SINGLE ACADEMY MODEL
Mainstream

MALMESBURY C OF E PRIMARY 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 Malmesbury C of E Primary School (the "Academy Trust").

2) The Academy Trust is a Company incorporated in England and Wales, limited by guarantee with registered Company number 08483768.

3) The following expressions used in this Agreement have the respective meanings assigned to them by the numbered clauses of this Agreement referred to immediately after the reference to the expressions -

a) "Academies Financial Handbook" - clause 66;

b) "Accounting Officer" – clause 65;

c) "Annual Letter of Funding" - clause 59;

d) "GAG" – clause 35;

e) "Capital Expenditure" - clause 36;

f) "Capital Grant" – clause 36;

g) "EAG" - clause 35;

h) "Governing Body" – clause 13

i) "Recurrent Expenditure" – clause 35;

j) "Start-up Period" – clause 49;

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

"Academy" means an Academy school (within the meaning of the Academies Act 2010);

"Academy Financial Year" means the year from 1st September to 31st August

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 the 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 ‘Controls’ shall be construed accordingly;

“DfE” means the Department for Education and any successor;

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

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

known as Malmesbury Church of England Primary School, the land to the west of Tetbury Hill, Malmesbury, SN16 9JR registered under title number WT253485.

"Memorandum" means the memorandum of association of the Academy Trust, for the time being in force;

"parents" means parents or guardians;

"persons" includes a body of persons, corporate or incorporate;

"Principal" means the head teacher of the Academy;

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

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

"SEN" means Special Educational Needs; and

"SENCO" means Special Educational Needs Co-ordinator.

5) The Interpretation Act 1978 shall apply for the interpretation of this Agreement as it applies for the interpretation of an Act of Parliament.

6) Expressions defined in this Agreement shall have the same meaning where used in any Annex to this Agreement.

7) Questions arising on the interpretation of the arrangements in this Agreement shall be resolved by the Secretary of State after consultation with the Academy Trust.

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

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

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

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

LEGAL AGREEMENT

9) In consideration of the Academy Trust undertaking to establish and maintain, and to carry on or provide for the carrying on of, an independent school in England to be known as the **Malmesbury C of E Primary School** ("the 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.

ACADEMY REQUIREMENTS

10) The Academy requirements are those set down in Section 1A of the Academies Act 2010.

ACADEMY OPENING DATE

11) The Academy shall open as a school on 1 June 2013 replacing Malmesbury Church of England Primary School which shall cease to be maintained by the Local Authority on that date, which date shall be the conversion date within the meaning of the Academies Act 2010

CONDITIONS OF GRANT

General

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

(a) the school will be at the heart of its community, promoting community cohesion and sharing facilities with other schools and the wider community;
(b) there will be assessments of pupils' performance as they apply to maintained schools and the opportunity to study for qualifications in accordance with clause 29 (d);

(c) the admissions policy and arrangements for the school will be in accordance with admissions law, and the DfE Codes of Practice, as they apply to maintained schools;

(d) teachers' levels of pay and conditions of service will be the responsibility of the Academy Trust;

(e) there will be an emphasis on the needs of the individual pupils including pupils with special educational needs (SEN), both those with and without statements of SEN;

(f) there will be no charge in respect of admission to the school and the school will only charge pupils where the law allows maintained schools to charge; and

(g) the Academy Trust shall as soon as reasonably practicable establish an appropriate mechanism for the receipt and management of donations and shall use reasonable endeavours to procure donations through that mechanism for the purpose of the objects specified in the Articles.

12A) Subject to Clause 12B), the academy will operate designated places reserved for pupils with special educational needs (SEN Unit and or Resourced Provision) with up to 3.83 planned places for pupils with complex needs in the age range 4 - 11.

12B) The Secretary of State may at any time determine that the SEN Unit should cease to operate.

12C) In making any determination under clause 12B) the Secretary of State shall:

(i) have regard to the views of the Academy and local authorities in the area (in their strategic role in the commissioning of SEN provision); and

(ii) consider the impact of such a determination on the local authorities' ability to secure suitable SEN provision for all children within the area.

Governance

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

Academy Trust.

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 Academy in accordance with:

a) the Articles;
b) all provisions by or under statute which confer rights or impose obligations on Academies including, without limitation, the independent schools standards prescribed under section 157 of the Education Act 2002 to the extent they apply to the Academy;
c) the terms of this Agreement.

Disclosure and Barring Service Checks

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

16A) 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.

Pupils

17) The planned capacity of the Academy is 420 in the age range 4 - 11, and will subject to Clause 12B) operate designated reserved provision for pupils with special educational needs (SEN Unit or Resourced Provision) for up to 3.83 planned places for pupils with complex needs in the age range 4 - 11. The Academy will be an all

ability inclusive school whose requirements for:

a) the admission of pupils to the Academy are set out in Annex B to this Agreement;
b) the admission to the Academy of and support for pupils with SEN and with disabilities (for pupils who have and who do not have statements of SEN) are set out in Annex C to this Agreement;
c) pupil exclusions are set out in regulations made by virtue of section 51A of the Education Act 2002 (as may be amended from time to time, and includes any successor provisions).

Designated Teacher for Looked After Children

17A) The Academy Trust will, in respect of the Academy, act in accordance with, and be bound by, all relevant statutory and regulatory provisions and have regard to any guidance and codes of practice issued pursuant to such provisions, as they apply at any time to a maintained school, relating to the designation of a person to manage the teaching and learning programme for children who are looked after by an LA and are registered pupils at the school. For the purpose of this clause, any reference to the governing body of a maintained school in such statutory and regulatory provisions, or in any guidance and code of practice issued pursuant to such provisions, shall be deemed to be references to the Governing Body of the Academy Trust.

Teachers and other staff

17) 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 pupils, delivering lessons to pupils, assessing the development, progress and attainment of pupils, and reporting on the development, progress and attainment of pupils.

18) Clause 18 does not apply to anyone who:

a) is appointed as the SENCO by the Academy Trust under section 317(3A) of

the Education Act 1996, who must meet the requirements set out in Regulation 3 of the Education (Special Educational Needs Co-ordinators) (England) Regulations 2008 (SI 2008/2945); or

b) is appointed as a designated teacher for looked after children further to clause 17A.

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

20) The Academy Trust shall ensure that all employees at the Academy other than teachers 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 Academy applies for a teaching post at another Academy, 16 to 19 Academy, Alternative Provision 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 Academy, or the school the Academy replaced (as referred to in clause 11 above); 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.

21B) The Academy Trust shall in relation to:

(a) any person who may apply for a position as an employee or to be otherwise engaged by the Academy Trust, and

(b) any employee with whom the Academy Trust enters into a contract of employment or a contract for services

act in accordance with and hereby agrees to be bound by sub-sections 58(2), (3), (5), (6) & (9) and sections 59 to 60 of the Schools Standards and Framework Act 1998 ("SSFA") as modified below, so far as those provisions apply to, and as if the Academy Trust were, a voluntarily controlled or foundation school designated by an order under section 69(3) of the SSFA as a school having a religious character. For the avoidance of doubt, the Academy Trust agrees and acknowledges that section 124A of the SSFA shall not therefore apply to it in relation the persons referred to at (a) and (b) above.

21C) (1) Section 58 of the SSFA shall apply to the Academy Trust with the following modifications:

a) in subsection (3) for the words "head teacher" read "principal";

b) in subsections (5) & (6) for "foundation governors" read "Foundation Governors" as defined in the Articles;

c) in subsection (6):(b) for the words "governing body" read "appropriate body";

d) in subsection (9) for (a) and (b) read the words "Academy Trust".-

(2) Section 60(4) of the SSFA shall apply to the Academy Trust with the modification that for the words "head teacher" read "principal" each time they occur.

Curriculum, curriculum development and delivery and RE and collective worship

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

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 GCSE options (and other Key Stage 4 qualifications) or other future qualifications, as specified by the Secretary of State, offered by the Academy;

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

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

22B) Subject to the requirements of clauses 22, 22A and 23 to 28A, the curriculum will be the responsibility of the Academy Trust.

22) The Academy Trust shall ensure that the broad and balanced curriculum includes English, mathematics and science.

23A) Sections 42A (provision of careers guidance) and 45A (guidance as to discharge of duties) of the Education Act 1997 shall be deemed to apply to the Academy with the following modifications:

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

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

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

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

- Not used.

26) The requirements for religious education and collective worship are as follows:

a) subject to clause 27 and paragraph 3 of Schedule 19 to the School Standards and Framework Act 1998 which shall apply as if the Academy were a foundation school or voluntary controlled school with a religious character, the Academy Trust shall ensure that provision shall be made for religious education to be given to all pupils at the Academy in accordance with the requirements for agreed syllabuses in section 375(3) of the Education Act 1996;

b) subject to clause 27, the Academy Trust shall comply with the requirements of section 70(1) of, and Schedule 20 to, the School Standards and Framework Act 1998 as if the Academy were a foundation school or voluntary controlled school with a religious character, and as if references to ' the required collective worship' were references to collective worship in accordance with the tenets and practices of the specified religion or religious denomination of the Academy;

c) the Academy Trust shall ensure that the quality of the Academy's collective worship given in accordance with the tenets and practice of the specific religion or religious denomination is inspected. Such inspection shall be conducted by a person chosen by the Academy Trust and the Academy shall secure that such inspection shall comply with the requirements set out in any statutory provision and regulations as if the Academy were a foundation or voluntary controlled school which has been designated under section 69(3) of the School Standards and Framework Act 1998 as having a religious character.

26A) Where the Academy is listed in the Register of Independent Schools as having a religious ethos, but has not been designated with a religious character in accordance with section 124B of the School Standards and Framework Act 1998 or further to Section 6(8) of the Academies Act 2010, the Academy Trust agrees that paragraph 5(b) of Schedule 11 of the Equality Act 2010 shall not apply to the Academy.

24) Section 71(1) – (6) and (8) of the School Standards and Framework Act 1998 shall apply as if the Academy were a community, foundation or voluntary school, and as if references to "Religious Education" and to "Religious Worship" in that section

were references to the religious education and religious worship provided by the Academy in accordance with clauses 25 or 26 as appropriate.

25) The Academy Trust shall have regard to any guidance issued by the Secretary of State, further to section 403 of the Education Act 1996, on sex and relationship education to ensure that children at the Academy are protected from inappropriate teaching materials and they learn the nature of marriage and its importance for family life and for bringing up children. The Academy Trust shall also have regard to the requirements set out in section 405 of the Education Act 1996 which shall apply to the Academy as if it were a maintained school.

28A) The Academy Trust agrees to act in accordance with Sections 406 (Political Indoctrination) and 407 (Duty to secure balanced treatment of political issues) of the Education Act 1996 as if it were a maintained school, subject to the following modifications:

a) references to any maintained school shall be treated as references to the Academy;

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

c) references to the governing body or the local authority shall, in each case, be treated as references to the Academy Trust; and

d) references to the head teacher shall, in each case, be treated as references to the Principal of the Academy[1].

Assessment

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

a) The Academy Trust shall ensure that the Academy complies with any guidance issued by the Secretary of State from time to time to ensure that pupils take part in assessments and in teacher assessments of pupils'

[1] Please also see the Charity Commission guidance (CC9): "Speaking out: Guidance on Campaigning and Political Activities by Charities" http://www.charity-commission.gov.uk/Publications/cc9.aspx

performance as they apply to maintained schools.

b) The Academy Trust shall report to any body on assessments under clause 29 as the Secretary of State shall require and shall provide such information as may be required by that body as applies to maintained schools.

c) In respect of all Key Stages, the Academy Trust will submit the Academy to monitoring and moderation of its assessment arrangements as required by the Secretary of State.

d) In relation to courses of education or training at the Academy which are funded from its GAG, the Academy Trust may offer:-

(i) any course of education or training 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 that the following information is published on the Academy's website:

a) [If applicable]The school's most recent Key Stage 2 results as published by the Secretary of State under the following column headings in the School Performance Tables published on the Department for Education's website:

(i) "% achieving Level 4 or above in English and maths";

(ii) "% making expected progress";

(iii) in relation to English, "% achieving Level 5 or above"; and

(iv) in relation to maths, "% achieving Level 5 or above".

b) [If applicable] The school's most recent Key Stage 4 results as published by the Secretary of State under the following column headings in the School Performance Tables published on the Department for Education's website:

(i) "% achieving 5 + A* - C GCSEs (or equivalent) including English and maths GCSEs";

(ii) "% achieving the English Baccalaureate"; and

(iii) "% of pupils making expected progress".

c) Information as to where and by what means parents (including prospective parents) may access the most recent report about the school published by the Chief Inspector.

d) Information as to where and by what means parents (including prospective parents) may access the School Performance Tables published by the Secretary of State on the Department for Education's website.

Exclusions Agreement

27) The Academy Trust shall, if invited to do so by an LA, enter into an agreement in respect of the Academy with that LA, which has the effect that where:

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

payment will flow between the Academy Trust and the LA in the same direction and for the same amount that it would, were the Academy a maintained school, under Regulations made under section 47 of the School Standards and Framework Act 1998 relating to the addition or deduction of a maintained school's budget following a permanent exclusion or the admission of a permanently excluded pupil. At the date of this Agreement, the applicable Regulation is Regulation 23 of the School Finance (England) Regulations 2011.

School Meals

28) The Academy Trust shall, if requested to do so by or on behalf of any pupils at the Academy, provide school lunches for those pupils unless it would be

unreasonable for it to do so. Subject to the provisions of clause 32, charges may be levied for lunches, but the Academy Trust shall otherwise fund the cost of such school lunches from its GAG.

29) In relation to a pupil who is himself or whose parents are in receipt of benefits mentioned in section 512ZB of the Education Act 1996 (or equivalent provision governing the entitlement to free school lunches of pupils at maintained schools), the Academy Trust shall ensure that a school lunch is provided for such a pupil free of charge to be funded by the Academy Trust.

Charging

30) Sections 402 (obligation to enter pupils for public examinations), 450 - 457 (charges), 459 (regulations about information about charges and school hours), 460 (voluntary contributions), 461 (recovery of sums as civil debt) and 462 (interpretation re charges) of the Education Act 1996 (including, for the avoidance of doubt, any secondary legislation made further to those provisions) shall be deemed to apply to the Academy with the following modifications:

a) references to any maintained school shall be treated as references to the Academy;
b) references to registered pupils shall be treated as references to registered pupils at the Academy;
c) references to the governing body or the local authority shall, in each case, be treated as references to the Academy Trust; and
d) the Academy Trust may charge persons who are not registered pupils at the Academy for education provided or for facilities used by them at the Academy.

International Education Surveys

33A) Section 538A of the Education Act 1996 (power to direct participation in international surveys) shall be deemed to apply to the Academy with the following modifications:

(a) references to the governing body shall be treated as references to the Academy Trust; and

(b) references to community, foundation or voluntary school shall be treated as references to the Academy.

Pupil Premium

33B) The Academy Trust shall publish in each Academy Financial Year information in relation to:

a) the amount of Pupil Premium allocation that it will receive during the Academy Financial Year;
b) on what it intends to spend the Pupil Premium allocation;
c) on what it spent its Pupil Premium in the previous Academy Financial Year;
d) the impact in educational attainment, arising from expenditure of the previous Academy Financial Year's Pupil Premium.

DURATION OF SCHOOL DAY AND YEAR

33C) The duration of the school day and year will be the responsibility of the Academy Trust.

GRANTS TO BE PAID BY THE SECRETARY OF STATE

General

31) The Secretary of State shall pay grants towards Recurrent Expenditure and may pay grants towards Capital Expenditure for the Academy. Except with the Secretary of State's prior agreement, the Academy Trust shall not budget for its expenditure in any Academy Financial Year in excess of expected income (subject to clause 79). 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.

32) "Recurrent Expenditure" means any expenditure on the establishment, conduct,

administration and maintenance of the Academy which does not fall within the categories of capital expenditure set out at clause 36. The Secretary of State shall pay two separate and distinct grants in respect of Recurrent Expenditure: General Annual Grant ("GAG") and Earmarked Annual Grant ("EAG").

Capital Grant

33) "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.

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

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

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

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

c) any other conditions that the Secretary of State may specify.

Arrangements for Payment of Capital Grant

37) 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

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

a) teachers' salaries and related costs (including full and part time teaching staff and seconded teachers);
b) non-teaching staff salaries and related costs (including pension contributions, educational support staff, administrative and clerical staff and manual and premises related staff);
c) employees' expenses;
d) the purchase, maintenance, repair and replacement:
    (i) of teaching and learning materials and other educational equipment, including books, stationery and ICT equipment and software, sports equipment and laboratory equipment and materials;
    (ii) of other supplies and services;
e) examination fees;
f) repairs, servicing and maintenance of buildings (including redecoration, heating, plumbing, lighting etc); maintenance of grounds (including boundary fences and walls); cleaning materials and contract cleaning; water and sewage; fuel and light (including fuel oil, solid and other fuel, electricity and gas); rents; rates; purchase, maintenance, repairs and replacement of furniture and fittings;
g) insurance;
h) medical equipment and supplies;
i) staff development (including in-service training);
j) curriculum development;
k) the costs of providing school meals for pupils (including the cost of providing free school meals to pupils who are eligible to receive them), and discretionary grants to pupils to meet the cost of pupil support, including

support for pupils with special educational needs or disabilities (taking account of the fact that separate additional money will be available for pupils with statements of special educational needs);

l) administration; and

m) establishment expenses and other institutional costs.

39) Subject to clauses to 50-51, GAG for each Academy Financial Year for the Academy will include:

a) funding equivalent to that which would be received by a maintained school with similar characteristics, determined by the Secretary of State and notified in the Annual Letter of Funding or its equivalent, taking account of the number of pupils at the Academy;

b) funding in respect of functions which would be carried out by the LA if the Academy were a maintained school.

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

a) funding for matters for which it is necessary for the Academy to incur extra costs, for as long as those costs are deemed necessary by the Secretary of State; and

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

[note alternative funding clauses 44- 48 for sponsored Academies attached in Appendix]

41) Subject to clause 46, the basis of the pupil number count for the purposes of determining GAG for the Academy Financial Year in which the Academy opens shall be the same basis as that used by the Local Authority for determining the budget share of the predecessor maintained school as adjusted by numbers counted in any subsequent Schools Census, as determined by the Secretary of

State.

42) Subject to clause 46, the basis of the pupil number count for the purpose of determining GAG for the Academy for Academy Financial Years after the Academy Financial Year in which the Academy opens will be:

a) for the pupil number count for pupils in Year 11 and below, the Schools Census which is used to fund maintained schools for the financial year overlapping with the Academy Financial Year in question; and
b) for the pupil number count for pupils in Year 12 and above, the formula which for the time being is in use for maintained schools for the calculation of pupil numbers for pupils in Year 12 and above for the purpose of calculating their level of funding.

43) Where either of the following conditions applies in respect of an Academy Financial Year, the basis of the pupil count shall be determined by the Secretary of State, taking account of any diseconomies of scale that the Academy will be under as a result of such condition(s) applying. The conditions are:

a) not all planned Year-groups will be present at the Academy (that is, not all the pupil cohorts relevant to the age-range of the Academy will have some pupils present); or
b) the total number of pupils as measured in the Schools Census which is used to fund maintained schools for the financial year overlapping with the Academy Financial Year in question is less than 90% of the planned final size of the Academy, which is 420, and has not at any previous time been 90% or more of that number.

44) For any Academy Financial Year in which GAG for the Academy has been calculated in accordance with clause 44, no adjustment shall be made to the following Academy Financial Year's formula funding element of GAG to recognise variation from the pupil count basis used.

45) For any Academy Financial Year in which GAG for the Academy is calculated in accordance with clause 45, no adjustment will be made to the formula funding element in the following Academy Financial Year’s formula funding element of GAG

unless the Academy Trust demonstrates to the satisfaction of the Secretary of State that there has been a significant impact on balances. For any other element of GAG the Secretary of State may make adjustments to recognise a variation in pupil numbers from that used to calculate the element of grant in question; the basis of these will be set out in the annual letter of funding.

46) The Secretary of State recognises that:

a) Where the Academy opens with an intake representing only a proportion of the final planned size of the Academy, payments based simply upon the number of pupils present are unlikely to be sufficient to meet the Academy's needs in the Academy Financial Years before all age groups are present at their planned size (the "Start-up Period") because of a lack of economies of scale. The Secretary of State may pay an appropriately larger GAG in the Start-up Period than would be justified solely on the basis of the methods set out in clauses 42-48, in order to enable the Academy to operate effectively;[2]
b) Where the Academy opens with pupils transferred from one or more maintained schools which have closed, additional GAG resources may be required to take account of transitional costs including any costs associated with supporting the integration of pupils from the closed schools and, where necessary, to offer a dual curriculum. If the Secretary of State has indicated that such additional GAG will be payable, the Academy Trust will make a bid for this addition to GAG based upon need and providing appropriate supporting evidence.

47) During the Start-up Period or during the period when year groups are present who have transferred from a predecessor school or schools, the Secretary of State will pay a further element of GAG additional to that calculated in accordance with the methods set out in clauses 42-48 to allow the Academy to:

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

[2] Note that a larger GAG for the Start-Up Period is only applicable Academies with approved Academy Action Plans.

teaching and other staff.

After the Start-up Period these costs will be met through the ordinary GAG.

48) The Secretary of State recognises that if he serves notice of intention to terminate this Agreement, the intake of new pupils during the notice period is likely to decline and that in such circumstances payments based simply upon the number of pupils attending the Academy are unlikely to be sufficient to meet the Academy's needs during the notice period. The Secretary of State may undertake to pay a reasonable and appropriately larger GAG with respect to the Academy in the notice period than would be justified solely on the basis of the methods set out in clauses 42-48, in order to enable the Academy to operate effectively.

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

50) GAG paid by the Secretary of State shall only be spent by the Academy Trust towards the normal running costs of the Academy.

Earmarked Annual Grant

51) 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.

52) 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

53) The Secretary of State shall notify the Academy Trust at a date preceding the start of each Academy Financial Year of the GAG and EAG figures in respect of the Academy which, subject to Parliamentary approval, the Secretary of State plans for that Academy Financial Year and of the assumptions and figures on which these are based.

54) 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.

55) 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.

56) The amounts of GAG for an Academy Financial Year will be determined annually by the Secretary of State. The amount of GAG for the Academy for the initial Academy Financial Year will be notified to the Academy Trust in a funding letter at a date preceding that year. For subsequent years the amount of GAG will be notified to the Academy Trust in a funding letter preceding that Academy Financial Year (the “Annual Letter of Funding"). The Annual Letter of Funding will not include the amount that the Academy Trust will receive in respect of grants for

which information to enable timely calculation is not available or is incomplete, such grants will be notified as soon as practicable later in the year. Amounts of EAG will be notified to the Academy Trust wherever possible in the Annual Letter of Funding or its equivalent or as soon as practicable thereafter.

57) 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.

Other relevant funding

58) Not used.

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

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

61) Not used.

Financial and Accounting Requirements

General

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

63) 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 its being a charity.

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

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

a) in its conduct and operation it shall apply financial and other controls which conform to the requirements both of propriety and of good financial management;
b) arrangements have been made to maintain proper accounting records and that statements of income and expenditure and balance sheets may be produced in such form and frequency as the Secretary of State may from time to time reasonably direct;
c) in addition to the obligation to fulfil the statutory requirements referred to in sub-clause f) below, the Academy Trust shall prepare its financial statements, Directors' report, Annual Accounts and its Annual Return for each Academy Financial Year in accordance with the Statement of Recommended Practice as issued by the Charity Commission and updated from time to time as if the Academy Trust was a non-exempt Charity and in such form or manner and by such a date as the Secretary of State may reasonably direct and shall file these with the Secretary of State and the Principal Regulator each Academy Financial Year;
d) A statement of the accounting policies used should be sent to the Secretary of State with the financial statements and should carry an audit report stating that, in the opinion of the auditors, the statements show a true and fair view of

the Academy Trust's affairs and that the grants were used for the purposes intended;

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

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

g) the Academy Trust shall publish on its website its Annual Accounts, Annual Report, Memorandum, 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 any subsisting leases in respect of the leasehold interest of the site upon which the Academy is situated.

66) 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.

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

68) The Academy Trust shall submit information relating to the 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.

69) 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.

70) Notwithstanding clause 72, any additional grant provided over and above that set out in clauses 42-48, and made in accordance with clauses 49-51 may be carried forward without limitation or deduction until the Start-up Period or the circumstances set out in clause 51 come to an end.

71) Any unspent GAG not allowed to be carried forward under clauses 72-73 may be taken into account in the payment of subsequent grant.

74A) 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 an Academy offering a broad and balanced curriculum. 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.

72) 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. 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.

73) 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 for a term exceeding three years.

74) 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 for a term exceeding three years.

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

76) 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 72, carrying a surplus from one Academy Financial Year to the next; or
b) carrying forward from a previous Academy Financial Year or Academy Financial Years a sufficient surplus or sufficient cumulative surpluses on grants from the Secretary of State to meet an in-year deficit on such grants in a subsequent financial year; or
c) incurring an in-year deficit on funds from sources other than grants from the Secretary of State in any Academy Financial Year, provided it does not affect the Academy Trust's responsibility to ensure that the Academy balances its overall budget from Academy Financial Year to Academy Financial Year.

79A) 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 Protecting Charities from Harm ('the compliance toolkit'). Any references in this document which require charity trustees to report to the Charity Commission should instead be interpreted as references to report to the Principal Regulator.

Borrowing Powers

77) 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 may only be granted in limited circumstances. The Academy Trust shall not operate an overdraft except to cover irregularities in cash flow. Such an overdraft, and the maximum amount to be borrowed, shall require approval by the Academy Trust in General Meeting and in writing by the Secretary of State, and shall be subject to any conditions which the Secretary of State may reasonably impose.

78) 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 80 above.

Disposal of Assets

79) Where the Academy Trust acquires assets for a nil consideration or at an under value it shall be treated for the purpose of this Agreement as having incurred expenditure equal to the market value of those assets at the time that they were acquired. This provision shall not apply to assets transferred to the Academy Trust at nil or nominal consideration and which were previously used for the purposes of an Academy and/or were transferred from an LA, the value of which assets shall be disregarded.

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

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

81) Furthermore, reinvestment of a percentage of the proceeds of disposal of a capital asset paid for with a capital grant from the Secretary of State shall require the Secretary of State's consent in the circumstances set out above and reinvestment exceeding the value for the time being specified by the Secretary of

State or with other special features will be subject to Parliamentary approval. The percentage of the proceeds for which consent is needed is the percentage of the initial price of the asset which was paid by capital grant from the Secretary of State.

82) 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.

83) 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.

84) 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.

85) The Academy Trust shall provide 30 days' written 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 87 above.

TERMINATION

86) Either party may give not less than seven Academy Financial Years' written notice to terminate this Agreement, such notice to expire on 31 August [ ] or any

subsequent anniversary of that date.

Termination Warning Notice

87) 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 Academy is no longer meeting the requirements referred to in clause 10 of this Agreement (subject to clause 97);
b) the conditions and requirements set out in clauses 12-33B of this Agreement are no longer being met;
c) the standards of performance of pupils at the Academy are unacceptably low;
d) there has been a serious breakdown in the way the Academy is managed or governed;
e) the safety of pupils or staff is threatened (whether by breakdown of discipline or otherwise); or
f) the Academy Trust is otherwise in material breach of the provisions of this Agreement.

88) A Termination Warning Notice issued by the Secretary of State in accordance with clause 90 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.

89) 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 91(c) and shall confirm whether he considers that:

a) in the 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 within 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.)

90) 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 91(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 91(c), the Secretary of State remains satisfied that it is appropriate to terminate the Agreement.

Notice of Intention to Terminate

91) The Secretary of State may at any time give written notice of his intention to terminate this Agreement where the Chief Inspector gives notice to the Academy Trust in accordance with section 13(3) of the Education Act 2005 stating that in the Chief Inspector's opinion –

(a) special measures are required to be taken in relation to the Academy; or

(b) the Academy requires significant improvement.

92) Any notice issued by the Secretary of State in accordance with clause 94 shall invite the Academy Trust to respond with any representations within a specified timeframe.

93) Where the Secretary of State has given notice of his intention to terminate this Agreement in accordance with clauses 94 and 95 and –

(a) he has not received any representations from the Academy Trust within the timeframe specified in clause 95; or

(b) having considered the representations made by the Academy Trust pursuant to clause 95, 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

94) If the Secretary of State has cause to serve a notice on the Academy Trust under section 165 of the Education Act 2002 and a determination (from which all rights of appeal have been exhausted) has been made that the Academy shall be struck off the Register of Independent Schools, he may terminate this Agreement by notice in writing to the Academy Trust such termination to take effect on the date of the notice.

95) 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.

96) 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.

Change of Control

97) The Secretary of State may at any time, subject to clause 102 below, 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;

(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.

98) The Academy Trust shall notify the Secretary of State in writing of any change or proposed change of Control within the meaning of clause 100 above, as soon as reasonably practicable after it has become aware of any such change, or proposed change, of Control.

99) When notifying the Secretary of State further to clause 101 the Academy Trust must seek the Secretary of State's agreement that, if he is satisfied that the person assuming Control is suitable, he will not in those circumstances exercise his right to terminate this Agreement further to clause 100.

Effect of Termination

100) Not used.

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

102) Subject to clauses 106 and 107, if the Secretary of State terminates this Agreement pursuant to clause 89 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 89 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.

103) 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.

104) 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 89) indemnify the Academy Trust and may (where the Secretary of State terminates

this Agreement otherwise than pursuant to clause 89) 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.

105) **Subject to clause 109, 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 Academy or at a later date; or
b) if the Secretary of State confirms that a transfer under clause 108(a) is not required, promptly repay to the Secretary of State a sum equivalent to the percentage of the value of the assets at the date of termination, or, by agreement with the Secretary of State, at the date of subsequent disposal of those assets. Such percentage to be the same as the percentage of the capital contribution made by the Secretary of State to the original value of those assets, whether that contribution was made on the establishment of the Academy or later.

106) **The Secretary of State may waive in whole or in part the repayment due under clause 108(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.

107) 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

108) 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 pupils;
c) teaching staff including numbers, qualifications, experience, salaries, and teaching loads;
d) class sizes;
e) outreach work with other schools and the local community;
f) operation of the admission criteria and over subscription arrangements for the Academy including numbers of applications for places and the number and characteristics of pupils accepted for admission;
g) numbers of pupils excluded (including permanent and fixed term exclusions);
h) levels of authorised and unauthorised 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: Guidance on Campaigning and Political Activities by Charities", as amended from time to time; and
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 115), is reasonably necessary for the Secretary of State to carry out his functions generally and in relation to this Agreement.

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

Access by the Secretary of State's Officers

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

111) 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 Academy and, as soon as is reasonably practicable, sent to the Secretary of State upon request.

112) 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 114, any material relating to:

a) a named teacher or other person employed, or proposed to be employed,

at the Academy;

b) a named pupil at, or candidate for admission to, the Academy; and

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

Notices

113) 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 116A;

(c) shall be sent by a method listed in clause 116C; and

(d) is deemed received as set out in clause 116C if prepared and sent in accordance with this clause.

LAND

Restrictions on Land transfer

115A) Recognising that they are or will be receiving publicly funded land at nil consideration (which for the purposes of this transaction shall include leases granted at a peppercorn rent) the Academy Trust:

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

No disposition of the registered estate by the proprietor of the registered estate is to be registered without a written consent signed by the Secretary of State for Education, of Sanctuary Buildings, Great Smith Street, London SW1P 3BT

b) shall take any further steps required to ensure that the restriction referred to in clause 115A(a) is entered on the proprietorship register,

c) shall provide the Secretary of State with confirmation of the entry of the restriction referred to in clause 115A(a) as soon as practicable after it receives notification from the Land Registry,

d) in the event that it has not registered the restriction referred to in clause 115A(a), hereby consents to the entering of the restriction referred to in 115A(a) in the register by the Secretary of State (under s. 43(1)(b) of the Land Registration Act 2002),

e) shall not, without the consent of the Secretary of State, apply to dis-apply, modify or remove (by cancellation or otherwise) a restriction entered in accordance with clause 115A(a) or 115A(d) above, whether by itself, a holding company, a subsidiary company, or a receiver, administrator or liquidator acting in the name of the Trust.

116A) The parties' addresses and contacts are:

Name of Party	Position of Contact	Address
Secretary of State	Head of Academies Division	Department for Education, Sanctuary Buildings, Great Smith Street, London SW1P 3BT
The Academy Trust	Chairman of Governors	Tetbury Hill, Malmesbury, Wiltshire, SN16 9JR

116B) A party may change its details given in the table in clause 116A) 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.

116C) 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 116A, or otherwise at 9.00 am on the second Business Day after posting.

116D) This clause does not apply to the service of any proceedings or other documents in any legal action. For the purposes of clause 116, "writing" shall not include e-mail.

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

Complaints

117A) If a complaint is made about matters arising in whole or in part prior to the opening of the Academy, as referred to in clause 11 above, and all or part of that complaint was being or had been investigated by the Local Government Ombudsman under Part III of the Local Government Act 1974 (“Part III”) or that complaint in whole or in part could have been investigated under Part III had the school the Academy replaced remained a maintained school, the Academy Trust:

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

117B) If the Secretary of State could have given an order and/or a direction under section 496 and/or section 497 of the Education Act 1996 to the governing body of the school the Academy replaced (as referred to in clause 11 above) and that order

and/or direction related to matters occurring within the 12 months immediately prior to conversion, the Academy Trust agrees:

a) the Secretary of State may give orders and/or directions to the Academy Trust as though the Academy were a maintained school and sections 496 and 497 applied to the governing body of that maintained school;
b) to act in accordance with any such order and/or direction from the Secretary of State.

117C) If at the time of the opening of the Academy the investigation of a complaint made to the governing body of the school the Academy replaced (as referred to in clause 11 above) has not yet been completed, the Academy Trust shall continue to investigate that complaint in accordance with the complaints procedures established by that governing body.

117D) If a complaint is made to the Academy Trust about matters arising in whole or in part during the 12 months prior to the opening of the Academy, the Academy Trust agrees to investigate that complaint as if the matter complained of had taken place after the opening of the Academy.

General

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

116) 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 or remedy conferred on him by this Agreement shall be or be deemed to be a waiver of such provision or right or remedy or a waiver of any other provision or right or remedy or shall in any way prejudice any right or remedy of the Secretary of State under this Agreement or shall amount to an election not to enforce such provision or exercise such right or remedy (including, for the avoidance of doubt, any right to terminate this Agreement). No single or partial exercise of such right or remedy shall preclude or restrict the further exercise of that or any other right or remedy.

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

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

119) This deed 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.

120) 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.

121) 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 2013

Executed on behalf of by:

.....
Director

In the presence of:

Witness.....

Address.....

Occupation.....

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

.....

Duly Authorised