

**KENDRICK SCHOOL**

**DEED OF VARIATION AND NOVATION OF FUNDING AGREEMENT  
2020**

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**");

- and -

(2) **Kendrick School**, a charitable company incorporated in England and Wales with registered company number 07494754 (the "**Company**")

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

## **INTRODUCTION**

- A. The Parties entered into a supplementary funding agreement in respect of Kendrick School on 31<sup>st</sup> January 2011, a copy of which is contained in Schedule 1 (the "**Existing SFA**"); and
- B. The Parties have agreed to amend and re-state the terms of the Existing SFA on the terms set out in this Deed.

## **LEGAL AGREEMENT**

- 1. Words, expressions and interpretations used in this Deed shall, unless the context expressly requires otherwise, have the meaning given to them in, and shall be interpreted in accordance with, the Amended Supplemental Funding Agreement (as defined in clause 2 below).
- 2. The Secretary of State and the Company agree that with effect from the date of this Deed, the Existing SFA shall be amended and re-stated in the form of the Supplemental Funding Agreement set out in Schedule 2 (the "**Amended SFA**"). For the avoidance of doubt, the Amended SFA does not terminate or suspend the Existing SFA but amends and re-states it.

## **GOVERNING LAW AND JURISDICTION**

- 3. This Deed, and any dispute or claim arising out of or in connection with it, its subject matter or formation (including non-contractual disputes or claims) shall be governed by and interpreted in accordance with the law of England and Wales.
- 4. 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**

5. 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:- )



*[Handwritten signature]*

Duly authorised by the Secretary of State for Education

Date 25<sup>th</sup> August 2020

EXECUTED as a deed by Kendrick  
School acting by:

*[Handwritten signature]*

Director

Print name

*Janice Nowacki*

Date.....17<sup>th</sup> August 2020.

Witnessed by 

Signature

Full name.....PAUL SMITH.....

Address.....25 Emmet Park, Binfield, RG42 4HQ

Occupation.....Local Authority Office

**Schedule 1**

**Existing SFA**

KENDRICK SCHOOL

**MODEL FUNDING AGREEMENT**

[31 January] 2011

**KENDRICK SCHOOL  
ACADEMY  
FUNDING AGREEMENT  
CONTENTS:**

<b>SECTION</b>	<b>CLAUSE NO</b>
<b>INTRODUCTION</b>	1-8
<b>LEGAL AGREEMENT</b>	9
<b>CHARACTERISTICS OF THE ACADEMY</b>	10
<b>ACADEMY OPENING DATE</b>	<b>11</b>
<b>CONDITIONS OF GRANT</b>	
General	12
Governance	13-14
Conduct	15
Criminal Records Bureau Checks	16
Pupils	17
Designated Teacher for Children in Care	17A
Teachers and other staff	18-21
Curriculum, curriculum development and delivery and RE and collective worship	22-28
Assessment	29
Exclusions	30
School meals	31 - 32
Charging	33
<b>GRANTS TO BE PAID BY THE SECRETARY OF STATE</b>	
General	34 - 35
Capital Grant	36 - 39
Arrangements for Payment of Capital Grant	40
Implementation Grant	41 - 46
General Annual Grant	47 - 59
Earmarked Annual Grant	60 - 61
Arrangements for payment of GAG and EAG	62 - 66
Other relevant funding	67 - 70
<b>FINANCIAL AND ACCOUNTING REQUIREMENTS</b>	
General	71 - 85
Borrowing Powers	86 - 87
Disposal of Assets	88 - 94

**TERMINATION**

General	95-108
Effect of Termination	109 - 116

**GENERAL**

Information	117-118
Access by Secretary of State's Officers	119-121
Notices	122-123
General	124

**ANNEXES TO AGREEMENT**

Memorandum and Articles of the Academy Trust	Annex A
Admissions Requirements	Annex B
Arrangements for pupils with SEN and disabilities at each Academy	Annex C
Serious incidents of misbehaviour leading to fixed period or permanent exclusion	Annex D
Procedure for the removal of the Academy's selective admission arrangements	Annex E

## 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 Kendrick School (the "Academy Trust").
- 2) The Academy Trust is a Company incorporated in England and Wales, limited by guarantee with registered Company number 7494754.
- 3) The following expressions used in this Agreement have the respective meanings assigned to them by the numbered clauses of this Agreement referred to immediately after the reference to the expressions -
  - a) "Academies Financial Handbook" - clause 72;
  - b) "Academy Financial Year" - clause 62;
  - c) "Accounting Officer" - clause 71;
  - d) "Annual Letter of Funding" - clause 65;
  - e) "Chief Inspector" means Her Majesty's Chief Inspector of Education, Children's Services and Skills or his successor;
  - f) "GAG" - clause 35;
  - g) "Capital Expenditure" - clause 36;
  - h) "Capital Grant" - clause 36;
  - i) "EAG" - clause 35;
  - j) "Recurrent Expenditure" - clause 35; k) "Start-up Period" - clause 55;
- 4) In this Agreement the following words and expressions shall have the following meanings:-

"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;

Academy;

"SEN" means Special Educational Needs;

- 5) The Interpretation Act 1978 shall apply for the interpretation of this Agreement as it applies for the interpretation of an Act of Parliament.
- 6) Expressions defined in this Agreement shall have the same meaning where used in any Annex to this Agreement.
- 7) Questions arising on the interpretation of the arrangements in this Agreement shall be resolved by the Secretary of State after consultation with the Academy Trust.
- 8) Section 1 (3) of the Academies Act 2010 states that:

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

- (a) the other party gives the undertakings in subsection (5), and
- (b) the Secretary of State agrees to make payments to the other party in consideration of those undertakings.

#### **LEGAL AGREEMENT**

- 9) In consideration of the Academy Trust undertaking to establish and maintain, and to carry on or provide for the carrying on of, an independent school in England to be known as Kendrick School ("the Academy") and having such characteristics 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.

#### **CHARACTERISTICS OF THE ACADEMY**

- 10) The characteristics of the Academy set down in Section 1(6) of the Academies Act 2010, are that:
  - (a) the school has a curriculum satisfying the requirements of section 78 of EA 2002 (balanced and broadly based curriculum)

- (b) if the school provides secondary education, its curriculum for the secondary education has an emphasis on a particular subject area, or particular subject areas, specified in the Agreement;
- (c) the school provides education for pupils who are wholly or mainly drawn from the area in which the school is situated.

### **ACADEMY OPENING DATE**

- 11) The Academy shall open as a school on 1 February 2011 replacing Kendrick School which shall cease to be maintained by the Local Authority on that date, which date shall be the conversion date within the meaning of the Academies Act 2010.

### **CONDITIONS OF GRANT**

#### **General**

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

- (a) the school will be at the heart of its community, promoting community cohesion and sharing facilities with other schools and the wider community;
- (b) there will be assessments of pupils performance as they apply to maintained schools and the opportunity to study for external qualifications in accordance with clause 29 (d);
- (c) the admissions policy and arrangements for the school will be in accordance with admissions law, and the DfE Codes of Practice, as they apply to maintained schools;
- (d) teachers' levels of pay and conditions of service for all employees will be the responsibility of the Academy Trust save that when entering into a contract of employment with any person the Academy Trust shall be bound by and act in accordance with such guidance as the Secretary of State may publish in relation to the maximum salary that may be paid to employees of Academies;
- (e) there will be an emphasis on the needs of the individual pupils including pupils with special education needs (SEN), both those with and without statements of SEN;
- (f) there will be no charge in respect of admission to the school and the school will only charge pupils where the law allows maintained schools to charge;
- (g) the Academy Trust shall as soon as reasonably practicable establish an appropriate mechanism for the receipt and management of donations and shall use reasonable endeavours to procure donations through that mechanism for the purpose of the objects specified in the Articles.

### **Governance**

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

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 academies that the Secretary of State may publish.

### **Conduct**

15) The Academy shall be conducted in accordance with:

- a) the Memorandum and Articles, which shall not be amended by the Academy Trust without the written consent of the Secretary of State, such consent not to be unreasonably withheld;
- b) all provisions by or under statute which confer rights or impose obligations on Academies including, without limitation, the independent schools standards prescribed under section 157 of the Education Act 2002 to the extent they apply to the Academy;
- c) the terms of this Agreement.

### **Criminal Records Bureau Checks**

16) The Academy shall comply with the requirements of paragraph 4 of the Schedule to the Education (Independent School Standards) (England) Regulations 2003 (as amended) in relation to carrying out enhanced criminal records checks, obtaining enhanced criminal records certificates and making any further checks, as required and appropriate for members of staff, supply staff, individual Governors and the Chair of the Governing Body.

### **Pupils**

17) The planned capacity of the Academy is 790 in the age range 11-18, including a sixth form of 250 places. The Academy will be a school whose requirements for:

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

- c) pupil exclusions are set out in Annex D to this Agreement;
- d) the procedure for the removal of the Academy's selective admission arrangements is set out in Annex E to this Agreement.

### **Designated Teacher for Children in Care**

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

### **Teachers and other staff**

18) Subject to clause 19, the Academy Trust shall not employ anyone under a contract of employment or for services to carry out planning and preparing lessons and courses for pupils, delivering lessons to pupils, assessing the development, progress and attainment of pupils, and reporting on the development, progress and attainment of pupils ("specified work") who is not either:-

- a) a qualified teacher within the meaning of regulations made under section 132 of the Education Act 2002; or
- b) otherwise eligible to do specified work under the Education (Specified Work and Registration) (England) Regulations 2003 (SI 2003/1663), which for the purpose of this clause shall be construed as if the Academy were a maintained school.

19) Clause 18 does not apply to anyone who:

- a) was transferred to the employment of the Academy Trust by virtue of the Transfer of Undertakings (Protection of Employment) Regulations 2006;
- b) immediately prior to the transfer, was employed to do specified work; and
- c) immediately prior to the transfer, was not:

(i) a qualified teacher within the meaning of regulations made under section 132 of the Education Act 2002 and registered with full

registration with the appropriate body, or (ii) eligible to do specified work under the Education (Specified Work and Registration) (England) Regulations 2003 (SI 2003/1663)

("transferred staff member"). The Academy Trust shall use its best endeavours to ensure that any transferred staff member who undertakes specified work and does not meet the requirements of clause 18(a) or clause 18(b) meets such requirements as soon as possible.

- 20) The Academy Trust shall ensure that all teachers employed at the Academy have access to the Teachers Pension Scheme and, in so doing, will comply with the statutory provisions underlying the scheme.
- 21) The Academy Trust shall ensure that all employees at the Academy other than teachers have access to the Local Government Pension Scheme.

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

- 22) The curriculum provided by the Academy to pupils up to the age of 16 shall be broad and balanced with an emphasis in its secondary curriculum on science, maths and languages.<sup>1</sup>
- 23) The Academy Trust shall ensure that the broad and balanced curriculum includes English, Mathematics and Science.
- 24) The Academy Trust shall make provision for the teaching of religious education and for a daily act of collective worship at the Academy.
- 25) Where the Academy is designated with a religious character<sup>2</sup> in accordance with section 124B of the School Standards and Framework Act 1998 or further to section 6(8) of the Academies Act 2010:
- a) subject to clause 27, the Academy Trust shall ensure that provision is made for Religious Education to be given to all pupils at the Academy in accordance with the tenets of the specified religion or religious denomination of the Academy;

<sup>1</sup> insert specialism if the school provides secondary education

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

- b) subject to clause 27, the Academy Trust shall comply with the requirements of section 70(1) of, and Schedule 20 to, the School Standards and Framework Act 1998 as if the Academy were a foundation school with a religious character or a voluntary school, and as if references to ' the required collective worship' were references to collective worship in accordance with the tenets and practices of the specified religion or religious denomination of the Academy;
- c) the Academy Trust shall ensure that the quality of Religious Education given to pupils at the Academy and the contents of the Academy's collective worship given in accordance with the tenets and practice of the specific religion or religious denomination are inspected. Such inspection shall be conducted by a person chosen by the Academy Trust and the Academy shall secure that such inspection shall comply with the requirements set out in any statutory provision and regulations as if the Academy were a foundation of voluntary school which has been designated under section 69(3) of the School Standards and Framework Act 1998 as having a religious character.

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

- a) subject to clause 27, the Academy Trust shall ensure that provision shall be made for religious education to be given to all pupils at the Academy in accordance with the requirements for agreed syllabuses in section 375(3) of the Education Act 1996 and paragraph 2(5) of Schedule 19 to the School Standards and Framework Act 1998;
- b) subject to clause 27, the Academy Trust shall ensure that the Academy complies with the requirements of section 70(1) of, and Schedule 20 to, the School Standards and Framework Act 1998 as if it were a community, foundation or voluntary school which does not have a religious character, except that the provisions of paragraph 4 of that Schedule do not apply. The Academy may apply to the Secretary of State for consent to be relieved of the requirement imposed by paragraph 3(2) of that Schedule, the Secretary of State's consent to such an application not to be unreasonably withheld or delayed.

27) Section 71(1)- (6) and (8) of the School Standards and Framework Act 1998 shall apply as if the Academy were a community, foundation or voluntary school, and as if

references to "Religious Education" and to "Religious Worship" in that section were references to the religious education and religious worship provided by the Academy in accordance with clauses 25 or 26 as appropriate.

- 28) The Academy Trust shall have regard to any guidance issued by the Secretary of State on sex and relationship education to ensure that children at the Academy are protected from inappropriate teaching materials and they learn the nature of marriage and its importance for family life and for bringing up children.

### **Assessment**

- 29) The Secretary of State will notify the appropriate body for assessment purposes about the Academy.
- a) The Academy Trust shall ensure that the Academy complies with any guidance issued by the Secretary of State from time to time to ensure that pupils take part in assessments and in teacher assessments of pupil's performance as they apply to maintained schools.
  - b) The Academy Trust shall report to any body on assessments under clause 29 as the Secretary of State shall prescribe and shall provide such information as may be required by that body as applies to maintained schools.
  - c) In respect of all Key Stages, the Academy Trust will submit the Academy to monitoring and moderation of its assessment arrangements as prescribed by the Secretary of State.
  - d) The Academy Trust may not offer courses at the Academy which lead to external qualifications, as defined in section 96 of the Learning and Skills Act 2000, unless the Secretary of State gives specific approval for such courses.

### **Exclusions Agreement**

- 30) The Academy Trust shall, if invited to do so by an LA, enter into an agreement in respect of the Academy with that LA, which has the effect that where:
- a) the Academy Trust admits a pupil to the Academy who has been permanently excluded from a maintained school, the Academy itself or another Academy with whom the LA has a similar agreement; or
  - b) the Academy Trust permanently excludes a pupil from the Academy

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

### **School Meals**

- 31) The Academy Trust shall, if requested to do so by or on behalf of any pupils at the Academy, provide school lunches for those pupils unless it would be unreasonable for it to do so. Subject to the provisions of clause 32 charges may be levied for lunches, but the Academy Trust shall otherwise fund the cost of such school lunches from its GAG.
- 32) In relation to a pupil who is himself or whose parents are in receipt of benefits mentioned in section 512ZB of the Education Act 1996 (or equivalent provision governing the entitlement to free school lunches of pupils at maintained schools), the Academy Trust shall ensure that a school lunch is provided for such a pupil free of charge to be funded out of the Academy Trust's GAG.

### **Charging**

- 33) Sections 402 (Obligation to enter pupils for public examinations), 450 - 457 (charges), 459 (regulations about information about charges and school hours) and 460 (voluntary contributions), 461 (recovery of sums as civil debt) - 462 (Interpretation re charges) of the Education Act 1996 shall be deemed to apply to the Academy with the following modifications:
- a) references to any maintained school shall be treated as references to the Academy;
  - b) references to registered pupils shall be treated as references to registered pupils at the Academy;
  - c) references to the governing body or the local education authority shall, in each case, be treated as references to the Academy Trust;
  - d) the charging and remissions policies required to be determined under section 457, and any amendment thereto, shall require the approval of the Secretary of State; and
  - e) the Academy Trust may charge persons who are not registered pupils at the

Academy for education provided or for facilities used by them at the Academy.

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

### **General**

34) The Secretary of State shall pay grants towards capital and Recurrent Expenditure for the Academy. Except with the Secretary of State's prior agreement, the Academy Trust shall not budget for its expenditure in any Academy Financial Year in excess of expected income. 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 Academy which does not fall within the categories of capital expenditure set out at clause 36. The Secretary of State shall pay two separate and distinct grants in respect of Recurrent Expenditure: General Annual Grant ("GAG") and Earmarked Annual Grant ("EAG").

### **Capital Grant**

36) "Capital Expenditure" means expenditure on:

- a) the acquisition of land and buildings;
- b) the erection, enlargement, improvement or demolition of any building including fixed plant, installation, wall, fence or other structure, or any playground or hard standing;
- c) the installation of electrical, mechanical or other services;
- d) the purchase of vehicles and other self-propelled mechanical equipment;
- e) the installation and equipping of premises with furnishings and equipment, other than necessary replacements, repairs and maintenance due to normal wear and tear;
- f) the installation and equipping of premises with computers, networking for computers, operating software and information and communication technology equipment, other than necessary updates or necessary replacements, repairs and maintenance due to normal wear and tear;
- g) the provision and equipping of premises, including playing fields and other facilities for social activities and physical recreation;
- h) works of a permanent character other than the purchase or replacement of minor day-to-day items;

i) any major repairs or replacements which are specified as constituting capital expenditure in any grant letter relating to them; j) such other items (whether of a like or dissimilar nature to any of the foregoing) of a substantial or enduring nature as the Secretary of State may agree shall constitute capital expenditure for the purposes of 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 Academy to open in such premises, the Secretary of State, may, in his absolute discretion be responsible for meeting the incurred Capital Expenditure for that Academy. To that end, the Secretary of State will consider providing funding in accordance with any arrangements as he considers appropriate.

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

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.

#### **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. Capital Grant will be paid within 21 days from the day on which a claim for grant is received if the claim is in the proper format, supported by the appropriate documentation and the conditions on its payment set out at clause 39 are complied with. If a dispute arises as to whether a claim

is or is not acceptable both parties undertake to attempt to resolve it in good faith. In the event of such a dispute, the Secretary of State shall pay to the Academy Trust so much of the claim as shall not be in dispute.

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

- 41) "Implementation Grant" means payments towards Recurrent Expenditure incurred for the establishment of the Academy prior to it opening.
- 42) The Secretary of State may enter into an agreement with a third party ("Project Management Company") for the provision of project management services to assist in the establishment of the Academy. Where such an agreement has been entered into, the Secretary of State shall pay Implementation Grant to the Project Management Company in accordance with that agreement.
- 43) If the Secretary of State has indicated that Implementation Grant will be payable, the Academy Trust shall prepare and submit to the Secretary of State a budget showing expected Recurrent Expenditure to be incurred by the Academy Trust before the Academy opens and for which grant is sought. This budget must either be agreed to or modified by the Secretary of State as he considers appropriate ("Approved Implementation Budget").
- 44) Both parties recognise that as the project develops it may be necessary to revise individual costs in the Approved Implementation Budget and to move costs between budget headings in order to ensure that the project remains within its approved budget. Where the Academy Trust wishes to make such an adjustment of over £10,000, the reason for the change and a revised budget must be submitted to the Secretary of State for approval.
- 45) The Secretary of State will pay Implementation Grant to the Academy Trust on the basis of claims for grant submitted to the Secretary of State in accordance with the Approved Implementation Budget and in the notified format with supporting invoices, receipts and documents as required by the Secretary of State. If the grant claim is acceptable, the Secretary of State undertakes to pay the amount due within 21 days from the day on which it was received. If a dispute arises over whether a grant claim or part of it is acceptable, both parties undertake to attempt to resolve the dispute in good faith.

<sup>3</sup> Note that the Secretary of State will not pay Implementation Grant pursuant to these clauses in relation to schools applying to convert further to the Academies Act 2010.

46) Any amount in the Approved Implementation Budget in respect of which the expenditure has not been incurred by the Academy Trust by the date on which the Academy opens will lapse and no Implementation Grant will be payable in respect of that part of the Approved Implementation Budget. Any amount of Implementation Grant which has been paid but remains unexpended on relevant expenditure by the date on which the Academy opens will, without prejudice to any other mode of recovery, be taken into account in determining the total amount of grant to be paid to the Academy Trust after the Academy has opened. Any amount of Implementation Grant which is found to have been used on ineligible expenditure will, without prejudice to any other mode of recovery, be taken into account in determining the total amount of grant to be paid to the Academy Trust.

### **General Annual Grant**

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

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

- j) curriculum development;
- k) the costs of providing school meals for pupils (including the cost of providing free school meals to pupils who are eligible to receive them), and discretionary grants to pupils to meet the cost of pupil support, including support for pupils with special educational needs or disabilities (taking account of the fact that separate additional money will be available for pupils with statements of special educational needs);
- l) administration;
- m) establishment expenses and other institutional costs.

48) Subject to clauses 56-57, GAG for each Academy Financial Year for the Academy will be the total of the following areas of funding;

- a) Formula Funding: Funding equivalent to the level of funding which would be provided through the funding formula of the LA to a maintained school which had all of that Academy's relevant characteristics, including its number of pupils;
- b) Local Authority Central Spend Equivalent: Funding representing a proportion of the LA Education Budget money which the LA would be able to retain, from the non-delegated elements of the Schools Budget and the relevant items in the LA Budget, if the Academy were a maintained school. The proportion which this funding will represent will be based on the elements of the LA's Section 251 Budget Return which are relevant to that Academy.
- c) Specialist Schools Allowance: Funding equivalent to that which a maintained school with the Academy's characteristics would receive in respect of their participation in the specialist schools programme. In the year of conversion, this may continue to be paid by the Local Authority;

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

- a) funding for matters for which it is necessary for the Academy to incur extra costs, for as long as those costs are deemed necessary by the Secretary of State; and
- b) payments in respect of further, specific grants made available to maintained schools, where the Academy meets the requisite conditions and criteria necessary for a maintained school to receive these grants.

50) Subject to clause 51, the basis of the pupil number count for the purposes of determining GAG for an Academy Financial Year for the Academy will be, in the first year of conversion, the same basis as that used by the Local Authority for determining the

budget share of the predecessor maintained school as adjusted by numbers counted in any subsequent Schools Census, as determined by the Secretary of State. In subsequent years the basis of the pupil count will be as determined by the Secretary of State.

- 51) Once the conditions specified in clause 52 have been satisfied with respect to the Academy for the Academy Financial Year for which funding is being calculated, the basis of the pupil number count for the purpose of determining GAG for the Academy will be:
- a) for the pupil number count for pupils in Year 11 and below, the Schools Census for the January preceding the Academy Financial Year in question; and
  - b) for the pupil number count for pupils in Year 12 and above, the formula which for the time being is in use for maintained schools for the calculation of pupil numbers for pupils in Year 12 and above for the purpose of calculating their level of funding.
- 52) For the purpose of clause 51, the conditions are:
- a) all planned Year-groups will be present at the Academy (that is, all the pupil cohorts relevant to the age-range of the Academy will have some pupils present); and
  - b) the total number of pupils as measured in the Schools Census for the preceding January is 90% or more of the planned final size of the Academy, which is 742
  - c) The Secretary of State has determined that the basis shall be as provided for in Clause 51.
- 53) For any Academy Financial Year in which GAG for the Academy has been calculated in accordance with clause 50, no adjustment shall be made to the following Academy Financial Year's formula funding element of GAG to recognise variation from the pupil count basis used.
- 54) For any Academy Financial Year in which GAG for the Academy is calculated in accordance with clause 51, no adjustment will be made to the formula funding element in the following Academy Financial Year's formula funding element of GAG unless the Academy Trust demonstrates to the satisfaction of the Secretary of State that there has been a significant impact on costs, such as an extra class. For any other element of GAG the Secretary of State may make adjustments to recognise a variation in pupil numbers from that used to calculate the element of grant in question; the basis of these will be set out in the annual letter of funding.

55) The Secretary of State recognises that:

- a) Where the Academy opens with an intake representing only a proportion of the final planned size of the Academy, payments based simply upon the number of pupils present are unlikely to be sufficient to meet the Academy's needs in the Academy Financial Years before all age groups are present at their planned size (the "Start-up Period") because of a lack of economies of scale. The Secretary of State may pay an appropriately larger GAG in the Start-up Period than would be justified solely on the basis of the methods set out in clauses 48-54, in order to enable the Academy to operate effectively;<sup>4</sup>
- b) Where the Academy opens with pupils transferred from one or more maintained schools which have closed, additional GAG resources may be required to take account of transitional costs including any costs associated with supporting the integration of pupils from the closed schools and, where necessary, to offer a dual curriculum. If the Secretary of State has indicated that such additional GAG will be payable, the Academy Trust will make a bid for this addition to GAG based upon need and providing appropriate supporting evidence.

56) During the Start-up Period or during the period when year groups are present who have transferred from a predecessor school or schools, the Secretary of State will pay a further element of GAG additional to that calculated in accordance with the methods set out in clauses 48-54 to allow the Academy to:

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

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

57) The Secretary of State recognises that if he serves notice of intention to terminate this Agreement, the intake of new pupils during the notice period is likely to decline and that in such circumstances payments based simply upon the number of pupils attending the Academy are unlikely to be sufficient to meet the Academy's needs during the notice period. The Secretary of State undertakes to pay a reasonable and appropriately larger

<sup>4</sup> Note that a larger GAG for the Start-Up Period is not applicable to schools applying to convert further to the Academies Act 2010.

GAG with respect to the Academy in the notice period than would be justified solely on the basis of the methods set out in clauses 48-54, in order to enable the Academy to operate effectively.

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

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

### **Earmarked Annual Grant**

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

61) 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 Academies Division, Sanctuary Buildings, Great Smith Street, London SW1P 3BT.

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

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

63) 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.

- 64) 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.
- 65) The amounts of GAG for an Academy Financial Year will be determined annually by the Secretary of State. The amount of GAG for the Academy for the initial Academy Financial Year will be notified to the Academy Trust in a funding letter at a date preceding that year. For subsequent years the amount of GAG will be notified to the Academy Trust in a funding letter not later than 1 April preceding that Academy Financial Year (the "Annual Letter of Funding"). The Annual Letter of Funding will not include the amount that the 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 as soon as practicable thereafter.
- 66) For the purposes of this Agreement, an Academy Financial Year shall be deemed to run from September to August, in order to align it to the school academic year. The Secretary of State undertakes to pay GAG in monthly instalments on or before the twenty fifth day of each month, each such instalment to fund the salaries and other payroll costs for the relevant month of all monthly paid employees and all other costs payable during the next following month. The detailed arrangements for payment will be set out in the Annual Letter of Funding.

#### **Other relevant funding**

- 67) The Secretary of State shall meet a proportion of the Academy Trust's costs arising from the inclusion of Academies in the Schedules to the Redundancy Payments (Continuity of Employment in Local Government) (Modification) Order 1999. The Secretary of State

shall meet the costs of the employees' prior eligible service, being service prior to the opening of the Academy, and the Academy Trust will meet the costs of service after the opening of the Academy. The Academy Trust shall seek the Secretary of State's consent for these redundancies, such consent not to be unreasonably withheld, before committing to the redundancies.

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

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

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

#### **Financial and Accounting Requirements**

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

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

73) The formal budget plan must be approved each Academy Financial Year by the

Governing Body.

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

- a) in its conduct and operation it shall apply financial and other controls which conform to the requirements both of propriety and of good financial management;
- b) arrangements have been made to maintain proper accounting records and that statements of income and expenditure and balance sheets may be produced in such form and frequency as the Secretary of State may from time to time reasonably direct;
- c) in addition to the obligation to fulfil the statutory requirements referred to in sub-clause f) below, the Academy Trust shall prepare its financial statements, Directors' report, Annual Accounts and its Annual Return in accordance with the Statement of Recommended Practice 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 of Association, Funding Agreement and a list of the names of the Governors of the Academy Trust;
- h) the Academy Trust insures or procures insurance by another person of its assets in accordance with normal commercial practice or under the terms of any subsisting leases in respect of the leasehold interest of the site upon which the Academy is situated.

75) 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.

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

77) The Academy Trust shall submit indicative budgets relating to the Academy to the Secretary of State by not later than 15 February before the start of each Academy Financial Year. Such budgets shall set out clearly the prospective income and expenditure of the Academy and shall differentiate, and give adequate details of:

- a) a statement of expected income for that Academy Financial Year including cash donations and gifts in kind from sources other than GAG, EAG and grants from the Secretary of State towards capital and revenue expenditure, distinguishing between income from public funds including the national lottery and income from other sources. Income from cash donations and gifts in kind from sources other than GAG, EAG and grants from the Secretary of State towards capital expenditure will not be taken into account by the Secretary of State in the calculation of GAG;
- b) a statement of proposed recurrent expenditure for that Academy Financial Year;
- c) a statement of proposed capital expenditure for that Academy Financial Year.

78) At the beginning of any Academy Financial Year the Academy Trust may hold unspent GAG from previous Academy Financial Years amounting to 12% of the total GAG payable for the Academy in the Academy Financial Year just ended or such higher amount as may from time to time be agreed. This carried forward amount may be used as follows:

- a) equivalent to 2% of the total GAG payable in the Academy Financial Year just ended may be used by the Academy Trust for any of the purposes for which GAG is paid;
- b) equivalent to 12% of the total GAG payable in the Academy Financial Year just ended, or such higher figure as may from time to time be agreed, minus any amount

used under sub-clause (a) above, may be used on the upkeep and improvement of premises, including the costs of equipment and routine repairs and maintenance of the Academy, and on capital expenditure relating to the Academy.

79) Notwithstanding clause 78, any additional grant provided over and above that set out in clauses 48-54, and made in accordance with clauses 55-57 may be carried forward without limitation or deduction until the Start-up Period or the circumstances set out in clause 57 come to an end.

80) Any savings of GAG not allowed to be carried forward under clauses 78-79 will be taken into account in the payment of subsequent grant.

81) The Academy Trust may also accumulate funds from private sources or public sources other than grants from the Secretary of State for application to the benefit of the Academy as it sees fit. Any surplus arising from private sources or public sources other than grants from the Secretary of State shall be separately identified in the Academy Trust's balance sheet.

82) The Academy Trust shall not, in relation to assets or property funded (whether in whole or in part) by the Secretary of State, without the prior written consent of the Secretary of State which shall not be unreasonably withheld or delayed:

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

83) The Academy Trust shall provide 30 days 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 freehold property; or
- d) grant or take up any leasehold or tenancy agreement for a term exceeding three years.

- 84) Each discovered loss of an amount exceeding the amount set out in the annual letter of funding, and arising from suspected theft or fraud, shall be reported by the Academy Trust to the Secretary of State at the earliest opportunity.
- 85) 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) carrying a surplus from one Academy Financial Year to the next; or
  - b) carrying forward from a previous Academy Financial Year or Academy Financial Years a sufficient surplus or sufficient cumulative surpluses on grants from the Secretary of State to meet an in-year deficit on such grants in a subsequent financial year; or
  - c) incurring an in-year deficit on funds from sources other than grants from the Secretary of State in any Academy Financial Year, provided it does not affect the Academy Trust's responsibility to ensure that the Academy balances its overall budget from Academy Financial Year to Academy Financial Year.

### **Borrowing Powers**

- 86) The Academy Trust shall not borrow against or so as to put at risk property or assets funded (whether in whole or in part) by the Secretary of State without specific approval of the Secretary of State, such approval may only be granted in limited circumstances. The Academy Trust shall not operate an overdraft except to cover irregularities in cash flow. Such an overdraft, and the maximum amount to be borrowed, shall require approval by the Academy Trust in General Meeting and in writing by the Secretary of State, and shall be subject to any conditions which the Secretary of State may reasonably impose.
- 87) The Academy Trust shall provide 30 days notice to the Secretary of State of its intention to borrow, whether or not such borrowing requires the Secretary of State's approval under clause 86 above.

### **Disposal of Assets**

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

- 89) 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 £20,000 for the asset; or
  - b) the asset was transferred to the Academy Trust from an LA for no or nominal consideration.
- 90) Furthermore, reinvestment of a percentage of the proceeds of disposal of a capital asset paid for with a capital grant from the Secretary of State shall require the Secretary of State's consent in the circumstances set out above and reinvestment exceeding £1,000,000 or with other special features will be subject to Parliamentary approval. The percentage of the proceeds for which consent is needed is the percentage of the initial price of the asset which was paid by capital grant from the Secretary of State.
- 91) 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.
- 92) 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.
- 93) 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.
- 94) 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 93 above.

## **TERMINATION**

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

96) If the Secretary of State is of the opinion that the Academy no longer has the characteristics set out in clause 10 of this Agreement or that the conditions and requirements set out in clauses 12-33 of this Agreement are not being met, or that the Academy Trust is otherwise in material breach of the provisions of this Agreement, the Secretary of State may give notice of his provisional intention to terminate this Agreement.

97) Any such notice shall be in writing and shall:

- a) state the grounds on which the Secretary of State considers the Academy no longer has the characteristics set out in clause 10 of this Agreement or is not meeting the conditions and requirements of clauses 12-33 of this Agreement or the Academy Trust is otherwise in material breach of the provisions of this Agreement;
- b) specify the measures needed to remedy the situation or breach;
- c) specify a reasonable date by which these measures are to be implemented; and
- d) state the form in which the Academy Trust is to provide its response and a reasonable date by which it must be provided.

98) If no response is received by the date specified in accordance with clause 97(d), the Secretary of State may give the Academy Trust 12 months, or such lesser period as he considers appropriate in the circumstances, written notice to terminate this Agreement.

99) If a response is received by the date specified in accordance with clause 97(d) the Secretary of State shall consider it, and any representations made by the Academy Trust, and shall, within three months of its receipt, indicate that:

- a) he is content with the response and/or that the measures which he specified are being implemented; or
- b) he is content, subject to any further measures he reasonably specifies being implemented by a specified date or any evidence he requires that implementation of such measures have been successfully completed; or

c) he is not satisfied, that he does not believe that he can be reasonably satisfied, and that he will proceed to terminate this Agreement.

100) In the circumstances of clause 99(c) the Secretary of State shall notify the Academy Trust why he believes that he cannot be reasonably satisfied and, if so requested by the Academy Trust within thirty days from such notification, he shall meet a deputation including representatives from Governing Body to discuss his concerns. If following such meeting he has good reasons for remaining satisfied that the Academy does not and will not have the characteristics set out in clause 10 of this Agreement or does not and will not meet the conditions and requirements set out in clauses 12-33 of this Agreement or the Academy Trust is in material breach of the provisions of this Agreement and such breach will not be remedied to his reasonable satisfaction, he shall give the Academy Trust twelve months written notice to terminate this Agreement.

101) If the Secretary of State has cause to serve a notice on the Academy Trust under section 165 of the Education Act 2002 and a determination (from which all rights of appeal have been exhausted) has been made that the Academy shall be struck off the Register of Independent Schools, the period of twelve months notice referred to in clause 100 may be shortened to a period deemed appropriate by the Secretary of State.

102) A "Special Measures Termination Event Occurs" when:

- a) the Chief Inspector gives a notice to the Academy Trust in accordance with section 13(3) of the Education Act 2005 (the "Special Measures Notice") stating that in his opinion special measures are required to be taken in relation to the Academy; and
- b) the Chief Inspector carries out a subsequent inspection of the Academy in accordance with the Education Act 2005 and makes a report in accordance with the Education Act 2005 stating that the Academy has made inadequate progress since the date of the Special Measures Notice; and
- c) the Secretary of State shall have requested the Academy Trust to deliver within 10 Business Days a written statement (a "Further Action Statement") of the action the Academy Trust proposes to take, and the period within which it proposes to take such action, or, if it does not propose to take any action, the reasons for not doing so; and
- d) the Secretary of State, having considered the Further Action Statement, is not satisfied that any action proposed to be taken by the Academy Trust is sufficient in all the circumstances, or, if no Further Action Statement shall have been given to the Secretary of State within the requested timeframe or otherwise.

- 103) If a Special Measures Termination Event occurs, the Secretary of State may:
- a) by notice in writing to the Academy Trust terminate this Agreement forthwith; or
  - b) appoint such Further Governors to the Academy Trust as he thinks fit in accordance with the Articles and/or may provide up to 12 months' notice in writing to terminate this Agreement.
- 104) In the event that the Secretary of State appoints Further Governors in accordance with clause 103(b), the Academy Trust must, upon the request of the Secretary of State, procure the resignation of the Governors appointed in accordance with the Article 50 of the Articles of Association.
- 105) The Secretary of State may at any time by notice in writing terminate this Agreement forthwith on the occurrence of any of the following events:-
- a) the Academy Trust calls a meeting of its creditors (whether formal or informal) or enters into any composition or arrangement (whether formal or informal) with its creditors; or
  - b) the Academy Trust proposes a voluntary arrangement within Section 1 of the Insolvency Act 1986; or
  - c) the Academy Trust is unable to pay its debts within the meaning of Section 123 of the Insolvency Act 1986 provided that, for the purposes of this clause, Section 123 (1)(a) of the Insolvency Act 1986 shall have effect as if the amount of £10,000 was substituted for £750. The Academy Trust shall not be deemed unable to pay its debts for the purposes of this clause if any such demand as is mentioned in the said Section is being contested in good faith by the Academy 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 1993 or any subsequent re-enactment of that Act), administrator or administrative receiver appointed over all or any part of its undertakings, assets or income; or
  - e) any distraint, execution or other process is levied or enforced on any of the 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.
- 106) 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.

107) If, following the exercise of the Secretary of State's powers to appoint Additional Governors or Further Governors, pursuant to the Articles of Association the Members pass an ordinary or special resolution to remove one or more of those Additional or Further Governors appointed by the Secretary of State, the Secretary of State may give the Academy Trust 12 months, or such lesser period as he considers appropriate in the circumstances, written notice to terminate this Agreement.

108) The Secretary of State's right to terminate this Agreement under clause 107 shall cease if he removes any of the Additional Governors or Further Governors which he has appointed pursuant to the Articles of Association.

### **Effect of Termination**

109) In the event of the termination of this Agreement however occurring the Secretary of State shall procure that his nominee (if any) shall resign as a member of the Academy Trust and shall co-operate in making any associated amendments to the Articles.

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

111) Subject to clause 112, if the Secretary of State terminates this Agreement for reasons other than that a Special Measures Termination Event occurs, that the Academy no longer has the characteristics set out in clause 10 of this Agreement, or is no longer meeting the conditions and requirements set out in clauses 12-33 of this Agreement or that the Academy Trust is otherwise in material breach of the provisions of this Agreement, the Secretary of State shall indemnify the Academy Trust.

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

113) 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 indemnify the Academy Trust include (but not by way of limitation), staff compensation and

redundancy payments, compensation payments in respect of broken contracts, expenses of disposing of assets or adapting them for other purposes, legal and other professional fees, and dissolution expenses.

114) Subject to clause 115, 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 educational purposes by that nominee. The proportion of the assets to be transferred shall be the same as the proportion of the capital contribution made by the Secretary of State to the original value of those assets, whether that contribution was made on the establishment of the Academy or later; or

b) if the Secretary of State confirms that a transfer under clause 114(a) is not required, promptly repay to the Secretary of State a sum equivalent to the percentage of the value of the assets at the date of termination, or, by agreement with the Secretary of State, at the date of subsequent disposal of those assets. Such percentage to be the same as the percentage of the capital contribution made by the Secretary of State to the original value of those assets, whether that contribution was made on the establishment of the Academy or later.

115) The Secretary of State may waive in whole or in part the repayment due under clause 114(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.

116) If any land or premises of the Academy were acquired by the Academy Trust from an LA by a scheme under Paragraph 1 of Schedule 1 of the Academies Act 2010 or otherwise at less than the market value of the land at the date of acquisition, and the Secretary of State does not make a scheme as provided for in Paragraph 6 of Schedule 1 of the Academies Act 2010, the Academy Trust may dispose of its interest in that land or premises but only with the consent of the Secretary of State, who shall have regard to any representations from the Academy Trust and the LA from which the land was transferred before giving or withholding that consent.

## **GENERAL**

### **Information**

- 117) Without prejudice to any other provision of this Agreement, the Secretary of State acting reasonably may from time to time call for information on, inter alia, the Academy's:
- a) curriculum;
  - b) arrangements for the assessment of pupils;
  - c) teaching staff including numbers, qualifications, experience, salaries, and teaching loads;
  - d) class sizes;
  - e) outreach work with other schools and the local community;
  - f) operation of the admission criteria and over subscription arrangements for the Academy including numbers of applications for places and the number and characteristics of pupils accepted for admission;
  - g) numbers of pupils excluded (including permanent and fixed term exclusions);
  - h) levels of authorised and unauthorised absence;
  - i) charging and remissions policies and the operation of those policies;
  - j) organisation, operation and building management;
  - k) financial controls; and
  - l) membership and proceedings of the Governing Body.
- 118) The Academy Trust shall make such information available to the Secretary of State, in such form and manner and at such times as may reasonably be required. The Secretary of State shall provide the Academy Trust with such information as it may reasonably require of him for the running of the Academy.

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

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

the obligations imposed by this clause of this Agreement.

120) The Academy Trust shall ensure that:

- a) the agenda for every meeting of the Governing Body;
- b) the draft minutes of every such meeting, if they have been approved by the person acting as chairman of that meeting;
- c) the signed minutes of every such meeting; and
- d) any report, document or other paper considered at any such meeting,

are made available for inspection by any interested party at the Academy and, as soon as is reasonably practicable, sent to the Secretary of State.

121) 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 120, any material relating to:

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

## **LAND**

### **Restrictions on Land transfer**

121 A) The Academy Trust:

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

*No disposition of the registered estate by the proprietor of the registered estate, or by the proprietor of any registered charge, not being a charge registered before the entry of this restriction is to be registered without a written consent signed by the Secretary of State for Education, of Sanctuary Buildings, Great Smith Street, London SW1P3BT*

- b) shall take any further steps required to ensure that the restriction referred to in clause 121A(a) is entered on the proprietorship register,
- c) shall provide the Secretary of State with confirmation of the entry of the restriction referred to in clause 121 A(a) as soon as practicable after it receives notification from the Land Registry,
- d) in the event that it has not registered the restriction referred to in clause 121 A(a), hereby consents to the entering of the restriction referred to in 121 A(a) in the register by the Secretary of State (under s. 43(1 )(b) of the Land Registration Act 2002),
- e) shall not, without the consent of the Secretary of State, apply to dis-apply, modify or remove (by cancellation or otherwise) a restriction entered in accordance with clause 121 A(a) or 121A(d) above.

### **Repair and Upkeep**

121B) The Academy Trust shall keep the Land clean and tidy and make good any damage it causes to the Land and / or any deterioration to the condition of the Land that may arise from the date of this Agreement.

### **Insurance**

121C) The Academy Trust shall:-

- a) keep the Land insured with a reputable insurance office against loss or damage by the Insured Risks in the sum the Academy Trust is advised represents the reinstatement value of the Land from time to time;
- b) pay the premiums for insurance promptly as they become due and maintain in force the policies of insurance on the Land;
- c) following the incidence of damage to or destruction of the Land and subject to receipt of all necessary consents licences permissions and the like apply the proceeds of the policy of the insurance received for those purposes in rebuilding and reinstating the Land (provided that this clause should be satisfied if the Academy Trust provides premises not necessarily identical to the Land as the same existing

prior to such damage or destruction occurring) as soon as may be reasonably practicable;

d) produce to the Secretary of State a copy of the insurance policy whenever reasonably requested and the receipt for the last 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 Land may become void or voidable.

f) insure against liability in respect of property owners' and third party risks including occupiers liability.

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

121D) On termination of this Agreement (in circumstances where there is no other Funding Agreement in existence between the Academy Trust and the Secretary of State in relation to the Academy), the Academy Trust shall, if the Secretary of State so requires by notice in writing to the Academy Trust, immediately transfer the freehold of the Land to the Secretary of State or such other person as the Secretary of State may nominate.

### **Notices**

122) Any notice or other communication concerning this Agreement shall be sent, in the case of a notice or communication from the Secretary of State to the Academy Trust at its registered office or such other addressee/address as may be notified in writing from time to time by the Academy Trust and, in the case of a notice or communication from the Academy Trust to the Secretary of State to Head of Academies Division, Department for Education, Sanctuary Buildings, Great Smith Street, London SW1P 3BT; or such other address as may be notified from time to time by the Secretary of State and where any such notice or communication is sent by post, unless the contrary is proved, it shall be deemed, subject to satisfactory proof of posting, to be effected at the time at which the letter would be received in the ordinary course of post.

123) The service by the Secretary of State of a notice of termination of this Agreement shall not prejudice the ability of the Academy Trust (if it wishes to do so) during the notice period to admit pupils to the Academy in accordance with the provisions of this

Agreement and to receive GAG and EAG in respect of them.

**General**

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

This Agreement was executed as a Deed on 31 January 2011

Executed on behalf of the Academy Trust 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:



BRETT WELCH

**Duly Authorised**





**Electronic resolution of the Governors**

**of**

**Kendrick School (Company)**

Pursuant to Article 120 of the Articles of Association of the Company, it is proposed that the following resolutions be agreed as written resolutions of the Governors:

- 1 THAT the Commercial Transfer Agreement is approved and is to be entered into with the Governing Body of Kendrick School and Reading Borough Council.
- 2 THAT the land transfer in Form TR5 in respect of the transfer of Kendrick Girls' School, London Road, Reading, Berkshire and a strip of land adjacent to East Street, Reading, Berkshire is approved and to be entered into.
- 3 THAT the Funding Agreement with the Secretary of State for Education is approved to be entered into.
- 4 THAT the Company consents to the assignment of the various Contracts and School Contracts under the terms of the Commercial Transfer Agreement.
- 5 THAT any two of the Governors or a Governor with a witness or a Governor and the Company Secretary (if any) shall have authority to execute the above documents on behalf of

**Electronic resolution of the Governors**

**of**

**Kendrick School (Company)**

Pursuant to Article 120 of the Articles of Association of the Company, it is proposed that the following resolutions be agreed as written resolutions of the Governors:

- 1 THAT the Commercial Transfer Agreement is approved and is to be entered into with the Governing Body of Kendrick School and Reading Borough Council.
- 2 THAT the land transfer in Form TR5 in respect of the transfer of Kendrick Girls' School, London Road, Reading, Berkshire and a strip of land adjacent to East Street, Reading, Berkshire is approved and to be entered into.
- 3 THAT the Funding Agreement with the Secretary of State for Education is approved to be entered into.
- 4 THAT the Company consents to the assignment of the various Contracts and School Contracts under the terms of the Commercial Transfer Agreement.
- 5 THAT any two of the Governors or a Governor with a witness or a Governor and the Company Secretary (if any) shall have authority to execute the above documents on behalf of

**Electronic resolution of the Governors**

**of**

**Kendrick School (Company)**

Pursuant to Article 120 of the Articles of Association of the Company, it is proposed that the following resolutions be agreed as written resolutions of the Governors:

- 1 THAT the Commercial Transfer Agreement is approved and is to be entered into with the Governing Body of Kendrick School and Reading Borough Council.
- 2 THAT the land transfer in Form TR5 in respect of the transfer of Kendrick Girls' School, London Road, Reading, Berkshire and a strip of land adjacent to East Street, Reading, Berkshire is approved and to be entered into.
- 3 THAT the Funding Agreement with the Secretary of State for Education is approved to be entered into.
- 4 THAT the Company consents to the assignment of the various Contracts and School Contracts under the terms of the Commercial Transfer Agreement.
- 5 THAT any two of the Governors or a Governor with a witness or a Governor and the Company Secretary (if any) shall have authority to execute the above documents on behalf of

# ANNEX A

THE COMPANIES ACT 2006  
& COMPANIES (REGISTRATION) REGULATIONS 2008 (SI 2008/3014)

A COMPANY LIMITED BY GUARANTEE

MEMORANDUM OF ASSOCIATION

OF

KENDRICK SCHOOL

THE COMPANIES ACT 2006

& COMPANIES (REGISTRATION) REGULATIONS 2008 (SI 2008/3014)

---

SCHEDULE 2

A COMPANY LIMITED BY GUARANTEE

Regulation 2(b)

MEMORANDUM OF ASSOCIATION OF

KENDRICK SCHOOL

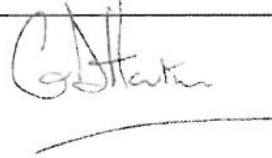
Each subscriber to this memorandum of association wishes to form a company under the Companies Act 2006 and agrees to become a member of the company.

*Name of each subscriber    Authentication by each subscriber*

---

Name: Geoffrey David Hawkins

Signature:



Name: Keith Andrew Miller

Signature:



Name: Janice Nowecki

Signature:



---

Dated

THE COMPANIES ACT 2006

A COMPANY LIMITED BY GUARANTEE

ARTICLES OF ASSOCIATION

OF

KENDRICK SCHOOL

COMPANY NUMBER: 7494754

"the Governors" means the directors of the Academy Trust (and "Governor" means any one of those directors), subject to the definition of this term at Article 6.9(b) in relation to Articles 6.2-6.9;

"the LA" means the local authority covering the area in which the Academy is situated;

"the LA Governor" means the Governor who may be appointed pursuant to Article 51;

"Local Authority Associated Persons" means any person associated with any local authority within the meaning given in section 69 of the Local Government and Housing Act 1989;

"Member" means a member of the Academy Trust and someone who as such is bound by the undertaking contained in Article 8;

"the Memorandum" means the Memorandum of Association of the Academy Trust;

"Office" means the registered office of the Academy Trust;

"the Parent Governors" means the Governors appointed pursuant to Articles 53 to 58 inclusive;

"Principal" means the head teacher of the Academy;

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

"the seal" means the common seal of the Academy Trust if it has one;

"Secretary" means the secretary of the Academy Trust or any other person appointed to perform the duties of the secretary of the Academy Trust, including a joint, assistant or deputy secretary;

"Secretary of State" means the Secretary of State for Education or successor;

"Staff Governor" means an employee of the Academy Trust who may be appointed as a Governor pursuant to Article 50A;

"teacher" means a person employed under a contract of employment or a contract for services or otherwise engaged to provide his services as a teacher at the Academy;

"the United Kingdom" means Great Britain and Northern Ireland;

words importing the masculine gender only shall include the feminine gender.

to establish or support, whether financially or otherwise, any charitable trusts, associations or institutions formed for all or any of the Object;

to co-operate with other charities, other independent and maintained schools, voluntary bodies and statutory authorities operating in furtherance of the Object and to exchange information and advice with them;

to pay out of funds of the Academy Trust the costs, charges and expenses of and incidental to the formation and registration of the Academy Trust;

to establish, maintain, carry on, manage and develop the Academy at London Road, Reading, Berkshire RG1 5BN or at any alternative site as the Governors may determine from time to time;

to offer scholarships, exhibitions, prizes and awards to pupils and former pupils, and otherwise to encourage and assist pupils and former pupils;

to provide educational facilities and services to students of all ages and the wider community for the public benefit;

to carry out research into the development and application of new techniques in education in particular in relation to the areas of curricular specialisation of the Academy and to its approach to curriculum development and delivery and to publish the results of such research, and to develop means of benefiting from application of the experience of industry, commerce, other schools and the voluntary sector to the education of pupils in academies;

subject to such consents as may be required by law and/or by any contract entered into by or on behalf of the Academy Trust to borrow and raise money for the furtherance of the Object in such manner and on such security as the Academy Trust may think fit;

to deposit or invest any funds of the Academy Trust not immediately required for the furtherance of its Object (but to invest only after obtaining such advice from a financial expert as the Governors consider necessary and having regard to the suitability of investments and the need for diversification);

to delegate the management of investments to a financial expert, but only on terms that:

(i) the investment policy is set down in writing for the financial expert by the  
Governors;

- 6.2 None of the income or property of the Academy Trust may be paid or transferred directly or indirectly by way of dividend bonus or otherwise by way of profit to any member of the Academy Trust. Nonetheless a member of the Academy Trust who is not also a Governor may:
- (a) benefit as a beneficiary of the Academy Trust;
  - (b) be paid reasonable and proper remuneration for any goods or services supplied to the Academy Trust;
  - (c) be paid rent for premises let by the member of the Academy Trust if the amount of the rent and other terms of the letting are reasonable and proper; and
  - (d) be paid interest on money lent to the Academy Trust at a reasonable and proper rate, such rate not to exceed 2 per cent per annum below the base lending rate of a UK clearing bank selected by the Governors, or 0.5%, whichever is the higher.
- 6.3 A Governor may benefit from any indemnity insurance purchased at the Academy Trust's expense to cover the liability of the Governors which by virtue of any rule of law would otherwise attach to them in respect of any negligence, default or breach of trust or breach of duty of which they may be guilty in relation to the Academy Trust: Provided that any such insurance shall not extend to any claim arising from any act or omission which the Governors knew to be a breach of trust or breach of duty or which was committed by the Governors in reckless disregard to whether it was a breach of trust or breach of duty or not and provided also that any such insurance shall not extend to the costs of any unsuccessful defence to a criminal prosecution brought against the Governors in their capacity as directors of the Academy Trust.
- 6.4 A company, which has shares listed on a recognised stock exchange and of which any one Governor holds no more than 1% of the issued capital of that company, may receive fees, remuneration or other benefit in money or money's worth from the Academy Trust.
- 6.5 A Governor may at the discretion of the Governors be reimbursed from the property of the Academy Trust for reasonable expenses properly incurred by him or her when acting on behalf of the Academy Trust, but excluding expenses in connection with foreign travel.

6.6 No Governor may:

- (i) his or her employment, remuneration, or any matter concerning the contract, payment or benefit; or
  - (ii) his or her performance in the employment, or his or her performance of the contract; or
  - (iii) any proposal to enter into any other contract or arrangement with him or her or to confer any benefit upon him or her that would be permitted under Article 6.7; or
  - (iv) any other matter relating to a payment or the conferring of any benefit permitted by Article 6.7.
- (c) the Governor does not vote on any such matter and is not to be counted when calculating whether a quorum of Governors is present at the meeting;
- (d) save in relation to employing or contracting with the Principal (a Governor pursuant to Articles 46 and 52) the other Governors are satisfied that it is in the interests of the Academy Trust to employ or to contract with that Governor rather than with someone who is not a Governor. In reaching that decision the Governors must balance the advantage of employing a Governor against the disadvantages of doing so (especially the loss of the Governor's services as a result of dealing with the Governor's conflict of interest);
- (e) the reason for their decision is recorded by the Governors in the minute book;
- (f) a majority of the Governors then in office have received no such payments or benefit.

6.8A The provision in clause 6.6 (c) that no Governor may be employed by or receive any remuneration from the Academy Trust (other than the Principal) does not apply to an existing employee of the Academy Trust who is subsequently elected or appointed as a Governor save that this clause shall only allow such a Governor to receive remuneration or benefit from the Academy Trust in his capacity as an employee of the Academy Trust and provided that the procedure as set out in Articles 6.8(b)(i), (ii) and 6.8 (c) is followed.

6.9 In Articles 6.2-6.9:

- (a) "Academy Trust" shall include any company in which the Academy Trust:
- holds more than 50% of the shares; or

10. No alteration or addition shall be made to or in the provisions of the Articles without the written consent of the Secretary of State.
11. No alteration or addition shall be made to or in the provisions of the Articles which would have the effect (a) that the Academy Trust would cease to be a company to which section 60 of the Companies Act 2006 applies; or (b) that the Academy Trust would cease to be a charity.

## MEMBERS

12. The Members of the Academy Trust shall comprise
  - (a) the signatories to the Memorandum;<sup>1</sup>
  - (b) 1 person appointed by the Secretary of State, in the event that the Secretary of State appoints a person for this purpose;
  - (c) the chairman of the Governors; and
  - (d) any person appointed under Article 16.
13. Each of the persons entitled to appoint Members in Article 12 shall have the right from time to time by written notice delivered to the Office to remove any Member appointed by them and to appoint a replacement Member to fill a vacancy whether resulting from such removal or otherwise.
14. If any of the persons entitled to appoint Members in Article 12:
  - (a) in the case of an individual, die or become legally incapacitated;
  - (b) in the case of a corporate entity, cease to exist and are not replaced by a successor institution; or
  - (c) becomes insolvent or makes any arrangement or composition with their creditors generallytheir right to appoint Members under these Articles shall vest in the remaining Members.
15. Membership will terminate automatically if:

<sup>1</sup> There must be no less than 3 signatories to the Memorandum of Association.

United Kingdom sufficient Governors to call a general meeting, any Governor or any Member of the Academy Trust may call a general meeting.

#### NOTICE OF GENERAL MEETINGS

21. General meetings shall be called by at least fourteen clear days' notice but a general meeting may be called by shorter notice if it is so agreed by a majority in number of Members having a right to attend and vote and together representing not less than 90% of the total voting rights at that meeting.

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

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

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

#### PROCEEDINGS AT GENERAL MEETINGS.

23. No business shall be transacted at any meeting unless a quorum is present. A Member counts towards the quorum by being present either in person or by proxy. Two persons or one-third of the total number (whichever is the greater) entitled to vote upon the business to be transacted, each being a Member or a proxy of a Member or a duly authorised representative of a Member organisation shall constitute a quorum provided that at least two Members are present in person.

24. If a quorum is not present within half an hour from the time appointed for the meeting, or if during a meeting a quorum ceases to be present, the meeting shall stand adjourned to the same day in the next week at the same time and place or to such time and place as the Governors may determine.

25. The chairman, if any, of the Governors or in his absence some other Governor nominated by the Governors shall preside as chairman of the meeting, but if neither the chairman nor such other Governor (if any) be present within fifteen minutes after the time appointed for holding the meeting and willing to act, the Governors present shall elect one of their number to be chairman and, if there is only one Governor present and willing to act, he shall be the chairman.

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

#### VOTES OF MEMBERS

36. On the show of hands every Member present in person shall have one vote. On a poll every Member present in person or by proxy shall have one vote.
37. Not used.
38. No Member shall be entitled to vote at any general meeting unless all moneys then payable by him to the Academy Trust have been paid.
39. No objections shall be raised to the qualification of any person to vote at any general meeting except at the meeting or adjourned meeting at which the vote objected to is tendered, and every vote not disallowed at the meeting shall be valid. Any objection made in due time shall be referred to the chairman whose decision shall be final and conclusive.
40. An instrument appointing a proxy shall be in writing, signed by or on behalf of the appointer and shall be in the following form (or in a form as near thereto as circumstances allow or in any other form which is usual or which the Governors may approve) -

"I/We, ..... of ..... being a Member/Members of the above named

deposited as aforesaid after the poll has been demanded and not less than 24 hours before the time appointed for the taking of the poll;

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

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

43. A vote given or poll demanded by proxy or by the duly authorised representative of a corporation shall be valid notwithstanding the previous determination of the authority of the person voting or demanding a poll unless notice of the determination was received by the Academy Trust at the office or at such other place at which the instrument of proxy was duly deposited before the commencement of the meeting or adjourned meeting at which the vote given or the poll demanded or (or in the case of a poll taken otherwise than on the same day as the meeting or adjourned meeting) the time appointed for taking the poll.
44. Any organisation which is a Member of the Academy Trust may by resolution of its board of directors or other governing body authorise such person as it thinks fit to act as its representative at any meeting of the Academy Trust, and the person so authorised shall be entitled to exercise the same powers on behalf of the organisation which he represents as that organisation could exercise if it were an individual Member of the Academy Trust.

## GOVERNORS

45. The number of Governors shall be not less than three but (unless otherwise determined by ordinary resolution) shall not be subject to any maximum.
46. Subject to Articles 48-49 and 64, the Academy Trust shall have the following Governors:
- (a) up to 9 Governors, appointed under Article 50;
  - (b) up to 4 Staff Governors, if appointed under Article 50A;
  - (c) up to 1 LA Governor if appointed under Article 51;
  - (d) up to 7 Parent Governors (with a minimum of 2) appointed under Articles 53-58 ;

56. Where a vacancy for a Parent Governor is required to be filled by election, the Governing Body shall take such steps as are reasonably practical to secure that every person who is known to them to be a parent of a registered pupil at the Academy is informed of the vacancy and that it is required to be filled by election, informed that he is entitled to stand as a candidate, and vote at the election, and given an opportunity to do so.
57. The number of Parent Governors required shall be made up by Parent Governors appointed by the Governing Body if the number of parents standing for election is less than the number of vacancies.
58. In appointing a Parent Governor the Governing Body shall appoint a person who is the parent of a registered pupil at the Academy; or where it is not reasonably practical to do so, a person who is the parent of a child of compulsory school age.

#### CO-OPTED GOVERNORS

59. The Governors may appoint up to 3 Co-opted Governors. A 'Co-opted Governor' means a person who is appointed to be a Governor by being Co-opted by Governors who have not themselves been so appointed. The Governors may not co-opt an employee of the Academy Trust as a Co-opted Governor if thereby the number of Governors who are employees of the Academy Trust would exceed one third of the total number of Governors (including the Principal).

#### APPOINTMENT OF ADDITIONAL GOVERNORS

60. The Secretary of State may give a warning notice to the Governors where he is satisfied—
  - (a) that the standards of performance of pupils at the Academy are unacceptably low, or
  - (b) that there has been a serious breakdown in the way the Academy is managed or governed, or
  - (c) that the safety of pupils or staff of the Academy is threatened (whether by a breakdown of discipline or otherwise).
61. For the purposes of Article 60 a 'warning notice' is a notice in writing by the Secretary of State to the Academy Trust delivered to the Office setting out—

- (a) the matters referred to in Article 60;

66. A Governor shall cease to hold office if he resigns his office by notice to the Academy Trust (but only if at least three Governors will remain in office when the notice of resignation is to take effect).
67. A Governor shall cease to hold office if he is removed by the person or persons who appointed him. This Article does not apply in respect of a Parent Governor.
68. Where a Governor resigns his office or is removed from office, the Governor or, where he is removed from office, those removing him, shall give written notice thereof to the Secretary.
- 68A. Where an Additional or Further Governor appointed pursuant to Articles 62, 62A or 63 ceases to hold office as a Governor for any reason, other than being removed by the Secretary of State, the Secretary of State shall be entitled to appoint an Additional or Further Governor in his place.

#### DISQUALIFICATION OF GOVERNORS

69. No person shall be qualified to be a Governor unless he is aged 18 or over at the date of his election or appointment. No current pupil of the Academy shall be a Governor.
70. A Governor shall cease to hold office if he becomes incapable by reason of mental disorder, illness or injury of managing or administering his own affairs.
71. A Governor shall cease to hold office if he is absent without the permission of the Governors from all their meetings held within a period of six months and the Governors resolve that his office be vacated.
72. A person shall be disqualified from holding or continuing to hold office as a Governor if—
- (a) his estate has been sequestrated and the sequestration has not been discharged, annulled or reduced; or
  - (b) he is the subject of a bankruptcy restrictions order or an interim order.
73. A person shall be disqualified from holding or continuing to hold office as a Governor at any time when he is subject to a disqualification order or a disqualification undertaking under the Company Directors Disqualification Act 1986 or to an order made under section 429(2)(b) of the Insolvency Act 1986 (failure to pay under county court administration order).

their unsuitability to work with children that person shall be disqualified. If a dispute arises as to whether a person shall be disqualified, a referral shall be made to the Secretary of State to determine the matter. The determination of the Secretary of State shall be final.

80. Where, by virtue of these Articles a person becomes disqualified from holding, or continuing to hold office as a Governor; and he is, or is proposed, to become such a Governor, he shall upon becoming so disqualified give written notice of that fact to the Secretary.
81. Articles 69 to 80 and Articles 98-99 also apply to any member of any committee of the Governors who is not a Governor.

#### SECRETARY TO THE GOVERNORS

82. The Secretary may be appointed by the Governors for such term, at such remuneration and upon such conditions as they may think fit; and any Secretary so appointed may be removed by them. The Secretary shall not be a Governor or a Principal. Notwithstanding this Article, the Governors may, where the Secretary fails to attend a meeting of theirs, appoint any one of their number or any other person to act as Secretary for the purposes of that meeting.

#### CHAIRMAN AND VICE-CHAIRMAN OF THE GOVERNORS

83. The Governors shall each alternate school year, at their last meeting in that year, elect a chairman and a vice-chairman from among their number. A Governor who is employed by the Academy Trust shall not be eligible for election as chairman or vice-chairman.
84. Subject to Article 85, the chairman or vice-chairman shall hold office as such until his successor has been elected in accordance with Article 86.
85. The chairman or vice-chairman may at any time resign his office by giving notice in writing to the Secretary. The chairman or vice-chairman shall cease to hold office if—
  - (a) he ceases to be a Governor;
  - (b) he is employed by the Academy Trust;
  - (c) he is removed from office in accordance with these Articles; or
  - (d) in the case of the vice-chairman, he is elected in accordance with these

given by special resolution, the business of the Academy Trust shall be managed by the Governors who may exercise all the powers of the Academy Trust. No alteration of the Articles and no such direction shall invalidate any prior act of the Governors which would have been valid if that alteration had not been made or that direction had not been given. The powers given by this Article shall not be limited by any special power given to the Governors by the Articles and a meeting of Governors at which a quorum is present may exercise all the powers exercisable by the Governors.

95. In addition to all powers hereby expressly conferred upon them and without detracting from the generality of their powers under the Articles the Governors shall have the following powers, namely:
- (a) to expend the funds of the Academy Trust in such manner as they shall consider most beneficial for the achievement of the Object and to invest in the name of the Academy Trust such part of the funds as they may see fit and to direct the sale or transposition of any such investments and to expend the proceeds of any such sale in furtherance of the Object; and
  - (b) to enter into contracts on behalf of the Academy Trust.
96. In the exercise of their powers and functions, the Governors may consider any advice given by the Principal and any other executive officer.
97. Any bank account in which any money of the Academy Trust is deposited shall be operated by the Governors in the name of the Academy Trust. All cheques and orders for the payment of money from such an account shall be signed by at least two signatories authorised by the Governors.

#### CONFLICTS OF INTEREST

98. Any Governor who has or can have any direct or indirect duty or personal interest (including but not limited to any Personal Financial Interest) which conflicts or may conflict with his duties as a Governor shall disclose that fact to the Governors as soon as he becomes aware of it. A Governor must absent himself from any discussions of the Governors in which it is possible that a conflict will arise between his duty to act solely in the interests of the Academy Trust and any duty or personal interest (including but not limited to any Personal Financial Interest).
99. For the purpose of Article 98, a Governor has a Personal Financial Interest in the employment or remuneration of, or the provision of any other benefit to, that

decision.

## PRINCIPAL

104. The Governors shall appoint the Principal. The Governors may delegate such powers and functions as they consider are required by the Principal for the internal organisation, management and control of the Academy (including the implementation of all policies approved by the Governors and for the direction of the teaching and curriculum at the Academy).

## MEETINGS OF THE GOVERNORS

105. Subject to these Articles, the Governors may regulate their proceedings as they think fit.
106. The Governors shall hold at least three meetings in every school year. Meetings of the Governors shall be convened by the Secretary. In exercising his functions under this Article the Secretary shall comply with any direction—
- (a) given by the Governors; or
  - (b) given by the chairman of the Governors or, in his absence or where there is a vacancy in the office of chairman, the vice-chairman of the Governors, so far as such direction is not inconsistent with any direction given as mentioned in (a).
107. Any three Governors may, by notice in writing given to the Secretary, requisition a meeting of the Governors; and it shall be the duty of the Secretary to convene such a meeting as soon as is reasonably practicable.
108. Each Governor shall be given at least seven days before the date of a meeting -
- (a) notice in writing thereof and sent to each Governor at the address provided by each Governor from time to time; and
  - (b) a copy of the agenda for the meeting;

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

- (a) appointing a parent Governor under Article 57;
- (b) any vote on the removal of a Governor in accordance with Article 67;
- (c) any vote on the removal of the chairman of the Governors in accordance with Article 91;

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

117. Subject to these Articles, every question to be decided at a meeting of the Governors shall be determined by a majority of the votes of the Governors present and voting on the question. Every Governor shall have one vote.
118. Subject to Article 114-116, where there is an equal division of votes, the chairman of the meeting shall have a casting vote in addition to any other vote he may have.
119. The proceedings of the Governors shall not be invalidated by
- (a) any vacancy among their number; or
  - (b) any defect in the election, appointment or nomination of any Governor.
120. A resolution in writing, signed by all the Governors entitled to receive notice of a meeting of Governors or of a committee of Governors, shall be valid and effective as if it had been passed at a meeting of Governors or (as the case may be) a committee of Governors duly convened and held. Such a resolution may consist of several documents in the same form, each signed by one or more of the Governors.
121. Subject to Article 122, the Governors shall ensure that a copy of:
- (a) the agenda for every meeting of the Governors;
  - (b) the draft minutes of every such meeting, if they have been approved by the person acting as chairman of that meeting;
  - (c) the signed minutes of every such meeting; and
  - (d) any report, document or other paper considered at any such meeting,
- are, as soon as is reasonably practicable, made available at the Academy to persons wishing to inspect them.
122. There may be excluded from any item required to be made available in pursuance of

## ANNUAL REPORT

127. The Governors shall prepare its Annual Report in accordance with the Statement of Recommended Practice as if the Academy Trust was a non-exempt charity and shall file these with the Secretary of State and the Principal Regulator by 31 December each Academy Financial Year.

## ANNUAL RETURN

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

## NOTICES

129. Any notice to be given to or by any person pursuant to the Articles (other than a notice calling a meeting of the Governors) shall be in writing or shall be given using electronic communications to an address for the time being notified for that purpose to the person giving the notice. In these Articles, "Address" in relation to electronic communications, includes a number or address used for the purposes of such communications.
130. A notice may be given by the Academy Trust to a Member either personally or by sending it by post in a prepaid envelope addressed to the Member at his registered address or by leaving it at that address or by giving it using electronic communications to an address for the time being notified to the Academy Trust by the Member. A Member whose registered address is not within the United Kingdom and who gives to the Academy Trust an address within the United Kingdom at which notices may be given to him, or an address to which notices may be sent using electronic communications, shall be entitled to have notices given to him at that address, but otherwise no such Member shall be entitled to receive any notice from the Academy Trust.
131. A Member present, either in person or by proxy, at any meeting of the Academy Trust shall be deemed to have received notice of the meeting and, where necessary, of the purposes for which it was called.
132. Proof that an envelope containing a notice was properly addressed, prepaid and

the Articles; and

(e) generally, all such matters as are commonly the subject matter of company rules.

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

#### AVOIDING INFLUENCED COMPANY STATUS

136. Notwithstanding the number of Members from time to time, the maximum aggregate number of votes exercisable by Local Authority Associated Persons shall never exceed 19.9% of the total number of votes exercisable by Members in general meeting and the votes of the other Members having a right to vote at the meeting will be increased on a pro-rata basis.
137. No person who is a Local Authority Associated Person may be appointed as a Governor if, once the appointment had taken effect, the number of Governors who are Local Authority Associated Persons would represent 20% or more of the total number of Governors. Upon any resolution put to the Governors, the maximum aggregate number of votes exercisable by any Governors who are Local Authority Associated Persons shall represent a maximum of 19.9% of the total number of votes cast by the Governors on such a resolution and the votes of the other Governors having a right to vote at the meeting will be increased on a pro-rata basis.
138. No person who is a Local Authority Associated Person is eligible to be appointed to the office of Governor unless his appointment to such office is authorised by the local authority to which he is associated.
139. If at the time of either his becoming a Member of the Academy Trust or his first appointment to office as a Governor any Member or Governor was not a Local Authority Associated Person but later becomes so during his membership or tenure as a Governor he shall be deemed to have immediately resigned his membership and/or resigned from his office as a Governor as the case may be.
140. If at any time the number of Governors or Members who are also Local Authority Associated Persons would (but for Articles 136 to 139 inclusive) represent 20% or

**ANNEX B**

## **Annex B**

### **REQUIREMENTS FOR THE ADMISSION OF PUPILS TO KENDRICK SCHOOL**

#### **GENERAL**

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

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

## Single Academy Model

- b. adopt admission oversubscription criteria that give highest priority to looked after children, in accordance with the relevant provisions of the School Admissions Code.

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

10. The Academy admission arrangements will include oversubscription criteria, and an admission number for each relevant age group<sup>3</sup>. The Academy will consult on its admission arrangements and determine them in line with the requirements within the School Admissions Code.

11. The Young People's Learning Agency (YPLA) may consider objections on the Secretary of State's behalf. The Academy Trust should therefore make it clear, when determining the Academy's admission arrangements, that objections should be submitted to the YPLA.

12. A determination of an objection by the YPLA on behalf of the Secretary of State, or by the Secretary of State will be binding upon the Academy.

<sup>3</sup> 'Relevant age group' means 'normal point of admission to the school:', for example, year R, Year7 and Year 12.

**ANNEX C**

**Arrangements for pupils with Special Educational Needs ('SEN') and disabilities at Kendrick School**

**Duties in relation to pupils with SEN**

1. The Governing Body of the Academy Trust must comply with all of the duties imposed upon the governing bodies of maintained schools in:
  - Part 4 of the Education Act 1996 as amended from time to time<sup>1</sup>;
  - The Education (Special Educational Needs) (Information) Regulations 1999 as amended from time to time;
  - The Education (Special Educational Needs Co-ordinators) (England) (Amendment) Regulations 2008 as amended from time to time .
2. Notwithstanding any provision in this Agreement, the Secretary of State may (whether following a complaint made to him or otherwise) direct the Academy Trust to comply with an obligation described in this Annex where the Academy Trust has failed to comply with any such obligation.
3. Where a child who has SEN is being educated in the Academy, those concerned with making special educational provision for the child must secure that the child engages in the activities of the school together with children who do not have SEN, so far as is reasonably practicable and is compatible with:
  - (a) the child receiving the special educational provision which his learning difficulty calls for,
  - (b) the provision of efficient education for the children with whom he will be educated, and
  - (c) the efficient use of resources.
4. In addition to complying with the duties imposed upon the governing bodies of maintained schools set out in The Education (Special Educational Needs) (Information) Regulations 1999 (as amended from time to time), the Academy Trust must ensure that the Academy's website includes details of the arrangements for the admission of disabled pupils; the steps taken to prevent disabled pupils from being treated less favourably than other pupils; and the facilities provided to assist access to the Academy by disabled pupils (disabled pupils meaning pupils who are disabled for the purposes of the Equality Act 2010<sup>3</sup>).

<sup>1</sup> Currently these duties are in sections 313 (Duty to have regard to the Special Educational Needs Code of Practice 2001); 317 (Duties in relation to pupils with special educational needs), 317A (Duty to advise parents that special educational provision is being made); and 324(5)(b) (Duty to admit the child where a school is named in the statement).

<sup>2</sup> These Regulations are amended by The Education (Special Educational Needs Co-ordinators) (England) (Amendment) Regulations 2009 (SI 2009 No 1387).

<sup>3</sup> For the meaning of 'disabled', see section 6 of the Equality Act 2010.

## Single Academy Model

appeal shall be binding and shall, if different from that of the Secretary of State under paragraph 9 above, be substituted for the Secretary of State's decision.

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

**ANNEX D**

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

### **General Duties**

1. Subject to the exceptions in paragraph 4, the Academy Trust shall act and shall ensure that the Principal shall act in accordance with the law on exclusions as if the Academy were a maintained school. For this purpose, reference in the law on exclusions to the Head Teacher and Governing Body shall respectively be deemed to be the Principal and Governing Body of the Academy Trust.
2. Without limiting the generality of paragraph 1, the Academy Trust shall ensure that the Local Authority is informed of an exclusion decision in the same circumstances as required by maintained schools under the law on exclusions.
3. Subject to the exceptions in paragraph 4, the Academy Trust shall ensure that in carrying out their functions the Principal and the Governing Body have regard to the Secretary of State's guidance on exclusions including in relation to any appeals process<sup>1</sup> as if the Academy were a maintained school.
4. The exceptions to the duties imposed under paragraphs 1 and 3 are:
  - The Academy Trust shall make arrangements for enabling appeals against any decision of the Governing Body to permanently exclude a pupil in accordance with the functions assigned to the Local Authority. Any appeal panel will be impartial, constituted in accordance with the Secretary of State's guidance and any decision of such a panel will be binding on the Academy Trust<sup>2</sup>. The requirements in relation to appeals apply to the Academy Trust only to the extent that the Local Authority is required to carry out such functions for maintained schools under the law on exclusions.
  - the Governing Body is not expected to seek the advice of a Local Authority officer when considering an exclusion, although a Local Authority officer may attend any meeting to consider an exclusion at the request of a parent; and
  - subject to the Academy Trust's obligations under clause 30 of this

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

<sup>2</sup> A parent may seek a judicial review of any appeal panel. A parent may not appeal to the Commissioner for Local Administration (the Local Government Ombudsman) about maladministration as the Commissioner's remit is limited to considering the conduct of appeal panels constituted by Local Authorities

**ANNEX E**

## **Annex E**

### **Procedure for deciding whether Academy should retain selective arrangements**

Whereas the joint intention of the parties to this agreement through this Annex is to provide for the removal of selective admission arrangements by the Academy Trust and to replicate (once the school converts into an Academy) provisions in relation to group ballots as would have applied to the maintained school prior to this agreement, it is hereby agreed:

This annex applies to the Academy which, prior to their entering into Academy arrangements with the Secretary of State under section 1 of the Academies Act 2010, was designated as a grammar school<sup>1</sup> - and was part of a prescribed group of grammar schools ("prescribed group") as set out in Schedule 2 to the Education (Grammar School Ballots) Regulations 1998<sup>2</sup>.

**This Academy is in a prescribed group for the purposes of this Annex with the following Academy - Reading School.**

#### **Proposals by the Academy Trust to remove selection**

1. Where an Academy Trust for a wholly selective Academy which was part of a prescribed group wishes to remove the Academy's selective admission arrangements they will follow the process set out below.
2. The Academy Trust will ballot all parents of registered pupils at the school on the question 'are you in favour of the Academy removing selection by ability and introducing admission arrangements which admit children of all abilities?'
3. If a simple majority of parents vote to remove selection, the Academy will determine admission arrangements that do not provide for selection by ability.
4. The ballot must allow parents a minimum of five weeks within which to vote. The ballot must be initiated prior to 25 January and the ballot result must be declared by 1 March in the determination year<sup>3</sup>.
5. If a ballot is in favour of the removal of selection, non selective

<sup>1</sup> Under the Education (Grammar School Designation) Order 1998 - or subsequent designation orders made under section 104 of the School Standards and Framework Act 1998.

<sup>2</sup> SI 1998/2876.

<sup>3</sup> A 'determination year' is the Academy Financial Year beginning two years before the Academy Financial Year which the admissions arrangements will be for e.g. consultation to end in March 2011 and determination to be in April 2011 for admissions in September 2012

## Annex to Single Funding Agreement

- a. a parent who is not an individual (such as a corporate parent);
- b. a parent who is resident outside the United Kingdom;
- c. if their child is over compulsory school age on the date in question;
- d. if, on the date in question their child is over the transfer age group for the Academy in question.

15. A parent's residence shall be determined by reference to the address contained in the admissions register of the relevant Academies in the group.

16. "Transfer age group" means the highest relevant age group for that Academy, disregarding any relevant age group in which the majority of the pupils admitted to the school are over compulsory school age.

### **Meaning of "feeder school"**

17. The feeder schools for a prescribed group of Academies are each school from which at least 5 pupils have transferred to the prescribed group of Academies (taken together) or their predecessor grammar schools during the period consisting of the school year in question and the two preceding school years.

18. Any pupils who were over the age of the transfer age group for the group of Academies or their predecessor grammar schools when they transferred to the Academies or their predecessor grammar schools shall be disregarded.

## **Petitions for a Ballot**

### **Petitions for a ballot—general**

19. No ballot shall be held unless a request for a ballot is made by means of a petition relating to the prescribed group of Academies is sent to the Academy Trust of each Academy in the prescribed group, the Secretary of State, and YPLA.

20. If there is doubt over whether a ballot is necessary, the YPLA will notify the Academy.

21. The Academy Trusts of each of the prescribed group of Academies, and if there is a dispute, the Secretary of State or YPLA, will determine whether a petition is a valid petition. A petition is valid if it complies with paragraphs 22-35.

22. A petition must be received by the Academy Trusts of each Academy in the prescribed group during a petition period. "Petition period" means the period from 1 st September in one year to 31st July in the next year.

23. Subject to paragraph 26, a petition must be signed by a number of

## Annex to Single Funding Agreement

"We the undersigned, being eligible parents, seek a ballot on whether the listed Academies which select by academic ability should continue to do so."

33. In relation to each parent who signs a petition the following information shall be given—

- a. the first name and surname and address of the parent;
- b. the name of a child of that parent who is a pupil at a school which is a feeder school for the group of Academies to which the petition relates who, at the date on which the petition is signed, is of compulsory school age; and
- c. the name of the school which the child named in the petition is attending; and
- d. the date on which the parent signs the petition.

34. The petition shall give the name and address of the person ("petition organiser") to whom notification should be given as to whether the petition is valid.

35. Where the Academy has given the notification required by paragraph 38 that a valid petition has been received, any subsequent petition relating to the same group of Academies shall not be valid unless

- a. the subsequent ballot is in favour of retaining selective admission arrangements for those Academies; and
- b. no person signs it before the end of the moratorium period for the group of Academies.

### **Meaning of "relevant eligible parent" and "parent population"**

36. A parent is a relevant eligible parent if the feeder school confirms he is an 'eligible parent' or if the Academy Trust is satisfied by other means that a parent is an 'eligible parent'.

37. Parent population means the total of eligible parents for the group of Academies.

### **Notification of result of petition**

38. Where the petition is a valid petition the Academy shall notify the persons referred to in paragraph 39 of this fact and that a ballot will be held.

39. The persons to be notified are—

- a. the other Academies in the group of Academies subject to the petition;

## Annex to Single Funding Agreement

- a. no later than 10 weeks from the date on which the Academy notified the persons in paragraph 39 that the petition is valid; and
- b. at least 5 weeks from the date on which ballot papers were sent to parents (or if ballot papers were sent on more than one date, the last such date).

48. Where the Academy has determined the result of a ballot it will forthwith notify the persons mentioned in paragraph 39 of that fact, and, where the ballot is in favour of retaining selective admission arrangements for the group of Academies, the date on which the moratorium period will expire.

### **Declaring a ballot void**

49. Subject to paragraph 50 below the Secretary of State may declare a ballot void if it appears that—

- a. any requirement of this annex has been contravened
- b. persons other than those falling within paragraph 41 have purported to vote in the ballot;
- c. persons who fall within paragraph 41 have been prevented from voting or hindered from doing so freely in accordance with their own opinion by any other person; or
- d. material has been provided, or meetings have been held, in a manner which does not comply with the principles for the production of such material or the standards for the holding of such meetings or debates contained in the Ballot Information Code specified in Schedule 4 of the Education (Grammar School Ballots) Regulations 1998; and
- e. that voting in a ballot is likely to have been influenced to a significant extent as a result of any of those matters.

50. Paragraph 49 shall not apply unless before the date which is two weeks after the ballot result date any person or body referred to in paragraph 51 have requested the Secretary of State in writing to declare a ballot void; specifying the reason for such a request and the grounds on which the person or body considers the ballot should be declared void.

51. The persons or bodies mentioned in paragraph 50 are—

- a. the local education authority within which the group of Academies is located
- b. any of the Academies in the group of Academies or the governing body or proprietor of any feeder school for the group of Academies;

## Annex to Single Funding Agreement

to comply with paragraph 23;

- f. the words to be contained in a petition in accordance with paragraph 32;
- g. where requested, the details of eligible parents who have consented to those details being made available to petition organisers.

58. To the extent that either party to this Funding Agreement (including all Annexes) considers that the terms of this Annex do not replicate the relevant statutory provisions, so far as is possible, to apply group ballot provisions to the converted Academy, the parties agree: to make all such amendments to this Annex as may be required in order to achieve, so far as is possible, equivalent provision for the Academy post conversion as it would have had as part of a group of grammar schools subject to a group ballot.

**Schedule 2**

**Amended SFA**



Department  
for Education

# **Kendrick School: single funding agreement**

**March 2018 v7**

## Contents

Contents	2
SUMMARY	5
<b>1 ESTABLISHING THE ACADEMY</b>	<b>9</b>
<b>Introduction to this agreement</b>	<b>9</b>
<b>General Obligations of the Academy Trust</b>	<b>12</b>
<b>Academy opening date</b>	<b>13</b>
<b>Governance</b>	<b>13</b>
<b>2. RUNNING OF THE ACADEMY</b>	<b>14</b>
<b>Length of school day and year</b>	<b>14</b>
<b>Teachers and staff</b>	<b>14</b>
<b>Pupils</b>	<b>16</b>
<b>School meals</b>	<b>16</b>
<b>Pupil Premium</b>	<b>16</b>
<b>Charging</b>	<b>17</b>
<b>Admissions</b>	<b>18</b>
<b>Exclusions</b>	<b>20</b>
<b>Curriculum</b>	<b>21</b>
<b>Assessment</b>	<b>23</b>
<b>3. GRANT FUNDING</b>	<b>25</b>
<b>Recurrent Expenditure grants</b>	<b>25</b>
<b>Capital Grant</b>	<b>25</b>
<b>General Annual Grant (GAG)</b>	<b>27</b>
<b>Calculation of GAG</b>	<b>29</b>

	<b>Earmarked Annual Grant (EAG)</b>	30
	<b>Arrangements for paying GAG and EAG</b>	30
	<b>Other relevant funding</b>	32
<b>4.</b>	<b>FINANCIAL AND ACCOUNTING REQUIREMENTS</b>	32
	<b>General</b>	32
	<b>Application of the Academies Financial Handbook</b>	33
	<b>Budgeting for funds</b>	33
	<b>Carrying forward of funds</b>	34
	<b>Annual accounts and audit</b>	35
	<b>Keeping financial records</b>	35
	<b>Access to financial records</b>	36
	<b>Acquiring and disposing of Publicly Funded Assets</b>	36
	<b>Retaining proceeds from the disposal of capital assets</b>	37
	<b>Transactions outside the usual planned range</b>	37
	<b>Borrowing</b>	38
<b>5.</b>	<b>LAND CLAUSES</b>	38
<b>6.</b>	<b>COMPLAINTS</b>	42
<b>7.</b>	<b>TERMINATION</b>	43
	<b>Termination by either party</b>	43
	<b>Termination Warning Notice</b>	43
	<b>Termination by the Secretary of State after inspection</b>	44
	<b>Termination by the Secretary of State</b>	45
	<b>Change of Control</b>	48
	<b>Funding and admission during notice period</b>	48

<b>Effect of Termination</b>	48
<b>8. OTHER CONTRACTUAL ARRANGEMENTS</b>	50
<b>Information</b>	50
<b>Access by the Secretary of State's Officers</b>	50
<b>Notices</b>	51
<b>General provisions</b>	52
<b>ANNEXES</b>	53
<b>9. ADMISSION OF CHILDREN AND YOUNG PEOPLE WITH EDUCATION, HEALTH AND CARE PLANS</b>	53
<b>10. ADMISSION OF CHILDREN WITH A STATEMENT OF SPECIAL EDUCATIONAL NEEDS</b>	53

## SUMMARY

### Information about the Academy:

<b>Name of Academy Trust</b>	Kendrick School
<b>Company number</b>	07494754
<b>Name of academy</b>	Kendrick School
<b>Opening date</b>	1 <sup>st</sup> February 2011
<b>Type of academy (indicate whether academy or free school)</b>	Academy Converter
<b>Religious designation</b>	Not applicable
<b>Wholly or partly selective</b>	Not applicable
<b>Name of predecessor school (where applicable)</b>	Not applicable
<b>Capacity</b>	920
<b>Age range</b>	11-18
<b>Number of sixth form places</b>	280
<b>Number of boarding places</b>	Not applicable
<b>SEN unit / Resource provision</b>	Not applicable
<b>Land arrangements (Version 1-8 or other)</b>	Version 1
<b>Address and title number of Land</b>	41-43 London Road, Reading, Berkshire, RG1 5BN. Title number: BK441930
<b>Contact details for the Chair of Governors, London Road, Reading, Berkshire, RG1 5BN.</b>	Chair of Governors, London Road, Reading, Berkshire, RG1 5BN.

**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>
1.19	Only applies to free schools and new provision academies		X
2.9.A	Clause applies where an academy was previously a VC or foundation school designated with a religious character		X
2.12, 2.13	Only applies where the academy has an SEN unit		X
2.23	Only applies where there was a predecessor independent school		X
2.24	Only applies where the academy provides boarding		X
2.26	Clause does not apply to free schools (unless there was a predecessor independent school), or new provision academies	X	
2.32	Clause applies only to academies and free schools designated with a religious character		X
2.33	Clause applies only to academies that were formerly wholly selective grammar schools	X	
2.34	Clause applies only to academies that were formerly partially selective grammar schools		X
2.39	Clause applies to free schools and new provision academies designated with a religious character		X
2.50	Clause only applies where the academy is designated with a religious character		X
2.51	Clause only applies where the academy has not been designated with a religious character	X	
2.52	Clause applies where an academy was previously a VC school or foundation school designated with a religious character		X
2.52c)	Sub-clause applies if the academy is designated with a denominational religious character – CE etc. rather than ‘Christian’		X
3.16 – 3.21	Option 1 applies to converter and sponsored academies: if used delete option 2	X	

Clause No	Descriptor	Applied	Not used
3.16 – 3.21	Option 2 applies to free schools and new provision academies: if used delete option 1		X
3.23	Clause does not apply to academy converters		X
3.33	Clause only applies to full sponsored and intermediate sponsored academies with approved Academy Action Plans		X
3.34	Clause does not apply to free schools (unless there was a predecessor independent school), or new provision academies	X	
4.5	Clause applies where the academy has 16-19 provision	X	
4.5A	Clause only applies to free schools		X
4.11	Clause to be included where relevant circumstances apply – and only in relation to academy converters		X
4.16	Clause only applies where a Start-Up period applies to the academy		X
6.1 – 6.4	Clauses do not apply to free schools and new provision academies	X	
7.6A	Clause applies only to a boarding academy/free school		X
7.8	Clause only applies to sponsored academies		X
7.15	Clause applies to free schools and may be applied to new provision academies		X
7.16	Clause applies to free schools and may be applied to new provision academies		X
7.17	Clause applies to free schools and may be applied to new provision academies		X
7.18	Clause applies to free schools and may be applied to new provision academies		X
7.19	Clause applies to free schools and may be applied to new provision academies		X
8.12	Clause only applies to schools which are designated with a Church of England or Roman Catholic character		X

**Please confirm whether additional clauses have been included (e.g. PFI clauses which will be supplied by your project lead if needed)**

Descriptor	Clause No.	Applied	Not used

## 1 ESTABLISHING THE ACADEMY

### Introduction to this agreement

- 1.1. This Agreement is between the Secretary of State for Education (the “**Secretary of State**”) and Kendrick School (the “**Academy Trust**”), and is an academy agreement as defined by section 1 of the Academies Act 2010.
- 1.2. The Academy Trust is a company limited by guarantee incorporated in England and Wales with company number 07494754. The Academy Trust is a charity and its directors are the Charity Trustees of the Academy Trust.
- 1.3. In order for the Academy Trust to establish and run an independent school in England, according to the provisions of the Academies Act 2010, to be known as Kendrick School (the “**Academy**”), and in order for the Secretary of State to make payments to the Academy Trust, the Academy Trust must meet the requirements in this Agreement.
- 1.4. In this Agreement these capitalised words and expressions will have the following meanings:

“**Academies Financial Handbook**” means the document with that title published by the ESFA and amended from time to time, on behalf of the Secretary of State.

“**Academy Financial Year**” means the year from 1 September to 31 August, or a different period notified in writing by the Secretary of State.

“**Articles**” means the Academy Trust’s articles of association.

“**Business Day**” means any day other than a Saturday, Sunday, Christmas Day, Good Friday or any day which is a bank holiday with the meaning given to that expression in the Banking and Financial Dealings Act 1971.

“**Charity Trustees**” means the directors of the Academy Trust, who are responsible for the general control and management of the administration of the Academy Trust.

“**Chief Inspector**” means Her Majesty’s Chief Inspector of Education, Children’s Services and Skills.

“**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.

**“Control”** means the power of an organisation or individual (‘A’) to ensure that the affairs of another organisation are conducted in accordance with A’s wishes, whether through share ownership or voting power, by agreement, because of powers conferred by articles of association or any other document, or otherwise; and **“Controls”** will be construed accordingly.

**“DfE”** and the expression **“Department”** means the Department for Education or any successor Department which has responsibility for schools”

**“ESFA”** means the Education and Skills Funding Agency.

**“Guidance”** means guidance issued by or on behalf of the Secretary of State, as amended from time to time.

**“Independent School Standards”** means the independent school standards prescribed under section 157 of the Education Act 2002.

**“LA”** means a local authority.

**“Parents”** means parents or guardians.

**“Predecessor School”** means the school which the Academy has replaced, where applicable.

**“Publicly Funded Assets”** means (a) assets or property funded wholly or partly using payments made by or on behalf of the Secretary of State, and (b) publicly funded land as defined in paragraph 22(3) of Schedule 1 to the Academies Act 2010.

**“Pupil Premium”** means an amount equivalent to the pupil premium as defined in the School and Early Years Finance (England) Regulations 2013.

Any reference to **“Secretary of State”** includes a reference to the ESFA acting on the Secretary of State’s behalf.

**“Secretary of State’s consent”** means the Secretary of State’s specific, prior written consent, which will not be unreasonably withheld or delayed.

“**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.

“**Teaching Staff**” means teachers and the principal or head teacher employed at the Academy.

“**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.

- 1.5. The Interpretation Act 1978 applies to this Agreement as it applies to an Act of Parliament.
- 1.6. A reference in this Agreement to any party or body includes its successors.
- 1.7. Any words following the terms ‘include’, ‘including’ or ‘in particular’ are by way of illustration, not limitation.
- 1.8. A reference in this Agreement to land includes any buildings or structures on the land.
- 1.9. References to this Agreement include any and all annexes.
- 1.10. Where any legislation, legal requirement or published guidance is referred to, unless otherwise stated, the following terms should be interpreted as follows:
  - a) the “school” refers to the Academy;
  - b) the “head teacher” may refer to the Academy’s head teacher or principal;
  - c) the Academy Trust will be deemed to be the “responsible authorities”; and
  - d) references to registered pupils will be treated as references to registered pupils at the Academy.

- 1.11. References in this Agreement to any named legislation, legal requirement or published guidance, should be taken to include any amendment to or replacement of it.
- 1.12. If any questions arise about how this Agreement should be interpreted, the answer will be decided by the Secretary of State, after discussion with the Academy Trust.

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

- 1.13. The Academy Trust must ensure that the Academy meets the requirements in section 1A of the Academies Act 2010.
- 1.14. To the extent that it is compatible with the Academy Trust fulfilling its charitable purpose of advancing education in the United Kingdom for the public benefit, the Academy Trust must ensure that the Academy is at the heart of its community, promoting community cohesion and sharing facilities with other schools and the wider community.
- 1.15. The Academy Trust must conduct the Academy within the terms and requirements of:
  - a) the Articles;
  - b) any legislation or legal requirement that applies to academies, including the Independent School Standards and legislation about meeting the needs of pupils with SEN and disabilities;
  - c) the Academies Financial Handbook, as stated in clauses 4.6–4.8; and
  - d) this Agreement.
- 1.16. The Academy Trust must, as soon as is reasonable, establish an appropriate mechanism for receiving and managing donations for the purpose of its aims as specified in the Articles.
- 1.17. The Academy Trust must obtain the Secretary of State's consent before applying for the Academy to be designated as a school with religious

character. The Secretary of State may at his discretion refuse or consent to the Academy Trust making such an application.

1.18. Unless an Academy operated by the Academy Trust is designated as a school with a religious character under the Religious Character of Schools (Designation Procedure) (Independent Schools) (England) Regulations 2003, it agrees to be bound by the prohibition against discrimination in section 85 of the Equality Act 2010.

1.19. Not used.

1.20. The Academy Trust is not required to publish information under this Agreement if to do so would breach its obligations under the Data Protection Act 1998.

### **Academy opening date**

1.21. The Academy Trust opened the Academy on 1<sup>st</sup> February 2011.

### **Governance**

1.22. The Academy will be governed by a board comprising the Charity Trustees of the Academy Trust (the “**Board of Charity Trustees**”).

1.23. The Board of Charity Trustees must have regard to any Guidance on the governance of Academy Trusts.

1.24. The Academy Trust must provide to the Secretary of State the names of all new or replacement members of the Academy Trust, stating the date of their appointment and, where applicable, the name of the member they replaced as soon as is practicable and in any event within 14 days of their appointment.

1.25. The Academy Trust must not appoint any new or replacement 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.

1.26. The Academy Trust must not amend or remove the provisions in its Articles relating to the appointment or election or the resignation or removal of Charity

Trustees or members (“the Governance Articles”) without the Secretary of State’s consent.

1.27. Before any change to the Governance Articles is proposed the Academy Trust must give notice to the Secretary of State of:-

- a) the proposed amendment or removal; and
- b) the reason for it.

1.28. If the Secretary of State consents to the proposed changes, the Academy Trust shall approve any changes to the Articles as soon as reasonably practicable and provide the Secretary of State with a copy of the amended Articles and the resolution(s) approving them.

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

### **Length of school day and year**

2.1. The length of the school day and year is the responsibility of the Academy Trust.

### **Teachers and staff**

2.2. In complying with the Independent School Standards, the Academy Trust must require enhanced Disclosure and Barring Service (“**DBS**”) certificates as appropriate for members of staff, supply staff, members of the Academy Trust, individual Charity Trustees and the chair of the Board of Charity Trustees.

2.3. The Academy Trust must promptly submit to the Secretary of State, on request, the information contained in any enhanced DBS certificate that it receives.

2.4. Subject to clause 2.5 and section 67 of the Children and Families Act 2014, 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.

- 2.5. 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..
- 2.6. Teachers' pay and conditions of service are the responsibility of the Academy Trust.
- 2.7. The Academy Trust must ensure that all teachers employed at the Academy have access to the Teachers' Pension Scheme and, in so doing, must comply with the requirements of this scheme and with Fair Deal for staff pensions guidance published by HM Treasury.
- 2.8. The Academy Trust must ensure that all affected staff employed in the Academy other than teachers have access to the Local Government Pension Scheme in line with that Scheme's main regulations being the Local Government Pension Scheme Regulations 2013 and the Local Government Pension Scheme (Transitional Provisions, Savings and Amendment) Regulations 2014. Access to the Scheme must also be in accordance with HM Treasury's published guidance on New Fair Deal which sets out how pensions issues are to be dealt with when staff are compulsorily transferred from the public sector to independent providers. These requirements don't apply if an individual chooses to opt out of the Scheme in line with the relevant legal provisions.
- 2.9. Where a member of the Teaching Staff employed at the Academy applies for a teaching post at another Academy, a maintained school, or a further education institution, the Academy Trust must at the request of the board of governors or Academy Trust of that other educational institution:

- a) advise in writing whether or not, in the previous two years, there have been any formal capability considerations or proceedings for that teacher at the Academy or the Predecessor School;
- b) give 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.

2.9A Not used.

### **Pupils**

2.10. The planned capacity of the Academy is 920 in the age range 11-18, including a sixth form of 280 places.

2.11. The Academy Trust must ensure that the Academy meets the needs of individual pupils, including pupils with SEN and disabilities.

2.12. Not used.

2.13. Not used.

### **School meals**

2.14. The Academy Trust must provide school lunches and free school lunches 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 Academy.

2.15. The Academy Trust must comply with school food standards legislation as if it were a maintained school.

2.16. 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.

### **Pupil Premium**

2.17. For each Academy Financial Year the Academy Trust must publish, on the Academy's website, information about:

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

2.18. For each Academy Financial Year the Academy Trust must, where applicable, publish, on the Academy's website, information about:

- a) the amount of year 7 literacy and numeracy catch-up premium grant that it will receive during the Academy Financial Year;
- b) what it intends to spend its year 7 literacy and numeracy catch-up premium grant on;
- c) what it spent its year 7 literacy and numeracy catch-up premium grant on in the previous Academy Financial Year; and
- d) the impact of the previous year's year 7 literacy and numeracy catch-up premium grant on educational attainment, and how that effect was assessed.

## **Charging**

2.19. The Academy Trust must comply with sections 402, 450-457 and 459-462 of the Education Act 1996 with regard to public examinations, charging, providing information, inviting voluntary contributions and recovering civil debts, as if the Academy were a maintained school.

2.20. There must be no charge for admission to or attendance at the Academy and the Academy will only charge pupils where the law allows maintained schools to charge.

- 2.21. Clause 2.20 does not prevent the Academy Trust receiving funds from an LA or a charity in respect of the admission and attendance of a pupil with SEN to the Academy.
- 2.22. Notwithstanding clause 2.20, the Academy Trust may charge people who are not registered pupils at the Academy for education provided or use of facilities.
- 2.23. Not used.
- 2.24. Not used. Not used

### **Admissions**

- 2.25. Subject to clauses 2.30 and 2.31 the Academy Trust will act in accordance with, and will ensure that its Independent Appeal Panel is trained to act in accordance with, the School Admissions Code and School Admission Appeals Code published by the DfE (the “Codes”) and all relevant admissions law as they apply to foundation and voluntary aided schools, and with equalities law. Reference in the Codes or legislation to “admission authorities” will be deemed to be references to the Academy Trust.
- 2.26. Pupils on roll in a Predecessor School which was a maintained or independent school will transfer automatically to the Academy on opening. All children already offered a place at that Predecessor School must be admitted to the Academy.
- 2.27. The Academy Trust must participate in the local Fair Access Protocol. The Academy Trust must participate in the coordinated admission arrangements operated by the LA in whose area the Academy is situated. If the Academy is a free school, the Academy Trust is not required to participate in coordination for its first intake of pupils.
- 2.28. Not used.
- 2.29. Not used.
- 2.30. Not used.

2.31. 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 do not comply with the Codes or this Agreement, or are otherwise unlawful.

2.32. Not used.

2.33. Where the Academy is a former maintained grammar school designated as such under section 104 of the School Standards and Framework Act 1998 and the Education (Grammar School Designation) Order 1998, then it may continue to select its intake by reference to ability. Annex A sets out the procedures for removing selective arrangements.

2.34. Not used.

2.35. The Academy Trust must make arrangements to ensure an independent appeals panel is established for the Academy and its clerk and members are trained to act in accordance with the Codes. The Academy Trust must ensure that parents and 'relevant children' (as described in the Codes) are informed of their right to appeal to an Independent Appeal Panel if they are dissatisfied with an admission decision of the Academy Trust. The arrangements for appeals must comply with the Codes as they apply to foundation and voluntary aided schools. The determination of the appeal panel is binding on all parties.

- 2.36. Subject to clause 2.37, the meaning of “**relevant area**” for the purposes of consultation requirements in relation to admission arrangements is that determined by the relevant LA for maintained schools in the area in accordance with the Education (Relevant Areas for Consultation on Admission Arrangements) Regulations 1999.
- 2.37. If the Academy does not consider the relevant area determined by the LA for the maintained schools in the area to be appropriate, it must apply to the Secretary of State by 1 August before the academic year in question for a determination of the appropriate relevant area for the Academy, setting out the reasons for this view. The Secretary of State will consult the Academy Trust and the LA in whose area the Academy is situated in reaching a decision.
- 2.38. The Office of the Schools Adjudicator (“OSA”) will consider objections to the Academy’s admission arrangements (except objections against any agreed derogations from the provisions of the Codes specified in this funding agreement, over which it has no jurisdiction). The Academy Trust must therefore make it clear, when determining the Academy’s admission arrangements, that objections should be submitted to the OSA. The OSA’s determination of an objection is binding on the Academy and the Academy Trust must make appropriate changes to its admission arrangements to give effect to the Adjudicator’s decision within two months of the decision (or by 28 February following the decision, whichever is sooner), unless an alternative timescale is specified by the Adjudicator.

2.39. Not used.

### **Exclusions**

- 2.40. If asked to by an LA, the Academy Trust must enter into an agreement with that LA that has the effect that where:
- a) the Academy admits a pupil who has been permanently excluded from a maintained school, the Academy itself or another Academy with which the LA has a similar agreement; or

b) the Academy Trust permanently excludes a pupil from the Academy, the arrangements for payment will be the same as if the Academy were a maintained school, under regulations made under section 47 of the School Standards and Framework Act 1998.

## **Curriculum**

2.41. The curriculum is the responsibility of the Academy Trust.

2.42. The Academy Trust must ensure that the curriculum provided to pupils up to the age of 16 is balanced and broadly based, and includes English, mathematics, science and (subject to the provisions in clause 2.49) religious education.

2.43. The Academy Trust must publish on the Academy's website information about its curriculum, including:

- a) the content of the curriculum;
- b) its approach to the curriculum;
- c) where applicable, the names of any phonics or reading schemes in operation for Key Stage 1;
- d) where applicable, the GCSE options and other Key Stage 4 qualifications, or other future qualifications specified by the Secretary of State, offered by the Academy; and
- e) how parents (including parents of prospective pupils) can obtain more information about the Academy's curriculum.

2.44. The Academy Trust must not allow any view or theory to be taught as evidence-based if it is contrary to established scientific or historical evidence and explanations. This clause applies to all subjects taught at the Academy.

2.45. The Academy Trust must provide for the teaching of evolution as a comprehensive, coherent and extensively evidenced theory.

- 2.46. 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.
- 2.47. The Academy Trust must ensure the Academy actively promotes the fundamental British values of democracy, the rule of law, individual liberty, and mutual respect and tolerance of those with different faiths and beliefs.
- 2.47A The Academy Trust must ensure the Academy promotes principles that support equality of opportunity for all.
- 2.48. The Academy Trust must provide for the teaching of religious education and a daily act of collective worship at the Academy.
- 2.49. 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 2.51.
- 2.50. Not used.
- 2.51. Subject to clause 2.49, where the academy **has not been designated with a religious character** (in accordance with section 124B of the School Standards and Framework Act 1998 or further to section 6(8) of the Academies Act 2010):
- a) 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.

2.52. Not used.

2.53. 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.

2.54. The Academy Trust must ensure that careers guidance is provided at the Academy, in accordance with the requirements on maintained schools in the Education Act 1997.

### **Assessment**

2.55. The Academy Trust must:

- a) ensure that pupils are entered for examinations in line with the requirements on maintained schools in section 402 of the Education Act 1996;
- b) comply with the relevant Guidance, as it applies to maintained schools, to ensure that pupils at the Academy take part in assessments, and in teacher assessments of pupils' performance;
- c) report on assessments as the Secretary of State requires, or provide any information on assessments, on the same basis that maintained schools are required to provide the information;
- d) for all Key Stages, allow monitoring and moderation of the Academy's assessment arrangements as required by the Secretary of State.

2.56. Unless specifically approved in writing by the Secretary of State, the Academy Trust must not use GAG to offer any course of education or training which

leads to a qualification, if that qualification is not approved by the Secretary of State for the purpose of section 96 of the Learning and Skills Act 2000.

2.57. Unless informed by the Secretary of State that alternative information must be published, the Academy Trust must ensure that the following information is published on the Academy's website:

- a) where applicable, the Academy's most recent Key Stage 2 results as published by the Secretary of State in the School Performance Tables, broken down as follows:
  - i. "% achieving Level 4 or above in reading, writing and maths";
  - ii. "% making expected progress in reading", "% making expected progress in writing", and "% making expected progress in maths";
  - iii. in relation to reading, "% achieving Level 5 or above";
  - iv. in relation to writing, "% achieving Level 5 or above"; and
  - v. in relation to maths, "% achieving Level 5 or above";
- b) where applicable, the Academy's most recent Key Stage 4 results as published by the Secretary of State in the School Performance Tables, broken down as follows:
  - i. "% achieving 5 + A\* - C GCSEs (or equivalent) including English and maths GCSEs";
  - ii. "% achieving the English Baccalaureate"; and
  - iii. "% of pupils making expected progress";
- c) information about where and how parents (including parents of prospective pupils) can access the most recent report about the Academy published by the Chief Inspector; and
- d) information about where and how parents (including parents of prospective pupils) can access the School Performance Tables published by the Secretary of State.

2.58. The Secretary of State may direct the Academy to participate in international education surveys under the Education Act 1996, as if it were a maintained school.

### 3. **GRANT FUNDING**

#### **Recurrent Expenditure grants**

- 3.1. The Secretary of State will pay grants towards Recurrent Expenditure and may pay grants towards Capital Expenditure for the Academy.
- 3.2. “**Recurrent Expenditure**” means any money spent on the establishment, conduct, administration and maintenance of the Academy which does not fall within Capital Expenditure.
- 3.3. In respect of Recurrent Expenditure, the Secretary of State will pay **General Annual Grant (“GAG”)**, and may additionally pay **Earmarked Annual Grant (“EAG”)**. These are two separate and distinct grants.
- 3.4. Except with the Secretary of State’s consent, the Academy Trust must not make commitments to spending which have substantial implications for future grant. No decision by the Academy Trust will commit the Secretary of State to paying any particular amount of grant.

#### **Capital Grant**

- 3.5. The Secretary of State may pay a grant (“**Capital Grant**”) to the Academy Trust for the purpose of spending on items of Capital Expenditure.
- 3.6. “**Capital Expenditure**” means expenditure on:
- a) acquiring land and buildings;
  - b) erecting, enlarging, improving or demolishing any building including any fixed plant, installation, wall, fence or other structure, or any playground or hard standing;
  - c) installing electrical, mechanical or other services other than necessary repairs and maintenance due to normal wear and tear;

- d) buying vehicles;
- e) installing and equipping premises with furnishings and equipment, other than necessary repairs and maintenance due to normal wear and tear;
- f) installing and equipping premises with computers, networking for computers, operating software and ICT equipment, other than necessary updates or repairs and maintenance due to normal wear and tear;
- g) providing and equipping premises, including playing fields and other facilities for social activities and physical recreation other than necessary 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 capital expenditure in any grant letter relating to them;
- j) such other items (whether like or unlike any of the foregoing) of a substantial or enduring nature which the Secretary of State agrees are capital expenditure for the purposes of this Agreement;
- k) professional fees properly and reasonably incurred in connection with the provision of any of the above; and
- l) VAT and other taxes payable on any of the above.

3.7. Any Capital Grant funding that may be made available to the Academy Trust will be notified to it by the Secretary of State.

3.8. The Academy Trust must spend Capital Grant only on items of Capital Expenditure approved by the Secretary of State and in accordance with conditions specified by the Secretary of State. Further, the Academy Trust must provide evidence that it has obtained all planning and other consents required for any proposed building and infrastructure development to be funded using Capital Grant.

- 3.9. In order to receive payments of Capital Grant, the Academy Trust must provide supporting invoices and certificates in the format specified by the Secretary of State.
- 3.10. The Academy Trust must provide an account of Capital Grant received, and associated spending on Capital Expenditure using Capital Grant, in the Academy Trust's financial statements and any other financial reports or returns that the Secretary of State may require.
- 3.11. If in its use of Capital Grant the Academy Trust does not comply with this Agreement or any of the conditions specified by the Secretary of State, or the project does not accord with the original specification or has not been completed, the Secretary of State may at his discretion not make any further payments of Capital Grant and require the Academy Trust to repay all or part of the Capital Grant.

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

- 3.12. The Secretary of State will pay GAG to the Academy Trust to cover the Academy's normal running costs or capital expenditure, including:
- a) teachers' salaries and related costs (including pension contributions, full- and part-time teaching staff and payments in respect of seconded teachers);
  - b) non-teaching staff salaries and related costs (including pension contributions);
  - c) employees' expenses;
  - d) buying, maintaining, repairing and replacing teaching and learning materials and other educational equipment, including books and stationery;
  - e) buying, maintaining, repairing and replacing other assets including ICT equipment and software, sports equipment and laboratory equipment and materials;
  - f) examination fees;

- g) repairs, servicing and maintenance of buildings (including redecoration, heating, plumbing and lighting); maintenance of grounds (including boundary fences and walls); insurance; cleaning materials and contract cleaning; water and sewerage; fuel and light (including electricity and gas); rents; rates; purchase, maintenance, repairs and replacement of furniture and fittings;
- h) medical equipment and supplies;
- i) staff development (including in-service training);
- j) curriculum development;
- k) the costs of providing school meals for pupils (including the cost of providing free school lunches to pupils who are eligible to receive them), and any discretionary grants to pupils to meet the cost of pupil support, including support for pupils with SEN or disabilities;
- l) administration; and
- m) establishment expenses and other institutional costs.

3.13. GAG for each Academy Financial Year for the Academy will include:

- a) funding equivalent to that which would be received by a maintained school with similar characteristics, determined by the Secretary of State and taking account of the number of pupils at the Academy;
- b) funding to cover necessary functions which would be carried out by the relevant LA if the Academy were a maintained school;
- c) payment of any additional specific grants made available to maintained schools, where the Academy meets the criteria for those grants, and at the Secretary of State's discretion; and
- d) funding for any other costs to the Academy which the Secretary of State considers necessary.

3.14. The Academy Trust must use GAG only for maintaining, carrying on, managing and developing the Academy in accordance with this Agreement,

except where the Secretary of State has given specific consent for the Academy Trust to use GAG for another charitable purpose.

3.15. In particular, the Academy Trust must not use GAG for:

- a) education and training for adults who are not pupils of the Academy, other than staff professional development and governance training and development;
- b) nursery provision for which parents are charged a fee;
- c) nursery provision to children outside the Academy's age range in clause 2.10;
- d) Children's Centres; or
- e) any additional cost of providing sport and leisure facilities for a purpose not permitted in clause 3.14.

### **Calculation of GAG**

3.16 – 3.19. Not used.

3.20. The Secretary of State will calculate GAG based on the pupil count at the Academy. In order to calculate GAG for the Academy Financial Year in which the Academy opens, the pupil count will be determined on the same basis as that used by the relevant LA for determining the budget of the maintained Predecessor School.

3.21. For Academy Financial Years after that referred to in clause 3.20, the basis of the pupil count for determining GAG will be:

- a) for pupils in Year 11 and below, the Schools Census which is used to fund maintained schools for the financial year overlapping with the Academy Financial Year in question; and
- b) for pupils in Year 12 and above, the formula which is in use at the time for maintained schools.

- 3.22. The Secretary of State may, at his discretion, adjust the basis of the pupil count to take account of any diseconomies of scale which may affect the Academy if it is operating below the planned capacity in clause 2.10. If such an adjustment is made in any Academy Financial Year, this will not change the basis of the pupil count for calculating the following Academy Financial Year's GAG. If the Secretary of State has indicated that additional grant may be payable in such circumstances, the Academy Trust will bid for this additional grant based on need and providing appropriate supporting evidence. The Secretary of State may accept or refuse the bid at his discretion.
- 3.23. Not used.
- 3.24. The Secretary of State recognises that if a Termination Notice or a Termination Warning Notice is served, the intake of new pupils during the notice period may decline and therefore payments based on the number of pupils attending the Academy may be insufficient to meet the Academy's needs. In these circumstances the Secretary of State may pay a larger GAG in the notice period, to enable the Academy to operate effectively.

### **Earmarked Annual Grant (EAG)**

- 3.25. The Secretary of State may pay EAG to the Academy Trust for specific purposes, agreed between the Secretary of State and the Academy Trust, and described in the relevant funding letter. The Academy Trust must spend EAG only in accordance with that letter.
- 3.26. Where the Academy Trust is seeking a specific EAG for any Academy Financial Year, it must send a letter to the DfE outlining its proposals and the reasons for the request.

### **Arrangements for paying GAG and EAG**

- 3.27. Before each Academy Financial Year, the Secretary of State will notify the Academy Trust of the GAG and EAG amounts which, subject to parliamentary approval, the Secretary of State plans for that Academy Financial Year and how they have been calculated.

- 3.28. The amount of GAG for an Academy Financial Year will be decided annually by the Secretary of State, and notified to the Academy Trust in a funding letter sent before the relevant Academy Financial Year begins (the “**Annual Letter of Funding**”).
- 3.29. Amounts of EAG will be notified to the Academy Trust wherever possible in the Annual Letter of Funding or as soon as is practicable afterwards.
- 3.30. The Annual Letter of Funding will, as well as stating the grant amounts, set out how they have been calculated. It will not include grants which cannot be calculated in time because there is not enough information, or for other administrative reasons. Any such grants will be notified as soon as practicable.
- 3.31. The Secretary of State will pay GAG in monthly instalments on or before the first day of each month (“the relevant month”), to fund the salaries and other payroll costs of all monthly paid employees and all other costs payable during the relevant month. The detailed arrangements for payment will be set out in the Annual Letter of Funding, or an equivalent.
- 3.32. If GAG or EAG is miscalculated:
- a) because of a mistake by the Secretary of State, which leads to an underpayment to the Academy Trust, the Secretary of State will correct the underpayment in the same or subsequent Academy Financial Years;
  - b) because the Academy Trust provided incorrect information, which leads to an underpayment to the Academy Trust, the Secretary of State may correct the underpayment in the same or subsequent Academy Financial Years;
  - c) for any reason which results in an overpayment to the Academy Trust, the Secretary of State may recover any overpaid grant in the same or subsequent Academy Financial Years, having considered all the relevant circumstances and taking into account any representations from the Academy Trust.

## **Other relevant funding**

- 3.33. Not used.
- 3.34. 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.
- 3.35. The Academy Trust may receive additional funding from an LA under an agreement with that LA for the provision of support for pupils with SEN who require high levels of such support. The Academy Trust must ensure that all support required under that agreement is provided for those pupils.

## **4. FINANCIAL AND ACCOUNTING REQUIREMENTS**

### **General**

- 4.1. In order for the Secretary of State to provide grant funding to the Academy Trust, the Academy Trust must be fulfilling the financial and reporting requirements in this Agreement.
- 4.2. In its conduct and operation, the Academy Trust must apply financial and other controls which meet the requirements of regularity, propriety and value for money.
- 4.3. The Academy Trust must appoint an accounting officer and must notify the Secretary of State of that appointment. The Academy Trust must assign to the accounting officer the responsibilities of the role set out in the Academies Financial Handbook and HM Treasury's publication 'Managing Public Money'.
- 4.4. The Academy Trust must abide by the obligations of, and have regard to the guidance for, charities and charity trustees issued by the Charity Commission and, in particular, the Charity Commission's guidance on 'Protecting Charities from Harm'. Any references in this document which require charity trustees to report to the Charity Commission should instead be interpreted as reporting to

the body or person prescribed as the principal regulator under the Charities Act 2011.

4.5. The Academy Trust must comply with the 16 to 19 Funding Guidance published by the Secretary of State, in respect of its provision for pupils above compulsory school age until the academic year in which they reach the age of 19.

4.5A Not used.

### **Application of the Academies Financial Handbook**

4.6. In relation to the use of grant paid to the Academy Trust by the Secretary of State, the Academy Trust must follow the requirements of, and have regard to the guidance in, the Academies Financial Handbook.

4.7. The Academy Trust must have adequate insurance cover or opt in to the Department's arrangements as set out in the Academies Financial Handbook.

4.8. The Academy Trust must submit information about its finances to the Secretary of State in accordance with the Academies Financial Handbook, or as otherwise specified by the Secretary of State.

### **Budgeting for funds**

4.9. The Academy Trust must balance its budget from each Academy Financial Year to the next. For the avoidance of doubt, this does not prevent the Academy Trust from:

- a) subject to clause 4.14, carrying a surplus from one Academy Financial Year to the next; or
- b) carrying forward from previous Academy Financial Years sufficient cumulative surpluses on grants from the Secretary of State to meet an in-year deficit on such grants in a subsequent financial year, in accordance with clauses 4.14-4.17; or
- c) incurring an in-year deficit on funds from sources other than grants from the Secretary of State in any Academy Financial Year, provided it

does not affect the Academy Trust's responsibility to ensure that the Academy balances its overall budget from each Academy Financial Year to the next.

- 4.10. The Academy Trust may spend or accumulate funds from private sources or public sources, other than grants from the Secretary of State. Any surplus from private or public sources other than grants from the Secretary of State must be separately identified in the Academy Trust's accounts.
- 4.11. Not used.
- 4.12. The Academy Trust's budget must be approved for each Academy Financial Year by the Board of Charity Trustees.
- 4.13. The approved budget must be submitted to the Secretary of State in a form, and by a date, to be notified by the Secretary of State.

#### **Carrying forward of funds**

- 4.14. At the end of any Academy Financial Year the Academy Trust may carry forward unspent GAG from previous Academy Financial Years without limit (unless a limit is specified in the Academies Financial Handbook, or otherwise specified in writing by the Secretary of State, in which case that limit will apply).
- 4.15. The Academy Trust must use any GAG carried forward only for the purposes of GAG as set out in this Agreement, or otherwise as specified in the Academies Financial Handbook or in writing by the Secretary of State.
- 4.16. Not used.
- 4.17. Any additional grant made in accordance with clause 3.24, for a period after the Secretary of State has served a Termination Notice or a Termination Warning Notice, may be carried forward without limitation or deduction until the circumstances set out in clause 3.24 cease to apply, or the Academy closes.
- 4.18. Any unspent grant not allowed to be carried forward under clauses 4.14-4.17 may be taken into account in the payment of subsequent grant.

## **Annual accounts and audit**

- 4.19. The Academy Trust must prepare and file with Companies House the annual reports and accounts required by the Companies Act 2006.
- 4.20. In addition, the Academy Trust must prepare its annual reports and accounts for each Academy Financial Year:
- a) in accordance with the Charity Commission's 'Accounting and Reporting by Charities: Statement of Recommended Practice', as if the Academy Trust were a registered charity; and
  - b) additionally as the Secretary of State directs.
- 4.21. The Academy Trust's accounts must be audited annually by independent auditors appointed in line with the Academies Financial Handbook.
- 4.22. The accounts must carry an audit report stating whether, in the auditors' opinion, the accounts show a true and fair view of the Academy Trust's affairs. The accounts must also be accompanied by such other audit reports, relating to the use of grants and other matters, as the Secretary of State directs.
- 4.23. The Academy Trust's annual report must include the names of all members of the Academy Trust who served during the year.
- 4.24. The Academy Trust's annual reports and accounts, and the auditor's reports, must be submitted to the Secretary of State by 31 December each Academy Financial Year, or as otherwise specified by the Secretary of State.
- 4.25. The Academy Trust must publish on its website its annual reports and accounts, current memorandum of association, Articles and Funding Agreement and the names of its Charity Trustees and members. The Secretary of State may also publish the Academy Trust's annual reports and accounts, and the audit report, as he sees fit.

## **Keeping financial records**

- 4.26. The Academy Trust must keep proper accounting records. Statements of income and expenditure, statements of cash flow and balance sheets must be

produced in such form and frequency as the Secretary of State directs.

### **Access to financial records**

- 4.27. The books of accounts and all relevant records, files and reports of the Academy Trust, including those relating to financial controls, must be open at all reasonable times to officials of the DfE and the National Audit Office, and to their agents and contractors, for inspection or carrying out value for money assessments. The Academy Trust must give those officials and contractors 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.
- 4.28. The Secretary of State may, at his expense, instruct auditors to report to him on the adequacy and effectiveness of the Academy Trust's accounting systems and internal controls to standards determined by the Secretary of State, and to make recommendations for improving the Academy Trust's financial management.

### **Acquiring and disposing of Publicly Funded Assets**

- 4.29. In relation to Publicly Funded Assets, the Academy Trust must not, without the Secretary of State's consent:
- a) acquire or dispose of freehold land;
  - b) take up or grant a lease of land;
  - c) dispose of any other class of capital asset,
- except as expressly permitted in the Academies Financial Handbook, and subject to Part 3 of Schedule 1 to the Academies Act 2010.
- 4.30. The Academy Trust must give the Secretary of State 30 days' notice of its intention to take any of the actions in clause 4.29 (a) – (c) regardless of whether the Secretary of State's consent is required.

## **Retaining proceeds from the disposal of capital assets**

- 4.31. Except as permitted in the Academies Financial Handbook, if the Academy Trust sells capital assets which were acquired or enhanced wholly or partly using payments made by or on behalf of HM Government, the Academy Trust must pay to the Secretary of State, at his request, an amount of the sale proceeds equivalent to the proportion of the original cost of the acquisition or enhancement which was met by or on behalf of HM Government.
- 4.32. If the Academy Trust sells a capital asset which was transferred to it for no or nominal consideration from an LA, the Predecessor School or the Predecessor School's foundation, the Academy Trust must, if required by the Secretary of State, pay all or part of the sale proceeds to the LA or to the Secretary of State, taking into account the amount of the proceeds to be reinvested by the Academy Trust.

## **Transactions outside the usual planned range**

- 4.33. In relation to Publicly Funded Assets, the Academy Trust must not, without the Secretary of State's consent:
- a) give any guarantees, indemnities or letters of comfort, except such as are given in normal contractual relations; or
  - b) write off any debts or liabilities owed to it; or
  - c) offer to make any special payments as defined in HM Treasury's publication 'Managing Public Money' (including ex gratia payments, staff severance payments and compensation payments)
- if the value of those transactions would be above any threshold specified in the Academies Financial Handbook.
- 4.34. The Academy Trust must give the Secretary of State 30 days' notice (or such shorter period as the Secretary of State may agree) of its intention to take any of the actions in clause 4.33 (a) – (c) regardless of whether the Secretary of State's consent is required.

4.35. The Academy Trust must promptly notify the Secretary of State of any loss arising from suspected theft or fraud in line with the requirements in the Academies Financial Handbook, or otherwise specified by the Secretary of State.

### **Borrowing**

4.36. Except as permitted in the Academies Financial Handbook, the Academy Trust must not borrow against Publicly Funded Assets, or so as to put Publicly Funded Assets at risk, without the Secretary of State's consent.

## **5. LAND CLAUSES**

“**Land**” means the freehold land at 41-43 London Road, Reading RG1 5BN, registered with title number BK441930, which is to be the permanent site of the Academy.

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

### **Restrictions on Land transfer**

5.1. 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**

- 5.2. 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.
- 5.3. The Academy Trust must not, without the Secretary of State's consent:
- a) grant any consent or licence; or
  - b) create or allow any encumbrance; or
  - c) part with or share possession or occupation; or
  - d) enter into any onerous or restrictive obligations,
- in respect of all or part of the Land.

## Option

5.4. The Academy Trust grants and the Secretary of State accepts an option (the “**Option**”) to acquire all or part of 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

5.5. 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**

5.6. 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.

## **Sharing the Land**

5.7 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 leased 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.

5.8 To the extent the Academy Trust and the Secretary of State agree to part of the Land being demised or leased in accordance with clause 5.7, the Academy Trust must use its best endeavours to procure all necessary consents 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.

5.9 For the purposes of clause 5.7:

- 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 2.10.

## 6. COMPLAINTS

6.1. If a complaint is made about matters arising wholly or partly before the Academy opened, and all or part of that complaint was investigated by the Local Government Ombudsman under Part III of the Local Government Act 1974 ("**Part III**"), or could have been investigated under Part III if the Predecessor School had remained a maintained school, the Academy Trust:

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

6.2. If the Secretary of State could have given an order or a direction under sections 496 or 497 of the Education Act 1996 to the governing body of the Predecessor School relating to matters occurring within the 12 months immediately before the Academy opened, the Academy Trust:

- a) agrees that the Secretary of State may give orders or directions to the Academy Trust as though the Academy were a maintained school and

sections 496 and 497 applied to the governing body of that maintained school; and

b) must act in accordance with any such order or direction from the Secretary of State.

6.3. If a complaint made to the governing body of the Predecessor School has not been fully investigated when the Academy opens, the Academy Trust must continue to investigate that complaint in accordance with the complaints procedures established by that governing body.

6.4. If a complaint is made to the Academy Trust about matters arising wholly or partly during the 12 months before the Academy opened, the Academy Trust agrees to investigate that complaint as if the matter complained of had taken place after the Academy opened.

## **7. TERMINATION**

### **Termination by either party**

7.1. 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**

7.2. 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
- 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 by a breakdown of discipline; or

- e) the Academy is coasting provided he has notified the Academy Trust that it is coasting.

7.3. A Termination Warning Notice served under clause 7.2 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.

7.4. 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.

7.5. If the Secretary of State considers that the Academy Trust has not responded to the Termination Warning Notice as specified under clause 7.3(c), or has not completed the action required in the Termination Warning Notice under clauses 7.3(a) and (b) (and any further action specified under clause 7.4) he may serve a Termination Notice.

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

7.6. 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.

7.6A Not used.

7.7. If the Secretary of State has served a Termination Warning Notice under clause 7.6 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.

7.8. Not used.

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

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

7.10. The Secretary of State may serve a Termination Notice if any of the following events occurs, or if he considers that there is a serious risk that any of them may occur:

- a) the Academy Trust calls a formal or informal meeting of its creditors or enters into any formal or informal composition or arrangement 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 cannot pay its debts within the meaning of section 123 of the Insolvency Act 1986 with, for the purposes of this clause, section 123 (1)(a) of this Act having an effect as if £10,000 were substituted for £750. The Academy Trust will not be considered unable to pay its debts for the purposes of this clause if it is contesting any such demand in good faith ; or
- d) the Academy Trust has a receiver and manager (except those appointed by the Charity Commission under the Charities Act 2011), administrator or administrative receiver appointed over all or 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 15 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.

7.11. The Academy Trust must promptly notify the Secretary of State, with an explanation of the circumstances, after receiving any petition which may result in an order for its winding up or administration.

7.12. If

- a) Any Charity Trustee 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 Charity Trustee or member of the Academy Trust is unsuitable,

the Secretary of State may:

- i. direct the Academy Trust to ensure that the Charity Trustee 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.

7.13. For the purposes of clause 7.12 a Charity Trustee or member of the Academy Trust will be "unsuitable" if that Charity Trustee 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 Charity Trustee or member is unsuitable to take part in the management of the Academy.

7.14. For the purposes of clause 7.13:

- a) a Charity Trustee or member of the Academy Trust will be subject to a “relevant finding” in respect of an offence if:
  - i. that Charity Trustee or member has been found not guilty of the offence by reason of insanity;
  - ii. that Charity Trustee 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 Charity Trustee 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 Charity Trustee or member unsuitable to take part in the management of the Academy.

7.15. Not used.

7.16. Not used.

7.17. Not used.

7.18. Not used.

7.19. Not used.

## **Change of Control**

7.20. The Secretary of State may at any time, subject to clause 7.21, serve a Termination Notice if 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.

7.21. Where a person ('P') is a member or director of a 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.

7.22. The Academy Trust must promptly notify the Secretary of State if there is a proposed or actual change of Control of the Academy Trust, or of a legal entity that Controls the Academy Trust.

7.23. When notifying the Secretary of State under clause 7.22, the Academy Trust must seek his agreement that, if he is satisfied with the change of Control, he will not exercise his right to terminate this Agreement under clause 7.20.

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

7.24. If the Secretary of State serves a Termination Notice under clause 7.1, 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.

7.25. If the Secretary of State serves a Termination Warning Notice or a Termination Notice otherwise than under clause 7.1, 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.

## **Effect of Termination**

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

7.27. Subject to clauses 7.28 and 7.29, if the Secretary of State terminates this Agreement under clause 7.1, he will indemnify the Academy Trust. If the

Secretary of State terminates this Agreement otherwise than under clause 7.1, he may at his discretion indemnify or compensate the Academy Trust.

- 7.28. 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.
- 7.29. 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 clauses 7.27, 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.
- 7.30. 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 7.30(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.
- 7.31. The Secretary of State may:

- a) waive all or part of the repayment due under sub-clause 7.30(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.

## **8. OTHER CONTRACTUAL ARRANGEMENTS**

### **Information**

- 8.1. The Academy Trust must promptly provide to the Secretary of State any information that he requests about the Academy Trust or the Academy, which he regards as necessary to fulfil his role and responsibilities.
- 8.2. The Secretary of State will give the Academy Trust any information it reasonably requires of him for the running of the Academy.

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

- 8.3. The Academy Trust must allow DfE officials to enter the Academy at any reasonable time. All records, files and reports relating to the running of the Academy must be available to them at any reasonable time. Two DfE officials may attend and speak at any meetings of the Board of Charity Trustees or any other meetings of Charity Trustees of the Academy Trust, but will withdraw from any discussion of the Academy's or the Academy Trust's relationship with the Secretary of State or any discussion of bids for funding to the Secretary of State.
- 8.4. The following documents must be provided to the Secretary of State or any person nominated by the Secretary of State on request:
  - a) the agenda for every meeting of the Board of Charity Trustees or any committee to which it delegates any of its functions;
  - b) the draft minutes of every such meeting, if they have been approved by the 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.

8.5. The Academy Trust may exclude from items provided under clause 8.4 any content relating to:

- a) a named teacher or other person employed, or proposed to be employed, at the Academy;
- b) a named pupil at, or candidate for admission to, the Academy; and
- c) any matter which, the Academy Trust reasonably believes should remain confidential.

### **Notices**

8.6. A notice or communication to a party in connection with this Agreement:

- a) must be in writing (excluding email, except where agreed in advance) and in English;
- b) must be delivered by hand or sent by pre-paid first-class post or other next working day delivery service;
- c) will be deemed to have been received:
  - i. if delivered by hand, at the time when a delivery receipt is signed or when the notice is left at the address in paragraph (d), or
  - ii. if posted, at 9.00 am on the second working day after posting; and
- d) must be sent to the party for the attention of the contact and at the address listed as follows (or to a different contact or address previously notified to the sending party, the change taking effect five business days after deemed receipt of the notice):

<b>Name of party</b>	<b>Position of contact</b>	<b>Address</b>
Secretary of State	Head of Academies Division	Department for Education, Sanctuary Buildings, Great Smith

Name of party	Position of contact	Address
		Street, London SW1P 3BT
Academy Trust	Chair of Governors	Kendrick School, London Road, Reading, Berkshire, RG1 5BN

## General provisions

- 8.7. The Academy Trust cannot assign this Agreement.
- 8.8. 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 it), 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.
- 8.9. Termination of this Agreement will not affect the accrued rights, remedies, obligations or liabilities of the parties to this Agreement existing at termination.
- 8.10. This Agreement may be executed in any number of counterparts, each of which when executed and delivered will constitute a duplicate original, but all of which will together constitute the same agreement.
- 8.11. 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) will 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.
- 8.12. Not used.

## **ANNEXES**

### **9. 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.

9.1. Except as set out in clause 10 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.

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

(Clauses 10.1-10.7 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.

10.1. The Academy Trust must admit all children with a Statement of SEN naming the Academy.

- 10.2. The Academy Trust must have regard to the Special Educational Needs Code of practice 2001 when dealing with statements of SEN.
- 10.3. 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.
- 10.4. 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.
- 10.5. 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.
- 10.6. 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.

- 10.7. 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
- 10.8. Clauses 10.1 to 10.7 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.

