

**DEED OF NOVATION AND VARIATION  
OF THE  
FUNDING AGREEMENT  
FOR  
WAC ARTS COLLEGE**

The Parties to this Deed are:

(1) **THE SECRETARY OF STATE FOR EDUCATION** of Sanctuary Buildings, Great Smith Street, London SW1P 3BT (the "**Secretary of State**");

(2) **T4 TRUST** a charitable company incorporated in England and Wales with registered company number 12111001 whose registered address is at Manor House, Slip Mill Road, Hawkhurst, Cranbrook, United Kingdom, TN18 5AE (the "**Incoming Trust**"); and

(3) **WAC ARTS COLLEGE** a charitable company incorporated in England and Wales with registered company number 07949464 whose registered address is at 213 Haverstock Hill, London, NW3 4QP (the "**Outgoing SAT**"),

together referred to as the "**Parties**".

## **INTRODUCTION**

- A. Wac Arts College is an academy within the meaning of the Academies Act 2010 (the "**Academy**") and is currently operated by the Outgoing SAT (a single academy trust).
- B. The Secretary of State and the Outgoing SAT entered into a Funding Agreement on or around 26 August 2014 (the "**Agreement**") for the maintenance and funding of the Academy attached at Schedule 1.
- C. It is proposed that, with effect from 00.01 am on 1 September 2019 ("**Transfer Date**"), the Incoming Trust will assume responsibility for the management and operation of the Academy in succession to the Outgoing SAT.
- D. The Parties wish to novate the Agreement to the Incoming Trust and the Secretary of State and the Incoming Trust wish to vary the terms of the Agreement subject to the provisions of this Deed.

## **LEGAL AGREEMENT**

- 1. Any word or phrase used in this Deed shall, if that word or phrase is defined in the Agreement, bear the meaning given to it in the Agreement.

## **NOVATION**

2. The Outgoing SAT transfers all its rights and obligations under the Agreement to the Incoming Trust with effect from the Transfer Date. With effect from the Transfer Date, the Incoming Trust shall enjoy all the rights and benefits of the Outgoing SAT under the Agreement and all references to the Outgoing SAT in the Agreement shall be read and construed as references to the Incoming Trust.

3. With effect from the Transfer Date, the Incoming Trust agrees to perform the Agreement and be bound by its terms in every way as if it were the original party to it in place of the Outgoing SAT.

4. With effect from the Transfer Date, the Secretary of State agrees to perform the Agreement and be bound by its terms in every way as if the Incoming Trust were the original party to it in place of the Outgoing SAT.

#### **OBLIGATIONS AND LIABILITIES**

5. With effect from the Transfer Date, the Outgoing SAT and the Secretary of State release each other from all future obligations to the other under the Agreement.

6. Each of the Outgoing SAT and the Secretary of State release and discharge the other from all claims and demands under or in connection with the Agreement arising after the Transfer Date.

7. Each of the Incoming Trust and the Secretary of State will have the right to enforce the Agreement and pursue any claims and demands under the Agreement against the other with respect to matters arising before, on or after the date of this Deed as though the Incoming Trust were the original party to the Agreement instead of the Outgoing SAT.

#### **VARIATION**

8. The Secretary of State and the Incoming Trust agree that with effect from the Transfer Date the Agreement shall be amended and restated so as to take effect in the form set out in Schedule 2 to this Deed.

9. As varied by this Deed, the Agreement shall remain in full force and effect.

10. This Deed shall be governed by and interpreted in accordance with English law.

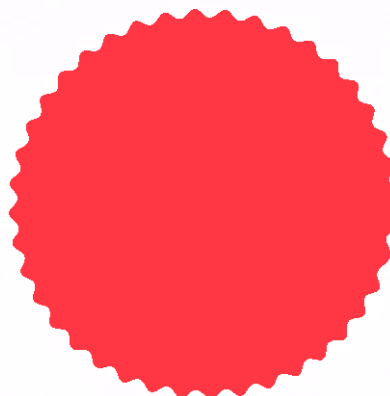
11. The Parties irrevocably agree that the courts of England and Wales shall have exclusive jurisdiction to settle any dispute or claim that arises out of, or in connection with, this deed or its subject matter or formation (including non-contractual disputes or claims).

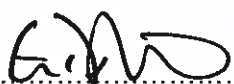
## **COUNTERPARTS**

12. This Deed may be executed in any number of counterparts and by the parties to it on separate counterparts, each of which when so executed and delivered shall be an original, but all the counterparts shall together constitute one and the same instrument.

IN WITNESS whereof this Deed has been executed by the parties hereto and is intended to be and is hereby delivered on the last date listed below.

EXECUTED as a deed by affixing the corporate seal )  
of **THE SECRETARY OF STATE FOR EDUCATION** )  
authenticated by:- )



  
.....  
Duly authorised by the **SECRETARY OF STATE FOR EDUCATION**  
Date: 29<sup>th</sup> August 2019 .....

EXECUTED as a deed by **T4**  
**TRUST** acting by one director in  
the presence of a witness:

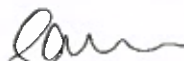
Director



.....  
Print name: Tom Attwood

Date: 02/08/2019

Witness



.....  
Print name: LUCY BOWMAN

Address: 25 Ross Apartments, London, E16 1DE

Occupation: Accountant

EXECUTED as a deed by **WAC**  
**ARTS COLLEGE** acting by one  
director in the presence of a  
witness:

Director



.....  
Print name: John Bolt

Date: 02/08/2019

Witness



.....  
Print name: LUCY BOWMAN

Address: 25 Ross Apartments, London, E16 1DE

Occupation: Accountant

**SCHEDULE 1**  
**EXISTING FUNDING AGREEMENT**





I

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

**AUGUST 2014**

**Wac Arts College  
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 Wac Arts College (the "Academy Trust").
- 2) The Academy Trust is a Company incorporated in England and Wales, limited by guarantee with registered Company number 07949464.
- 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 Additional Land" means means the land (including for the avoidance of doubt all buildings, structures landscaping and other erections) situated

at and known as Land known as the Bunkers, Old Hampstead Town Hall, 213 Haverstock Hill, London NW3 4QP and edged red on the plan attached at Annex E making up the part of the permanent site of the Academy or the part of such land remaining in the ownership of the Academy Trust

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

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

“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;

“Clawback Agreement” means the agreement between the Secretary of State and the Landlord of Lease of the Additional Land, WAC Arts, under which WAC Arts have an option to purchase the Lease of Additional Land for the premium as stipulated by the agreement.

“Commissioner” means local authorities and/or schools referring Pupils to the 16 to 19 Academy for admission under the legal powers set out at Annex B;

“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;

"DfE" means Department for Education and any successor;

"EFA" means Education Funding Agency and any successor;

"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 Land known as Old Hampstead Town Hall, 213 Haverstock Hill, London NW3 4QP and edged red on the plan attached at Annex D making up the permanent site of the Academy or the part of such land remaining in the ownership of the Academy Trust;

“the Lease” means the leasehold agreement or its equivalent between the Academy Trust and any third party (“the Landlord”) in respect of the site upon which the 16 to 19 Academy is situated;

;

“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 16 to 19 Academy;

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

“Pupil” means a person of compulsory school age attending the 16 to 19 Academy;

“Rent” means a payment made by the Academy Trust to a third party pursuant to the Lease 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;

“SEN” means Special Educational Needs;

“SENCO” means Special Educations Needs Co-ordinator

“Start-up period” means a period of three 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);



“Student” means a person over compulsory school age but under 19 attending the 16 to 19 Academy or are aged 19-24 and have a learning difficulty and/or disability and are the subject of a learning difficulty assessment; and

“School Premises” means the site upon which the Academy is situated upon from time to time which comprises either the Land or the Additional Land.

- 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 educational institution in England to be known as the WAC Arts College (“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 Students attending the 16 to 19 Academy will be formulated in accordance with clause 17A of this agreement;

d) the admissions policy and arrangements for Pupils attending the 16 to 19 Academy will be in accordance with Annex B;

e) 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;

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

g) not used.

h) there will be no charge to Students or Pupils (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;

i) 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;

j) 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;

k) unless there are exceptional reasons to do otherwise, there will be assessments of Pupils' performance as they apply to maintained schools;

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

m) there will be no charge to Pupils (or their parents or guardians) in respect

of admissions to, or attendance at, the 16 to 19 Academy and the 16 to 19 Academy will only charge Pupils where the law allows maintained schools to charge; and

n) clause 12m) does not prevent the Academy Trust receiving funds/ income from Commissioners in respect of the admission and attendance of a Pupil at the 16 to 19 Academy.

## **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.

14A) The Academy Trust must provide to the Secretary of State the names of all new or replacement Governors and members of the Academy Trust, stating whether they have been appointed or elected, the date of their appointment or election and, where applicable, the name of the Governor or member they replaced as soon as is practicable and in any event within 14 days of their appointment or election.

14B) The Academy Trust must not appoint any new or replacement Governors or members until it has first informed them, and they have agreed, that their names will be shared with the Secretary of State to enable him to assess their suitability.

## **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.

15A) The Academy Trust must ensure that so far as is reasonably practicable and consistent with this Agreement and the Equality Act 2010, the policies and practices adopted by the Academy (in particular regarding curriculum, uniform and school food) enable pupils of all faiths and none to play a full part in the life of the Academy, and do not disadvantage pupils or parents of any faith or none. For the avoidance of doubt, this requirement applies irrespective of the proportion of pupils of any faiths or none currently attending or predicted to join the school.

#### **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 individual Governors and 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 Governor or Chair of the Governing Body as appropriate;

(iii) references to “beginning work at the further education institution” shall be treated as references to beginning work as a Governor or Chair of the Governing Body as appropriate.

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**

17A) The planned capacity of the 16 to 19 Academy is 64 places in the age range 14-19, including a sixth form of 40 places. 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.

17D) The 16 to 19 Academy will provide education for the cohort of Pupils whose characteristics are set out in the requirements at 1C of the Academies Act and whose requirements for:

- a) the admission of Pupils to the 16 to 19 Academy are set out in Annex B to this Agreement;
- b) the admission to the 16 to 19 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 or modified from time to time, and includes any successor provision(s)).

17E) The Academy Trust will in respect of the 16 to 19 Academy act in accordance with, and be bound by, all relevant statutory and regulatory provisions and have regard to any guidance and codes of practice issued pursuant to such provisions, as they apply at any time to a maintained school, relating to the designation of a person to manage the teaching and learning programme for children who are looked after by a LA and are registered Pupils at the 16 to 19 Academy. 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**

- 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 Pupils and Students, delivering lessons to Pupils and Students, assessing the development, progress and attainment of Pupils and Students, and reporting on the development, progress and attainment of Pupils and Students.
- 19) 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..
- 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 to Students by the 16 to 19 Academy should be suitable to the requirements of the Students 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 GCSE options, other Key Stage 4 qualifications and qualifications offered by the 16 to 19 Academy;

d) not used; and

e) how Students, Pupils and parents (including prospective Students, Pupils 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 23 to 28B, the curriculum will be the responsibility of the Academy Trust.

23) The curriculum provided by the 16 to 19 Academy to Pupils shall be broad and balanced. The Academy Trust shall ensure that the broad and

balanced curriculum includes English and mathematics .

23A) In respect of Pupils attending the 16 to 19 Academy, 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 16 to 19 Academy with the following modifications:

- a) the 16 to 19 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 16 to 19 Academy.

24)The Academy Trust shall make provision for: (i) the teaching of religious education at the 16 to 19 Academy for any Pupil or Student attending the 16 to 19 Academy wishing to receive it; and (ii)ensure 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 Pupils or 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.

26A) Not Used.

27)Not used.

28)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 Pupils at the 16 to 19 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 in relation to Pupils attending the 16 to 19 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 16 to 19 Academy;
- a) references to registered pupils shall be treated as references to registered Pupils at the 16 to 19 Academy;
- b) references to the governing body or the local authority shall, in each case, be treated as references to the Academy Trust; and
- c) references to the head teacher shall, in each case, be treated as references to the Principal of the 16 to 19 Academy<sup>1</sup>.

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

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<sup>1</sup> 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>

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 sStudents 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) Unless there are exceptional reasons to do otherwise, the Academy Trust shall ensure that the 16 to 19 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' performance as they apply to maintained schools..
- c) In respect of all Key Stages that apply to Pupils, the Academy Trust will submit the 16 to 19 Academy to monitoring and moderation of its assessment arrangements as required by the Secretary of State.
- 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.

29AA) Subject to clause 29AAA the Academy Trust shall ensure that the following information is published on the 16 to 19 Academy's website:

a) The 16 to 19 Academy'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".

b) Information as to where and by what means parents (including prospective parents) of Pupils and Commissioners may access the most recent report about the school published by the Chief Inspector; and

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

29AAA) There is no requirement to publish information under clause 29 AA if to do so would be in breach of the Academy Trust's obligations under the Data Protection Act 1998.

### **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)Subject to 12m) and 12 n), the 16 to 19 Academy shall only be permitted to make charges to Students 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 as may from time to time be applicable.

### **Free meals**

33A) In relation to Students, the Academy Trust must comply with any guidance issued by or on behalf the Secretary of State, as amended from time to time, in relation to free meals in the further education sector, as far as it applies to the Academy.

32AA The Academy Trust must provide school lunches and free school lunches to Pupils in accordance with the provisions of sections 512(3) and 512ZB(1) of the Education Act 1996 as if references in sections 512 and 512ZB to a local authority were to the Academy Trust and as if references to a school maintained by the local authority were to the 16 to 19 Academy.

32B In relation to 32AA, in relation to Pupils the Academy Trust must comply with school food standards legislation as if it were a maintained school.

32C Where the Academy Trust provides milk to Pupils, it must be provided free of charge to pupils who would be eligible for free milk if they were Pupils at a maintained school.

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

33D) 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 (GAG)**

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.

41A) clause 42 to 43D shall apply to GAG for Students attending the 16 to 19 Academy.

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; 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.

43E) Clauses 43F to 43H shall apply in respect of Pupils attending the 16 to 19 Academy

43F) GAG for each Academy Financial Year for Pupils attending the 16 to 19 Academy will include:

- a) Funding determined by the Secretary of State and notified in the Annual Letter of Funding or its equivalent, taking account of the number of Pupils and/or places at the 16 to 19 Academy;
- b) Funding for the cost of functions which would be carried out by the local authority if the 16 to 19 Academy were a maintained school, such funding to be determined at the discretion of the Secretary of State;
- c) Funding for matters for which it is necessary for the 16 to 19 to incur extra costs, to the extent that those costs are deemed in the discretion of the Secretary of State to be necessary; and
- d) Payments equivalent to further, specific grants made available to maintained schools, where the 16 to 19 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;

43G) The Secretary of State will determine GAG for the Pupils attending the 16 to 19 Academy for each Academy Financial Year. The determination will be made taking into account relevant factors. Arrangements for this will be set out in the Annual Letter of Funding or its equivalent.

43H) The Secretary of State may make provision, within his absolute discretion, for GAG to be adjusted in-year if the number of Pupils attending the 16 to 19 Academy at specified dates exceeds or falls below thresholds specified by letter. Arrangements for this will be set out in the Annual Letter of Funding or its equivalent.

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 pupils 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 and 43E to 43H, 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 and Pupils 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 pupils 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 (EAG)**

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 Lease. Such costs shall include those costs arising from any rent rise payable by the Academy Trust under the terms of the Lease, 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, but such costs shall not include any amount in respect of service charge payments or insurance premiums. Where the definition of rent in the Lease includes service charge payments or insurance premiums, the Secretary of State shall exclude from the total grant payable in respect of Rent an amount in respect of such service charge payments or insurance premiums.

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 or opts in to the Department's arrangements as set out in the Academies Financial Handbook.

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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 or 43F, 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 12-32C of this Agreement are no longer being met;
- c) the standards of performance of Pupils or 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;
- e) the safety of Pupils or Students 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.

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) Not used.

91A.1) If

- a) Any Governor or member of the Academy Trust refuses to consent to any checks required under this Agreement, or as otherwise requested by the Secretary of State; or

- b) The Secretary of State determines that any Governor or member of the Academy Trust is unsuitable,

the Secretary of State may:

- i. direct the Academy Trust to ensure that the Governor or member resigns or is removed within 42 days, failing which the Secretary of State may serve a Termination Notice; or
- ii. serve a Termination Notice.

91A.2) For the purposes of clause 91A.1 a Governor or member of the Academy Trust will be “unsuitable” if that Governor or member:

- a) has been convicted of an offence;
- b) has been given a caution in respect of an offence;
- c) is subject to a relevant finding in respect of an offence; or
- d) has engaged in relevant conduct,

as a result of which, the Secretary of State considers that that Governors or member is unsuitable to take part in the management of the Academy.

91A.3) For the purposes of clause 91A.2:

- a) a Governor or member of the Academy Trust will be subject to a “relevant finding” in respect of an offence if:
  - i) that Governor or member has been found not guilty of the offence by reason of insanity;
  - ii) that Governor or member has been found to be under a disability and to have done the act charged against them in respect of the offence; or
  - iii) a court outside the United Kingdom has made a finding equivalent to that described in paragraphs (i) and (ii) above.

- b) “relevant conduct” is conduct by a Governor or member of the Academy Trust which is:
- i) aimed at undermining the fundamental British values of democracy, the rule of law, individual liberty and mutual respect and tolerance of those with different faiths and beliefs; or
  - ii) found to be in breach of professional standards by a professional body; or
  - iii) so inappropriate that, in the opinion of the Secretary of State, it makes that Governor or member unsuitable to take part in the management of the Academy.

91B) For the purposes of clauses 91B).1), “prospective pupils” means those Pupils who have been referred to the Academy and accepted a place.

91B.1) If on or after 31 August 2014 or at any time after signing this Agreement and before the Academy opens, the total number of prospective pupils is fewer than 13, the Secretary of State may by written notice to the Academy Trust:-

- (a) require the Academy Trust not to open the Academy until the number of prospective pupils has reached 13;or
- (b) terminate this Agreement such termination to take effect on the date specified in the notice.

91B 2) If on or after 31 August 2014 or at any time after signing this Agreement and 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 17, the Secretary of State may by written notice to the Academy Trust:-

- (a) require the Academy Trust not to open the Academy until the number of prospective Students has reached 17; or



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

91C If at any time after signing this Agreement and after the Academy has opened, the Secretary of State is of the opinion that, by virtue of low pupil (including both Pupils and Students) 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 that the Academy Trust admits a sufficient number of Students and/or Pupils by such date as he deems appropriate in the circumstances and setting out the consequences if the Academy Trust has not admitted a sufficient number of pupils 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 pupil (including both Pupils and Students) 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 Land by 30/06/2016 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 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 the Lease for the Land by 31/10/2014, 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 opening of the Academy but prior to the Academy allowing Pupils and/or Students of the Academy access to the Additional Land, the Secretary of State is of the view that:

94A.1) the safety of pupils or staff at the Academy would, on use of the Additional Land, be threatened; or

94A.2) the buildings and other structures the Additional Land are unsuitable or the Company has not obtained Building Regulations approval;

he may in writing either:

- (a) require the Company not to use any building or other structure on the Additional Land until such time as the relevant matter or matters listed in 94A.1 to 94A.2 above has or have been resolved to the Secretary of State's satisfaction; or
- (b) terminate this Agreement by notice in writing to the Company such termination to take effect on the date of the notice.

94B If the Company has not entered into the Lease for the Additional Land within two calendar months of receiving planning permission or by 31/08/2016 (whichever is the sooner), the Secretary of State may by notice terminate this Agreement forthwith or may provide such notice as he deems appropriate in the circumstances in writing to terminate this Agreement.

#### **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 Pupils and Students accepted for admission;
- g) numbers of Pupils and Students excluded (including permanent and fixed-term exclusions) characteristics of Pupils excluded; reasons for exclusions; outcomes of any independent review panels;
- 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 in respect of Students 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.

## **Land Clauses**

### **Debt**

108A Not Used. Not Used.

### **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) 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.*

- 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 School Premises clean and tidy and make good any damage it causes to the School Premises and/or any deterioration to the condition of the School Premises 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 Lease. 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 School Premises 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 Lease 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 Lease; and/or
- b) grant any consent or licence in respect of the School Premises or any part of it; and/or
- c) create or permit to arise or continue any encumbrance affecting the School Premises or any part of it; and/or
- d) part with or share possession or occupation of the School Premises or any part of it; and/or
- e) enter into any onerous or restrictive obligations affecting the School Premises 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 School Premises, 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 Lease provide for the Landlord to obtain insurance in respect of the School Premises:-

- a) keep the School Premises insured as in accordance with the terms of the Lease 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 School Premises 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 School Premises;
- c) following the incidence of damage to or destruction of the School Premises 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 School Premises (provided that this clause should be satisfied if the Academy Trust provides premises not necessarily identical to the School Premises 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 no 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 School Premises may become void or voidable.
- f) insure against liability in respect of property owners' and third party risks including occupiers liability or opts in to the Department's arrangements as set out in the Academies Financial Handbook.

### **Transfer of Land**

108E) In consideration that it has or will be obtaining a legal interest in the Land and the Additional 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 said Land or any part thereof or said Additional Land or any part thereof at nil consideration, subject to the terms of the Clawback Agreement. The option hereby granted shall be exercisable (by notice in writing by or on behalf of the Secretary of State) on the termination of this Funding Agreement for whatever

cause or in circumstances where the Academy Trust is unable to use all or part of the Land or the Additional 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 register (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 register,
- 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 register 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) Not Used.

### **Failure to use the Land for the purposes of the 16-19 Academy**

108H) If the Academy Trust is unable to use the Land or the Additional Land or any part thereof as the permanent site of the 16 to 19 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 Additional Land or the relevant part thereof for nil consideration to himself or his nominee;
- b) Not Used.
- c) Not Used.

### **Sharing of the Land**

108I) The Academy Trust agrees that if:

- a) the 16 to 19 Academy does not reach its planned capacity over a period of three 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 16 to 19 Academy at planned capacity does not require the use of the full extent of the Land or the Additional Land,

i. it will share occupation of the Land or the Additional 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. Not Used

Providing that the Academy Trust may not be required to do anything that would breach its obligations under the Lease.

### **Exercise of Rights**

108J-108O) Not Used

### **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	Charlie Lang	Department for Education, Sanctuary



of State	Deputy Director, Free School Delivery Division 1	Buildings, Great Smith Street, London SW1P 3BT
The Academy Trust	Chairman of Governors	213 HAVERSTOCK HILL LONDON NW3 4QP

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**



**SCHEDULE 2**

**AMENDED SUPPLEMENTAL FUNDING AGREEMENT**





Department  
for Education

# **Alternative Provision Academy and Free School: Supplemental Funding Agreement**

**March 2018**

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## SUMMARY SHEET

### Information about the Academy:

<b>Name of Academy Trust</b>	T4 Trust
<b>Company number</b>	12111001
<b>Date of Master Funding Agreement</b>	29th August 2019
<b>Name of academy</b>	Wac Arts College
<b>Opening date</b>	Opened as a free school on 1 September 2014  Transferred to T4 Trust on 1 September 2019
<b>Type of academy (indicate whether academy or free school)</b>	Alternative Provision Academy
<b>Name of predecessor school (where applicable)</b>	Wac Arts College
<b>Capacity number</b>	64
<b>Age range</b>	14 to 19
<b>Number of sixth form places</b>	40
<b>Number of boarding places</b>	N/A
<b>SEN unit / Resource provision</b>	N/A
<b>Land arrangements (Version 1-8 or other)</b>	Version 2 - existing leasehold site
<b>Address and title number of Land</b>	Address: 213 Haverstock Hill, Belsize Park, London, NW3 4QP  Title number: NGL756108

**Please confirm which clause variations have been applied or marked as 'Not used'**

<b>Clause No.</b>	<b>Descriptor</b>	<b>Applied</b>	<b>Not used</b>
1.I	Only applies to free schools and new provision academies	✓	
2.D, 2.E	Only applies where the academy has an SEN unit		✓
2.F	Only applies where there was a predecessor independent school		✓
2.I	Clause does not apply to free schools (unless there was a predecessor independent school), or new provision academies		✓
2.U	Clause reflects the requirements for religious education and daily collective worship	✓	
3.C	Clause only applies to full sponsored and intermediate sponsored academies with approved Academy Action Plans		✓
3.D	Clause does not apply to free schools (unless there was a predecessor independent school), or new provision academies	✓	
5.G.1	Clause applies only to a boarding academy/boarding free school		✓
5.I	Clause only applies to sponsored academies		✓
5.K	Clause applies to free schools and may be applied to new provision academies		✓
5.L	Clause applies to free schools and may be applied to new provision academies	✓	
5.M	Clause applies to free schools and may be applied to new provision academies	✓	
5.N	Clause applies to free schools and may be applied to new provision academies		✓
5.O	Clause applies to free schools and may be applied to new provision academies		✓

Please identify any other variations from the model that apply to this academy (e.g. clauses relating to PFI, or any required because the multi academy trust includes academies designated with different religious characters, or a mixture of those designated with a religious character, and those which are not):

These clauses will be supplied by your project lead if needed.

Descriptor	Clause No.	Applied	Not used
N/A			

## 1. ESTABLISHING THE ACADEMY

1.A This Agreement made between the Secretary of State for Education and T4 Trust is supplemental to the master funding agreement made between the same parties and dated *29th August 2019* (the “**Master Agreement**”).

### **Definitions and interpretation**

1.B Except as expressly provided in this Agreement words and expressions defined in the Master Agreement will have those same meanings in this Agreement.

1.C The following capitalised words and expressions will have the following meanings:

“**The Academy**” means Wac Arts College, an Alternative Provision Academy which is an Academy or a Free School which meets the requirements set out in section 1C(1) of the Academies Act 2010 .

“**Commissioner**” means local authorities and/or schools referring children/pupils to the Alternative Provision Academy for admission under the legal powers set out in clauses 2.G to clauses 2.M.

“**Coasting**” has the meaning given by regulations under subsection (3) of section 60B of the Education and Inspections Act 2006 in relation to a school to which that section applies.

“**Prospective Pupils**” means those pupils who have been referred to the Academy and accepted a place.

“**Pupil Premium**” means the amount allocated by a local authority from the pupil premium grant to a school under the terms and conditions of the grant;

“**Pupil Premium Grant**” means a grant of that name paid to a local authority by the Secretary of State under section 14 of the 2002 Act in respect of pupils who are entitled to a pupil premium;

**“Pupil Referral Unit (PRU)”** means an Academy or Free School which meets the requirements set out in Section 19(2) of the Education Act 1996.

**“SEN”** means Special Educational Needs and the expressions **“special educational needs”** and **“special educational provision”** have the meaning set out in sections 20(1) and 21(2) of the Children and Families Act 2014.

**“Termination Notice”** means a notice sent by the Secretary of State to the Academy Trust, terminating this Agreement on the date specified in the notice.

**“Termination Warning Notice”** means a notice sent by the Secretary of State to the Academy Trust, stating his intention to terminate this Agreement.

1.D The Interpretation Act 1978 applies to this Agreement as it applies to an Act of Parliament.

1.E Reference in this Agreement to clauses and annexes will, unless otherwise stated, be to clauses and annexes to this Agreement.

### **The Academy**

1.F The Academy is an Alternative Provision Academy as defined in clause 1.4 of the Master Agreement.

1.G The Academy Trust will establish and maintain the Academy in accordance with the Master Agreement and this Agreement.

1.H The Academy opened as a Free School on 1 September 2014 and transferred to the Academy Trust on 1 September 2019.

1.I The Academy Trust must ensure that so far as is reasonably practicable and consistent with clause 2.U of this Agreement and the Equality Act 2010, the policies and practices adopted by the Academy (in particular regarding curriculum, uniform and school food) enable pupils of all faiths and none to play a full part in the life of the Academy, and do not disadvantage pupils or parents of any faith or none. For the avoidance of doubt, this requirement applies irrespective of the proportion of pupils of any faiths or none currently attending or predicted to join the school.

- 1.J Further to clause 1.13(b) of the Master Agreement the Academy Trust must ensure that the educational provision is made at the Academy for children of compulsory school age who, by reason of illness, exclusion from school or otherwise, may not for any period receive suitable education unless alternative provision is made for them.

## **2. RUNNING OF THE ACADEMY**

### **Teachers and staff**

- 2.A Subject to clause 2.A.1 and 7.A of this Agreement (if used), the Academy Trust may, in accordance with any relevant Guidance, employ anyone it believes is suitably qualified or is otherwise eligible to plan and prepare lessons and courses for pupils, teach pupils, and assess and report on pupils' development, progress and attainment.
- 2.A.1 The Academy Trust must designate a staff member at the Academy as responsible for promoting the educational achievement of registered pupils at the Academy who are being looked after by an LA, or are no longer looked after by an LA because of an adoption, special guardianship or child arrangements order, or because they have been adopted from 'state care' outside England and Wales, and in doing so must comply with the law, regulations and guidance that apply to maintained schools. The Academy Trust must ensure the designated person undertakes appropriate training and has regard to any guidance issued by the Secretary of State.

### **Pupils**

- 2.B The planned number of places at the Academy is 64 places in the age range 14 to 19, including a sixth form of 40 places. The planned number of places and the age ranges is/are not determinative of GAG. GAG for each Academy Financial Year will be determined by the Secretary of State in accordance with clauses 3.12 and 3.15 of the Master Agreement.

- 2.C Where the Company considers that there is a need to increase the overall planned number of places stated in clause 2.B, the Company must seek the approval of the Secretary of State and the requirements of this Agreement may be amended accordingly by agreement between the Secretary of State and the Company.

#### **SEN unit**

2.D Not used.

2.E Not used.

#### **Charging**

2.F Not used.

#### **Admissions**

2.G The Academy Trust will act in accordance with equalities law.

2.H Except where clauses 2.I, 2.J, 7.A and 8.A apply, the Academy Trust may not admit a child of compulsory school age unless it is by way of a referral from a Commissioner through one of the referral routes set out in Clause 2.J.

2.I Not used.

2.J The Secretary of State may:

- a) direct the Academy Trust to admit a named pupil to the Academy:
  - i. following an application from an LA including complying with a school attendance order as defined in section 437 of the Education Act 1996. Before doing so the Secretary of State will consult the Academy Trust; or
  - ii. where in relation to a specific child or children the Academy Trust has failed to act in accordance with the Codes or this Agreement or has otherwise acted unlawfully; or



- b) direct the Academy Trust to amend its admission arrangements where they no longer meet the requirements at 1C of the Academies Act, do not comply with this Agreement, or are otherwise unlawful.

2.K The Academy Trust may only admit a child of compulsory school age:

- a) referred by a local authority where the local authority has a duty to that child under section 19 of the Education Act 1996.
- b) referred by a maintained school or Academy where the maintained school or Academy has a duty under Section 100 of the Education and Inspections Act 2006.
- c) referred by a maintained school under powers set out in section 29(A) of the Education Act 2002.
- d) referred by an Academy under general powers in the Articles of the Academy Trust for the purpose of improving the child's behaviour.

2.L The Academy Trust shall have a referral policy. Any referral policy will include the number of places to be provided, the age range of pupils, the oversubscription criteria, and a fair, transparent and objective process for considering whether the education provided will be appropriate for prospective pupils. The Academy Trust will consult on any changes to its referral policy with key stakeholders including the local authority, local schools, any other school or local authority which has previously commissioned places and any other relevant parties.

2.M Any changes to admission arrangements proposed by the Academy Trust should be discussed with Commissioners and must be agreed with the Secretary of State.

### **Pupil registration and information sharing**

2.N The Academy Trust must ensure that pupils attending the Academy are appropriately registered, in line with its legal duties and those of any other school that the pupil attends.

- 2.O As far as reasonably practicable, in agreeing contractual arrangements with Commissioners the Academy Trust shall request appropriate information on the needs and prior attainment of pupils who will attend the Academy.
- 2.P The Academy Trust will provide regular feedback to Commissioners (and in any event when requested by the Commissioner to do so) on progress made by the pupil, the pupil's needs and attainment.

### **Objections and determinations**

- 2.Q The Academy Trust must make clear when determining the Academy's admission arrangements, that objections should be submitted to the ESFA or any successor to it.
- 2.R A determination of an objection, by the ESFA or any successor to it on behalf of the Secretary of State, or by the Secretary of State, will be binding upon the Academy.

### **Curriculum**

- 2.S The Academy Trust may provide for the teaching of religious education and a daily act of collective worship at the Academy.
- 2.T The Academy Trust must comply with section 71(1)-(6) and (8) of the School Standards and Framework Act 1998 as if the Academy were a community, foundation or voluntary school, and as if references to "religious education" and "religious worship" in that section were references to the religious education and religious worship provided by the Academy in accordance with clause 2.U.
- 2.U At its discretion in accordance with clause 2.T, where the Academy Trust has made provision for the teaching of religious and/or for a daily act of collective worship (in accordance with section 124B of the School Standards and Framework Act 1998 or further to section 6(8) of the Academies Act 2010):
- a) provision must be made for religious education to be given to all pupils at the Academy in accordance with the requirements for agreed

syllabuses in section 375(3) of the Education Act 1996 and paragraph 2(5) of Schedule 19 to the School Standards and Framework Act 1998;

- b) the Academy must comply with section 70(1) of and Schedule 20 to, the School Standards and Framework Act 1998 as if it were a community, foundation or voluntary school which does not have a religious character, except that paragraph 4 of that Schedule does not apply. The Academy may apply to the Secretary of State for consent to be relieved of the requirement imposed by paragraph 3(2) of that Schedule.

2.V The Academy Trust must have regard to any Guidance, 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 that they learn the nature of marriage and its importance for family life and for bringing up children. The Academy Trust must also have regard to the requirements in section 405 of the Education Act 1996, as if the Academy were a maintained school.

2.W The Academy Trust must prevent political indoctrination, and secure the balanced treatment of political issues, in line with the requirements for maintained schools set out in the Education Act 1996, and have regard to any Guidance.

### **3. GRANT FUNDING**

#### **General Annual Grant (GAG)**

3.A GAG for each Academy Financial Year for the Academy will include:

- a) funding equivalent to that which would be received by a PRU maintained by the local authority with similar characteristics, determined by the Secretary of State and taking account of the number of pupils and/or places at the Academy;

- b) funding to cover necessary functions which would be carried out by the relevant LA if the Academy were a school maintained by a local authority;
- c) payments in respect of further, specific grants made available to schools maintained by the local authority, where the Academy meets the requisite conditions and criteria necessary for a school maintained by the local authority to receive these grants.
- d) 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
- e) The Secretary of State may make provision, within his absolute discretion, for GAG to be adjusted in-year if the number of pupils attending the Academy at specified dates exceeds or falls below thresholds specified by letter. Arrangements for this will be set out in the Annual Letter of Funding or its equivalent.

### **Calculation of GAG**

- 3.B The Secretary of State recognises that if he serves a Termination Notice or a Termination Warning Notice, or otherwise terminates the Master Agreement, the intake of new pupils during the notice period may decline. In these circumstances the Secretary of State may pay a larger GAG in the notice period, to enable the Academy to operate effectively.

### **Other relevant funding**

- 3.C Not used.
- 3.D The Secretary of State may pay the Academy Trust's costs in connection with the transfer of employees from a Predecessor School under the Transfer of Undertakings (Protection of Employment) Regulations 2006. Such payment will be agreed on a case-by-case basis. The Academy Trust must not budget for such a payment unless the Secretary of State confirms in writing that it will be paid.

## **Carrying forward of funds**

3.E Any additional grant made in accordance with clause 3.B, for a period after the Secretary of State has served a Termination Notice or a Termination Warning Notice under this Agreement, or otherwise terminates the Master Agreement, may be carried forward without limitation or deduction until the circumstances set out in clause 3.B cease to apply or the Academy closes.

## **4. LAND**

**“Land”** means the land at 213 Haverstock Hill, Belsize Park, London, NW3 4QP, being the land registered with title number NGL756108 and demised by the Lease.

**“Lease”** means the lease or other occupational agreement between the Academy Trust and a third party (the **“Landlord”**) under which the Academy Trust derives title to the Land.

**“Property Notice”** means any order, notice, proposal, demand or other requirement issued by any competent authority (including the Landlord) which materially affects the Academy Trust’s ability to use the Land for the purposes of the Academy.

## **Restrictions on Land transfer**

4.A The Academy Trust must:

- a) within 28 days of the signing of this Agreement in circumstances where the Land is transferred to the Academy Trust prior to the date of this Agreement, or otherwise within 28 days of the transfer of the Land to the Academy Trust, apply to the Land Registry using Form RX1 for the following restriction (the **“Restriction”**) to be entered in the proprietorship register for the Land:

*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) take any further steps reasonably required to ensure that the Restriction is entered on the proprietorship register;
- c) promptly confirm to the Secretary of State when the Restriction has been registered;
- d) if it has not registered the Restriction, permit the Secretary of State to do so in its place; and
- e) not, without the Secretary of State's consent, apply to disapply, modify, cancel or remove the Restriction, 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**

- 4.B The Academy Trust must keep the Land clean and tidy and make good any damage or deterioration to the Land. The Academy Trust must not do anything to lessen the value or marketability of the Land without the Secretary of State's consent.
- 4.C The Academy Trust must comply with the Lease and promptly enforce its rights against the Landlord.
- 4.D The Academy Trust must not, without the Secretary of State's consent:
  - a) terminate, vary, surrender, renew, dispose of or agree any revised rent under the Lease;
  - b) grant any consent or licence; or
  - c) create or allow any encumbrance; or
  - d) part with or share possession or occupation; or
  - e) enter into any onerous or restrictive obligations,
 in respect of all or part of the Land.

## **Option**

- 4.E The Academy Trust grants and the Secretary of State accepts an option (the “**Option**”) to acquire all the Land at nil consideration. The Secretary of State may exercise the Option in writing on termination of this Agreement. If the Option is exercised, completion will take place 28 days after the exercise date in accordance with the Law Society’s Standard Conditions of Sale for Commercial Property in force at that date.

## **Option Notice**

- 4.F The Academy Trust:

- a) must, within 14 days after acquiring the Land or, if later, after signing this Agreement, apply to the Land Registry on Form AN1 (including a copy of this Agreement) for a notice of the Option (the “**Option Notice**”) to be entered in the register, taking any further steps required to have the Option Notice registered and promptly confirming to the Secretary of State when this has been done;
- b) if it has not registered the Option Notice, agrees that the Secretary of State may apply to register it using Form UN1;
- c) must not, without the Secretary of State’s consent, apply to disapply, modify or remove the Option Notice, whether by itself, a holding company, a subsidiary company, or a receiver, administrator or liquidator acting in the name of the Academy Trust, and
- d) must, in the case of previously unregistered land, within 14 days after acquiring the Land or, if later, after signing this Agreement, apply to register a Class C(iv) land charge in the Land Charges Registry, and send the Secretary of State a copy of the relevant entry within 7 days after the registration has been completed. If the Secretary of State considers that the Academy Trust has not complied with this clause, he may apply to secure the registration.

## **Property Notices**

4.G If the Academy Trust receives a Property Notice, it must:

- a) send a copy of it to the Secretary of State within 14 days, stating how the Academy Trust intends to respond to it;
- b) promptly give the Secretary of State all the information he asks for about it;
- c) allow the Secretary of State to take all necessary action, with or instead of the Academy Trust, to comply with it, and
- d) use its best endeavours to help the Secretary of State in connection with it.

### **Breach of Lease**

4.H If the Academy Trust is, or if it is reasonably foreseeable that it will be, in material breach of the Lease, the Academy Trust must immediately give written notice to the Secretary of State stating what the breach is and what action the Academy Trust has taken or proposes to take to remedy it, including timescales where appropriate.

4.I After notifying the Secretary of State under clause 4.H, the Academy Trust must:

- a) promptly give the Secretary of State all the information he asks for about the breach;
- b) allow the Secretary of State to take all necessary action, with or instead of the Academy Trust, to remedy or prevent the breach, and
- c) use its best endeavours to help the Secretary of State to remedy or prevent the breach.

### **Sharing the Land**

4.J Where:



- a) the Secretary of State identifies basic or parental need for additional places in the area in which the Academy is situated; and
- b) the Secretary of State then considers that not all the Land is needed for the operation of the Academy at planned capacity,

the Secretary of State must consult with the Academy Trust to determine whether part of the Land could be demised or sublet to another Academy Trust, as the Secretary of State considers appropriate, for the purpose of that Academy Trust establishing and maintaining an educational institution on the Land.

4.K To the extent the Academy Trust and the Secretary of State agree to part of the Land being demised or sublet in accordance with clause 4.J, the Academy Trust must use its best endeavours to procure either the approval of the Landlord or any necessary amendments to the Lease in order to enable it to share occupation of the Land with the incoming Academy Trust and to provide the incoming Academy Trust with security of tenure over the Land occupied by it, and shall enter into any legal arrangements which the Secretary of State requires for this purpose. The Secretary of State shall meet the necessary and reasonable costs incurred by the Academy Trust in connection with this clause.

4.L For the purposes of clause 4.J:

- a) a **basic need** will arise when the forecast demand for pupil places in the area where the Academy is situated is greater than the existing capacity to provide them;
- b) a **parental need** will arise when the DfE is actually aware of an additional demand for pupil places in the area where the Academy is situated, following representations from parents in that area; and
- c) **planned capacity** has the meaning given in clause 2.B.

## 5. TERMINATION

### **Termination by either party**

- 5.A Either party may give at least seven Academy Financial Years' notice to terminate this Agreement. Such termination would take effect on 31 August of the relevant year.

### **Termination Warning Notice**

- 5.B The Secretary of State may serve a Termination Warning Notice where he considers that:

- a) the Academy Trust has breached the provisions of this Agreement or the Master Agreement; or
- b) the standards of performance of pupils at the Academy are unacceptably low; or
- c) there has been a serious breakdown in the way the Academy is managed or governed; or
- d) the safety of pupils or staff is threatened, including due to breakdown of discipline.
- e) the Academy is coasting provided he has notified the Academy Trust that it is coasting.

- 5.C A Termination Warning Notice served under clause 5.B will specify:

- a) the action the Academy Trust must take;
- b) the date by which the action must be completed; and
- c) the date by which the Academy Trust must make any representations, or confirm that it agrees to undertake the specified action.

- 5.D The Secretary of State will consider any representations from the Academy Trust which he receives by the date specified in the Termination Warning Notice. The Secretary of State may amend the Termination Warning Notice to

specify further action which the Academy Trust must take, and the date by which it must be completed.

- 5.E If the Secretary of State considers that the Academy Trust has not responded to the Termination Warning Notice as specified under clause 5.C(c), or has not completed the action required in the Termination Warning Notice as specified under clauses 5.C(a) and (b) (and any further action specified under clause 5.D) he may serve a Termination Notice.

#### **Termination by the Secretary of State after inspection**

- 5.F If the Chief Inspector gives notice to the Academy Trust that:

- a) special measures are required to be taken in relation to the Academy;  
or
- b) the Academy requires significant improvement

the Secretary of State may serve a Termination Warning Notice, specifying the date by which the Academy Trust must make any representations.

- 5.G In deciding whether to give notice of his intention to terminate under clause 5.F, the Secretary of State will have due regard to the overall performance of the Academy Trust.

- 5.G.1 Not used.

- 5.H If the Secretary of State has served a Termination Warning Notice under clause 5.F and:

- a) has not received any representations from the Academy Trust by the date specified in the notice; or
- b) having considered the representations made by the Academy Trust remains satisfied that this Agreement should be terminated;

he may serve a Termination Notice.

5.I Not used.

### **Termination by the Secretary of State**

5.J If the Secretary of State has determined that the Academy will be removed from the Register of Independent Schools and no appeal against that determination is pending, he may serve a Termination Notice.

5.K Not used.

5.L If at any time after the Academy has opened, the Secretary of State considers that the Academy is not financially viable because of low pupil numbers, then he may:

- a) serve a Termination Warning Notice; or
- b) serve a Termination Notice.

5.M If both parties agree that the Academy is not financially viable because of low pupil numbers, they may jointly terminate this Agreement after agreeing the precise terms of termination.

5.N Not used.

5.O Not used.

### **Funding and admission during notice period**

5.P If the Secretary of State serves a Termination Notice under clause 5.A, the Academy Trust may continue during the notice period to admit pupils to the Academy, and to receive GAG and EAG, in accordance with this Agreement.

5.Q If the Secretary of State serves a Termination Warning Notice or a Termination Notice otherwise than under clause 5.A, the Academy Trust may continue during the notice period to admit pupils to the Academy (unless the Secretary of State specifies otherwise), and to receive GAG and EAG, in accordance with this Agreement.

## **Notice of intention to terminate by Academy Trust**

- 5.R The Secretary of State will, before the start of each Academy Financial Year, provide the Academy Trust with a final funding allocation indicating the level of GAG and EAG to be provided in the next Academy Financial Year (the **"Funding Allocation"**).
- 5.S If the Academy Trust is of the opinion that, after receipt of the Funding Allocation for the next Academy Financial Year (the **"Critical Year"**) and after taking into account all other resources likely to be available to the Academy, including other funds that are likely to be available to the Academy from other academies operated by the Academy Trust (**"All Other Resources"**), it is likely that the cost of running the Academy during the Critical Year would cause the Academy Trust to become insolvent (and for this reason only) then the Academy Trust may give written notice of its intention to terminate this Agreement on 31 August before the Critical Year.
- 5.T Any notice given by the Academy Trust under clause 5.S must be provided to the Secretary of State within six weeks of the Secretary of State issuing the Funding Allocation. The notice given by the Academy Trust under clause 5.S must specify:
- a) the grounds upon which the Academy Trust's opinion is based, including:
    - i. evidence of those grounds;
    - ii. any professional accounting advice the Academy Trust has received;
    - iii. a detailed statement of steps which the Academy Trust proposes to take to ensure that the running costs of the Academy are reduced such that costs are less than the Funding Allocation and All Other Resources, and the period of time within which such steps will be taken; and

- b) the shortfall in the Critical Year between the Funding Allocation and All Other Resources expected to be available to the Academy Trust to run the Academy and the projected expenditure on the Academy; and
  - c) a detailed budget of income and expenditure for the Academy during the Critical Year (the “**Projected Budget**”).
- 5.U Both parties will use their best endeavours to agree whether or not the cost of running the Academy during the Critical Year would cause the Academy Trust to become insolvent. Both parties recognise that they will need to engage in a constructive dialogue at the time about how best to provide education for the pupils at the Academy and use their best endeavours to agree a practical solution to the problem.
- 5.V If no agreement is reached by 30 April (or another date if agreed between the parties) as to whether the cost of running the Academy during the Critical Year would cause the Academy Trust to become insolvent, then that question will be referred to an independent expert (the “**Expert**”) for resolution. The Expert’s determination will be final and binding on both parties. The Expert will be requested to specify in his determination the amount of the shortfall in funding (the “**Shortfall**”).
- 5.W The Expert will be an insolvency practitioner with significant professional experience of educational institutions or academies. If the parties fail to agree upon the appointment of the Expert then the Expert will be appointed by the President of the Institute of Chartered Accountants in England and Wales. The Expert’s fees will be borne equally between the parties.
- 5.X The Expert will be required in reaching his determination to take account of advice from an educational specialist who is professionally familiar with the issues arising from the budget management of schools. If the parties fail to agree upon the appointment of the educational specialist then the educational specialist will be appointed by the Chairman of the Specialist Schools and Academies Trust (or any successor or equivalent body). The educational specialist’s fees will be borne equally between the parties.

5.Y If the Expert determines that the cost of running the Academy during the Critical Year would cause the Academy Trust to become insolvent, and the Secretary of State will not have agreed to provide sufficient additional funding to cover the Shortfall, then the Academy Trust will be entitled to terminate this Agreement, by notice expiring on 31 August before the Critical Year. Any such notice will be given within 21 days after (a) the Expert's determination will have been given to the parties or (b), if later, the Secretary of State will have given written notice of his refusal to provide sufficient additional funding for the Academy to cover the Shortfall.

#### **Effect of termination**

5.Z If this Agreement is terminated, the Academy will cease to be an Academy within the meaning of sections 1 and 1C of the Academies Act 2010.

5.AA Subject to clauses 5.BB and 5.CC, if the Secretary of State terminates this Agreement under clause 5.A, he will indemnify the Academy Trust. If the Secretary of State terminates this Agreement otherwise than under clause 5.A, he may at his discretion indemnify or compensate the Academy Trust.

5.BB The amount of any such indemnity or compensation will be determined by the Secretary of State, having regard to representations made to him by the Academy Trust, and will be paid as and when the Secretary of State considers appropriate.

5.CC The categories of expenditure incurred by the Academy Trust in consequence of termination, for which the Secretary of State may indemnify the Academy Trust under clause 5.AA, may include:

- a) staff compensation and redundancy payments;
- b) compensation payments in respect of broken contracts;
- c) expenses of disposing of assets or adapting them for other purposes;
- d) legal and other professional fees; and
- e) dissolution expenses.

5.DD If this Agreement is terminated, and the Academy Trust owns capital assets which have been partly or wholly funded by HM Government, the Academy Trust must, as soon as possible after the termination date:

- a) transfer a proportion of those capital assets, equal to the proportion of the original financial contribution made by HM Government, to a nominee of the Secretary of State to use for educational purposes; or
- b) if the Secretary of State directs that a transfer under clause 5.DD(a) is not required, pay to the Secretary of State at the termination date (or, by agreement with the Secretary of State, at the date of their subsequent disposal) a sum equivalent to the proportion of the original financial contribution made by HM Government.

5.EE The Secretary of State may:

- a) waive all or part of the repayment due under sub-clause 5.DD(b) if the Academy Trust obtains his permission to invest the sale proceeds for its charitable purposes; or
- b) direct the Academy Trust to pay all or part of the sale proceeds to the relevant LA.

## **6. OTHER CONTRACTUAL ARRANGEMENTS**

### **Annexes**

6.A Any annexes to this Agreement form part of and are incorporated into this Agreement.

### **The Master Agreement**

6.B Except as expressly provided in this Agreement, all provisions of the Master Agreement have full force and effect.

### **General**

6.C The Academy Trust cannot assign this Agreement.



- 6.D Failure to exercise, or a delay in exercising, any right or remedy of the Secretary of State under this Agreement (including the right to terminate this Agreement), or a single or partial exercise of such a right or remedy, is not a waiver of, and does not prevent or restrict any initial or further exercise of, that or any other right or remedy.
- 6.E Termination of this Agreement will not affect the accrued rights, remedies, obligations or liabilities of the parties existing at termination.
- 6.F This Agreement may be executed in any number of counterparts, each of which when executed and delivered shall constitute a duplicate original, but all of which will together constitute the same agreement.
- 6.G 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, and submitted to the exclusive jurisdiction of the courts of England and Wales.

## **ANNEXES**

### **7. ADMISSION OF CHILDREN AND YOUNG PEOPLE WITH EDUCATION, HEALTH AND CARE PLANS**

**“EHC plan”** means an Education, Health and Care plan made under section 37 of the Children and Families Act 2014.

7.A Except as set out in clause 8 below, the Children and Families Act 2014 imposes duties directly on Academies in respect of pupils with special educational needs, including the admission of pupils with EHC plans. If an Academy Trust considers that a LA should not have named the Academy in an EHC plan, it may ask the Secretary of State to determine whether the LA has acted unreasonably, and to make an order directing the LA to reconsider. The Academy Trust must admit the pupil if such a determination is pending. The Secretary of State's determination as to whether the LA acted unreasonably will be final, subject to any right of appeal which a parent of the pupil may have to the First Tier Tribunal (Special Educational Needs and Disability) or the Upper Tribunal Administrative Appeals Chamber.

### **8. ADMISSION OF CHILDREN WITH A STATEMENT OF SPECIAL EDUCATIONAL NEEDS**

(Clauses 8.A-8.G only apply where the pupil has a statement of special educational needs (SEN) rather than an EHC plan and where they therefore continue to be subject to the relevant provisions of the Education Act 1996. EHC plans are replacing statements of SEN but although all statements of SEN should have been converted to an EHC plan by the 1 April 2018 this clause is retained to protect pupils who still have a statement of special education need after this date. The detail on the drafting of a statement below is retained to protect pupils in exceptional circumstances.)

**“Statement of SEN”** means a statement made under section 324 of the Education Act 1996.

- 8.A The Academy Trust must admit all children with a Statement of SEN naming the Academy.
- 8.B The Academy Trust must have regard to the Special Educational Needs Code of practice 2001 when dealing with statements of SEN.
- 8.C Where the LA sends the Academy Trust a draft statement with a proposal that the Academy is named in the final statement, the Academy Trust must respond within 15 working days unless the time period falls within a school holiday that is longer than two weeks in which case the Academy Trust should respond within 15 working days of the end of the school holiday.
- 8.D In its response the Academy Trust must either:
- a. consent to being named in the final statement or
  - b. explain why it believes that admitting the child would be incompatible with the provision of efficient education for other children and the efficient use of resources, including why no reasonable steps could secure compatibility. In doing so the Academy Trust must have regard to the relevant legislation and Code of Practice. If the LA does not agree with the Academy Trust's response, and names the Academy in the child's Statement of SEN, the Academy Trust must admit the child to the school as specified in the statement or otherwise by the LA. The final decision as to whether to name the Academy falls to the LA.
- 8.E If the Academy Trust considers that the LA should not have named the Academy in the statement of SEN, it may ask the Secretary of State to determine whether the LA has acted unreasonably, and to make an order directing the LA to reconsider. The Academy Trust must admit the pupil if such a determination is pending. The Secretary of State's determination will be final, subject only to any right of appeal which a parent of the child may have to the First-tier Tribunal (Special Educational Needs and Disability) or the Upper Tribunal Administrative Appeals Chamber.
- 8.F If a parent of a child for whom the LA maintains a statement appeals to the First-tier Tribunal (Special Educational Needs and Disability) or the Upper

Tribunal Administrative Appeals Chamber, either for or against the naming of the Academy in the child's statement, then the Tribunal's decision will be binding, even if it is different from that of the Secretary of State.

- 8.G Where it has been finally determined that the Academy be named in a child's Statement of SEN, the Academy Trust must admit the child to the Academy, notwithstanding any other admissions requirements in this Agreement.
- 8.H Clauses 8.A to 8.G only apply insofar as the relevant provisions of the Children and Families Act 2014 relating to SEN and disability do not apply to Academies and Free Schools.



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