAG in relation to any Academy Financial Year, it shall submit a letter outlining its proposals and the reasons for its request to the DfE.

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

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

the 16 to 19 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.

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

a) if this leads to an underpayment of GAG, the Secretary of State will correct the underpayment in subsequent Academy Financial Years;

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

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

a) if this leads to an underpayment of GAG, the Secretary of State may correct the underpayment in subsequent Academy Financial Years;

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

53) The amounts of GAG for an Academy Financial Year will be determined annually by the Secretary of State. The amount of GAG for the 16 to 19 Academy for the initial Academy Financial Year will be notified to the Academy Trust in a funding letter at a date preceding that year. For subsequent years the amount of GAG will be notified to the Academy Trust in a funding letter preceding that Academy Financial Year (the "Annual Letter of Funding"). The Annual Letter of Funding or its equivalent will not include the amount that the Academy Trust will receive in respect of grants for which information to enable timely calculation is not available or is incomplete. Such grants will be notified as soon as

practicable later in the year. Amounts of EAG will be notified to the Academy Trust wherever possible in the Annual Letter of Funding or its equivalent or as soon as practicable thereafter.

54) 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 or its equivalent.

### **Additional Funding**

55) Not used.

56) The Secretary of State shall meet the Academy Trust's costs arising from Rent payable by the Academy Trust under the Leases.

56A) Such costs payable under clause 56 shall include those costs arising from any rent rise payable by the Academy Trust under the terms of the Leases, so long as the relevant rent rise is properly evidenced in writing by the Academy Trust to the Department as soon as is reasonably practicable.

56B) Such costs payable under clause 56 shall not include any amount in respect of service charge payments or, insurance premiums. Where the definition of rent in the Leases includes service charge payments or insurance premiums, the Secretary of State shall exclude from the total grant payable in respect of Rent under clause 56 an amount in respect of such service charge payments or insurance premiums

56C) Such costs payable under clause 56 will include a deduction for any rent under the Sub Lease due to the Academy Trust in the preceding quarter.

57) Not used.

### **Financial and Accounting Requirements**

#### **General**

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

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

59A) The Academy Trust shall abide by the requirements of the current 16 to 19 Funding Guidance published by the Secretary of State, as amended from time to time, or such other guidance on 16 to 19 funding issued by the Secretary of State as may from time to time be applicable, in respect of any of its provision for persons who are above compulsory school age until the academic year in which they reach the age of 19.

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

61) Any payment of grant by the Secretary of State in respect of the 16 to 19 Academy is subject to his being satisfied as to the fulfilment by the Academy Trust of the following conditions:

a) in its conduct and operation it shall apply financial and other controls which conform to the requirements both of propriety and of good financial management;

b) arrangements have been made to maintain proper accounting records and that statements of income and expenditure and balance sheets may be produced in such form and frequency as the Secretary of State may from time to time reasonably direct;

c) in addition to the obligation to fulfil the statutory requirements referred to

in sub-clause f) below, the Academy Trust shall prepare its financial statements, Directors' report, Annual Accounts and its Annual Return for each Academy Financial Year in accordance with the Statement of Recommended Practice as issued by the Charity Commission and updated from time to time as if the Academy Trust 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 Academy Trust's affairs and that the grants were used for the purposes intended;

e) the Academy Trust shall ensure that its accounts are audited annually by independent auditors appointed under arrangements approved by the Secretary of State;

f) the Academy Trust prepares and files with the Companies Registry such annual accounts as are required by the Companies Act 2006;

g) the Academy Trust shall publish on its website its Annual Accounts, Annual Report, Memorandum and Articles, Funding Agreement and a list of the names of the Governors of the Academy Trust;

h) the Academy Trust insures or procures insurance by another person of its assets in accordance with normal commercial practice or under the terms of the Lease.

62) In addition, and at his expense, the Secretary of State may instruct auditors to report to him on the adequacy and effectiveness of the accounting systems and internal controls maintained by the Academy Trust to standards determined by the Secretary of State and to make recommendations for improving the financial management of the Academy Trust.

63) The books of accounts and all relevant records, files and reports of the Academy Trust including those relating to financial controls, shall be open at all reasonable times to officials or agents of the DfE and the National Audit Office and to contractors retained by the DfE or the National Audit Office for inspection or the carrying out of value for money studies; and the Academy Trust shall secure that those officials and contractors are given reasonable assistance with their enquiries. For the purposes of this clause 'relevant' means in any way relevant to the provision and use of grants provided by the Secretary of State under this Agreement.

64) The Academy Trust shall submit information relating to the 16 to 19 Academy's finances to the Secretary of State in accordance with the requirements of the Academies Financial Handbook as amended from time to time or as otherwise specified from time to time by the Secretary of State.

65) At the beginning of any Academy Financial Year the Academy Trust may hold unspent GAG from previous Academy Financial Years amounting to such percentage (if any) as for the time being specified in the Academies Financial Handbook or otherwise as the Secretary of State may specify by notice in writing to the Academy Trust prior to the beginning of that Academy Financial Year of the total GAG payable for the Academy in the Academy Financial Year just ended or such higher amount as may from time to time be agreed. The Academy Trust shall use such carried forward amount for such purpose, or subject to such restriction on its use, as for the time being specified in the Academies Financial Handbook or otherwise as the Secretary of State may specify by notice in writing to the Academy Trust.

66) Notwithstanding clause 65, any additional grant provided over and above that set out in clauses 42-43D, and made in accordance with clauses 44-45 may be carried forward without limitation or deduction until the Start-up Period or the circumstances set out in clause 45 come to an end.

67) Any unspent GAG not allowed to be carried forward under clauses 65-66 will be taken into account in the payment of subsequent grant.

67A) If the Secretary of State pays grant not including GAG to the Academy Trust

on condition either that such grant be used for a particular purpose or purposes or that such grant be used by a certain date, any failure on the part of the Academy Trust to use such grant for such a purpose or purposes or by such date may be taken into account by the Secretary of State either:

- (i) in the same Academy Financial Year that such grant is paid to the Academy Trust; or
- (ii) in the calculation and/or payment of any subsequent grant to the Academy Trust; or
- (iii) by an adjustment to the GAG paid by the Secretary of State to the Academy Trust in the following Academy Financial Year or Academy Financial Years.

67B) If the Secretary of State or his agents pay any grant to the Academy Trust which includes an amount to cover the VAT which will be payable by the Academy Trust in using any such grant for the purposes intended, the Academy Trust shall, having paid the VAT to a third party for any goods or services it has purchased from such a third party, where entitled, promptly and, in any event, as soon as is reasonably practicable, submit a VAT reclaim application to Her Majesty's Revenue and Customs (HMRC) in respect of such VAT payment. Any failure, on the part of the Academy Trust to submit a VAT reclaim application or repay the amount recouped to the Secretary of State as soon as reasonably practicable following the receipt of such payment from HMRC may be taken into account by the Secretary of State either:

- (i) in the same Academy Financial Year that such grant is paid to the Academy Trust; or
- (ii) in the calculation and/or payment of any subsequent grant to the Academy Trust; or
- (iii) by an adjustment to the GAG paid by the Secretary of State to the Academy Trust in the following Academy Financial Year or Academy Financial Years.

67C) GAG paid by the Secretary of State shall only be used by the Academy

Trust for the educational charitable purpose of advancing 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 a 16 to 19 Academy. Such funds shall not be used by the Academy Trust for any other charitable purpose without the prior written consent of the Secretary of State, except where the use of such funds for that charitable purpose is merely incidental to their use for the educational charitable purpose of advancing for the public benefit education in the United Kingdom.

68) The Academy Trust may also spend or accumulate funds from private sources or public sources other than grants from the Secretary of State for application to the benefit of the Academy as it sees fit provided that it complies with all applicable requirements relating to the proper and regular use of funds in the Academies Financial Handbook. Any surplus arising from private sources or public sources other than grants from the Secretary of State shall be separately identified in the Academy Trust's balance sheet.

69) The Academy Trust shall not, in relation to assets or property funded (whether in whole or in part) by the Secretary of State or otherwise coming within the meaning of publicly funded land as defined by paragraph 22(3) of Schedule 1 to the Academies Act 2010, 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 above a value as for the time being specified in the Academies Financial Handbook or otherwise as the Secretary of State may specify by notice in writing to the Academy Trust from time to time;

b) write off any debts or liabilities owed to it, nor offer to make any ex gratia payments (such as staff severance or compensation payments), above a value as for the time being specified in the Academies Financial Handbook or otherwise as the Secretary of State may specify by notice in writing to the Academy Trust from time to time ;

c) except as may be permitted in the Academies Financial Handbook or

otherwise as the Secretary of State may specify by notice in writing to the Academy Trust, make any sale or purchase of or otherwise dispose of freehold or leasehold property including entering into a contract to dispose of land or granting an option to acquire an interest in land; or

d) take up any leasehold or tenancy agreement.

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

a) give any guarantees, indemnities or letters of comfort;

b) write off any debts owed to it or offer to make any ex gratia payments;

c) make any sale or purchase of or otherwise dispose of freehold or leasehold property including entering into a contract to dispose of land or granting an option to acquire an interest in land; or

d) take up any leasehold or tenancy agreement.

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

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

a) subject to clause 65, carrying a surplus from one Academy Financial Year to the next; or

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

c) incurring an in-year deficit on funds from sources other than grants from the Secretary of State in any Academy Financial Year, provided it does not affect the Academy Trust's responsibility to ensure that the 16 to 19 Academy balances its overall budget from Academy Financial Year to Academy Financial Year.

72A) The Academy Trust shall abide by the requirements of and have regard to the Charity Commission's guidance to charities and charity trustees and in particular the Charity Commission's guidance in the Protecting Charities from Harm ('the compliance toolkit'), and in "CC9: Speaking Out, Campaigning and Political Activities by Charities" as amended from time to time. Any references in such guidance which require charity trustees to report to the Charity Commission should instead be interpreted as references to report to the Principal Regulator.

### **Borrowing Powers**

73) Except as may be permitted in the Academies Financial Handbook (as amended from time to time) or otherwise as the Secretary of State may specify by notice in writing to the Academy Trust, the Academy Trust shall not borrow against or so as to put at risk property or assets funded (whether in whole or in part) by the Secretary of State without specific approval of the Secretary of State, such approval at the absolute discretion of the Secretary of State. The Academy Trust shall not operate an overdraft except to cover irregularities in cash flow. Such an overdraft, and the maximum amount to be borrowed, must be approved by the Academy Trust in a 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.

74) The Academy Trust shall provide 30 days written 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 73 above.

### **Disposal of Assets**

75) Where the Academy Trust acquires assets for a nil consideration or at an under value it shall be treated for the purpose of this Agreement as having

incurred expenditure equal to the market value of those assets at the time that they were acquired. This provision shall not apply to assets transferred to the Academy Trust at nil or nominal consideration and which were previously used for the purposes of a 16 to 19 Academy and/or were transferred from a LA, the value of which assets shall be disregarded.

76) The sale or disposal by other means, or reinvestment of proceeds from the disposal, of a capital asset by the Academy Trust shall require the consent of the Secretary of State, such consent not to be unreasonably withheld or delayed, where:

- a) the Secretary of State paid capital grant in excess of the value from time to time being specified by the Secretary of State for the asset; or
- b) the asset was transferred to the Academy Trust from a LA for no or nominal consideration.

77) Furthermore, reinvestment of a percentage of the proceeds of disposal of a capital asset paid for with a capital grant from the Secretary of State shall require the Secretary of State's consent in the circumstances set out above and reinvestment exceeding the value from time to time being specified by the Secretary of State or with other special features will be subject to Parliamentary approval. The percentage of the proceeds for which consent is needed is the percentage of the initial price of the asset which was paid by capital grant from the Secretary of State.

78) This clause applies in the event, during the lifetime of this Agreement, of the disposal of a capital asset for which capital grant of any amount was paid by the Secretary of State, where the asset was acquired by the Academy Trust. In this event, the Academy Trust shall repay to the Secretary of State the same proportion of the proceeds of the disposal as equates with the proportion of the original cost met by the Secretary of State, unless the Secretary of State agrees to some or all of the proceeds being retained by the Academy Trust for its charitable purposes.

79) This clause applies in the event, during the lifetime of this Agreement, that

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

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

81) The Academy Trust shall provide 30 days' notice to the Secretary of State of its intention to dispose of assets for a consideration less than the best price that can reasonably be obtained, whether or not such disposal requires the Secretary of State's consent under clause 80 above.

## **TERMINATION**

### **General**

82) Either party may give not less than seven Academy Financial Years' written notice to terminate this Agreement, such notice to expire on 31 August 2021 or any subsequent anniversary of that date, save where the provisions of this Agreement otherwise provide.

### **Termination Warning Notice**

83) The Secretary of State shall be entitled to issue to the Academy Trust a written notice of his intention to terminate this Agreement ("Termination Warning Notice") where he considers that:

- a) the 16 to 19 Academy is no longer meeting the requirements referred to in clause 10 of this Agreement (subject to clause 89);
- b) the conditions and requirements set out in clauses 12-33A of this Agreement are no longer being met;

- c) the standards of performance of students at the 16 to 19 Academy are unacceptably low;
- d) there has been a serious breakdown in the way the 16 to 19 Academy is managed or governed;
- d) the safety of students is threatened (whether by breakdown of discipline or otherwise); or
- e) the Academy Trust is otherwise in material breach of the provisions of this Agreement.

83A) A Termination Warning Notice issued by the Secretary of State in accordance with clause 83 shall specify:

- a) reasons for the Secretary of State's issue of the Termination Warning Notice;
- b) the remedial measures which the Secretary of State requires the Academy Trust to carry out, with associated deadlines, in order to rectify the defaults identified ("Specified Remedial Measures"); and
- c) the date by which the Academy Trust must respond to the Termination Warning Notice providing its representations with regard thereto or confirm that it accepts and agrees to undertake the Specified Remedial Measures.

84) The Secretary of State shall consider any response and representations from the Academy Trust which are received by the date specified in accordance with clause 83A)c) and shall confirm whether he considers that:

- a) in light of the Academy Trust's representations in response to the Termination Warning Notice, some or all of the Specified Remedial Measures are not required to be implemented (and if so which) and/or the Specified Remedial Measures are being or will be implemented with the specified timeframe; or
- b) subject to any further measures he reasonably requires ("Further Remedial Measures") being implemented by a specified date or any evidence he requires being provided, the implementation of such measures has been or will be successfully completed within the

specified timeframes; or

- c) he is not satisfied that the Academy Trust will rectify the defaults identified in the Termination Warning Notice within the specified timeframes. (In such circumstances, the Secretary of State may notify the Academy Trust of his intention to terminate the Agreement on a specified date.)

85) The Secretary of State may by notice in writing terminate this Agreement with effect from a specified date in the event that:

- a) the Academy Trust has not by the date specified in clause 83A(c) responded to the Termination Warning Notice either confirming that it accepts and agrees to undertake the Specified Remedial Measures or providing its representations with regard to the Specified Remedial Measures; or

- b) the Academy Trust has not carried out the Specified Remedial Measures and/or Further Remedial Measures within the specified timeframes;

provided that having considered any representations made by the Academy Trust pursuant to clause 83A)c), the Secretary of State remains satisfied that it is appropriate to terminate the Agreement.

### **Notice of Intention to Terminate**

86) The Secretary of State may at any time give written notice of his intention to terminate the Agreement where the Chief Inspector has made a report under section 124(4)(a) or 125(4)(a) of the Education and Inspections Act 2006 and stated that he does not consider the education or training inspected in the 16 to 19 Academy to be of a quality adequate to meet the reasonable needs of those receiving it;

87) Any notice issued by the Secretary of State in accordance with clause 86 shall invite the Academy Trust to respond with any representations within a specified timeframe.

88) Where the Secretary of State has given notice of his intention to terminate this Agreement in accordance with clauses 86 and 87 and

- (a) he has not received any representations from the Academy Trust within the timeframe specified in clause 87; or
- (b) having considered the representations made by the Academy Trust pursuant to clause 87, the Secretary of State remains satisfied that it is appropriate to terminate this Agreement

he may by notice in writing terminate this Agreement with effect from a specified date.

### **Termination with Immediate Effect**

89) Not used.

90) The Secretary of State may at any time by notice in writing terminate this Agreement, such termination to take effect on the date of the notice, on the occurrence, or where in his reasonable opinion there is a serious risk of occurrence, of any of the following events:

- a) the Academy Trust calls a meeting of its creditors (whether formal or informal) or enters into any composition or arrangement (whether formal or informal) with its creditors; or
- b) the Academy Trust proposes a voluntary arrangement within Section 1 of the Insolvency Act 1986; or
- c) the Academy Trust is unable to pay its debts within the meaning of Section 123 of the Insolvency Act 1986 provided that, for the purposes of this clause, Section 123 (1)(a) of the Insolvency Act 1986 shall have effect as if the amount of £10,000 was substituted for £750. The Academy Trust shall not be deemed unable to pay its debts for the purposes of this clause if any such demand as is mentioned in the said Section is being contested in good faith by the Academy Trust; or
- d) the Academy Trust has a receiver and manager (with the exception of Receivers and Managers or Interim Managers appointed by the Charity

- Commission under the Charities Act 2011 or any subsequent re-enactment of that Act), administrator or administrative receiver appointed over all or any part of its undertakings, assets or income; or
- e) any distraint, execution or other process is levied or enforced on any of the Academy Trust's property and is not paid out, withdrawn or discharged within fifteen Business Days; or
  - f) the Academy Trust has passed a resolution for its winding up; or
  - g) an order is made for the winding up or administration of the Academy Trust.

91) The Academy Trust shall notify the Secretary of State as soon as possible after receiving any petition which may result in an order for the winding up or administration of the Academy Trust and shall provide an explanation to the Secretary of State of the circumstances giving rise to the service of such a petition.

91A) If the Secretary of State is satisfied that any Governor or Member of the Academy Trust is not a suitable person he may:

- (a) in relation to such a Governor or Member serve notice in writing to the Academy Trust requiring the Academy Trust to procure the resignation or removal of the person(s) within 42 days of the date of the notice; and if the Academy Trust fails to procure the said resignation or removal within the time specified, the Secretary of State may by notice terminate this Agreement by notice in writing to the Academy Trust such termination to take effect on the date of the notice; or
- (b) terminate this Agreement by notice in writing to the Academy Trust such termination to take effect on the date of the notice.

91B) If on or after 29 August 2014 or at any time thereafter but before the Academy opens, the total number of prospective students having accepted offers of places to attend at the Academy in September 2014 is fewer than 45, the Secretary of State may by written notice to the Academy Trust:-

- (a) require the Academy Trust not to open the Academy until 45

prospective students have accepted offers of places to attend at the Academy; or

(b) terminate this Agreement such termination to take effect on the date specified in the notice.

91C) If at any time after the Academy has opened, the Secretary of State is of the opinion that, by virtue of low student numbers, the Academy is not financially viable, then the Secretary of State may:-

(a) give a Warning Notice to the Academy Trust; or

(b) by written notice terminate this Agreement forthwith; or

(c) by written notice provide such notice as he deems appropriate in the circumstances to terminate this Agreement.

For the purposes of this clause a "Warning Notice" means a notice in writing by the Secretary of State to the Academy Trust requiring the Academy Trust to procure the admission of a sufficient number of students by such date as he deems appropriate in the circumstances and setting out the consequences of not procuring the admission of a sufficient number of students by the date specified in such Warning Notice.

91D) If at any time after signing this Agreement, the Parties agree that by virtue of low student numbers the Academy is not financially viable, then the Parties jointly may terminate this Agreement having agreed first the precise terms of termination.

92) If the Academy Trust has not obtained full planning permission (including where relevant listed building consent), in respect of the site on which it is proposed that the 16 to 19 Academy will be situated, by 29 August 2014, the Secretary of State may terminate this Agreement by notice in writing to the Academy Trust such termination to take effect on the date of the notice.

93) If at any time after the signing of this Agreement but prior to the 16 to 19 Academy opening date, the Secretary of State is of the view that:

- I. the 16 to 19 Academy would, on opening, provide an unacceptably low standard of education or training; or
- II. the safety of students or staff at the 16 to 19 Academy would, on opening, be threatened; or
- III. the staff employed at the 16 to 19 Academy are unsuitable;
- IV. there is a serious breakdown in the way the Academy Trust is being managed or governed; or
- V. the buildings and other structures on the Land or any part of it are unsuitable or the Academy Trust has not obtained Building Regulation approval;

he may in writing either:

- (a) require the Academy Trust (i) not to open the 16 to 19 Academy; and/or (ii) not to admit students 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 Land until such time as the relevant matter or matters listed in I. to IV. above has or have been resolved to the Secretary of State's satisfaction; or
- (b) terminate this Agreement by notice in writing to the Academy Trust such termination to take effect on the date of the notice.

94) If the Academy Trust has not entered into any of the the Leases by 29 August 2014, the Secretary of State may terminate this Agreement by notice in writing to the Academy Trust such termination to take effect on the date of the notice.

94A) If at any time after the Academy has opened, the Secretary of State is of the opinion that the Academy has not complied with clause 22 of this Agreement, then the Secretary of State may:-

- (a) give a Warning Notice to the Academy Trust; or

- (b) by written notice terminate this Agreement forthwith; or
- (c) by written notice provide such notice as he deems appropriate in the circumstances to terminate this Agreement.

For the purposes of this clause a “Warning Notice” means a notice in writing by the Secretary of State to the Academy Trust requiring the Academy Trust to take such steps as the Secretary of State deems necessary to ensure compliance with clause 22 by such date as he deems appropriate in the circumstances and setting out the consequences of failing to take those necessary steps by the date specified in such Warning Notice.

### **Change of control of the Academy Trust**

95) (i) The Secretary of State may at any time by notice in writing, subject to sub-clause (iii) below, terminate this Agreement forthwith terminate this Agreement by notice in writing to the Academy Trust such termination to take effect on the date of the notice in the event that there is a change:

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

Provided that where a person ('P') is a member or director of the body corporate (as a corporation sole or otherwise) by virtue of an office, no change of Control arises merely by P's successor becoming a member or director in P's place.

(ii) The Academy Trust shall, as soon as it is reasonably practicable to do so after it has become aware of any change or proposed change of Control within the meaning of clause 95A)(i), give written notice to the Secretary of State of such change or proposed change of control.

(iii) At the time of notifying the Secretary of State in accordance with sub-clause (ii) above, the Academy Trust may seek the Secretary of State's agreement that, if the Secretary of State is satisfied that the person assuming the Control is

suitable, he will not in those circumstances exercise his right to terminate this Agreement further to clause 95A)(i).

### **Effect of Termination**

96) Not used.

97) In the event of termination of this Agreement however occurring, the educational institution shall cease to be a 16 to 19 Academy within the meaning of Section 1 of the Academies Act 2010.

98) Subject to clause 99 and 100, if the Secretary of State terminates this Agreement pursuant to clause 82 of this Agreement, the Secretary of State shall indemnify the Academy Trust. If the Secretary of State terminates this Agreement otherwise than pursuant to clause 82 of this Agreement, the Secretary of State may in his absolute discretion indemnify or (to such extent if any as he may in his absolute discretion consider appropriate) compensate the Academy Trust.

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

100) The categories of expenditure incurred by the Academy Trust in consequence of the termination of this Agreement in respect of which the Secretary of State shall (where the Secretary of State terminates this Agreement pursuant to clause 82) indemnify the Academy Trust and may (where the Secretary of State terminates this Agreement otherwise than pursuant to clause 82) in his absolute discretion indemnify or compensate the Academy Trust include (but not by way of limitation), staff compensation and redundancy payments, compensation payments in respect of broken contracts, expenses of disposing of assets or adapting them for other purposes, legal and other professional fees, and dissolution expenses.

101) Subject to clause 102, on the termination of this Agreement however occurring, the Academy Trust shall in respect of any of its capital assets at the

date of termination:

a) promptly transfer a proportion of the assets to a person nominated by the Secretary of State, if the Secretary of State considers that all or some of those assets need to be used for any educational purpose 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 16 to 19 Academy or later; or

b) if the Secretary of State confirms that a transfer under clause 101(a) is not required, promptly repay to the Secretary of State a sum equivalent to the percentage of the value of the assets at the date of termination, or, by agreement with the Secretary of State, at the date of subsequent disposal of those assets. Such percentage to be the same as the percentage of the capital contribution made by the Secretary of State to the original value of those assets, whether that contribution was made on the establishment of the 16 to 19 Academy or later.

102) The Secretary of State may waive in whole or in part the repayment due under clause 101(b) if:

a) The Academy Trust obtains his permission to invest the proceeds of sale for its charitable objects; or

b) The Secretary of State directs all or part of the repayment to be paid to the LA.

103). The sale or disposal by other means of publicly funded land held for the purposes of an Academy is now governed by Part 3 of Schedule 1 to the Academies Act 2010.

## **GENERAL**

### **Information**

104) Without prejudice to any other provision of this Agreement, the Secretary of State acting reasonably may from time to time call for information on the

Academy relating to, but not restricted to, the following matters:

- a) curriculum;
- b) arrangements for the assessment of students;
- c) teaching staff including numbers, qualifications, experience, salaries, and teaching loads;
- d) class sizes;
- e) outreach work with other educational institutions 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 students accepted for admission;
- g) numbers of students excluded (including permanent and fixed-term exclusions);
- h) levels of authorised and unauthorised absence;
- i) charging and remissions policies and the operation of those policies;
- j) organisation, operation and building management;
- k) financial controls;
- l) compliance with the requirements of the Charity Commission's guidance to charities and charity trustees and in particular the Charity Commission's guidance in the Protecting Charities from Harm ('the compliance toolkit') and in "CC9 Speaking Out, Campaigning and Political Activities by Charities" as amended from time to time;
- m) membership and proceedings of the Governing Body together with any other relevant information concerning the management or governance of the Academy which, subject to clause 108), is reasonably necessary for the Secretary of State to carry out his functions generally and in relation to this Agreement.

105) The Academy Trust shall make such information available to the Secretary of State in such form and manner and at such times as may reasonably be required. The Secretary of State shall provide the Academy Trust with such information as it may reasonably require of him for the running of the 16 to 19 Academy.

105A) (i) The Academy Trust shall provide to the Secretary of State the name of any new or replacement Member or Governor of the Academy Trust, 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 or Governor 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.

105A) (ii) In this regard, the Academy Trust shall not appoint any new or replacement Members or Governors of the Academy Trust 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 Governors of the Academy Trust that the reason their name is being shared with the Secretary of State is to enable the Secretary of State to assess their suitability.

105B) i) If the Academy Trust is in material breach of the provisions of the Lease or if it is reasonably foreseeable that the Academy Trust will be in material breach of the Lease, the Academy Trust shall forthwith give written notice to the Secretary of State specifying the exact nature of the material breach or reasonably foreseeable material breach and such notice shall set out the steps taken or to be taken by the Academy Trust to remedy the material breach or reasonably foreseeable material breach and, where appropriate, shall include the timescales relating to any remedial action.

105B) ii) The Academy Trust 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.

105C) Following the receipt by the Secretary of State of the written notice under clause 105B), the Academy Trust shall permit the Secretary of State to take all such steps in conjunction with or instead of the Academy Trust as may be

necessary to remedy or prevent the material breach referred to in the said notice. The Academy Trust shall, in such circumstances, use its best endeavours to assist the Secretary of State to remedy or prevent such material breach.

105D)(i) The Academy Trust shall, within 14 days of receiving any order, notice, proposal, demand or any other requirement materially affecting the ability of the Academy Trust to use the Land for the purposes of the 16 to 19 Academy from any competent authority (including the Landlord), give full particulars by written notice to the Secretary of State and deliver to the Secretary of State copies of such documents as he may require. Such notice shall state what steps, if any actions are required, the Academy Trust intends to take in response to the order, notice, proposal, demand or other requirement affecting the Land.

105D) (ii) The Academy Trust will at its own cost provide all information reasonably required by the Secretary of State in respect of order, notice, proposal, demand or any other requirement affecting the Land as referred to in clause 105D(i).

105E) Following the receipt by the Secretary of State of the written notice under clause 105D)(i), the Academy Trust shall permit the Secretary of State to take all steps in conjunction with or instead of the Academy Trust as may be necessary to comply with any order, notice, proposal, demand or other requirement affecting the Land referred to in the said notice. The Academy Trust shall, in such circumstances, use all reasonable endeavours to assist the Secretary of State to take the appropriate required steps.

105F) The Academy Trust agrees to comply with the “Specification of the Individualised Learner Record for 2012/13” published by the Information Authority as may be amended or replaced from time to time.

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

106) The Academy Trust shall allow access to the premises of the 16 to 19 Academy at any reasonable time to DfE officials and/or agents of the Secretary of State. All records, files and reports relating to the running of the 16 to 19

Academy shall be available to them at any reasonable time. The Academy Trust shall provide the Secretary of State in advance with papers relating to the Academy prepared for meetings of the Governing Body and of the Members of the Academy Trust. Two DfE officials shall be entitled to attend and to speak at all such meetings, but shall withdraw from any discussion of the 16 to 19 Academy's or the Academy Trust's relationship with the Secretary of State or any discussion of bids for funding to the Secretary of State. The Academy Trust shall take any steps which are required to secure its compliance with the obligations imposed by this clause of this Agreement.

107) The Academy Trust shall ensure that:

- a) the agenda for every meeting of the Governing Body or any committee to whom the Governing Body delegates one or more of its functions to;
- 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 16 to 19 Academy and, as soon as is reasonably practicable, sent to the Secretary of State upon request.

108) 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 107, any material relating to:

- a) a named teacher or other person employed, or proposed to be employed, at the 16 to 19 Academy;
- b) a named student at, or candidate for admission to, the 16 to 19 Academy; and
- c) any matter which, by reason of its nature, the Academy Trust is satisfied should remain confidential.

## **Debt**

108A) a) The Secretary of State has agreed to make payments of Capital Grant to the Academy Trust pursuant to Clause 37;

108A) b) The payments referred to at 108A(a) are made available to the Academy Trust on an interest free basis;

108A) c) In consideration of the Secretary of State making the payments referred to at 108A(a) and financing the acquisition an interest in the Land, the Academy Trust shall pay the Debt upon termination of this Agreement or in accordance with clauses 108H(b) or 108K(a) or upon any disposition by way of sale of the whole or part of the Land, whether or not such sale has been consented to by the Secretary of State; and

108A) d) The Debt shall be secured by the Legal Charge.

## **Restrictions on Land transfer**

108B) In consideration that it has or will be obtaining a legal interest in the Land, such acquisition being financed by the Secretary of State, the Academy Trust:

- a)i) shall, within 28 days from the acquisition of the legal interest in the Land or the signing of this Agreement, whichever is the latter, apply to the Land Registry for restrictions 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) ('LRR 2003') in the following terms:

*No disposition of the registered estate by the proprietor of the registered estate to which sections 117-121 or section 124 of the Charities Act 2011 applies is to be registered unless the instrument contains a certificate complying with section 122(3) or section 125(2) of that Act, as appropriate.*

*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.*

- a)ii) shall, within 28 days from date of the Legal Charge apply to the Land Registry to amend the restrictions entered 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) ('LRR 2003') in accordance with 108B(a)(i) in the following terms:

No disposition of the registered estate by the proprietor of the registered estate or by the proprietor of any registered charge, not being a charge registered before the entry of this restriction, is to be registered without a written consent signed by the proprietor for the time being of the charge dated [date] in favour of The Secretary of State for Education referred to in the charges register, or its conveyancer."

- b) shall take any further steps reasonably required to ensure that the restrictions referred to in clause 108B(a) are entered on the proprietorship register,
- c) shall provide the Secretary of State with confirmation of the entry of the restrictions referred to in clause 108B(a) as soon as reasonably practicable after it receives notification from the Land Registry,
- d) in the event that it has not registered the restrictions referred to in clause 108B(a), hereby consents to the entering of the restrictions referred to in 108B(a) in the register by the Secretary of State (under s. 43(1)(b) of the Land Registration Act 2002); and
- e) shall not, without the consent of the Secretary of State, apply to dis-apply, modify or remove (by cancellation or otherwise) a restriction

entered in accordance with clause 108B(a) or 108B(d) above, whether by itself, a holding company, a subsidiary company, or a receiver, administrator or liquidator acting in the name of the Academy Trust.

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

108C) (i) The Academy Trust shall keep the Land clean and tidy and make good any damage it causes to the Land and / or any deterioration to the condition of the Land that may arise from the date of this Agreement, save that the Academy Trust shall ensure that any actions undertaken in compliance with this clause shall be consistent with the terms of the Leases. In compliance with this clause, the Academy Trust shall not do or cause or permit to be done anything to lessen the value or marketability of the Land save with the express written consent of the Secretary of State.

108C)(ii) The Academy Trust shall observe and comply with its obligations under the Leases and shall promptly enforce its rights against the Landlord.

108C)(iii) The Academy Trust agrees it shall seek and obtain the prior written consent of the Secretary of State, not to be unreasonably withheld or delayed before taking any steps to:

- a) terminate, vary, surrender or dispose of the Leases or any one of them; or the Sub-Lease and / or
- b) grant any consent or licence or Sub Lease in respect of the Land or any part of it; and / or
- c) create or permit to arise or continue any encumbrance affecting the Land or any part of it; and / or
- d) part with or share possession or occupation of the Land or any part of it; and / or
- e) enter into any onerous or restrictive obligations affecting the Land or any

part of it.

108C) iv) The Academy Trust agrees that prior to 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 written consent of the Secretary of State, not to be unreasonably withheld or delayed.

### **Insurance**

108D) The Academy Trust shall, save where the terms of the Leases provide for the Landlord to obtain insurance in respect of the Land:-

- a) keep the Land insured as in accordance with the terms of the Leases and in any event with a reputable insurance office against loss or damage by the Insured Risks in the sum the Academy Trust is advised represents the reinstatement value of the Land from time to time;
- b) pay the premiums for insurance promptly as they become due and maintain in force the policies of insurance on the Land;
- c) 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 Academy Trust 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;
- d) 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 not more often than once in any period of 12 months in both cases);

- e) not knowingly do anything whereby any policy of insurance relating to the Land may become void or voidable.
- f) insure against liability in respect of property owners' and third party risks including occupiers liability.

### **Transfer of Land**

108E) In consideration that it has or will be obtaining a legal interest in the Land, such acquisition being financed by the Secretary of State, the Academy Trust hereby grants and the Secretary of State hereby accepts an option, exercisable by the Secretary of State or his nominee, to acquire the Academy Trust's legal interest said Land or the Academy Trust's legal interest in any part thereof at nil consideration. The option hereby granted shall be exercisable, subject to the terms of the Leases, (by notice in writing by or on behalf of the Secretary of State) on the termination of this Funding Agreement for whatever cause or in circumstances where the Academy Trust is unable to use all or part of the Land as the permanent site of the Academy in accordance with clauses 108H or 108K. 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.

108F) In consideration that it has or will be obtaining a legal interest in the Land, such acquisition being financed by the Secretary of State, the Academy Trust:

- a) shall, within 14 days from the transfer to it of the Land or the signing of this Agreement, whichever is the latter, 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 registers (under section 34(3)(a) of the Land Registration Act 2002) to protect the option granted under clause 108E and including a copy of this Agreement as evidence of that option,
- b) shall take any further steps required to ensure that the notice referred to in clause 108F(a) is entered on the proprietorship registers,

c) shall provide the Secretary of State with confirmation of the entry of the notice referred to in clause 108F(a) as soon as practicable after it receives notification from the Land Registry,

d) in the event that it has not registered the notice referred to in clause 108F(a), hereby consents to the entering of the notice referred to in 108F(a) in the registers by the Secretary of State (by application in Form UN1 under s. 34(3)(b) of the Land Registration Act 2002),

e) shall not, without the consent of the Secretary of State, apply to dis-apply, modify or remove (by cancellation or otherwise) a notice entered in accordance with clause 108F(a) or 108F(d) above, whether by itself, a holding company, a subsidiary company, or a receiver, administrator or liquidator acting in the name of the Trust, and

f) in the case of previously unregistered land, for the further protection of the option granted in Clause 108E the Academy Trust shall within 14 days of the acquisition of the legal interest in the Land or the signing of this Agreement, whichever is the latter, make application to register a Class C (iv) land charge in the Land Charges Registry and a Caution against First Registration in the Land Registry and shall provide the Secretary of State with copies of the entries secured thereby within 7 days of completing each registration, respectively. If the Secretary of State is of the view that the Academy Trust has failed to perform the registration obligations in this sub-clause he shall be at liberty to make his own applications to secure these registrations.

### **Legal Charge**

108G) In consideration that it has or will be obtaining a legal interest in the Land, such acquisition being financed by the Secretary of State, the Academy Trust:

a. shall enter into the Legal Charge within two weeks of the opening of the Academy;

- b. shall, within 21 days from the entry into of the Legal Charge, register the Legal Charge with Companies House or if required by the Secretary of State shall use all reasonable endeavours to assist the Secretary of State to register the Legal Charge at Companies House, including signing and executing any documents, deeds and/or forms as required;
- c. shall, within 28 days from the date of the Legal Charge, apply to the Land Registry for the Legal Charge to be entered on the charges registers, using forms AP1 (Rule 13 LRR 2003) and CH1 (Rule 103 LRR 2003) or such form as may be required by the Secretary of State;
- d. shall take any further steps required to ensure that the Legal Charge is entered on the charges registers;
- e. shall provide the Secretary of State with confirmation of the registration of the Legal Charge as soon as reasonably practicable after it receives notification from the Land Registry; and
- f. in the event that it has not registered the Legal Charge, hereby consents to the registration of the Legal Charge by the Secretary of State. To enable the Secretary of State to do so, the Academy Trust shall use all reasonable endeavours to assist the Secretary of State to register the Legal 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 Legal Charge and completed AP1/CH1 forms, and dealing with any requisitions raised by the Land Registry.

### **Failure to use the Land for the purposes of the Academy**

108H) If the Academy Trust is unable to use the Land or any part thereof as the permanent site of the Academy but the Secretary of State agrees not to terminate this Agreement on that basis, the Secretary of State may give notice to the Academy Trust that:

- a) he intends to exercise the option granted under clause 108E) to transfer the Land or the relevant part thereof for nil consideration to himself or his nominee;
- b) the Academy Trust pays the Debt or the Market Value; and/or
- c) the Academy Trust shall dispose of the Land or the relevant part thereof and that, pursuant to clause 78, the Academy Trust may retain some or all of the proceeds of sale of the Land or the relevant part thereof in order to fulfil its charitable purposes by funding the purchase of an alternative permanent site for the Academy, save that any proceeds not used to fund the purchase of an alternative permanent site shall be accounted for to the Secretary of State or his nominee.

### **Sharing of the Land**

108I) The Academy Trust agrees that if:

- a) the Academy does not reach its planned capacity over a period of 2 Academy Funding Years; or
- b) notice of termination is served by either the Academy Trust or the Secretary of State in accordance with clause 82 of this Agreement; or
- c) in the reasonable opinion of the Secretary of State the operation of the Academy at planned capacity does not require the use of the full extent of the Land,
  - i. it will share occupation of the Land with such other Academies as the Secretary of State deems appropriate in the circumstances and enter into such legal arrangements in respect of the same as are required by the Secretary of State; or
  - ii. it will dispose of part of the Land as required by the Secretary of State and account for any proceeds of such disposal to the Secretary of State or his nominee as part payment of the Debt. Upon such disposal and part payment of the Debt, the Secretary of State will discharge the Legal Charge in respect of the part of the Land that has been disposed of.

providing that the Academy Trust may not be required to act in breach of the terms of the Leases.

### **Exercise of Rights**

108J) On the termination of this Agreement, the Secretary of State may give notice of his intention to exercise the rights conferred upon the Secretary of State pursuant to clause 101, 102, 108E and the Legal Charge:

- a) any such notice shall be in writing and shall confirm which clause of this Agreement the Secretary of State intends to exercise without prejudice to the Secretary of State's right to exercise all and any other rights available to him;
- b) in the event that upon termination of this Agreement for whatever reason, the Secretary of State exercises his option granted and the legal interest in the Land is transferred to the Secretary of State or his nominee for nil consideration by the Academy Trust pursuant to clause 108E, the Academy Trust's obligation to pay the Debt shall be deemed to have been satisfied in full, the obligation on the Academy Trust to pay a proportion of the proceeds of sale of the Land to the Secretary of State under clause 101(b) shall be deemed to have been complied with, and the Secretary of State shall take all steps reasonably required to carry out the Discharge Process;
- c) in the event that upon termination of this Agreement for whatever reason the Secretary of State enforces the Legal Charge, the Academy Trust's obligation to pay the Debt shall be deemed to have been satisfied in full following the realisation of the Debt by any receiver, the obligation on the Academy Trust to pay a proportion of the proceeds of sale of the Land to the Secretary of State under clause 101(b) shall be deemed to be complied with, and the Secretary of State shall take all steps reasonably required to carry out the Discharge Process;
- d) in the event that upon termination of this Agreement for whatever reason,

the Secretary of State exercises his rights under clause 101, the Academy Trust's obligations to pay the Debt shall be deemed to have been satisfied in full and the Secretary of State shall take all steps reasonably required to carry out the Discharge Process; and

- e) in the event that upon termination of this Agreement for whatever reason, the Secretary of State agrees that pursuant to clause 102 the Academy Trust may invest the proceeds of the sale of the Land for its charitable objects or directs the Academy Trust to pay all or part of the proceeds of sale of the Land to the LA, the Academy Trust's obligations to pay the Debt shall be deemed to have been satisfied in full and the Secretary of State shall take all steps reasonably required to carry out the Discharge Process.

108K) On the Academy Trust applying to the Secretary of State for consent to the disposal of all or part of the Land during the lifetime of this Agreement, the Secretary of State shall, should he agree that the Land is no longer required or cannot be used for the purposes of the Academy, subject to clause 76,

- a) consent to the disposal subject to any one or a combination of the following conditions:
  - iii. that (notwithstanding the provisions of clause 78) the Academy Trust pays the Debt in full or, in the event of a proposed disposal of part, repays to the Secretary of State the Market Value;
  - iv. that pursuant to clause 78, the Academy Trust may retain some or all proceeds of the disposal for its charitable purposes, subject to the Academy Trust accounting to the Secretary of State for any remaining proceeds of sale that the Secretary of State does not agree that the Academy Trust may retain for such charitable purposes; or
  - v. that pursuant to clause 79, the Academy Trust pays all or some of the proceeds of sale to the LA and / or may reinvest all or some of the proceeds of sale for its charitable purposes,

and any such notice of consent and conditions shall be in writing; or

- b) exercise the option granted to him pursuant to clause 108E to transfer the relevant part of the Land to him or his nominee for nil consideration.

108L) In the event that the Secretary of State consents to the disposal of the Land during the lifetime of this Agreement, subject to any of the conditions set out in clause 108K(a):

- a) if the Secretary of State enforces the Legal Charge, the Academy Trust's obligation to pay the Debt shall be deemed to have been satisfied in full following the realisation of the Debt by any receiver, the obligations on the Academy Trust to pay a proportion of the proceeds of sale of the Land to the Secretary of State under clause 78 shall be deemed to have been complied with, and the Secretary of State shall take all steps reasonably required to carry out the Discharge Process.
- b) if the Secretary of State agrees that the Academy Trust may retain some or all proceeds of the disposal for its charitable purposes, subject to the Academy Trust accounting to the Secretary of State for any remaining proceeds of sale that the Secretary of State does not agree that the Academy Trust may retain for such charitable purposes, the Academy Trust's obligations to pay the Debt shall be deemed to have been satisfied in full, the obligations on the Academy Trust to pay a proportion of the proceeds of sale of the Land to the Secretary of State under clause 78 shall be deemed to have been complied with and the Secretary of State shall take all steps reasonably required to carry out the Discharge Process, provided that in the event of a disposal of part of the Land, the Academy Trust's obligation to pay the Debt shall be deemed to have been satisfied to the extent of the Market Value, the Academy Trust's obligation under clause 78 shall be deemed to have been satisfied in relation to the relevant part of the Land, the Legal Charge shall be released and the restriction and the notice shall be removed in relation to such part and the

Legal Charge, the restriction and the notice shall remain in place in relation to the balance of the Land.

- c) if the Secretary of State directs the Academy Trust to pay all or part of the proceeds of sale of the Land to the LA pursuant to clause 79 or agrees that the Academy Trust may reinvest the proceeds of the sale for its charitable purposes, the Secretary of State shall take all steps reasonably required to carry out the Discharge Process, provided that in the event of a disposal of part of the Land the restriction and notice shall remain in place in relation to the balance of the Land.

108M) In the event that the Secretary of State exercises his option during the lifetime of this Agreement under clause 108K(b) and the legal interest in the Land is transferred to the Secretary of State or his nominee for nil consideration by the Academy Trust pursuant to clause 108E, the Academy Trust's obligation to pay the Debt shall be deemed to have been satisfied in full, the obligations on the Academy Trust to pay a proportion of the proceeds of sale of the Land to the Secretary of State under clause 78 shall be deemed to have been complied with, and the Secretary of State shall take all steps reasonably required to carry out the Discharge Process, provided that in the event of the exercise of the option in relation to part of the Land, the Academy Trust's obligation to pay the Debt shall be deemed to have been satisfied to the extent of the Market Value, the Academy Trust's obligation under clause 78 shall be deemed to have been satisfied in relation to the relevant part of the Land and the Legal Charge shall be released and the restriction and notice shall be removed in relation to such part and the Legal Charge, the restriction and the notice shall remain in place in relation to the balance of the Land.

### **Payment of Debt**

108N) In the event that the Academy Trust pays all the Debt, upon termination of this Agreement or at any other time, the Secretary of State shall take all steps reasonably required to carry out the Discharge Process.

108O) Should the Academy Trust:

(a) dispose of any or all parts of the Land, in accordance with clause 108K,  
or

(b) make payment to the Secretary of State to pay the Debt in full,

it shall enter into negotiations with the Secretary of State in respect of a deed of variation for this Agreement.

## Notices

109) A notice or communication given to a party under or in connection with this Agreement:

(a) shall be in writing and in English;

(b) shall be sent to the party for the attention of the contact and at the address listed in clause 109A;

(c) shall be sent by a method listed in clause 109C; and

(d) is deemed received as set out in clause 109C if prepared and sent in accordance with this clause.

109A) The parties' addresses and contacts are:

Name of Party	Position of Contact	Address
Secretary of State	Head of Free Schools Group	Department for Education, Sanctuary Buildings, Great Smith Street, London SW1P 3BT
The Academy Trust	Chairman of Governors	c/o Mr Peter Garrod Director of Gov & Legal Affairs, King's College London, James Clerk Maxwell Building, 57 Waterloo Road, London SE1 8WA.

109B) A party may change its details given in the table in clause 109A) by giving notice, the change taking effect for the party notified of the change at 9.00 am on the date five Business Days after deemed receipt of the notice.

109C) Any notice or other communication required to be given to a party under or in connection with this Agreement shall be delivered by hand or sent by pre-paid first-class post or other next working day delivery service. Any notice or

communication shall be deemed to have been received if delivered by hand, on signature of a delivery receipt or at the time the notice is left at the address specified in Clause 109A, or otherwise at 9.00 am on the second Business Day after posting.

109D) This clause does not apply to the service of any proceedings or other documents in any legal action. For the purposes of clause 109, "writing" shall not include e-mail.

110) The service by the Secretary of State of a notice of termination of this Agreement shall not prejudice the ability of the Academy Trust (if it wishes to do so) during the notice period to admit students to the 16 to 19 Academy in accordance with the provisions of this Agreement and to receive GAG and EAG in respect of them.

## **General**

111) This Agreement shall not be assignable by the Academy Trust.

111A) No delay, neglect or forbearance on the part of the Secretary of State in enforcing (in whole or in part) any provision of this Agreement or in exercising (in whole or in part) any right conferred on him by this Agreement shall be or be deemed to be a waiver of such provision or right or a waiver of any other provision or right or shall in any way prejudice any right of the Secretary of State under this Agreement or shall amount to an election not to enforce such provision or exercise such right (including, for the avoidance of doubt, any right to terminate this Agreement).

112) The Secretary of State and the Academy Trust recognise the difficulties in catering in this Agreement for all the circumstances which may arise in relation to the 16 to 19 Academy and undertake in good faith to conduct such consultations as may from time to time be desirable in order to promote the interests of the 16 to 19 Academy throughout the currency of this Agreement.

113) Termination of this agreement, for any reason, shall not affect the accrued rights, remedies, obligations or liabilities of the parties existing at termination.

113A) This Agreement may be executed in any number of counterparts, each of which when executed and delivered shall constitute a duplicate original, but all the counterparts shall together constitute the one agreement.

114) This Agreement and any dispute or claim arising out of or in connection with it or its subject matter or formation (including non-contractual disputes or claims) shall be governed by and construed in accordance with the law of England and Wales.

115) The parties irrevocably agree that the courts of England and Wales shall have exclusive jurisdiction to settle any dispute or claim that arises out of or in connection with this agreement or its subject matter or formation (including non-contractual disputes or claims).

This Agreement was executed as a Deed on

2014

Executed on behalf of by:

**[Either**

.....  
**Director**

In the presence of:

Witness.....

Address.....

Occupation.....]

**[Or**

.....  
**Director**

.....]  
**Director/Secretary**

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

.....

**Duly Authorised**