

DATED

28-8-2013

(1) THE SECRETARY OF STATE FOR EDUCATION

(2) ARK SCHOOLS

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**AMENDMENT AND RESTATEMENT AGREEMENT**

Re: Funding Arrangements for Academies and Free Schools  
Operated by ARK Schools

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The logo for Stone King solicitors, featuring the text "Stone King" in a bold, sans-serif font with "Stone" in blue and "King" in yellow, followed by "solicitors" in a smaller, vertical font to the right.

Stone King LLP  
16 St John's Lane  
London EC1M 4BS

GRD/106839/0005  
20 August 2013

**THIS AMENDMENT AND RE-STATEMENT AGREEMENT** is made  
**BETWEEN:-**

26-8-2013

- (1) **THE SECRETARY OF STATE FOR EDUCATION** of Sanctuary Buildings, Great Smith Street, Westminster, London, SW1P 3BT ("the Secretary of State" which expression shall include successors of the Secretary of State);
- (2) **ARK SCHOOLS** a company limited by guarantee and registered in England under number 5112090 whose registered office is at 65 Kingsway London WC2B 6TD ("the Company")

**WHEREAS:**

- (A) This agreement is supplemental to and amends a master funding agreement dated 26 August 2006 made between the Secretary of State for Education and Skills ("the Previous Secretary of State") and the Company (under its name ARK Academies) ("the Original Master Agreement" which expression shall refer to that agreement as amended prior to the date of this agreement) and the agreements supplemental to the Original Master Agreement particulars of which are set out in schedule 1 to this agreement ("the Original Supplemental Agreements");
- (B) By virtue of the orders particulars of which are set out in schedule 2 to this agreement the functions of the Previous Secretary of State are now vested in and to be performed by the Secretary of State;
- (C) The parties have agreed to amend and re-state the Original Master Agreement and to amend the Original Supplemental Agreements on the terms set out in this agreement.

**IT IS HEREBY AGREED** as follows:-

**1 DEFINITIONS AND CONSTRUCTION**

- 1.1 Words and expressions defined in the Original Master Agreement (as amended and re-stated by this agreement) and where applicable the Original Supplemental Agreements (as amended by this agreement) shall have the same meanings in this agreement other than Schedule 3 unless they are expressly defined in it and, in addition, in this agreement;

**"Effective date"** means 1 September, 2013; and

**"Parties"** means the parties to this agreement.

**"Parties"** means the parties to this agreement.

- 1.2 The principles of construction set out in clauses 7 and 8 of the Original Master Agreement (but not to schedule 3) will apply to this agreement, insofar as they are relevant to it, as they apply to the Original Master Agreement.
- 1.3 The Parties do not intend that any term of this agreement or any supplemental agreements entered into pursuant to this agreement or of the Original Master Agreement or any of the Original Supplemental Agreements shall be enforceable solely by virtue of the Contracts (Rights of Third Parties) Act 1999 by any person who is not a party to this agreement.
- 1.4 The schedules, appendices and annexes to this agreement form part of and are incorporated into this agreement.

## **2 AMENDMENT AND RESTATEMENT OF ORIGINAL MASTER FUNDING AGREEMENT**

With effect from and on the Effective Date the Original Master Agreement shall be amended and restated in the form set out in schedule 3 to this agreement.

## **3 AMENDMENT OF ORIGINAL SUPPLEMENTAL AGREEMENTS**

With effect from and on the Effective Date the Original Supplemental Agreements shall be amended and restated in the manner set out in schedule 4 to this agreement.

## **4 ORIGINAL MASTER AGREEMENT AND ORIGINAL SUPPLEMENTAL AGREEMENTS**

- 4.1 The provisions of the Original Master Agreement and the Original Supplemental Agreements shall up until the Effective Date continue in full force and effect.
- 4.2 Notwithstanding clauses 2 and 3 of this agreement the provisions of clauses 39 to 53 of the Original Master Agreement and the clause 3 in the Original Supplemental Agreements relating to Capital Expenditure shall in connection with the Academies referred to in the Original Supplemental Agreements numbered 2, 7, 8 and 12 in Schedule 1 of this Agreement continue in full force and effect both before and after the Effective Date.

## **5 ENGLISH LAW**

This agreement shall be governed by and interpreted in accordance with English Law.

**IN WITNESS WHEREOF** this deed was executed the day and year first before mentioned.

## **SCHEDULE 1**

### **THE ORIGINAL SUPPLEMENTAL AGREEMENTS**

1. Dated 29<sup>th</sup> August 2006 between (1) The Secretary of State for Education and Skills and (2) ARK Schools (under its then name ARK Academies) relating to Burlington Danes Academy.
2. Dated 31<sup>st</sup> August 2007 between (1) The Secretary of State for Education and Skills and (2) ARK Schools (under its then name ARK Academies) relating to Walworth Academy.
3. Dated 8<sup>th</sup> May 2007 between (1) The Secretary of State for Education and Skills and (2) ARK Schools (under its then name ARK Academies) relating to King Solomon Academy.
4. Dated 24<sup>th</sup> September 2007 between (1) The Secretary of State for Education and Skills and (2) ARK Schools (under its then name ARK Academies) relating to Evelyn Grace Academy.
5. Dated 1<sup>st</sup> February 2008 between (1) The Secretary of State for Children, Schools and Families and (2) ARK Schools (under its then name ARK Academies) relating to Globe Academy.
6. Dated 28<sup>th</sup> August 2008 between (1) The Secretary of State for Children, Schools and Families and (2) ARK Schools (under its then name ARK Academies) relating to ARK academy.
7. Dated 20<sup>th</sup> August 2009 between (1) The Secretary of State for Children, Schools and Families and (2) ARK Schools (under its then name ARK Academies) relating to St. Alban's Academy.
8. Dated 26<sup>th</sup> August 2009 between (1) The Secretary of State for Children, Schools and Families and (2) ARK Schools (under its then name ARK Academies) relating to Charter Academy.
9. Dated 24<sup>th</sup> August 2011 between (1) The Secretary of State for Education and (2) ARK Schools relating to ARK Oval Primary Academy.
10. Dated 26<sup>th</sup> August 2011 between (1) The Secretary of State for Education and (2) ARK Schools relating to ARK Atwood Primary Academy.

12. Dated 2<sup>nd</sup> December 2009 between (1) The Secretary of State for Children, Schools and Families and (2) ARK Schools (under its then name ARK Academies) relating to Isaac Newton Academy.
13. Dated 31<sup>st</sup> August 2012 between (1) The Secretary of State for Education and (2) ARK Schools relating to ARK Bentworth Primary Academy.
14. Dated 31<sup>st</sup> August 2012 between (1) The Secretary of State for Education and (2) ARK Schools relating to ARK Putney Academy.
15. Dated 11<sup>th</sup> August 2011 between (1) The Secretary of State for Education and (2) ARK Schools relating to Bolingbroke Academy.
16. Dated 31<sup>st</sup> August 2012 between (1) The Secretary of State for Education and (2) ARK Schools relating to ARK Rose Academy.
17. Dated 4<sup>th</sup> September 2012 between (1) The Secretary of State for Education and (2) ARK Schools relating to ARK Tindal Primary Academy.
18. Dated 31<sup>st</sup> August 2012 between (1) The Secretary of State for Education and (2) ARK Schools relating to ARK Kings Academy.

## **SCHEDULE 2**

### **ORDERS TRANSFERRING THE FUNCTIONS OF THE PREVIOUS SECRETARY OF STATE TO THE SECRETARY OF STATE**

Secretaries of State for Children, Schools and Families, for Innovation, Universities and Skills and for Business, Enterprise and Regulatory Reform Order 2007  
The Secretary of State for Business Innovation and Skills Order 2009  
The Secretary of State for Education Order 2010

**SCHEDULE 3**  
**AMENDED AND RESTATED MASTER FUNDING AGREEMENT**

**ARK SCHOOLS**

**ACADEMIES**

**MASTER FUNDING AGREEMENT**

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## **INTRODUCTION**

- 1) This Agreement is made under Section 1 of the Academies Act 2010, between **THE SECRETARY OF STATE FOR EDUCATION** ("the Secretary of State" which expression shall include successors of the Secretary of State) and **ARK SCHOOLS** (the "Company").
- 2) The Company is a company incorporated in England and Wales, limited by guarantee with registered company number 5112090.
- 3) The Company intends to establish and maintain, and to carry on or provide for the carrying on of a number of Academies in accordance with this Agreement and the Supplemental Agreements.
- 4) This Agreement and the Supplemental Agreements will apply in respect of an Academy from such time as a Supplemental Agreement relating to that Academy shall have been entered into between the Secretary of State and the Company.
- 5) The following expressions used in this Agreement have the respective meanings assigned to them by the numbered clauses of this Agreement referred to immediately after the reference to the expressions -
  - a) "Academies Financial Handbook" - clause 67;
  - b) "Accounting Officer" – clause 66;
  - c) "Annual Letter of Funding" - clause 60;
  - d) "GAG" – clause 36;
  - e) "Capital Expenditure" - clause 37;
  - f) "Capital Grant" – clause 37;
  - g) "EAG" - clause 36;
  - h) "Recurrent Expenditure" – clause 36;
- 6) In this Agreement the following words and expressions shall have the following meanings:-

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

**"Academy"** means a Mainstream Academy, an Alternative Provision Academy or a Special Academy in respect of which a Supplemental Agreement shall have been entered into between the Secretary of State (or a predecessor of the Secretary of State) and the Company and the expression "Academies" shall refer to all or any of such Academies;

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

**"Alternative Provision Free School"** means an Academy which is a Free School and which meets the requirements set out in section 1C of the Academies Act 2010;

**"Alternative Provision Academy"** means an Academy which meets the requirements set out in section 1C of the Academies Act 2010 or where the context so permits an Alternative Provision Free School;

the **"Articles"** means the Articles of Association of the Company for the time being in force;

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

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

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

**"Commissioner"** means local authorities and/or schools referring children/pupils to the Alternative Provision Academy for admission under the legal powers set out in the relevant annex to the Supplemental Agreement;

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

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

- (b) by virtue or any powers conferred by the articles of association or other document regulating that Entity or any other Entity or partnership including, without limitation, the power to appoint or remove a majority of the directors thereof, or
- (c) by virtue of any agreement, understanding or arrangement between any person or persons,
- (d) that the affairs of the Entity are conducted in accordance with the wishes of A and 'Controls' shall be construed accordingly;

**"DfE"** means Department for Education and any successor;

**"Existing Academy"** means an Academy whose current name is listed in Schedule A Parts 1 or 2;

**"Free School"** means an academy designated as a Free School in the Supplemental Agreement applicable to that academy;

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

**"Local Governing Body"** means a committee of the Board of Directors of the Company to which certain powers and functions in relation to the operation of an Academy shall have been delegated by the board of directors of the Company;

**"Mainstream Academy"** means an Academy meeting the requirements referred to in clause 12 or where the context so permits a Mainstream Free School, a Studio School and a 16-19 Free School;

**"Mainstream Free School"** means an Academy which is a Free School and which meets the requirements set out in section 1A of the Academies Act 2010;

**"Memorandum"** means the memorandum of association of the Company for the time being in force;

**"Original Master Agreement"** means the agreement dated 26 August 2006 made between (1) the Secretary of State for Education and Skills and (2) the Company which is amended and restated by this Agreement;

**"Original Supplemental Agreements"** means the Supplemental Agreements relating to the Existing Academies entered into pursuant to the Original Master Agreement;

**“parents”** means parents or guardians;

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

**“PFI Academy”** means an Academy which forms part of a scheme procured pursuant to the Government’s Private Finance Initiative;

**“Principal”** means the head teacher of an Academy;

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

**“Pupil Referral Unit”** means any school established in England and maintained by a local authority which is specially organised to provide education for children falling within section 19(1) of the Education Act 1996;

references to **“school”** shall where the context so admits be references to an Academy;

**“SEN”** means special educational needs, and the expressions “special educational needs” and “special educational provision” have the meaning set out in section 312 of the Education Act 1996;

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

**“Special Academy”** means an Academy specially organised to make special educational provision for pupils with SEN or where the context so permits a Special Free School;

**“Special Free School”** means an Academy which is a Free School and which is specially organised to make special educational provision for pupils with SEN;

**“Sponsored Academy”** means each Existing Academy and any other Academy designated as a Sponsored Academy in the Supplemental Agreement applicable to that Academy;

**“Start-Up Period”** means in relation to a Mainstream Academy the period specified in clause 50 (a) and in relation to a Special Academy the period specified in the Annual Letter of funding referred to in clause 54E;

**“Statement of SEN”** means a statement made under section 324 of the Education Act 1996 or any similar statement under subsequent legislation;

**“Studio School”** means a Mainstream Academy principally for pupils and students aged between 14 and 19, which places an emphasis on such pupils and students obtaining employability skills through project based learning;

**“Supplemental Agreement”** means an agreement substantially in the form set out in the relevant appendix to this Agreement supplemental to this Agreement pursuant to which the Company agrees to establish and maintain, and to carry on or provide for the carrying on, and the Secretary of State agrees to fund, an Academy in accordance with the terms and conditions of that Supplemental Agreement and this Agreement;

**“Transitional Academy”** means an Academy listed in Schedule A Part 1;

**“Transitional Period”** means the period commencing on the date upon which the amendment to the Original Master Agreement becomes effective and ending on 31 August 2016;

**“16 to 19” Free School”** means an Academy which is a Free School which meets the requirements set out in section 1B of the Academies Act 2010.

7) The Interpretation Act 1978 shall apply for the interpretation of this Agreement and any Supplemental Agreement as it applies for the interpretation of an Act of Parliament. Any reference to a particular statute, statutory provision or subordinate legislation is a reference to it as it is in force from time to time taking account of any amendment or re-enactment and includes any statute, statutory provision or subordinate legislation which it amends or re-enacts and subordinate legislation for the time being in force under it;

8) Expressions defined in this Agreement shall have the same meaning where used in any Annex to this Agreement or Supplemental Agreement. References to clauses, schedules, appendices and annexes are to clauses, schedules, appendices and annexes of this Agreement.

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

10) Section 1 (3) of the Academies Act 2010 states that -

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

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

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

## **LEGAL AGREEMENT**

11) In consideration of the Company undertaking to establish and maintain, and to carry on or provide for the carrying on of a number of independent schools in England specially organised to make special educational provision for pupils with SEN or meeting the requirements referred to in clause 12, or meeting such requirements as referred to in clause 12B, the Secretary of State agrees to make payments to the Company in accordance with the conditions and requirements set out in this Agreement and Supplemental Agreements. If it is agreed between the Secretary of State and the Company that the Company will establish and maintain, and to carry on or provide for the carrying on of an Academy, the parties will enter into a Supplemental Agreement in relation to that Academy. For the avoidance of doubt, any obligations imposed upon or rights or powers given to an Academy by this Agreement or a Supplemental Agreement shall be imposed upon and may be enforced by the Company.

## **REQUIREMENTS OF A MAINSTREAM ACADEMY**

12) The requirements of a Mainstream Academy which is not a 16-19 Free School are those set down in Section 1A of the Academies Act 2010<sup>1</sup>.

## **THE SEN OBLIGATIONS**

12A) In respect of **Special Academies**:

- (a) The Company must comply with all of the obligations imposed upon the governing bodies of maintained special schools in Chapter 1 of Part 4 of the Education Act 1996 and in regulations in force at the date of this agreement or made from time to time under any provision in that Chapter (as amended from time to time<sup>2</sup>).

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<sup>1</sup> Any Supplemental Funding Agreement entered into in relation to an Academy which is a "selective school" within the meaning of Section 6(4) of the Academies Act 2010 will clarify that section 1A(1)(c) (requirement to provide education for pupils of different abilities) will not apply.

<sup>2</sup> Currently these duties are in section 313 (Duty to have regard to the Special Educational Needs Code of Practice 2001); section 317(5), (6) and (6A) (Duties in relation to the publication of information relating to arrangements and facilities for disabled pupils at the school); and 324(5)(b) (Duty to admit the child where a school is named in the statement); and the Education (Special Educational Needs)(Information)(England) Regulations 1999 (S.I. 1999/2506). For the avoidance of doubt, the obligations in clause 12A of this agreement are in addition to any obligations imposed upon Academy proprietors directly in legislation or regulations.

- (b) Notwithstanding any provision in this Agreement, the Secretary of State may (whether following a complaint made to him or otherwise) direct the Company to comply with an obligation imposed by this Agreement where the Company has failed to comply with any such obligation.
- (c) The Company must ensure that each 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; the facilities provided to assist access to the Academy by disabled pupils; and the plan prepared by the Company under paragraph 3 of Schedule 10 to the Equality Act 2010. Disabled pupils in this paragraph mean pupils who are disabled for the purposes of the Equality Act 2010<sup>3</sup>.

### **ALTERNATIVE PROVISION ACADEMY REQUIREMENTS**

12B) The Alternative Provision Academy requirements are those set down in Section 1C of the Academies Act 2010.

### **FREE SCHOOLS**

12C) The provisions contained in Schedule B Part 1 to this Agreement shall apply to Free Schools.

### **16-19 FREE SCHOOLS**

12D) The requirements of a 16-19 Free School are those set out in Section 1B of the Academies Act 2010.

### **CONDITIONS OF GRANT**

#### **General**

13) Other conditions and requirements in respect of an Academy, unless specified otherwise in a Supplemental Agreement, 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;

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<sup>3</sup> This obligation is in addition to the obligation to comply with the duties to publish information imposed upon the governing bodies of maintained special schools set out in the Education (Special Educational Needs) (Information) Regulations 1999 (as amended from time to time) which clause 12A has the effect of imposing.



- (b) there will be assessments of pupils' performance as they apply to maintained schools (this will also apply to Alternative Provision Academies unless there are exceptional reasons to do otherwise), and the opportunity to study for qualifications in accordance with clause 30 (d);
- (c) in respect of Mainstream Academies, 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, and in respect of Alternative Provision Academies the admissions policy and arrangements for the school will be set out in the relevant annex to the Supplemental Agreement;
- (d) teachers' levels of pay and conditions of service will be the responsibility of the Company;
- (e) there will be an emphasis on the needs of the individual pupils including pupils with SEN, both those with and without statements of SEN;
- (f) there will be no charge to pupils (or their parents or guardians) in respect of admission to, or attendance at, the school and the school will only charge pupils where the law allows maintained schools to charge;
- (g) the Company shall as soon as reasonably practicable establish an appropriate mechanism for the receipt and management of donations and shall use reasonable endeavours to procure donations through that mechanism for the purpose of the objects specified in the Articles.

13A) Clause 13(f) does not prevent the Company receiving funds from a local authority or a charity in respect of the admission of a pupil with special educational needs to an Academy.

13B) Clause 13 (f) does not prevent the Company receiving funds/income from Commissioners in respect of the admission and attendance of a pupil at an Alternative Provision Academy.

### **Governance**

14) Each Academy will be governed by the Company. The Company shall have regard to (but for the avoidance of doubt shall not be bound by) any guidance as to the governance of Academies that the Secretary of State may publish.

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

but the Company will, as a minimum, ensure that any advice of the Advisory Body is brought to the attention of the Directors of the Company. If the Company shall have established a Local Governing Body, the Academy's Local Governing Body shall be treated as the Advisory Body for that Academy.

### **Conduct**

16) Each Academy shall be operated in accordance with:

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

### **Disclosure and Barring Service Checks**

17) The Company shall comply with the requirements of the Education (Independent School Standards) (England) Regulations 2010 (or such regulations as may from time to time be applicable) 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 Directors and the Chair of any Local Governing Body.

17A) The Company shall, on receipt of a copy of an enhanced criminal record certificate, on request from the Secretary of State or his agents, as soon as possible thereafter submit information contained in the certificate to the Secretary of State in accordance with section 124 of the Police Act 1997.

### **Pupils**

18) Each Mainstream Academy will (unless otherwise specified in the relevant Supplemental Agreement) be an all ability inclusive<sup>4</sup> school whose requirements for:

- (a) the admission of pupils to the Academy are set out in the relevant annex to the Supplemental Agreement;

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<sup>4</sup> If one of the Mainstream Academies is a "selective school" within the meaning of Section 6(4) of the Academies Act 2010 then the Supplemental Funding Agreement for that Academy will provide that that Academy is not required to be an all ability inclusive school.

- (b) the admission to the Academy of and support for pupils with SEN and with disabilities (for pupils who have and who do not have statements of SEN) are set out in Annex B to this Agreement;
- (c) pupil exclusions are set out in regulations made by virtue of section 51A of the Education Act 2002.

18AAA) Each Special Academy will be a special school whose requirements for:

- (a) the admission of pupils to the Academy are set out in the relevant annex to the Supplemental Agreement;
- (b) pupil exclusions are set out in regulations made by virtue of section 51A of the Education Act 2002.

18AA) Each Alternative Provision Academy will provide education for the cohort of pupils whose characteristics are set out in the requirements at section 1C of the Academies Act 2010 and whose requirements for:

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

### **Designated Teacher for Looked after Children**

18A) The Company will in respect of each Academy act in accordance with, and be bound by, all relevant statutory and regulatory provisions and have regard to any guidance and codes of practice issued pursuant to such provisions, as they apply at any time to a maintained school, relating to the designation of a person to manage the teaching and learning programme for children who are looked after by 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 Directors of the Company.

### **Teachers and other staff**

19) In respect of Mainstream and Alternative Provision Academies:

- (a) subject to clause 19(b), the Company shall, in accordance with any guidance which the Secretary of State may issue on the qualifications of teaching and other staff in Academies, employ anyone it deems is suitably qualified or is otherwise eligible under a contract of employment or for services to carry out planning and preparing lessons and courses for pupils, delivering lessons to pupils, assessing the development, progress and attainment of pupils, and reporting on the development, progress and attainment of pupils.
- (b) clause 19(a) does not apply to anyone who:
  - i) is appointed as the SENCO by the Company under section 317(3A) of the Education Act 1996, who must meet the requirements set out in Regulation 3 of the Education (Special Educational Needs Co-ordinators) (England) Regulations 2008 (SI 2008/2945); or
  - ii) is appointed as a designated teacher for looked after children further to clause 18A.

20) In respect of Special Academies, subject to clause 20A, the Company shall not employ anyone under a contract of employment or for services to carry out planning and preparing lessons and courses for pupils, delivering lessons to pupils, assessing the development, progress and attainment of pupils, and reporting on the development, progress and attainment of pupils ("specified work") who is not either:-

- (a) a qualified teacher within the meaning of regulations made under section 132 of the Education Act 2002; or
- (b) otherwise eligible to do specified work under the Education (Specified Work) (England) Regulations 2012 (SI 2012/762), which for the purpose of this clause shall be construed as if the relevant Academy were a maintained school.

20A) Clause 20 does not apply to anyone who:

- (a) was transferred to the employment of the Company by virtue of the Transfer of Undertakings (Protection of Employment) Regulations 2006; and
- (b) immediately prior to the transfer, was employed to do specified work; and

- (c) immediately prior to the transfer, was not;
  - i) a qualified teacher within the meaning of regulations made under section 132 of the Education Act 2002 and registered with full registration with the appropriate body, or
  - ii) eligible to do specified work under the Education (Specified Work) (England) Regulations 2012 (SI 2012/762)

(a "transferred staff member"). The Company shall use its best endeavours to ensure that any transferred staff member who undertakes specified work and does not meet the requirements of either clause 20(a) or clause 20(b) meets such requirements as soon as possible.

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

22) The Company shall ensure that all employees at each Academy other than teachers ("non teaching staff") have access to the Local Government Pension Scheme in accordance with the Local Government Pension Scheme (Administration) Regulations 2008 (SI 2008/239) where the said Regulations require this, or, in relation to each Academy and Free School, such other pension benefits as such Regulations required for non teaching staff.

22A) Where a teacher employed at an Academy applies for a teaching post at another academy, 16 to 19 academy, maintained school, school maintained by a local authority or institution within the further education sector, the Company must at the request of the governing body or proprietor of that other educational institution:

- (a) indicate in writing whether or not, in the preceding two years, there has been any formal consideration of that teacher's capability to perform their role at the Academy, or, to the knowledge of the Company, the school the Academy replaced; and
- (b) provide written details of the concerns which gave rise to any such consideration of that teacher's capability, the duration of the proceedings and their outcome.

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

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

23A) Not used.

23B) The Company shall publish information in relation to the current curriculum provision at each Academy. Such information shall include details relating to:

- (a) the content of the curriculum;
- (b) its approach to the curriculum;
- (c) the GCSE options (and other Key Stage 4 qualifications) or other future qualifications, as specified by the Secretary of State, offered by each Academy;
- (d) the names of any phonics or reading schemes in operation for Key Stage 1; and
- (e) how parents (including prospective parents) and Commissioners can obtain further information in relation to the curriculum at each Academy.

23C) Subject to the requirements of clauses 23, 23B and 24 to 29A, the curriculum will be the responsibility of the Company.

24) In respect of Mainstream and Special Academies, the Company shall ensure that the broad and balanced curriculum includes English, mathematics and science, and in respect of Alternative Provision Academies shall ensure that the broad and balanced curriculum includes English and mathematics.

24A) Sections 42A (provision of careers guidance) and 45A (guidance as to discharge of duties) of the Education Act 1997 shall be deemed to apply to each Academy with the following modifications:

- (a) each Academy shall be treated as falling within the meaning of "a school" under section 42A(2);
- (b) the Company shall be deemed to be the "responsible authorities" for the purposes of subsection 42A(3); and
- (c) references to registered pupils shall be treated as references to registered pupils at the Academy.

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

25A) The Company shall not in any Free School make provision in the context of any subject for the teaching, as an evidence-based view or theory, of any view or theory that

is contrary to established scientific and/or historical evidence and explanations.

25B) The Company shall in each Free School make provision for the teaching of evolution as a comprehensive, coherent and extensively evidenced theory.

26) Where a Mainstream Academy is designated with a religious character<sup>5</sup> in accordance with section 124B of the School Standards and Framework Act 1998 or further to section 6(8) of the Academies Act 2010:

- (a) subject to clause 28, and paragraph 4 of Schedule 19 to the School Standards and Framework Act 1998 which shall apply as if the Academy were a voluntary aided school with a religious character, the Company shall ensure that provision is made for religious education to be given to all pupils at the Academy in accordance with the tenets of the specified religion or religious denomination of the Academy;
- (b) subject to clause 28, the Company shall comply with the requirements of section 70(1) of, and Schedule 20 to, the School Standards and Framework Act 1998 as if the Academy were a foundation school with a religious character or a voluntary school, and as if references to 'the required collective worship' were references to collective worship in accordance with the tenets and practices of the specified religion or religious denomination of the Academy;
- (c) the Company shall ensure that the quality of religious education given to pupils at the Academy and the contents of the Academy's collective worship given in accordance with the tenets and practice of the specific religion or religious denomination are inspected. Such inspection shall be conducted by a person chosen by the Company and the Academy shall secure that such inspection shall comply with the requirements set out in any statutory provision and regulations as if the Academy were a foundation or voluntary school which has been designated under section 69(3) of the School Standards and Framework Act 1998 as having a religious character.

27) Where a Mainstream 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:

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<sup>5</sup> Alternative provisions are available and would be potentially appropriate for non-denominational faith schools.

- (a) subject to clause 28, the Company shall ensure that provision shall be made for religious education to be given to all pupils at the Academy in accordance with the requirements for agreed syllabuses in section 375(3) of the Education Act 1996 and paragraph 2(5) of Schedule 19 to the School Standards and Framework Act 1998;
- (b) subject to clause 28, the Company shall ensure that the Academy complies with the requirements of section 70(1) of, and Schedule 20 to, the School Standards and Framework Act 1998 as if it were a community, foundation or voluntary school which does not have a religious character, except that the provisions of paragraph 4 of that Schedule do not apply. The Academy may apply to the Secretary of State for consent to be relieved of the requirement imposed by paragraph 3(2) of that Schedule, the Secretary of State's consent to such an application not to be unreasonably withheld or delayed;
- (c) the Company<sup>6</sup>:
  - (1) agrees that before making an application pursuant to the Religious Character of Schools (Designation Procedure) (Independent Schools) (England) Regulations 2003 for each Academy to be designated as a school with religious character it shall seek the prior written consent of the Secretary of State<sup>7</sup>;
  - (2) hereby acknowledges that the Secretary of State may in his absolute discretion refuse or consent to the Company making such an application.

27AAA) Where a Mainstream Academy is listed in the Register of Independent Schools as having a religious ethos, but has not been designated with a religious character in accordance with section 124B of the School Standards and Framework Act 1998 or further to Section 6(8) of the Academies Act 2010, paragraph 5(b) of Schedule 11 of the Equality Act 2010 shall not apply to the Academy.

27AA) The Company may make provision for the teaching of religious education and for a daily act of collective worship at each Alternative Provision Academy.

27A) Where an Alternative Provision Academy does (at its discretion in accordance with clause 27AA) make provision for the teaching of religious education and/or for a daily act of collective worship at the Alternative Provision Academy then:

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<sup>6</sup> This is required in order to ensure that the process by which an Academy becomes designated as a school with a religious character is comparable to that which applies for maintained schools.

<sup>7</sup> The Company must undertake consultation on the proposal for designation prior to seeking the Secretary of State's consent.



- (a) subject to clause 28, the Company shall ensure that any such provision shall be made for religious education to be given to all pupils at the Alternative Provision Academy in accordance with the requirements for agreed syllabuses in section 375(3) of the Education Act 1996 and paragraph 2(5) of Schedule 19 to the School Standards and Framework Act 1998;
- (b) subject to clause 28, the Company shall ensure that the Alternative Provision 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 Alternative Provision Academy may apply to the Secretary of State for consent to be relieved of the requirement imposed by paragraph 3(2) of that Schedule, the Secretary of State's consent to such an application not to be unreasonably withheld or delayed.

28) Section 71(1) – (6) and (8) of the School Standards and Framework Act 1998 shall apply as if each Academy were a community, foundation or voluntary school, and as if references to “religious education” and to “religious worship” in that section were references to the religious education and religious worship provided by each Academy in accordance with clauses 26 or 27 as appropriate.

28A) The Company shall, so far as practical, make provision for the teaching of religious education and for acts of collective worship at each Special Academy.

28B) In respect of religious education and collective worship at Special Academies:

- (a) subject to clause 28B(c), the Company shall ensure that provision shall be made for religious education to be given to all pupils at the Academy in accordance with the requirements for agreed syllabuses in section 375(3) of the Education Act 1996 and paragraph 2(5) of Schedule 19 to the School Standards and Framework Act 1998;
- (b) The Company shall ensure that each Special Academy complies with the requirements of regulation 5A of the Education (Special Educational Needs) (England) (Consolidation) Regulations 2001 as if it were a maintained special school;
- (c) Regulation 5A of the Education (Special Educational Needs) (England) (Consolidation) Regulations 2001 shall apply as if the Academy were a

community or foundation special 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 this clause.

28C) Where a Special Academy is listed in the Register of Independent Schools as having a religious ethos, paragraph 5(b) of Schedule 11 of the Equality Act 2010 shall not apply to the Academy.

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

29A The Company agrees to act in accordance with Sections 406 (Political Indoctrination) and 407 (Duty to secure balance treatment of political issues) of the Education Act 1996 as if it were a maintained school, subject to the following modifications:

- (a) references to any maintained school shall be treated as references to each Academy;
- (b) references to registered pupils shall be treated as references to registered pupils at each Academy;
- (c) references to the governing body or the local authority shall, in each case, be treated as references to the Company; and
- (d) references to the head teacher shall, in each case, be treated as references to the Principal of each Academy<sup>8</sup>.

### **Assessment**

30) The Secretary of State will, if he has not already done so, notify the appropriate body for assessment purposes about each Academy.

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<sup>8</sup> Please also see the Charity Commission guidance (CC9): "Speaking out: Guidance on Campaigning and Political Activities by Charities" <http://www.charity-commission.gov.uk/Publications/cc9.aspx>

- (a) The Company shall ensure that each Mainstream Academy and each Special Academy complies with any guidance issued by the Secretary of State from time to time to ensure that pupils take part in assessments and in teacher assessments of pupils' performance as they apply to maintained schools; and the Company shall also do so for each Alternative Provision Academy unless there are exceptional reasons to do otherwise.
- (b) The Company shall report to any body on assessments under clause 30 as the Secretary of State shall require and shall provide such information as may be required by that body as applies to maintained schools.
- (c) In respect of all Key Stages, the Company will submit each Academy to monitoring and moderation of its assessment arrangements as required by the Secretary of State.
- (d) In relation to courses of education or training at an Academy which are funded from its GAG, the Company may offer:
  - (i) any course of education or training which leads to a qualification that is approved by the Secretary of State for the purposes of section 96 of the Learning and Skills Act 2000; and
  - (ii) any course of education or training not falling within paragraph (i) if the Secretary of State gives his specific written approval for it.

30A) Subject to clause 30B, the Company shall ensure that the following information is published on the website for each Mainstream Academy, for each Alternative Provision Academy, and where relevant for each Special Academy:

- (a) If applicable the Academy's most recent Key Stage 2 results as published by the Secretary of State under the following column headings in the School Performance Tables published on the Department for Education's website:
  - (i) "% achieving Level 4 or above in English and maths";
  - (ii) "% making expected progress";
  - (iii) in relation to English, "% achieving Level 5 or above"; and
  - (iv) in relation to maths, "% achieving Level 5 or above".
- (b) If applicable the Academy's most recent Key Stage 4 results as published by the Secretary of State under the following column headings in the

School Performance Tables published on the Department for Education's website:

- (v) "% achieving 5 + A\* - C GCSEs (or equivalent) including English and maths GCSEs";
  - (vi) "% achieving the English Baccalaureate"; and
  - (vii) "% of pupils making expected progress".
- (c) Information as to where and by what means the most recent report about the school published by the Chief Inspector may be accessed.
- (d) Information as to where and by what means the School Performance Tables published by the Secretary of State on the DfE's website may be accessed.

30B) There is no requirement to publish information under clause 30A if to do so would be in breach of the Company's obligations under the Data Protection Act 1998.

### **Exclusions Agreement**

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

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

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

### **School Meals**

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

to do so. Subject to the provisions of clause 33 charges may be levied for lunches, but the Company shall otherwise fund the cost of such school lunches from its GAG for Mainstream Academies, or from its resources for Special Academies and for Alternative Provision Academies.

33) In relation to a pupil who is himself or whose parents are in receipt of benefits mentioned in section 512ZB of the Education Act 1996 (or equivalent provision governing the entitlement to free school lunches of pupils at maintained schools), the Company shall ensure that a school lunch is provided for such a pupil free of charge to be funded by the Company. This clause shall not apply to 16-19 Free Schools.

### **Charging**

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

- (a) references to any maintained school shall be treated as references to an Academy;
- (b) references to registered pupils shall be treated as references to registered pupils at an Academy;
- (c) references to the governing body or the local authority shall, in each case, be treated as references to the Company; and
- (d) the Company may charge persons who are not registered pupils at an Academy for education provided or for facilities used by them at that Academy<sup>9</sup>.

### **International Education Surveys**

34A) Section 538A of the Education Act 1996 (power to direct participation in international surveys) shall be deemed to apply to each Academy with the following modifications:

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<sup>9</sup> For clarification, such charging is separate and distinct from any arrangement that the Company may make with Commissioners concerning the referral of pupils to the **Alternative Provision Academy**.

- (a) references to the governing body shall be treated as references to the Company; and
- (b) references to a community, foundation or voluntary school shall be treated as references to the Academy.

### **Pupil Premium**

34B) For Mainstream Academies, and those Special Academies that receive Pupil Premium Funding<sup>10</sup>, the Company shall publish in each Academy Financial Year information in relation to:

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

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

34C) In respect of Mainstream Academies and Alternative Provision Academies, the duration of the school day and year will be the responsibility of the Company.<sup>11</sup>

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

#### **General**

35) The Secretary of State shall pay grants towards Recurrent Expenditure and may pay grants towards Capital Expenditure for each Academy. The Company shall not enter into commitments which are likely to have substantial implications for future levels of grant or for the period for which grant may be required. No decision by the Company shall

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<sup>10</sup> The Pupil Premium is additional funding for schools to support pupils from low-income families. In instances when those pupils are in special settings, the funding can either be allocated to the setting where they are being educated, or held by the local authority to spend specifically on additional educational support to raise the standard of attainment for these pupils. The authority must consult non-mainstream settings about how the Premium for these pupils should be used. Where Pupil Premium is allocated to the Special Academy by the Local Authority, the company must publish information as set out in clause 34B. There is no requirement for Alternative Provision settings to publish such information.

<sup>11</sup> In respect of **Special Academies**, regulations made under section 551 of the Education Act 1996 apply (currently the Education (School Day and School Year) (England) Regulations 1999).

commit the Secretary of State to paying any particular amount of grant for any particular period. Except with the Secretary of State's consent the Company shall not budget for its expenditure in any Academy Financial Year to exceed its expected income and reserves.

36) "Recurrent Expenditure" means any expenditure on the establishment, conduct, administration and maintenance of the Academy which does not fall within the categories of capital expenditure set out at clause 37. The Secretary of State shall pay two separate and distinct grants in respect of Recurrent Expenditure: General Annual Grant ("GAG") and Earmarked Annual Grant ("EAG").

### **Capital Grant**

37) "Capital Expenditure" means expenditure on:

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

- (j) such other items (whether of a like or dissimilar nature to any of the foregoing) of a substantial or enduring nature as the Secretary of State may agree shall constitute capital expenditure for the purposes of this Agreement;
- (k) all professional fees properly and reasonably incurred in connection with the provision of any of the above;
- (l) VAT and other taxes payable on any of the above.

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

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

39) Any Capital Expenditure in respect of an Academy which is funded by Capital Grant made by the Secretary of State will require the specific prior written agreement of the Secretary of State, which agreement shall not be unreasonably withheld or delayed.

40) Any payment of Capital Grant to the Company under this Agreement is subject to the fulfilment of the following conditions:

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

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

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



## **General Annual Grant**

41A) GAG paid by the Secretary of State in respect of an Academy shall only be spent by the Company towards the normal running costs or Capital Expenditure of the Academies.

## **Transitional Period**

42) Clauses 45A, 45AA, 46A, 47A, 48A, 49A, 57 and 60 shall apply in respect of Transitional Academies only after the expiration of the Transitional Period. During the Transitional Period the provisions of clauses 62, 63, 70 and 71 of the Original Master Agreement (as amended in respect of any particular Academy by the relevant Original Supplemental Agreement) shall continue in full force and effect but without regard to the amendments made in this Agreement. The provisions of clauses 42A to 53 shall apply in respect of Mainstream Academies which are not Transitional Academies from the Effective Date.

## **GAG for all Mainstream Academies**

42A) GAG will be paid by the Secretary of State to the Company in order to cover the normal running costs of each Mainstream Academy. These will include, but are not limited to:

- (a) teachers' salaries and related costs (including full and part time teaching staff and seconded teachers);
- (b) non-teaching staff salaries and related costs (including pension contributions, educational support staff, administrative and clerical staff and manual and premises related staff);
- (c) employees' expenses;
- (d) the purchase, maintenance, repair and replacement:
  - (i) of teaching and learning materials and other educational equipment, including books, stationery and ICT equipment and software, sports equipment and laboratory equipment and materials;
  - (ii) of other supplies and services;
- (e) examination fees;

- (f) repairs, servicing and maintenance of buildings (including redecoration, heating, plumbing, lighting etc); maintenance of grounds (including boundary fences and walls); cleaning materials and contract cleaning; water and sewage; fuel and light (including fuel oil, solid and other fuel, electricity and gas); rents; rates; purchase, maintenance, repairs and replacement of furniture and fittings;
- (g) insurance;
- (h) medical equipment and supplies;
- (i) staff development (including in-service training);
- (j) curriculum development;
- (k) the costs of providing school meals for pupils (including the cost of providing free school meals to pupils who are eligible to receive them), and discretionary grants to pupils to meet the cost of pupil support, including support for pupils with special educational needs or disabilities (taking account of the fact that separate additional money will be available for pupils with statements of special educational needs);
- (l) administration; and
- (m) establishment expenses and other institutional costs.

43) Subject to clauses to 51-52, GAG for each Academy Financial Year for each Mainstream Academy will include:

- (a) funding equivalent to that which would be received by a maintained school with similar characteristics, determined by the Secretary of State and notified in the Annual Letter of Funding or its equivalent, taking account of the number of pupils at each Academy;
- (b) funding in respect of functions which would be carried out by the LA if each Academy was a maintained school.

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

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

conditions and criteria necessary for a maintained school to receive these grants, such payments to be at the discretion of the Secretary of State.

**GAG for Mainstream Academies which are not Sponsored Academies**

45) Subject to clause 47, the basis of the pupil number count for the purposes of determining GAG for the Academy Financial Year in which a Mainstream Academy which is not a Sponsored Academy opens shall be the same basis as that used by the LA 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.

46) Subject to clause 47 the basis of the pupil number count for the purpose of determining GAG for a Mainstream Academy which is not a Sponsored Academy for Academy Financial Years after the Academy Financial Year in which the Academy opens will be:

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

47) Where in relation to a Mainstream Academy which is not a Sponsored Academy either of the following conditions applies in respect of an Academy Financial Year, the basis of the pupil count shall be determined by the Secretary of State, taking account of any diseconomies of scale that the Academy will be under as a result of such condition(s) applying. The conditions are:

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

48) For any Academy Financial Year in which GAG for a Mainstream Academy has been calculated in accordance with clause 45, no adjustment shall be made to the following Academy Financial Year's formula funding element of GAG for that Academy to recognise variation from the pupil count basis used.

49) For any Academy Financial Year in which GAG for a Mainstream Academy is calculated in accordance with clause 46, no adjustment will be made to the formula funding element in the following Academy Financial Year's formula funding element of GAG unless the Company demonstrates to the satisfaction of the Secretary of State that there has been a significant impact on the Academy's and the Company's financial position. 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 adjustments will be set out in the Annual Letter of Funding.

#### **GAG for Mainstream Academies which are Sponsored Academies**

45A) Subject to clause 46A, the basis of the pupil number count for the purposes of determining GAG for the first Academy Financial Year in which a Mainstream Academy which is a Sponsored Academy opens and the following four Academy Financial Years (the "Initial Five Year Term") will be the Company's most recent estimate of the numbers of pupils on the roll provided in accordance with clause 45AA. However, the Secretary of State may make adjustments to the GAG for the following Academy Financial Year to recognise any variation between the number of pupils that were actually on the roll in the previous September and the Company's estimate provided in accordance with clause 45AA. The basis of these adjustments will be set out in the Annual Letter of Funding.

45AA) The Secretary of State shall in advance of each Academy Financial Year for a Mainstream Academy which is a Sponsored Academy, at such time or times as he shall determine, request that the Company provides an estimate of the number of pupils on roll in the following September for the Academy for the purposes of determining GAG for an Academy Financial Year. The Company shall provide the requested estimate (such estimate to be based on an objective assessment of numbers) to the Secretary of State as soon as reasonably practicable.

46A) If in relation to a Mainstream Academy which is a Sponsored Academy the Conditions (as defined in Clause 47A below) have been met then the basis of the pupil number count for the purpose of determining GAG for the Academy Financial Year in question will be determined in accordance with Clause 47A and Clause 45A will no longer apply.

47A) After: (i) all planned Year-groups are present at the Academy (that is, all the pupil cohorts relevant to the age-range of the Academy will have some pupils present); and (ii) the total number of pupils as measured in the Schools Census which is used to fund maintained schools for the financial year overlapping with the Academy Financial Year in question is 90% or more of the planned final size of the Academy, as specified in the Academy's Supplemental Agreement (together the "**Conditions**") the basis of the pupil number count for the purpose of determining GAG for the Academy for Academy Financial Years will be:

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

48A) If either of the Conditions set out in clause 47A have not been met in respect of an Academy Financial Year and the Initial Five Year Term has come to an end, the basis of the pupil count for a Mainstream Academy shall be determined by the Secretary of State, taking account of any diseconomies of scale that the Academy will be under as a result of such Condition(s) not applying.

49A) For any Academy Financial Year in which GAG for a Mainstream Academy is calculated in accordance with clause 46A, no adjustment will be made to the formula funding element in the following Academy Financial Year's formula funding element of GAG unless the Company demonstrates to the satisfaction of the Secretary of State that there has been a significant impact on the Academy's and the Company's financial position. 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.

50) The Secretary of State recognises that:

- (a) in relation to Mainstream Academies which are Sponsored Academies which open with intakes representing only a proportion of the final planned size of the Academy, payments based simply upon the number of pupils present are unlikely to be sufficient to meet the Academy's needs in the Academy Financial Years before all age groups are present at their planned size 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 43-49A, in order to enable the Academy to operate effectively<sup>12</sup>;

- (b) in relation to Mainstream Academies which open with pupils transferred from one or more maintained schools which have closed, additional GAG resources may be required to take account of transitional costs including any costs associated with supporting the integration of pupils from the closed schools and, where necessary, to offer a dual curriculum. If the Secretary of State has indicated that such additional GAG will be payable, the Company will make a bid for this addition to GAG based upon need and providing appropriate supporting evidence.

### **All Mainstream Academies**

51) 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 43-49 to allow the relevant Mainstream 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.

52) The Secretary of State recognises that if he serves notice to terminate a Supplemental Agreement or of his intention to do so the intake of new pupils during the notice period is likely to decline and that in such circumstances payments based simply upon the number of pupils attending the relevant Mainstream Academy are unlikely to be sufficient to meet the Academy's needs during the notice period. The Secretary of State may undertake to pay a reasonable and appropriately larger GAG with respect to that Academy in the notice period than would be justified solely on the basis of the methods set out in clauses 43-49, in order to enable the Academy to operate effectively.

53) The Secretary of State also recognises that if this Agreement or a Supplemental

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<sup>12</sup> Note that a larger GAG for the Start-Up Period is only applicable to Academies with approved Academy Action Plans.

Agreement is terminated for any reason by either party the number of pupils at the relevant Mainstream Academy or Mainstream Academies is likely to decline. In these circumstances both parties undertake to attempt to resolve issues arising from such termination in good faith and with the aim of protecting the interests and the education of the pupils at the Academy.

54) Not used.

### **GAG for Special Academies**

54AAA) Clauses 54AA to 54H apply in respect of Special Academies only.

54AA) GAG will be paid by the Secretary of State to the Company as a contribution towards the normal running costs of each Special Academy. These will include, but are not limited to:

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

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

54A) Subject to clauses 54E – 54F, GAG for each Financial Year for each Special Academy will include:

- (a) funding equivalent to that which would be received by a maintained special school with similar characteristics, determined by the Secretary of State and notified in the Annual Letter of Funding or its equivalent, taking account of the number of pupils at each Academy;
- (b) funding in respect of functions which would be carried out by the LA if each Academy was a maintained special school.

54B) The GAG for each Academy Financial Year for each Special Academy will also include, payable on a basis equivalent to that applied to maintained special schools:

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

54C) The Secretary of State will determine GAG for each Special Academy for each Academy Funding Year. The determinations will be made taking into account relevant factors. Arrangements for this will be set out in the Annual Letter of funding or its equivalent.



54D) The Secretary of State may make provision, within his absolute discretion, for GAG for a Special Academy to be adjusted in-year if the number of pupils attending the relevant academy at specified dates exceeds or falls below thresholds specified by letter. Arrangements for this will be specified in the Annual Letter of Funding.

54E) The Secretary of State recognises that a larger GAG may be appropriate to meet additional costs and may pay Start-up Grant, on a basis determined by him, during the period stipulated in the Annual Letter of Funding<sup>13</sup>.

54F) The Secretary of State recognises that if he serves notice to terminate a Supplemental Agreement or of his intention to do so, the intake of new pupils during the notice period is likely to decline and that in such circumstances payments based on a number of places related to the number of pupils attending the relevant Special Academy are unlikely to be sufficient to meet the Academy's needs during the notice period. The Secretary of State may undertake to pay a reasonable and appropriately larger GAG with respect to that Academy in the notice period than would be justified solely on the basis of the methods set out in clauses 54A-54D, in order to enable the Academy to operate effectively.

54G) The Secretary of State also recognises that if this Agreement or a Supplemental Agreement is terminated for any reason by either party the number of pupils at the relevant Special Academy or Special Academies is likely to decline. In these circumstances both parties undertake to attempt to resolve issues arising from such termination in good faith and with the aim of protecting the interests and the education of the pupils at the Academy.

54H) Not used.

#### **GAG for Alternative Provision Academies**

54I) Clauses 54J to 54P apply in respect of Alternative Provision Academies only.

54J) GAG will be paid by the Secretary of State to the Company as a contribution<sup>14</sup> to the normal running costs of the Alternative Provision 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);

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<sup>13</sup> Note that a larger GAG for the Start-Up Period is only applicable to Academies with approved Academy Action Plans.

<sup>14</sup> The extent of any such contribution to be within the absolute discretion of the Secretary of State.

- (b) non-teaching staff salaries and related costs (including pension contributions, educational support staff, administrative and clerical staff and manual and premises related staff);
- (c) employees' expenses;
- (d) the purchase, maintenance, repair and replacement:
  - (i) of teaching and learning materials and other educational equipment, including books, stationery and ICT equipment and software, sports equipment and laboratory equipment and materials;
  - (ii) of other supplies and services;
- (e) examination fees;
- (f) repairs, servicing and maintenance of buildings (including redecoration, heating, plumbing, lighting etc); maintenance of grounds (including boundary fences and walls); cleaning materials and contract cleaning; water and sewage; fuel and light (including fuel oil, solid and other fuel, electricity and gas); rents; rates; purchase, maintenance, repairs and replacement of furniture and fittings;
- (g) insurance;
- (h) medical equipment and supplies;
- (i) staff development (including in-service training);
- (j) curriculum development;
- (k) the costs of providing school meals for pupils (including the cost of providing free school meals to pupils who are eligible to receive them), and discretionary grants to pupils to meet the cost of pupil support, including support for pupils with special educational needs or disabilities (taking account of the fact that separate additional money will be available for pupils with statements of special educational needs);
- (l) administration; and
- (m) establishment expenses and other institutional costs.

54K) Subject to clause 54M, GAG for each Academy Financial Year for each

Alternative Provision Academy will include:

- (a) funding determined by the Secretary of State and notified in the Annual Letter of Funding or its equivalent, taking account of the number of pupils and/or places at the Alternative Provision Academy;
- (b) funding in respect of functions which would be carried out by the local authority if the Alternative Provision Academy were a maintained school;
- (c) funding for matters for which it is necessary for the Alternative Provision Academy to incur extra costs, for as long as those costs are deemed necessary by the Secretary of State; and
- (d) payments in respect of further, specific grants made available to Pupil Referral Units maintained by the local authority, where the Alternative Provision Academy meets the requisite conditions and criteria necessary for a Pupil Referral Unit maintained by the local authority to receive these grants.

54L) For each Alternative Provision Academy, the Secretary of State will determine GAG for each Academy Financial Year. The determination will be made taking into account relevant factors. Arrangements for this will be set out in the Annual Letter of Funding or its equivalent.

54M) For each Alternative Provision Academy, the Secretary of State may make provision, within his absolute discretion, for GAG to be adjusted in-year if the number of pupils attending the relevant Alternative Provision Academy at specified dates exceeds or falls below thresholds specified by the Annual Letter of Funding or its equivalent.

54N) The Secretary of State recognises that if he serves notice to terminate this Agreement or of his intention to do so, the intake of new pupils during the notice period is likely to decline and that in such circumstances the total income of the relevant Alternative Provision Academy is unlikely to be sufficient. In such circumstances payments based simply upon the number of pupils attending that Academy are unlikely to be sufficient to meet the Academy's needs during the notice period. The Secretary of State may undertake to pay a reasonable and appropriately larger GAG with respect to the Alternative Provision Academy in the notice period than would be justified solely taking into account factors at clause 54J in order to enable the Alternative Provision Academy to operate effectively.

54O) The Secretary of State also recognises that if this Agreement is terminated for any reason by either party the number of pupils at the relevant Alternative Provision 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 Alternative Provision Academy.

### **GAG for Free Schools**

55A) The provisions contained in Schedule B Part 2 shall apply in relation to the payment of GAG for Free Schools.

### **Earmarked Annual Grant**

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

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

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

57) The Secretary of State shall notify the Company by not later than 30 April preceding the start of each Academy Financial Year of the GAG and EAG figures in respect of each Academy which, subject to Parliamentary approval, the Secretary of State plans for that Academy Financial Year and of the assumptions and figures on which these are based.

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

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

59) If GAG or EAG is calculated incorrectly because the Company provides incorrect information to the Secretary of State then:

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

60) The amounts of GAG for an Academy Financial Year will be determined annually by the Secretary of State. The amount of GAG for each Academy for the initial Academy Financial Year will be notified to the Company in a funding letter at a date preceding the start of that year. For subsequent years the amount of GAG will be notified to the Company in a funding letter preceding that Academy Financial Year (the "Annual Letter of Funding"). The Annual Letter of Funding will not include the amount that the Company will receive in respect of grants for which information to enable timely calculation is not available or is incomplete, such grants will be notified as soon as practicable later in the year. Amounts of EAG will be notified to the Company wherever possible in the Annual Letter of Funding or its equivalent as soon as practicable thereafter.

61) The Secretary of State undertakes to pay GAG in monthly instalments on or before the twenty-fifth day of each month, each such instalment to fund the salaries and other payroll costs for the relevant month of all monthly paid employees and all other costs payable during the next following month. The detailed arrangements for payment will be set out in the Annual Letter of Funding or its equivalent.

### **Other relevant funding**

62) With regards to a Mainstream Academy or a Special Academy which is in either case a Sponsored Academy or a Transitional Academy, the Company may apply to the Secretary of State for financial assistance in relation to proposed redundancies that it may make. On an application to the Secretary of State, he may (at his absolute discretion) agree to meet a proportion of the Company's costs arising from the inclusion of Academies in the Schedules to the Redundancy Payments (Continuity of Employment in Local Government)(Modification) Order 1999. In response to an application for financial assistance, the Secretary of State may agree to meet the costs of the employees' prior eligible service, being service prior to opening of the Academy, but the Company will be required to meet the costs of service after the opening of the Academy.

62A) With regards to an Alternative Provision Academy, the Company may apply to the Secretary of State for financial assistance in relation to proposed redundancies that it

may make. On an application to the Secretary of State, he may (at his absolute discretion) agree to meet a proportion of the Company's costs arising from the inclusion of Academies in the Schedules to the Redundancy Payments (Continuity of Employment in Local Government) (Modification) Order 1999. In response to an application for financial assistance, the Secretary of State may agree to meet the costs of the employees' prior eligible service, being service prior to the opening of the Alternative Provision Academy, but the Company will be required to meet the costs of service after the opening of the Academy.

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

64) The Company 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 Company shall ensure that all provision detailed in statements of SEN is provided for such pupils.

### **Bank Accounts for receipt of Secretary of State funding relating to PFI Academies**

65) Subject always to Clauses 73 and 73A, the Company shall, in relation to each PFI Academy, establish and maintain separate bank accounts to be used solely in respect of any monies provided by the Secretary of State pursuant to this Agreement for that PFI Academy. Monies provided by the Secretary of State will be paid into such accounts and will be paid into such accounts and will remain in those accounts until required. The Company agrees that such monies will be applied in accordance with the requirements of this Agreement.

## **FINANCIAL AND ACCOUNTING REQUIREMENTS**

### **General**

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

66A) The Company shall ensure that it has and continues to have sufficient capacity

and expertise to manage the finances of all Academies. The Company shall ensure, notwithstanding any other provision of this Agreement, but subject to clauses 73 and 73A, that any funding which relates to the PFI Academy shall be accounted for separately.

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

67A) The Company shall abide by the requirements of the current 16 to 19 Funding Guidance published by the Secretary of State and as amended from time to time, or such other guidance on 16 to 19 funding issued by the Secretary of State as may from time to time be applicable, in respect of any of its provision for persons who are above compulsory school age until the academic year in which they reach the age of 19.

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

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

- (a) in its conduct and operation it shall apply financial and other controls which conform to the requirements both of propriety and of good financial management;
- (b) arrangements have been made to maintain proper accounting records and that statements of income and expenditure and balance sheets may be produced in such form and frequency as the Secretary of State may from time to time reasonably direct;
- (c) in addition to the obligation to fulfil the statutory requirements referred to in sub-clause (f) below, the Company shall prepare its financial statements, Directors' report, Annual Accounts and its Annual Return for each Academy Financial Year in accordance with the Statement of

Recommended Practice as issued by the Charity Commission and updated from time to time as if the Company was a non-exempt charity and/or in such form or manner and by such date as the Secretary of State may reasonably direct and shall file these with the Secretary of State and the Principal Regulator after each Academy Financial Year;

- (d) a statement of the accounting policies used should be sent to the Secretary of State with the financial statements and should carry an audit report stating that, in the opinion of the auditors, the statements show a true and fair view of the Company's affairs and that the grants were used for the purposes intended;
- (e) the Company shall ensure that its accounts are audited annually by independent auditors appointed under arrangements approved by the Secretary of State;
- (f) the Company prepares and files with the Companies Registry such annual accounts as are required by the Companies Act 2006;
- (g) the Company shall publish on its website its Annual Accounts, Annual Report, Memorandum, Articles, Funding Agreement and a list of the names of the Directors of the Company; and
- (h) the Company insures or procures insurance by another person of its assets in accordance with normal commercial practice or under the terms of any subsisting leases in respect of the leasehold interest of the site upon which each Academy is situated.

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

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

72) The Company shall submit information in relation to the finances of each Academy



to the Secretary of State in accordance with the requirements of the Academies Financial Handbook as amended from time to time, or as otherwise specified from time to time by the Secretary of State.

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

73A) Notwithstanding clause 73 it is hereby agreed that the percentage of the GAG payable for the Academy in the Academy Financial Year just ended which may be carried forward shall not be less than 12 percent, of which sum not less than 83 percent shall be capable only of being utilised by the Company for Capital Expenditure, the upkeep and improvement of premises and repairs and maintenance.

74) Notwithstanding clause 73 any additional grant provided over and above that:

- (a) set out in clauses 43-49 in relation to Mainstream Academies and made in accordance with clauses 50-52 may be carried forward without limitation or deduction until the Start-up Period or the circumstances set out in clause 52 come to an end.
- (b) set out in clauses 54A-54D in relation to Special Academies and made in accordance with clauses 54E-54F may be carried forward without limitation or deduction until the Start-up Period or the circumstances set out in clause 54F come to an end.
- (c) set out in clauses 54K-54M in relation to Alternative Provision Academies and made in accordance with clauses 54N may be carried forward without limitation or deduction until the circumstances set out in clause 54N come to an end.

75) Any unspent GAG not allowed to be carried forward under clauses 73-74 may be taken into account in the payment of subsequent grant.

75A) If the Secretary of State pays in relation to a Free School grant other than GAG to

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

- (a) in the same Academy Financial Year that such grant is paid to the Company; or
- (b) in the following Academy Financial Year or Academy Financial Years.

75B) If the Secretary of State pays in relation to a Free School any grant to the Company which includes an amount to cover the VAT which will be payable by the Company in using any such grant for the purposes intended, the Company shall, having paid the VAT to a third party for any goods or services it has purchased from such a third party, where entitled, promptly and, in any event, as soon as is reasonably practicable, submit a VAT reclaim application to Her Majesty's Revenue and Customs ("HMRC") in respect of such VAT payment. Any failure, on the part of the Company, to submit a VAT reclaim application to HMRC or repay the amount recouped to the Secretary of State as soon as reasonably practicable following the receipt of any such payment from HMRC may be taken into account by the Secretary of State in the calculation and payment of grant either:

- (a) in the same Academy Financial Year that any such grant is paid to the Company; or
- (b) in the following Academy Financial Year or Academy Financial Years.

75A) GAG paid by the Secretary of State shall only be used by the Company for the educational charitable purpose of advancing for the public benefit education in the United Kingdom, in particular but without prejudice to the generality of the foregoing by establishing, maintaining, carrying on, managing and developing Academies offering a broad and balanced curriculum. Such funds shall not be used by the Company for any other charitable purpose without the prior written consent of the Secretary of State, except where the use of such funds for that charitable purpose is merely incidental to their use for the educational charitable purpose of advancing for the public benefit education in the United Kingdom.

76) The Company may also spend or accumulate funds from private sources or public sources other than grants from the Secretary of State for application to the benefit of an Academy as it sees fit. Any surplus arising from private sources or public sources other

than grants from the Secretary of State shall be separately identified in the Company's balance sheet.

77) The Company shall not, in relation to assets or property funded (whether in whole or in part) by the Secretary of State or otherwise coming within the meaning of publicly funded land as defined by paragraph 22(3) of Schedule 1 to the Academies Act 2010, without the prior written consent of the Secretary of State which consent shall not be unreasonably withheld or delayed:

- (a) except such as are given in normal contractual relations, give any guarantees, indemnities or letters of comfort above a value as for the time being specified in the Academies Financial Handbook or otherwise as the Secretary of State may specify by notice in writing to the Company from time to time;
- (b) write off any debts or liabilities owed to it, nor offer to make any ex gratia payments (in lieu of staff severance or compensation) above a value as for the time being specified in the Academies Financial Handbook or otherwise as the Secretary of State may specify by notice in writing to the Company from time to time;
- (c) except as may be permitted in the Academies Financial Handbook or otherwise as the Secretary of State may specify by notice in writing to the Company, make any sale or purchase of or otherwise dispose of freehold or leasehold property including entering into a contract to dispose of land or granting an option to acquire an interest in land; or
- (d) take up any leasehold or tenancy agreement for a term exceeding three years.

78) The Company shall provide 30 days' prior written notice to the Secretary of State, whether or not the circumstances require the Secretary of State's consent, of its intention to:

- (a) give any guarantees, indemnities or letters of comfort;
- (b) write off any debts owed to it or offer to make any ex gratia payments;
- (c) make any sale or purchase of or otherwise dispose of freehold or leasehold property including entering into a contract to dispose of land or granting an option to acquire an interest in land; or

- (d) take up any leasehold or tenancy agreement for a term exceeding three years.

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

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

- (a) subject to clauses 73 and 73A, carrying a surplus from one Academy Financial Year to the next; or
- (b) carrying forward from a previous Academy Financial Year or Academy Financial Years a sufficient surplus or sufficient cumulative surpluses on grants from the Secretary of State to meet an in-year deficit on such grants in a subsequent financial year; or
- (c) incurring an in-year deficit on funds from sources other than grants from the Secretary of State in any Academy Financial Year, provided it does not affect the Company's responsibility to ensure that the Company balances its overall budget from Academy Financial Year to Academy Financial Year; or
- (d) utilising GAG made available by the Secretary of State for one Academy to fund the operations of another Academy.

80A) The Company shall abide by the requirements of and have regard to the Charity Commission's guidance to charities and charity trustees and in particular the Charity Commission's guidance in "Protecting Charities from Harm" ('the compliance toolkit') and in CC9: "Speaking Out, Campaigning and Political Activities by Charities". Any references in this Agreement which require charity trustees to report to the Charity Commission should instead be interpreted as references to reporting to the Principal Regulator.

### **Borrowing Powers**

81) Except as may be permitted by the Academies Financial Handbook (and amended from time to time) or otherwise as the Secretary of State may specify by notice in writing to the Company, the Company shall not charge or grant any security interest over property or assets funded (whether in whole or in part) by the Secretary of State without specific approval of the Secretary of State, such approval may only be granted in

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

82) The Company shall provide 30 days' written notice to the Secretary of State of its intention to borrow, whether or not such borrowing requires the Secretary of State's approval under clause 81 above.

### **Disposal of Assets**

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

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

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

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

86) This clause applies in the event, during the lifetime of this Agreement, of the disposal of a capital asset for which Capital Grant of any amount was paid by the Secretary of State, where the asset was acquired by the Company. In this event, the Company shall repay to the Secretary of State the same proportion of the proceeds of the disposal as equates with the proportion of the original cost met by the Secretary of

State, unless the Secretary of State agrees to some or all of the proceeds being retained by the Company for its charitable purposes.

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

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

89) The Company shall provide 30 days' written notice to the Secretary of State of its intention to dispose of assets for a consideration less than the best price that can reasonably be obtained, whether or not such disposal requires the Secretary of State's consent under clause 88 above.

89A) In complying with clauses 66-89 (inclusive), the Company shall (where relevant) be obliged to provide information which relates to each PFI Academy in addition to information which relates to the Company and any combined information which relates to all of the Academies that the Company operates.

## **TERMINATION**

### **General**

90) This Agreement shall commence on the date hereof and continue until terminated in accordance with clause 91 or until all Supplemental Agreements have terminated.

91) The Secretary of State may at any time by notice in writing terminate this Agreement (with effect from the date of service of such notice) and each of the Supplemental Agreements in any of the following events:-

- (a) the Company calls a meeting of its creditors (whether formal or informal) or enters into any composition or arrangement (whether formal or informal) with its creditors; or
- (b) the Company proposes a voluntary arrangement within Section 1 of the Insolvency Act 1986 (as amended); or
- (c) the Company is unable to pay its debts within the meaning of Section 123 of the Insolvency Act 1986 provided that, for the purposes of this Clause, Section 123 (1)(a) of the Insolvency Act 1986 shall have effect as if the amount of £10,000 was substituted for £750. The Company shall not be deemed unable to pay its debts for the purposes of this clause if any such demand as is mentioned in the said Section is being contested in good faith by the Company; or
- (d) the Company has a receiver and manager (with the exception of Receivers and Managers or Interim Managers appointed by the Charity Commission under the Charities Act 2011) administrator or administrative receiver appointed over all or any part of its undertakings, assets or income; or
- (e) any distraint, execution or other process is levied or enforced on any of the Company's property and is not paid out, withdrawn or discharged within fifteen Business Days; or
- (f) the Company has passed a resolution for its winding up; or
- (g) an order is made for the winding up or administration of the Company; or
- (h) the Secretary of State shall determine in his reasonable opinion that one or more of the events specified in sub clauses (a) to (g) above is likely to occur.

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

93) [Not used]

### **Change of Control**

93A) The Secretary of State may at any time, subject to clause 93C) below, terminate this Agreement by notice in writing to the Company (such termination to take effect on the date of the notice) in the event that there is a change:

- (a) in the Control of the Company;
- (b) in the Control of a legal entity that Controls the Company.

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

93B) The Company shall notify the Secretary of State in writing of any change or proposed change of Control within the meaning of clause 93A) above, as soon as reasonably practicable after it has become aware of any such change, or proposed change, of Control.

93C) When notifying the Secretary of State further to clause 93B), the Company may seek the Secretary of State's agreement that, if he is satisfied that the person assuming Control is suitable, he will not in those circumstances exercise his right to terminate this Agreement further to clause 93A).

94) Not used.

## **GENERAL**

### **Information**

95) Without prejudice to any other provision of this Agreement, the Secretary of State acting reasonably may from time to time call for information on any Mainstream Academy or Special Academy relating to, but not restricted to, the following matters:

- (a) curriculum;
- (b) arrangements for the assessment of pupils;
- (c) teaching staff including numbers, qualifications, experience, salaries, and teaching loads;
- (d) class sizes;
- (e) outreach work with other schools and the local community;
- (f) operation of the admission criteria and over subscription arrangements for the Academy including numbers of applications for places and the number and characteristics of pupils accepted for admission – for Mainstream Academies only;



- (g) numbers of pupils excluded (including permanent and fixed term exclusions);
- (h) levels of authorised and unauthorised attendance;
- (i) charging and remissions policies and the operation of those policies;
- (j) organisation, operation and building management;
- (k) financial controls;
- (l) compliance with the requirements of the Charity Commission's guidance to charities and charity trustees and in particular the Charity Commission's guidance in the Protecting Charities from Harm ('the compliance toolkit') and in CC9: Speaking Out, Campaigning and Political Activities by Charities, as amended from time to time; and
- (m) membership and proceedings of the Company and the Local Governing Body together with any other relevant information concerning the management or governance of the Academy which, subject to clause 99), is reasonably necessary for the Secretary of State to carry out his functions generally and in relation to this Agreement or the relevant Supplemental Agreement.

95A) Without prejudice to any other provision of this Agreement, the Secretary of State acting reasonably may from time to time call for information on any Alternative Provision Academy relating to, but not restricted to, the following matters:

- (a) curriculum and the provision generally (including specifically for SEN pupils);
- (b) arrangements for the assessment of pupils and any information about pupil progress, achievement and attainment;
- (c) staff including numbers, qualifications, experience, salaries, and teaching loads;
- (d) class sizes and pupil organisation;
- (e) outreach work with other schools and the local community;
- (f) operation of the referral and reintegration processes for the Alternative Provision Academy including numbers of requested referrals, the number of referrals that have been refused and the reasons for the refusal in each case and the number and characteristics of pupils accepted for admission and destinations/outcomes of pupils/former pupils;

- (g) numbers of pupils excluded (including permanent and fixed term exclusions), characteristics of pupils excluded, reasons for exclusions, outcomes of any independent review panels;
- (h) levels of authorised and unauthorised absence;
- (i) charging and remissions policies and the operation of those policies;
- (j) organisation, operation and building management;
- (k) financial controls;
- (l) compliance with the requirements of the Charity Commission's guidance to charities and charity trustees and in particular the Charity Commission's guidance in the Protecting Charities from Harm ('the compliance toolkit') and in (CC9): "Speaking Out: Guidance on Campaigning and Political Activities by Charities", as amended from time to time; and
- (m) membership and proceedings of the Company and Local Governing Body together with any other relevant information concerning the management or governance of the Academy which, subject to clause 99), is reasonably necessary for the Secretary of State to carry out his functions generally and in relation to this Agreement or the relevant Supplemental Agreement.

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

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

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

98) The Company shall ensure that:

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

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

99) 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 98, any material relating to:

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

99A) Any information of a secret or confidential nature obtained by the Secretary of State or by any officials or advisers or contractors to such person, shall be kept confidential by such persons, as the Secretary of State shall procure, and shall not (except as required by law or under the Freedom of Information legislation) be disclosed to any third party (including without limitation any LA) without the prior written approval of the Company, such approval not to be unreasonably withheld or delayed

### **Notices**

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

- (a) shall be in writing and in English;
- (b) shall be sent to the party for the attention of the contact and at the address listed in clause 100A;
- (c) shall be sent by a method listed in clause 100C; and

(d) is deemed received as set out in clause 100C if prepared and sent in accordance with this clause.

100A) The parties' addresses and contacts are:

Name of Party	Position of Contact	Address
Secretary of State	Head of Academies Division	Department for Education, Sanctuary Buildings, Great Smith Street, London SW1P 3BT
The Company	The Chief Executive	ARK Schools at its registered office for the time being

100B) A party may change its details given in the table in clause 100A) by giving notice, the change taking effect for the party notified of the change at 9.00 am on the date five Business Days after deemed receipt of the notice.

100C) Any notice or other communication required to be given to a party under or in connection with this Agreement shall be delivered by hand or sent by pre-paid first-class post or other next working day delivery service. Any notice or communication shall be deemed to have been received if delivered by hand, on signature of a delivery receipt or at the time the notice is left at the address specified in Clause 100A, or otherwise at 9.00 am on the second Business Day after posting.

100D) This clause does not apply to the service of any proceedings or other documents in any legal action. For the purposes of clause 100, "writing" shall not include e-mail.

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

### **Complaints**

102) If a complaint is made about matters arising in whole or in part prior to the opening of any Mainstream Academy or any Special Academy, and all or part of that complaint was being or had been investigated by the Local Government Ombudsman under Part III or the Local Government Act 1974 ('Part III') or that complaint in whole or in part could

have been investigated under Part III had the school the Academy replaced remained a maintained school, the Company:

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

102A) If a complaint is made about matters arising in whole or in part prior to the opening of any Alternative Provision Academy, and all or part of that complaint was being or had been investigated by the Local Government Ombudsman under Part III of the Local Government Act 1974 ("Part III") or that complaint in whole or in part could have been investigated under Part III had the Pupil Referral Unit the Alternative Provision Academy replaced remained a Pupil Referral Unit, the Company:

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

102B) If at the time of the opening of any Mainstream Academy or any Special Academy the investigation of a complaint made to the governing body of the school that Mainstream Academy or any Special Academy replaced has not yet been completed, the Company shall in so far as it is able to do so continue to investigate that complaint in accordance with the complaints procedures established by that governing body.

102C) If a complaint is made to the Company about matters arising in whole or in part during the 12 months prior to the opening of any Mainstream Academy or any Special Academy the Company agrees in so far as it is able to do so to investigate that complaint as if the matter complained of had taken place after the opening of that Mainstream Academy or any Special Academy.

102D) If a complaint is made about matters arising in whole or in part during the 12

months prior to the opening of any Alternative Provision Academy, the Company agrees to investigate that complaint as if the matter complained of had taken place after the opening of that Alternative Provision Academy.

102E) With regards to a Mainstream Academy or a Special Academy, if the Secretary of State could have given an order and/or a direction under section 496 and/or section 497 of the Education Act 1996 to the governing body of the school the Academy replaced and that order and/or direction related to matters occurring within the 12 months immediately prior to conversion, the Company agrees:

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

102F) With regards to an Alternative Provision Academy if the Secretary of State could have given an order and/or a direction under section 496 and/or section 497 of the Education Act 1996<sup>15</sup> to the management committee of the Pupil Referral Unit the Alternative Provision Academy replaced and that order and/or direction related to matters occurring within the 12 months immediately prior to conversion, the Company agrees:

- (a) the Secretary of State may give orders and/or directions to the Company as though the Alternative Provision Academy were a Pupil Referral Unit and sections 496 and 497 applied to the management committee of that Pupil Referral Unit;
- (b) to act in accordance with any such order and/or direction from the Secretary of State.

## **General**

103) This Agreement shall not be assignable by the Company.

103A) No delay, neglect or forbearance on the part of the Secretary of State in enforcing (in whole or in part) any provision of this Agreement or in exercising (in whole or in part) any right or remedy conferred on him by this Agreement shall be or be deemed to be a waiver of such provision or right or remedy or a waiver of any other provision or right or

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<sup>15</sup> Section 496/7 of the Education Act 1996 applies to Pupil Referral Units by virtue of the Education (PRU)(Application of Enactments)(England) Regulations 2007

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

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

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

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

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

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

## **SCHEDULE A**

### **Transitional Academies and Existing Academies**

#### **Part 1**

#### **Existing Academies which are sponsored and Transitional Academies**

Burlington Danes Academy

Walworth Academy

King Solomon Academy

Evelyn Grace Academy

Globe Academy

ARK academy

St.Albans Academy

Charter Academy

ARK Oval Primary Academy

ARK Atwood Primary Academy

ARK Conway Primary Academy

Isaac Newton Academy

Bolingbroke Academy

ARK Rose Academy

ARK Tindal Primary Academy

ARK Kings Academy

#### **Part 2**

#### **Existing Academies which are not sponsored**

ARK Bentworth Primary Academy

ARK Putney Academy



## **SCHEDULE B**

### **FREE SCHOOLS**

References to paragraphs in this Schedule are to paragraphs of this Schedule

#### **Part 1**

##### **Specific Obligation Relating to Free Schools**

###### **Disclosure and Barring Service Checks**

- 1) In respect of each Mainstream Free School, Alternative Provision Free School, and Special Free School, the Company shall comply with the requirements of the Education (Independent School Standards) (England) Regulations 2010 (or such regulations as may for some time being be applicable) 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 Directors and the Chair of any Local Governing Body.
- 2) In respect of each 16 to 19 Free School, the Company agrees to comply with any obligations that apply to it by virtue of provisions in the Safeguarding and Vulnerable Groups Act 2006 in respect of, but not limited to, the performance of barred list checks.
- 3) Further, in respect of each 16 to 19 Free School, the Company agrees to act in accordance with the Further Education (Providers of Education) (England) Regulations 2006 (SI 2006/3199) as if the 16 to 19 Free School were a further education institution and subject to the following modifications:
  - (a) references to "the governing body of a further education institution" or to "the governing body" shall be treated as references to the Company;
  - (b) references to "a further education institution" or "the institution" shall be treated as references to the 16 to 19 Free School, except in regulations 9(1)(b) and 19(2)(a)(ii) where they shall have their normal meaning;
  - (c) the Company shall not have to comply with any of the requirements in relation to relevant staff qualifications specified in regulation 3(2), namely: regulations 5(3); regulation 17(1) only in so far as it relates to regulation

18(3); regulation 22 only in so far as it relates to paragraph 4 of Part 1 of the Schedule; and regulation 23 only in so far as it relates to paragraph 2(3) of Part 2 of the Schedule. For the avoidance of doubt, the relevant staff qualification requirements do not need to be met by members of staff at the 16 to 19 Free School; and

(d) references to "new member of staff" shall include Chairs and members of the Local Governing Body of any Free School and in respect of them:

(i) the obligation to carry out an enhanced criminal record check as provided for at regulation 5(5) will apply whether or not their position will involve a relevant activity;

(ii) the reference in regulation 6 to "considering his suitability for a position that will involve a relevant activity" will be treated as a reference to considering his suitability for a position as Chair or a member of the Local Governing Body;

(iii) references to "beginning work at the further education institution" shall be treated as references to beginning work as a Director or Chair or a member of the Local Governing Body.

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

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

5) Where secondary education is provided to persons of compulsory school age by a Free School, the Company shall secure that, except in such circumstances described in paragraph 6, no education is provided to a person who has attained the age of nineteen years in a room in which any persons of compulsory school age are for the time being receiving secondary education.

6) (a) The circumstances referred to in paragraph 5 shall be that a teacher is present in the room.

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

- (i) it would be impracticable to secure the presence of a teacher in a room at that time, and
  - (ii) the absence of a teacher at that time has not lasted more than five minutes.
- 7) The planned number of Statemented Pupil places and the age ranges at each Special Free School (as set out in the Supplemental Agreement for each Special Free School (if applicable)) are not determinative of GAG. GAG at each Special Free School for each Academy Financial Year in respect of Statemented Pupils will be determined by the Secretary of State in accordance with paragraphs 30 and 31.
- 8) The maximum number of Non-Statemented Pupils at each Special Free School and as set out in the Supplemental Agreement for each Special Free School (if applicable) is not determinative of GAG. GAG at each Special Free School for each Academy Year in respect of Non-Statemented Pupils will be determined by the Secretary of State in accordance with paragraphs 30 to 36.
- 9) Each Special Free School will be a special school whose requirements for:
  - (a) the admission of pupils to the Academy are set out in the relevant annex to the Supplemental Agreement;
  - (b) pupil exclusions are set out in regulations made by virtue of section 51A of the Education Act 2002 (as may be amended or modified from time to time, and includes any successor provisions).
- 10) Where the Company considers that there is a need to increase the planned number of places (as referred to in paragraph 7 and as set out in the Supplemental Agreement for the relevant Special Free School (if applicable) or the maximum number of pupils referred to in the Supplemental Agreement for the relevant Special Free School (if applicable)), the Company must seek the approval of the Secretary of State and the requirements of this Agreement and the Supplemental Agreement for the relevant Special Free School may be amended accordingly by agreement between the Secretary of State and the Company.
- 11) The planned number of places and the age ranges at each Alternative Provision Free School (as set out in the Supplemental Agreement for each alternative provision Free School) are not determinative of GAG. GAG at each alternative provision Free School for each Academy Financial Year will be determined by the Secretary of State in accordance with paragraphs 42 and 43. Each Alternative Provision Free School will

provide education for the cohort of pupils whose characteristics are set out in the requirements at section 1C of the Academies Act and whose requirements for:

- (a) the admission of pupils to the Alternative Provision Free School are set out in the relevant annex to the Supplemental Agreement;
- (b) the admission to the Alternative Provision Free School of and support for pupils with SEN and with disabilities (for pupils who have and who do not have statements of SEN) are set out in Annex B to this Agreement;
- (c) pupil exclusions are set out in regulations made by virtue of section 51A of the Education Act 2002 and includes any successor provision(s)).

12) Each 16 to 19 Free School will be an educational institution principally concerned with providing full-time or part-time education suitable to the requirements of persons over compulsory school age but under 19 whose requirements for:

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

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

13) In respect of any policies agreed in accordance with paragraph 12:

- (i) The Secretary of State agrees that the Company may vary the policies subject to the Company informing the Secretary of State of any variation to the policies in writing as soon as reasonably practicable.
- (ii) The Company agrees to vary the policies as may become necessary to comply with changes to future legislation and/or as the Secretary of State may require.

14) The Company shall charge fees for the full cost of the education provided at an Academy to non-European Economic Area pupils who:-

- (i) have a valid United Kingdom visa the terms of which state that the relevant pupil cannot access non-fee paying education; or
- (ii) no longer have a valid United Kingdom visa allowing them to enter or remain in the United Kingdom but who are applying to renew such a visa; and in each case.
- (iii) transferred to the Academy from a predecessor fee paying school.

If the Academy fails to charge these pupils, or is unable to recover fees by the end of the term for which they are due, it shall report this to the Secretary of State who may inform the UK Border Agency.

15) Each 16 to 19 Free School shall:

- (a) only be permitted to make charges in the circumstances that institutions within the further education sector are permitted to as set in the current 16 to 19 Funding Guidance published by the Secretary of State, as amended from time to time, or such other guidance on 16 to 19 funding issued by the Secretary of State as may from time to time be applicable; and
- (b) charge fees for the full cost of the education provided at the 16 to 19 Free School to non-European Economic Area students who:-
  - (i) have a valid United Kingdom visa the terms of which state that the relevant student cannot access non-fee paying education; or
  - (ii) no longer have a valid United Kingdom visa allowing them to enter or remain in the United Kingdom but are applying to renew such a visa; and in each case
  - (iii) transferred to the 16 to 19 Free School from a predecessor fee paying institution.

If the Academy fails to charge these students, or is unable to recover fees by the end of the term for which they are due, it shall report this to the Secretary of State who may inform the UK Border Agency.

## **Part 2**

### **Financial Provisions Relating to Free Schools**

#### **Mainstream Free Schools**

- 16) Paragraphs 17 to 26 apply in respect of Mainstream Free Schools only.
- 17) GAG will be paid by the Secretary of State to the Company in order to cover the normal running costs of each Mainstream Free School. These will include, but are not limited to:
- (a) teachers' salaries and related costs (including full and part time teaching staff and seconded teachers);
  - (b) non-teaching staff salaries and related costs (including pension contributions, educational support staff, administrative and clerical staff and manual and premises related staff);
  - (c) employees' expenses;
  - (d) the purchase, maintenance, repair and replacement:
    - (i) of teaching and learning materials and other educational equipment, including books, stationery and ICT equipment and software, sports equipment and laboratory equipment and materials;
    - (ii) of other supplies and services;
  - (e) examination fees;
  - (f) repairs, servicing and maintenance of buildings (including redecoration, heating, plumbing, lighting etc); maintenance of grounds (including boundary fences and walls); cleaning materials and contract cleaning; water and sewage; fuel and light (including fuel oil, solid and other fuel, electricity and gas); rents; rates; purchase, maintenance, repairs and replacement of furniture and fittings;
  - (g) insurance;
  - (h) medical equipment and supplies;
  - (i) staff development (including in-service training);

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

18) Subject to paragraph 25 and the Supplemental Agreement for the relevant Mainstream Free School, GAG for each Academy Financial Year for each Mainstream Free School will include:

- (a) funding equivalent to that which would be received by a maintained school with similar characteristics, determined by the Secretary of State and notified in the Annual Letter of Funding or its equivalent, taking account of the number of pupils at each Mainstream Free School;
- (b) funding for the cost of functions which would be carried out by the local authority if each Mainstream Free School were a maintained school, such funding to be determined at the discretion of the Secretary of State;
- (c) funding for matters for which it is necessary for the relevant Mainstream Free School to incur extra costs, to the extent that those costs are deemed in the discretion of the Secretary of State to be necessary; and
- (d) payments equivalent to further, specific grants made available to maintained schools, where the relevant Mainstream Free School meets the requisite conditions and criteria necessary for a maintained school to receive these grants, such payments to be at the discretion of the Secretary of State.

19) Subject to paragraph 21, the basis of the pupil number count for the purposes of determining GAG at each Mainstream Free School for an Academy Financial Year will be the Company's most recent estimate in respect of such Mainstream Free Schools provided in accordance with paragraph 20.

- 20) The Secretary of State shall in advance of each Academy Financial Year for each Mainstream Free School, at such time or times as he shall determine, request that the Company provides an estimate of the number of pupils on roll in the following September at each Mainstream Free School for the purposes of determining GAG for an Academy Financial Year at each Mainstream Free School, and the Company shall provide the requested estimate (such estimate to be based on an objective assessment of numbers) in respect of each Mainstream Free School to the Secretary of State as soon as reasonably practicable.
- 21) Once the condition specified in paragraph 22 has been satisfied with respect to the relevant Mainstream Free School 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 relevant Mainstream Free School will be:
- (a) for the pupil number count for pupils in Year 11 and below, the Schools Census for the relevant month (determined at the discretion of the Secretary of State) 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.
- 22) For the purpose of paragraph 21, the condition is satisfied in the Academy Financial Year which immediately follows the Academy Financial Year in which all planned Year-groups will be present at the relevant Mainstream Free School (that is, all the pupil cohorts relevant to the age-range of the relevant Mainstream Free School will have some pupils present).
- 23) For any Academy Financial Year in which GAG for the relevant Mainstream Free School has been calculated in accordance with paragraphs 19 and 20, an adjustment may be made to the following Academy Financial Year's formula funding element of GAG for the relevant Mainstream Free School to recognise any variation from that estimate. The Secretary of State may for the purpose of calculating any adjustment to the formula funding element of GAG under this clause, use the Census for the relevant month (determined at the discretion of the Secretary of State) for the Academy Financial Year in question as a means of determining pupil numbers in an Academy Financial Year. The additional or clawed-back grant will be only that amount relevant to the number of pupils above or below that estimate.



- 24) For any Academy Financial Year in which GAG for the relevant Mainstream Free School is calculated in accordance with paragraph 21, no adjustment will be made to the equivalence funding element in the following Academy Financial Year's equivalence funding element of GAG for the relevant Mainstream Free School unless the Company demonstrates to the satisfaction of the Secretary of State that there has been a significant impact on costs, such as an extra class. For any other element of GAG for the relevant Mainstream Free School the Secretary of State may make adjustments to recognise a variation in pupil numbers from that used to calculate the element of grant in question; the basis of these will be set out in the Annual Letter of Funding or its equivalent.
- 25) The Secretary of State recognises that if he serves notice to terminate the relevant Supplemental Agreement or of his intention to do so, the intake of new pupils during the notice period is likely to decline and that in such circumstances payments based simply upon the number of pupils attending the relevant Mainstream Free School or Mainstream Free Schools are unlikely to be sufficient to meet the Mainstream Free School's or Mainstream Free Schools' needs during the notice period. In those circumstances, the Secretary of State may undertake to pay a reasonable and appropriately larger GAG with respect to that Mainstream Free School or those Mainstream Free Schools in the notice period than would be justified solely on the basis of the methods set out in paragraphs 18 to 24, in order to enable the Mainstream Free School or Mainstream Free Schools to operate effectively.
- 26) The Secretary of State also recognises that if this Agreement or the relevant Supplemental Agreement is terminated for any reason by either party the number of pupils at the relevant Mainstream Free School or Mainstream Free Schools 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 relevant Mainstream Free School or Mainstream Free Schools.

### **Special Free Schools**

- 27) Paragraphs 28 to 38 apply in respect of Special Free Schools only.
- 28) GAG will be paid by the Secretary of State to the Company as a contribution towards the normal running costs of each Special Free School. 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.

29) Subject to paragraph 37 of this Agreement and the relevant Supplemental Agreement for the relevant Special Free School, GAG for each Financial Year for each Special Free School will include:

(a) funding determined by the Secretary of State and notified in the Annual Letter of Funding or its equivalent, taking account of the number of pupils/and or places at the Special Free School;

(b) funding for the cost of functions which would be carried out by the local authority if the Special Free School were a maintained school, such funding to be determined at the discretion of the Secretary of State .

(c) funding for matters for which it is necessary for the Special Free School to incur extra costs, to the extent that those costs are deemed in the discretion of the Secretary of State to be necessary; and

(d) Payments equivalent to further, specific grants made available to maintained schools, where the Special Free School meets the requisite conditions and criteria necessary for a maintained school to receive these grants, such payments to be at the discretion of the Secretary of State;

30) The Secretary of State will determine GAG for each Special Free School for each Academy Financial Year. The determination will be made taking into account relevant factors. Arrangements for this will be set out in the Annual Letter of Funding or its equivalent.

31) The Secretary of State may make provision, within his absolute discretion, for GAG to be adjusted in-year if the number of Pupils and Statemented Pupils attending one of the Special Free Schools at specified dates exceeds or falls below thresholds specified by letter. Arrangements for this will be set out in the Annual Letter of Funding.

32) Subject to paragraph 34, the basis of the number count for Non-Statemented Pupils for the purposes of determining GAG for an Academy Financial Year for each Special Free School will be the Company's most recent estimate for each Special Free School provided in accordance with paragraph 33.

33) The Secretary of State shall in advance of each Academy Financial Year for each Special Free School, at such time or times as he shall determine, request that the Company provides an estimate of the number of Non-Statemented pupils on roll in the following September for each Special Free School for the purposes of

determining GAG for an Academy Financial Year, and the Company shall provide the requested estimate for each Special Free School (such estimates to be based on an objective assessment of numbers at each Special Free School) to the Secretary of State as soon as reasonably practicable.

- 34) Once the condition specified in paragraph 35 has been satisfied with respect to the relevant Special Free School for the Academy Financial Year for which funding is being calculated, the basis of the number count for Non-Statemented Pupils for the purpose of determining GAG for the relevant Special Free School will be the actual number of Non-Statemented Pupils on roll in the relevant month of the previous Academy Financial Year. The relevant month shall be a month determined by the Secretary of State.
- 35) For the purpose of paragraph 34, the condition is satisfied when the number of Non-Statemented Pupils on roll is 90% or more of the number stated in the relevant Supplemental Agreement.
- 36) For any Academy Financial Year in which GAG for Non-Statemented Pupils has been calculated in accordance with paragraph 32 for the relevant Special Free School, an adjustment will be made to the following Academy Financial Year's GAG for the relevant Special Free School to recognise any variation from that estimate. The additional or clawed-back grant will be only that amount relevant to the number of pupils above or below that estimate.
- 37) The Secretary of State recognises that if he serves notice to terminate the relevant Supplemental Agreement or of his intention to do so, the intake of new pupils during the notice period is likely to decline and that in such circumstances payments based on a number of places related to the number of pupils attending the relevant Special Free School are unlikely to be sufficient to meet the Special Free School's needs during the notice period. The Secretary of State may undertake to pay a reasonable and appropriately larger GAG with respect to that Special Free School in the notice period than would be justified solely on the basis of the methods set out in paragraphs 29 to 31, in order to enable the Special Free School to operate effectively.
- 38) The Secretary of State also recognises that if this Agreement or the relevant Supplemental Agreement is terminated for any reason by either party the number of pupils at the relevant Special Free School or Special Free Schools 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 Special Free School.

### **Alternative Provision Free Schools**

- 39) Clauses 40 to 45 apply in respect of Alternative Provision Free Schools only.
- 40) GAG will be paid by the Secretary of State to the Company as a contribution<sup>16</sup> to the normal running costs of the Alternative Provision Free School. 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);

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<sup>16</sup> The extent of any such contribution to be within the absolute discretion of the Secretary of State.

- (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.
- 41) Subject to paragraph 44 of this Agreement and of the Supplemental Agreement for the relevant Alternative Provision Free School, GAG for each Academy Financial Year for each Alternative Provision Free School will include:
- (a) funding determined by the Secretary of State and notified in the Annual Letter of Funding or its equivalent, taking account of the number of pupils and/or places at the Alternative Provision Free School;
  - (b) funding for the cost of functions which would be carried out by the local authority if the Alternative Provision Free School were a maintained school, such funding to be determined at the discretion of the Secretary of State.
  - (c) funding for matters for which it is necessary for the Alternative Provision Free School to incur extra costs, to the extent that those costs are deemed in the discretion of the Secretary of State to be necessary; and
  - (d) payments equivalent to further, specific grants made available to maintained schools, where the Alternative Provision Free School meets the requisite conditions and criteria necessary for a maintained school to receive these grants, such payments to be at the discretion of the Secretary of State.
- 42) The Secretary of State will determine GAG for each alternative provision Free School for each Academy Financial Year. The determination will be made taking into account relevant factors. Arrangements for this will be set out in the Annual Letter of Funding or its equivalent.
- 43) The Secretary of State may make provision, within his absolute discretion, for GAG to be adjusted in-year if the number of pupils attending one of the alternative provision Free Schools at specified dates exceeds or falls below thresholds specified

by letter. Arrangements for this will be set out in the Annual Letter of Funding or its equivalent.

- 44) The Secretary of State recognises that if he serves notice to terminate the relevant Supplemental Agreement or of his intention to do so, the intake of new pupils during the notice period is likely to decline and that in such circumstances payments based simply upon the number of pupils attending the Alternative Provision Free School are unlikely to be sufficient to meet the Alternative Provision Free School's needs during the notice period. In those circumstances, the Secretary of State may undertake to pay a reasonable and appropriately larger GAG with respect to the Alternative Provision Free School in the notice period than would be justified solely on the basis of the methods set out in paragraphs 41-43, in order to enable the Alternative Provision Free School to operate effectively.
- 45) The Secretary of State also recognises that if this Agreement or the relevant Supplemental Agreement is terminated for any reason by either party the number of pupils at the relevant Alternative Provision Free School 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 alternative provision Free School.

### **16-19 Free Schools**

- 46) Paragraphs 47 to 56 apply in respect of 16 to 19 Free Schools only.
- 47) GAG will be paid by the Secretary of State to the Company in order to cover the normal running costs of each 16 to 19 Free School. These will include, but are not limited to:
- (a) teachers' salaries and related costs (including full and part time teaching staff and seconded teachers);
  - (b) non-teaching staff salaries and related costs (including pension contributions, educational support staff, administrative and clerical staff and manual and premises related staff);
  - (c) employees' expenses;
  - (d) the purchase, maintenance, repair and replacement:
    - (i) of teaching and learning materials and other educational equipment, including books, stationery and ICT equipment and

- software, sports equipment and laboratory equipment and materials;
  - (ii) of other supplies and services;
  - (e) examination fees;
  - (f) repairs, servicing and maintenance of buildings (including redecoration, heating, plumbing, lighting etc); maintenance of grounds (including boundary fences and walls); cleaning materials and contract cleaning; water and sewage; fuel and light (including fuel oil, solid and other fuel, electricity and gas); rents; rates; purchase, maintenance, repairs and replacement of furniture and fittings;
  - (g) insurance;
  - (h) medical equipment and supplies;
  - (i) staff development (including in-service training);
  - (j) curriculum development;
  - (k) discretionary grants to students to meet the cost of student support, including support for students with learning difficulties or disabilities (taking account of the fact that separate additional money will be available for students with learning difficulties or disabilities);
  - (l) administration;
  - (m) establishment expenses and other institutional costs.
- 48) Subject to paragraphs 54 and 55 and the Supplemental Agreement for the relevant 16 to 19 Free School, GAG for each Academy Financial Year for each 16 to 19 Free School will include:
- (a) funding in accordance with the national funding formula for the education and training of 16-19 year olds, determined by the Secretary of State and notified in the Annual Letter of Funding or its equivalent, taking account of the number of students at the 16 to 19 Free School;
  - (b) funding for matters for which it is necessary for the 16 to 19 Free School to incur extra costs, to the extent that those costs are deemed in the discretion of the Secretary of State to be necessary; and
  - (c) payments equivalent to further, specific grants made available to institutions within the further education sector, where the 16 to 19 Free School meets the requisite conditions and criteria necessary for an



institution within the further education sector to receive these grants, such payments to be at the discretion of the Secretary of State.

- 49) During the start-up period defined in the relevant Supplemental Agreement for each 16 to 19 Free School the basis of the student number count for the purposes of determining GAG for an Academy Financial Year for the 16 to 19 Free School will be the Company's estimate each year for numbers on roll in the following September for the 16 to 19 Free School, such estimate to be based on an objective assessment of student numbers and agreed with the Secretary of State.
- 50) The Secretary of State shall in advance of each Academy Financial Year for the 16 to 19 Free School, at such time or times as he shall determine, request that the Company provides an estimate of the number of students on roll in the following September for the 16 to 19 Free School for the purposes of determining GAG for an Academy Financial Year, and the Company shall provide the requested estimate (such estimate to be based on an objective assessment of numbers) to the Secretary of State as soon as reasonably practicable.
- 51) After the start-up period defined the relevant Supplemental Agreement for each 16 to 19 Free School the arrangements for calculating the student number count for the purpose of determining GAG for the 16 to 19 Free School shall be those provided for in guidance on the national funding system published by the Secretary of State under section 15ZD of the Education Act 1996 for the relevant Academy Financial Year, in respect of persons who have reached the age of 16 but have not reached the age of 19, or are aged 19-24 and have a learning difficulty and/or disability and are the subject of a learning difficulty assessment.
- 52) For any Academy Financial Year in which GAG for the 16 to 19 Free School has been calculated in accordance with paragraph 49, an adjustment may be made to the following Academy Financial Year's formula funding element of GAG for the 16 to 19 Free School to recognise any variation from that estimate. The Secretary of State may for the purpose of calculating any adjustment to the formula funding element of GAG under this clause, use the Individualised Learner Record for the Academy Financial Year in question as a means of determining student numbers in an Academy Financial Year. The additional or clawed-back grant will be only that amount relevant to the number of students above or below that estimate.
- 53) For any Academy Financial Year in which GAG for the 16 to 19 Free School is calculated in accordance with paragraph 51, no adjustment will be made to the equivalence funding element in the following Academy Financial Year's equivalence

funding element of GAG. For any other element of GAG the Secretary of State may make adjustments to recognise a variation in student numbers from that used to calculate the element of grant in question; the basis of these will be set out in guidance on the national funding system published by the Secretary of State under section 15ZD of the Education Act 1996 for the relevant Academy Financial Year.

- 54) The Secretary of State may pay further grant in the start-up period defined in the relevant Supplemental Agreement, as determined and specified by him, for costs which cannot otherwise be met from GAG.
- 55) The Secretary of State recognises that if he serves notice to terminate the relevant Supplemental Agreement or of his intention to do so, the intake of new students during the notice period is likely to decline and that in such circumstances payments based simply upon the number of students attending the relevant 16 to 19 Free School are unlikely to be sufficient to meet the Free School's needs during the notice period. In those circumstances, the Secretary of State may undertake to pay a reasonable and appropriately larger GAG with respect to the relevant 16 to 19 Free School in the notice period than would be justified solely on the basis of the methods set out in paragraphs 48 to 52, in order to enable the relevant 16 to 19 Free School to operate effectively.
- 56) The Secretary of State also recognises that if this Agreement or the Relevant Supplemental Agreement is terminated for any reason by either party the number of students at the relevant 16 to 19 Free School is likely to decline. In these circumstances both parties undertake to attempt to resolve issues arising from such termination in good faith and with the aim of protecting the interests and the education of the students at the relevant 16 to 19 Free School.

**SCHEDULE 4**  
**AMENDMENTS TO THE ORIGINAL SUPPLEMENTAL AGREEMENTS**

1. The Original Supplemental Agreement relating to Burlington Danes Academy shall be amended and restated in the manner set out in Appendix 1 to this agreement.
2. The Original Supplemental Agreement relating to Walworth Academy shall be amended and restated in the manner set out in Appendix 2 to this agreement.
3. The Original Supplemental Agreement relating to King Solomon Academy shall be amended and restated in the manner set out in Appendix 3 to this agreement.
4. The Original Supplemental Agreement relating to Evelyn Grace Academy shall be amended and restated in the manner set out in Appendix 4 to this agreement.
5. The Original Supplemental Agreement relating to Globe Academy shall be amended and restated in the manner set out in Appendix 5 to this agreement.
6. The Original Supplemental Agreement relating to ARK academy shall be amended and restated in the manner set out in Appendix 6 to this agreement.
7. The Original Supplemental Agreement relating to St. Alban's Academy shall be amended and restated in the manner set out in Appendix 7 to this agreement.
8. The Original Supplemental Agreement relating to Charter Academy shall be amended and restated in the manner set out in Appendix 8 to this agreement.
9. The Original Supplemental Agreement relating to ARK Oval Primary Academy shall be amended and restated in the manner set out in Appendix 9 to this agreement.
10. The Original Supplemental Agreement relating to ARK Atwood Primary Academy shall be amended and restated in the manner set out in Appendix 10 to this agreement.
11. The Original Supplemental Agreement relating to ARK Conway Primary Academy shall be amended and restated in the manner set out in Appendix 11 to this agreement.
12. The Original Supplemental Agreement relating to Isaac Newton Academy shall be amended and restated in the manner set out in Appendix 12 to this agreement.
13. The Original Supplemental Agreement relating to ARK Bentworth Primary Academy shall be amended and restated in the manner set out in Appendix 13 to this agreement.

14. The Original Supplemental Agreement relating to ARK Putney Academy shall be amended and restated in the manner set out in Appendix 14 to this agreement.
15. The Original Supplemental Agreement relating to Bolingbroke Academy shall be amended and restated in the manner set out in Appendix 15 to this agreement.
16. The Original Supplemental Agreement relating to ARK Rose Academy shall be amended and restated in the manner set out in Appendix 16 to this agreement.
17. The Original Supplemental Agreement relating to ARK Tindal Primary Academy shall be amended and restated in the manner set out in Appendix 17 to this agreement.
18. The Original Supplemental Agreement relating to ARK Kings Academy shall be amended and restated in the manner set out in Appendix 18 to this agreement.

**EXECUTED and DELIVERED as a DEED** )

by LUCKY HELLER )

*Lucky Heller*

a director of **ARK SCHOOLS** in the )  
presence of: )

Signature of witness: *Katherine Pollendine*.....

Print name: KATHERINE POLLENDINE.....

Address: 42 FROGNAL COURT.....

LONDON.....

NW3 5HQ.....

Occupation: ADMINISTRATOR.....

The **COMMON SEAL** of THE SECRETARY OF STATE  
for EDUCATION hereunto affixed is authenticated  
by:

*[Signature]*.....

Duly Authorised



**ARK SCHOOLS: MODEL SUPPLEMENTAL AGREEMENT  
FOR MAINSTREAM ACADEMY**

**THIS AGREEMENT** made 201[●]

**BETWEEN**

- (1) **THE SECRETARY OF STATE FOR EDUCATION; and**
- (2) **ARK SCHOOLS ("the Company")**

**IS SUPPLEMENTAL TO THE MASTER FUNDING AGREEMENT** made between the Secretary of State for Education and Skills and the Company dated 26 August 2006 (the "**Master Agreement**" which expression shall refer to the Master Agreement as amended and restated pursuant to an Agreement and Restatement Agreement dated 28 August 2013).

**1 DEFINITIONS AND INTERPRETATION**

- 1.1 Except as expressly provided in this Agreement words and expressions defined in the Master Agreement shall have the same meanings in this Agreement as were ascribed to them in the Master Agreement.
- 1.2 The following words and expressions shall have the following meanings:
  - "the Academy" means the [●] Academy [to be] established at [●].
- 1.3 Reference in this Agreement to clauses and Annexes shall, unless otherwise stated, be to clauses and annexes of this Agreement.

**2 THE ACADEMY**

- 2.1 The Company will establish and maintain, and carry on or provide for the carrying on of the Academy [as a Mainstream Academy]/[as a Sponsored Academy]<sup>1</sup> in accordance with the Master Agreement and this Agreement<sup>2</sup>.
- 2.2 The curriculum provided by the Academy to pupils up to the age of 16 shall be broad and balanced.
- 2.3 The requirements for the admission of pupils to the Academy are set out at Annex 1.

### **ACADEMY OPENING DATE**

- 2.4 The Academy shall open as a school on [insert] replacing [insert name of predecessor school if applicable] [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]<sup>3</sup>.
- 2.5 The planned capacity of the Academy is [insert] in the age range [insert], [including a sixth form of [insert] places] [and a nursery unit of [insert] places].

### **3 CAPITAL GRANT**

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

### **4 GAG AND EAG**

- 4.1 The Secretary of State agrees to pay GAG and EAG to the Company in relation to the Academy in accordance with the Master Agreement.

### **5 TERMINATION**

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<sup>1</sup> To be amended as applicable.

<sup>2</sup> Where the Academy is to be a "selective school" within the meaning of section 6(4) of the Academies Act 2010, please see alternative wording for this clause in Section C of the Appendix of Alternative and Additional Clauses.

<sup>3</sup> Delete words in square brackets if the SFA is being used for an Academy that is replacing a maintained school following school closure under the Education and Inspections Act 1996.

5.1 Either party may give not less than seven Academy Financial Years' written notice to terminate this Agreement, such notice to expire on 31 August [●]<sup>4</sup> or any subsequent anniversary of that date.

### **Termination Warning Notice**

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

- (a) the Academy is no longer meeting the requirements referred to in clause 12 of the Master Agreement;
- (b) the conditions and requirements set out in clauses 13-34B of the Master Agreement are no longer being met insofar as they apply to the Academy;
- (c) the standards of performance of pupils at the Academy are unacceptably low;
- (d) there are grounds to issue a Termination Warning Notice of his intention to terminate as a consequence of the Chief Inspector giving notice to the Company in accordance with section 13(3) of the Education Act 2005 stating that in the Chief Inspector's opinion special measures are required to be taken in relation to the Academy or that the Academy requires significant improvement (as that expression is used in section 44 of the Education Act 2005 (as amended))<sup>5</sup>.
- (e) there has been a serious breakdown in the way the Academy is managed or governed;
- (f) the safety of pupils or staff is threatened (whether by breakdown of discipline or otherwise); or
- (g) the Company is otherwise in material breach of the provisions of this Agreement or the Master Agreement.

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<sup>4</sup> Insert year which is 7 Academy Financial Years from the date of the funding agreement.

<sup>5</sup> If the Academy is a Sponsored Academy, the wording in Section F of the appendix should be used.

5.3 A Termination Warning Notice issued by the Secretary of State in accordance with clause 5.2 or 5.2A shall specify:

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

5.4 The Secretary of State shall consider any response and representations from the Company which are received by the date specified in accordance with clause 5.3(c) and shall confirm whether he considers that:

- (a) in the light of the Company's representations in response to the Termination Warning Notice, some or all of the Specified Remedial Measures are not required to be implemented (and if so which) and/or the Specified Remedial Measures are being or will be implemented within the specified timeframe; or
- (b) subject to any further measures he reasonably requires ("Further Remedial Measures") being implemented by a specified date or any evidence he requires being provided, the implementation of such measures has been or will be successfully completed within the specified timeframes; or
- (c) he is not satisfied that the Company will rectify the defaults identified in the Termination Warning Notice within the specified timeframes. In such circumstances, the Secretary of State may notify the Company of his intention to terminate the Agreement on a specified date.

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

- (a) the Company has not, by the date specified in clause 5.3(c), responded to the Termination Warning Notice either confirming that it accepts and agrees to undertake the Specified Remedial Measures or providing its representations with regard to the Specified Remedial Measures; or
- (b) the Company has not carried out the Specified Remedial Measures and/or Further Remedial Measures within the specified timeframes;



provided that having considered any representations made by the Company pursuant to clause 5.3(c), the Secretary of State remains satisfied that it is appropriate to terminate the Agreement.

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

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

### **Request to consider termination if the Academy is financially unsustainable**

5.7 Subject to the condition in 5.8 below, the Company may by notice in writing request the Secretary of State to terminate this Agreement ("Termination Request Notice") where the Company considers the Academy is or will be unable to attract sufficient pupils to enable the Academy to be financially sustainable in the foreseeable future, each party recognising that for these purposes the Company will not be required to subsidise the operations of the Academy by diverting the funding available for the operation of other academies and/or free schools operated by the Company.

5.8 A Termination Request Notice must be received by the Secretary of State before 31 December in the Academy Financial Year the Company proposes the termination of this agreement shall have effect.

5.9 The Termination Request Notice shall set out:

- (a) The grounds upon which the Company's opinion that the Academy is or will be unable to attract sufficient pupils to enable the academy to be financially sustainable in the foreseeable future.
- (b) A detailed statement of the steps taken by the Company in response to the circumstances set out in 5.9 (a) above.

5.10 The Secretary of State shall consider reasonably the representations from the Company set out in a Termination Request Notice and shall by notice in writing to the Company given within six weeks after receipt of the Termination Request Notice confirm whether he considers that:

- (c) in the light of the Company's representations in its Termination Request Notice, there are measures which the Secretary of State requires the Company to carry out, with associated deadlines for the implementation and review of such measures and the date after which a further Termination Request Notice under 5.7 will be considered by the Secretary of State;
- (d) he is satisfied that the Academy has no reasonable prospect of becoming financially sustainable in the foreseeable future, in which case the Secretary of State will consent to the Company terminating the Agreement on 31 August following the Termination Request Notice or on such other date as the parties may mutually agree and the Company may by notice in writing to the Secretary of State terminate the agreement on that date; or
- (e) the Academy is or will become financially sustainable in the foreseeable future and the basis for his view. In such circumstances, the Secretary of State will consider a further Termination Request Notice under 5.7 where the Company can demonstrate in that Notice a material change affecting the financial sustainability of the Academy.

5.11 Both parties recognise that if a Termination Request Notice is given by the company they will need to engage in a constructive dialogue about how best to provide education for the pupils at the Academy and undertake to use their respective best endeavours to agree a practical solution to the problem identified by the Termination Request Notice and, if possible, to seek ways in which the financial sustainability of the Academy can be achieved.

5.12 If the agreement is terminated in accordance with clause 5.10 the parties shall agree as soon as practical arrangements for the closure of the Academy and the future teaching of the pupils at the Academy.

## **6 EFFECT OF TERMINATION**

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

6.2 Subject to clauses 6.3 and 6.4, if the Secretary of State terminates this Agreement pursuant to clause 5.1 of this Agreement, the Secretary of State shall indemnify

the Company. If the Secretary of State terminates this Agreement otherwise than pursuant to clause 5.1 of this Agreement, the Secretary of State may in his absolute discretion indemnify or (to such extent if any as he may in his absolute discretion consider appropriate) compensate the Company.

- 6.3 The amount of any such indemnity or compensation shall be determined by the Secretary of State having regard to any representations made to him by the Company, and shall be paid at such times and in such manner as the Secretary of State may reasonably think fit.
- 6.4 The categories of expenditure incurred by the Company in consequence of the termination of the Agreement in respect of which the Secretary of State shall (where the Secretary of State terminates this Agreement pursuant to clause 5.1) indemnify the Company and may (where the Secretary of State terminates this Agreement otherwise than pursuant to clause 5.1) in his absolute discretion indemnify or compensate the Company include (but not by way of limitation), staff compensation and redundancy payments, compensation payments in respect of broken contracts, expenses of disposing of assets or adapting them for other purposes, legal and other professional fees, and dissolution expenses.
- 6.5 Subject to clause 6.6, on the termination of this Agreement however occurring, the Company shall in respect of any of its capital assets at the date of termination:
- (a) promptly transfer a proportion of the assets to a person nominated by the Secretary of State, if the Secretary of State considers that all or some of those assets need to be used for any educational 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 at a later date; or
  - (b) if the Secretary of State confirms that a transfer under clause 6.5(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.

6.6 The Secretary of State may waive in whole or in part the repayment due under clause 6.5(b) if:

- (a) the Company 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.

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

## **7 ANNEX**

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

## **8 THE MASTER AGREEMENT**

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

## **9 GENERAL**

9.1 This Agreement shall not be assignable by the Company.

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

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

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

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

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

This Agreement was executed as a Deed the day and year first before mentioned.

Executed on behalf of ARK SCHOOLS by:

.....  
Director

In the presence of:

Witness .....  
Address .....  
.....  
Occupation .....

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

.....

**Duly Authorised**

**ANNEX TO THIS SUPPLEMENTAL AGREEMENT**

Requirements for the Admission for pupils at the

Academy      Annex 1

**APPENDIX OF ADDITIONAL OR ALTERNATIVE CLAUSES THAT MAY BE NEEDED  
DEPENDING ON THE TYPE OF ACADEMY**

**A. FORMER VC OR FOUNDATION SCHOOLS DESIGNATED UNDER SECTION 69  
SSFA**

*For converting Academies that were previously VC schools or foundation schools designated by an order under section 69(3) of the SSFA as a school having a religious character.*

*INSERT the following clauses as additional clauses 2.6-2.8. Note that these clauses are for use if the Academy was a former VC or foundation school with a religious designation and has foundation governors defined as Foundation Governors in the Articles.*

**[TEACHERS AND OTHER STAFF]**

2.6 The Company shall in relation to:

- (a) any person who may apply for a position as an employee or to be otherwise engaged by the Company, and
- (b) any employee with whom the Company enters into a contract of employment or a contract for services

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

2.7 (1) Section 58 of the SSFA shall apply to the Company with the following modifications:

- a) in subsection (3) for the words "head teacher" read "principal"
- b) in subsection (5) & (6) for "foundation governors" read "Foundation Governors" as defined in the Articles of Association;

- c) in subsection (6)(b) for the words "governing body" read "appropriate body";
- d) in subsection (9) for (a) and (b) read the words "Company";
- (2) Section 60(4) of the SSFA shall apply to the Company with the modification that for the words "head teacher" read "principal" each time they occur.

### **RELIGIOUS EDUCATION AND COLLECTIVE WORSHIP**

[2.8] Clause 26 of the Master Agreement shall not apply and Clause 27 of the Master Agreement shall be replaced by the following:

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

- a) subject to clause 28 of the Master Agreement, the Company 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 as if the Academy were a foundation school or voluntary controlled school with a religious character;
- b) subject to clause 28 of the Master Agreement, the Company shall comply with the requirements of section 70(1) of, and Schedule 20 to, the School Standards and Framework Act 1998 as if the Academy were a foundation school or voluntary controlled school with a religious character, and as if references to 'the required collective worship' were references to collective worship in accordance with the tenets and practices of the specified religion or religious denomination of the Academy;

**[Next section only if the Academy is a denominational faith Academy CE, RC etc. rather than 'Christian']**

- c) the Company shall ensure that the quality of the Academy's collective worship given in accordance with the tenets and practice of the specific religion or religious denomination is inspected. Such inspection shall be conducted by a person chosen by the Company and the Academy shall secure that such inspection shall comply with the requirements set out in any statutory provision and regulations as if the Academy were a



foundation or voluntary controlled school which has been designated under section 69(3) of the School Standards and Framework Act 1998 as having a religious character.

**Where additional clauses 2.6 and 2.7 have been inserted, sub-clause 5.2b) should be replaced with the following:**

- a) the conditions and requirements set out in clauses 2.6 and 2.7 of this Agreement and in clauses 13-34B of the Master Agreement are no longer being met;

**B. LAND CLAUSES – FOR INSERTION WHERE FREEHOLD OR LEASEHOLD LAND WILL BE HELD BY THE COMPANY**

***Where a freehold interest in publicly funded land for use by the Academy is to be transferred to the Company insert all of the following clauses (6A-6D and the definitions of "land" and "Insured risks" at clause 1.2).***

***Where a leasehold interest in publicly funded land for use by the Academy is to be transferred to the Company using one of the DfE's model leases, insert only clauses 6A and the definition of "land" at clause 1.2 (the other land clauses can be left out as these overlap with what is covered by the lease).***

***Where the Company will have both freehold and leasehold interests in publicly funded land, (because it has been transferred more than one piece of land), then insert all the land clauses but the Company may include a clause saying that clauses 6B-6D do not apply to land in which the Company holds a leasehold interest only.***

***The following definitions are to be inserted into clause 1.2:***

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

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

as [insert address[es] of the land that is to be transferred to the Academy] [and [if applicable] registered under [enter Title number of Land].

**AND**

**Insert the following headings and paragraphs after clause 6.7 to become 6A):**

**LAND**

**Restrictions on Land transfer**

6A Recognising that they are or will be receiving publicly funded land at nil consideration (which for the purposes of this transaction shall include leases granted at a peppercorn rent) the Company:

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

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

- b) shall take any further steps required to ensure that the restriction referred to in clause 6A(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 6A(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 6A(a), hereby consents to the entering of the restriction referred to in 6A(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 6A(a) or 6A(d) above, whether by itself, a holding company, a subsidiary company, or a receiver, administrator or liquidator acting in the name of the Company.

## **Repair and Upkeep**

6B) The Company 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**

6C) The Company shall:-

- a) keep the Land insured with a reputable insurance office against loss or damage by the Insured Risks in the sum the Company is advised represents the reinstatement value of the Land from time to time;
- 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 Company provides premises not necessarily identical to the Land as the same existing prior to such damage or destruction occurring) as soon as may be reasonably practicable;
- 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**

6D) In recognition by the Company that they are or will be taking a transfer of publicly-funded land for nil consideration (which for the purposes of this transaction shall include leases granted at a peppercorn rent), the Company hereby grants and the Secretary of State hereby accepts an option, exercisable

by the Secretary of State or his nominee, to transfer the said land pursuant to Schedule 1 to the Academies Act 2010. The option hereby granted shall be exercisable (by notice in writing by or on behalf of the Secretary of State) on the termination of this Funding Agreement for whatever cause. On the exercise of this option, the Law Society's Standard Conditions of Sale for Commercial Property in force at the date of such exercise shall apply to the transaction and completion shall take place 28 days after such exercise.

- 6E) In further recognition by the Company that they are or will be taking a transfer of publicly-funded land for nil consideration, (which for the purposes of this transaction shall include leases granted at a peppercorn rent), to protect the option granted under clause 6D, the Company:
- a) shall, within 14 days from the transfer to it of the Land, apply to the Land Registry in Form AN1 as prescribed by Rule 81 of the Land Registration Rules 2003 for a notice to be entered in the register (under section 34(3)(a) of the Land Registration Act 2002) to protect the option granted under clause 6D and including a copy of this Agreement as evidence of that option,
  - b) shall take any further steps required to ensure that the notice referred to in clause 6E(a) is entered on the proprietorship register,
  - c) shall provide the Secretary of State with confirmation of the entry of the notice referred to in clause 6E(a) as soon as practicable after it receives notification from the Land Registry,
  - d) in the event that it has not registered the notice referred to in clause 6E(a), hereby consents to the entering of the notice referred to in 6E(a) in the register by the Secretary of State (by application in Form UN1 under s. 34(3)(b) of the Land Registration Act 2002),
  - e) shall not, without the consent of the Secretary of State, apply to dis-apply, modify or remove (by cancellation or otherwise) a notice entered in accordance with clause 6E(a) or 6E(d) above, whether by itself, a holding company, a subsidiary company, or a receiver, administrator or liquidator acting in the name of the Company,
  - f) in the case of previously unregistered land, for the further protection of the option granted in Clause 6D the Company shall within 14 days of the

signing of this Agreement make application to register a Class C (iv) land charge in the Land Charges Registry and a Caution against First Registration in the Land Registry and shall provide the Secretary of State with copies of the entries secured thereby within 7 days of completing each registration, respectively. If the Secretary of State is of the view that the Company has failed to perform the registration obligations in this sub-clause he shall be at liberty to make his own applications to secure these registrations.

### **C. SELECTIVE ACADEMIES**

***Additional clauses to be inserted in the Supplemental FA where the converting school is a Selective Academy and the Annex providing for the removal of the Academy's selective arrangements is to be annexed.***

***1. Insert at the end of clause 2.3:***

The procedure for the removal of the Academy's selective admission arrangements is set out at Annex 2.

***2. On the final page ANNEXES TO THIS SUPPLEMENTAL AGREEMENT insert:***

The procedure for the removal of the Academy's selective admission arrangements at the Academy Annex 2

***Amendments to be made to clause 2.1 where the converting school is a Selective Academy.***

***Insert the following words at the end of clause 2.1:***

"...,save that clauses 12 and 18 of the Master Agreement do not apply in so far as they require the Academy to be an all ability inclusive school as the Academy is a "selective school" within the meaning of Section 6(4) of the Academies Act 2010 ".

### **D. ACADEMIES WITH PFI ARRANGEMENTS**

***There are a number of PFI specific clauses that need to be inserted into Funding Agreements where there are PFI arrangements in existence relating to the land/property of the Academy.***

***Your Project Lead will provide you with the additional clauses that will be needed.***

**E. FOR ACADEMIES WITH SEN UNITS/PROVISION RESERVED FOR PUPILS WITH SEN**

***For Academies with SEN Units and/or Resourced Provision the following additional clauses should be inserted:***

- 2.3A) Subject to Clause 2.3B), the academy will operate designated places reserved for pupils with special educational needs (SEN Unit and or Resourced Provision) with up to [Insert] planned places for pupils [with insert SEN category] in the age range [insert].
- 2.3B) The Secretary of State may at any time determine that the [SEN Unit/Resourced Provision] should cease to operate.
- 2.3C) In making any determination under clause 2.3B) the Secretary of State shall:
- (i) have regard to the views of the Academy and local authorities in the area (in their strategic role in the commissioning of SEN provision); and
  - (ii) consider the impact of such a determination on the local authorities' ability to secure suitable SEN provision for all children within the area.

***For Academies with SEN Units and/or Resourced Provision clause 2.5 should be replaced with the following clause:***

- 2.5) The planned capacity of the Academy is [insert] in the age range [insert], [including a sixth form of [insert] places] [and a nursery unit of [insert] places] and will subject to Clause 2.3B) operate designated reserved provision for pupils with special educational needs (SEN Unit or Resourced Provision) for up to [insert] planned places for pupils with [insert SEN category] in the age range [insert].

**F. FOR SPONSORED ACADEMIES**

***If the academy is a sponsored academy, replace clause 5.2A with the following wording:***

- 5.2A At any time after the expiry of two years beginning with the date on which the Academy opened as a school as set out in clause [2.4] of this Agreement, the Chief Inspector gives notice to the Company in accordance with section 13(3) of the Education Act 2005 stating that in the Chief Inspector's opinion special measures are required to be taken in relation to the Academy or that the

Academy requires significant improvement (as that expression is used in section 44 of the Education Act 2005 (as amended)).





Draft:  
GRD/106839/0005  
16 August 2013

APPENDIX B

**ARK SCHOOLS: MODEL SUPPLEMENTAL AGREEMENT FOR A MAINSTREAM FREE SCHOOL**

**THIS AGREEMENT** made 201[●]

**BETWEEN**

- (1) **THE SECRETARY OF STATE FOR EDUCATION**; and  
(2) **ARK SCHOOLS ("the Company")**

IS SUPPLEMENTAL TO THE MASTER FUNDING AGREEMENT made between the Secretary of State for Education and Skills and the Company dated 26 August 2006 (the "Master Agreement" which expression shall refer to the Master Agreement as amended and restated pursuant to an Agreement and Restatement Agreement dated 28 August 2013).

**1 DEFINITIONS AND INTERPRETATION**

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

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

"the Academy" means the [●] Academy to be established at [enter address of MAINSTREAM FREE SCHOOL];

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

“the Land” means the land (including for the avoidance of doubt all buildings, structures landscaping and other erections) situated at and known as [insert address of the Land] and registered under [enter Title number of the Land] making up the permanent site of the Academy or the part of such land remaining in the ownership of the Company, following any disposal in accordance with clause 10l(c)ii or clause 10K;

“the Lease” means the leasehold agreement between the Company and any third party in respect of the site upon which the Academy is situated;

**[Delete if site acquired by the Secretary of State or leased on a peppercorn (rent) basis]**“Rent” means a payment made by the Company to a third party pursuant to the Lease but subject to the terms of clause 4A.1 of this Agreement;

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

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

## **2 THE ACADEMY**

- 2.1 The Company will establish and maintain, and carry on or provide for the carrying on of the Academy as a Mainstream Free School in accordance with the Master Agreement and this Agreement.
- 2.2 The curriculum provided by the Academy to pupils up to the age of 16 shall be broad and balanced.
- 2.3 The requirements for the admission of pupils to the Academy are set out at Annex 1.

### **ACADEMY OPENING DATE**

- 2.4 **For brand new provision only:** The Academy shall open as a school on [enter opening date]; or.

**Where the predecessor school remains open (and only changes its name and status to an Academy on the opening date):** On [the date the school becomes an Academy] the school changes its name from [insert previous name of school] to [insert new name of school] and becomes an Academy.

2.5 The planned capacity of the Academy is [ ] in the age range [ ], including a sixth form of [ ] places] [and a nursery unit of [insert] places].

### **3 CAPITAL GRANT**

Pursuant to clause 35 of the Master Funding Agreement, the Secretary of State may, in his absolute discretion provide Capital Expenditure funding in accordance with any arrangements he considers appropriate.

### **4 GAG AND EAG**

The Secretary of State agrees to pay GAG and EAG to the Company in relation to the Academy in accordance with the Master Agreement.

### **4A ADDITIONAL FUNDING**

**[Delete if site is acquired by Secretary of State or leased on a peppercorn (rent) basis]**

4A.1 The Secretary of State shall meet the Company's costs arising from Rent payable by the Company under the Lease. Such costs shall include those costs arising from any rent rise payable by the Company under the terms of the Lease, so long as the relevant rent rise is properly evidenced in writing by the Company to the Department as soon as is reasonably practicable, but such costs shall not include any amount in respect of service charge payments or insurance premiums. Where the definition of rent in the Lease includes service charge payments or insurance premiums, the Secretary of State shall exclude from the total grant payable in respect of Rent an amount in respect of such service charge payments or insurance premiums.

4A.2 The Secretary of State may pay further grant in the Start-up period, as determined and specified by him, for costs which cannot otherwise be met from GAG.

### **4B LEASE**

- 4B.1 If the Company is in material breach of the provisions of the Lease or if it is reasonably foreseeable that the Company will be in material breach of the Lease, the Company shall forthwith give written notice to the Secretary of State specifying the exact nature of the material breach or reasonably foreseeable material breach and such notice shall set out the steps taken or to be taken by the Company to remedy the material breach or reasonably foreseeable material breach and, where appropriate, shall include the timescales relating to any remedial action.
- 4B.2 The Company will at its own cost provide all information reasonably required by the Secretary of State in respect of any material breach or reasonably foreseeable material breach.
- 4B.3 Following the receipt by the Secretary of State of the written notice under clause 4B.1, the Company shall permit the Secretary of State to take all such steps in conjunction with or instead of the Company as may be necessary to remedy or prevent the material breach referred to in the said notice. The Company shall, in such circumstances, use its best endeavours to assist the Secretary of State to remedy or prevent such material breach.
- 4B.4 The Company shall, within 14 days of receiving any order, notice, proposal, demand or any other requirement materially affecting the ability of the Company to use the Land for the purposes of the Academy from any competent authority [(including the Landlord)], give full particulars by written notice to the Secretary of State and deliver to the Secretary of State copies of such documents as he may require. Such notice shall state what steps, if any actions are required, the Company intends to take in response to the order, notice, proposal, demand or other requirement affecting the Land.
- 4B.5 The Company will at its own cost provide all information reasonably required by the Secretary of State in respect of an order, notice, proposal, demand or any other requirement affecting the Land as referred to in clause 4B.4.

4B.6 Following the receipt by the Secretary of State of the written notice under clause 4B.4, the Company shall permit the Secretary of State to take all steps in conjunction with or instead of the Company as may be necessary to comply with any order, notice, proposal, demand or other requirement affecting the Land referred to in the said notice. The Company shall, in such circumstances, use all reasonable endeavours to assist the Secretary of State to take the appropriate required steps.

## **5 TERMINATION**

5.1 Either party may give not less than seven Academy Financial Years' written notice to terminate this Agreement, such notice to expire on 31 August [•]<sup>1</sup> or any subsequent anniversary of that date.

### **Termination Warning Notice**

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

- (a) the Academy is no longer meeting the requirements referred to in clause 12 of the Master Agreement;
- (b) the conditions and requirements set out in clauses 13-34B of the Master Agreement are no longer being met insofar as they apply to the Academy;
- (c) the standards of performance of pupils at the Academy are unacceptably low;
- (d) there are grounds to issue a Termination Warning Notice of his intention to terminate as a consequence of the Chief Inspector giving notice to the Company in accordance with section 13(3) of the Education Act 2005 stating that in the Chief Inspector's opinion special measures are required to be taken in relation to the Academy or that the Academy requires significant improvement (as

that expression is used in section 44 of the Education Act 2005 (as amended));

- (e) there has been a serious breakdown in the way the Academy is managed or governed;
- (f) the safety of pupils or staff is threatened (whether by breakdown of discipline or otherwise); or
- (g) the Company is otherwise in material breach of the provisions of this Agreement or the Master Agreement.

5.3 A Termination Warning Notice issued by the Secretary of State in accordance with clause 5.2 shall specify:

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

5.4 The Secretary of State shall consider any response and representations from the Company which are received by the date specified in accordance with clause 5.3(c) and shall confirm whether he considers that:

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

evidence he requires being provided, the implementation of such measures has been or will be successfully completed within the specified timeframes; or

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

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

- (a) the Company has not, by the date specified in clause 5.3(c), responded to the Termination Warning Notice either confirming that it accepts and agrees to undertake the Specified Remedial Measures or providing its representations with regard to the Specified Remedial Measures; or
- (b) the Company has not carried out the Specified Remedial Measures and/or Further Remedial Measures within the specified timeframes;

provided that having considered any representations made by the Company pursuant to clause 5.3(c), the Secretary of State remains satisfied that it is appropriate to terminate the Agreement.

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

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

#### **Request to consider termination if the Academy is financially unsustainable**

5.7 Subject to the condition in 5.8 below, the Company may by notice in writing request the Secretary of State to terminate this Agreement (“Termination Request Notice”)

where the Company considers the Academy is or will be unable to attract sufficient pupils to enable the Academy to be financially sustainable in the foreseeable future, each party recognising that for these purposes the Company will not be required to subsidise the operations of the Academy by diverting the funding available for the operation of other academies and/or free schools operated by the Company.

5.8 A Termination Request Notice must be received by the Secretary of State before 31 December in the Academy Financial Year the Company proposes the termination of this agreement shall have effect.

5.9 The Termination Request Notice shall set out:

(a) The grounds upon which the Company's opinion that the Academy is or will be unable to attract sufficient pupils to enable the academy to be financially sustainable in the foreseeable future.

(b) A detailed statement of the steps taken by the Company in response to the circumstances set out in 5.9 (a) above.

5.10 The Secretary of State shall consider reasonably the representations from the Company set out in a Termination Request Notice and shall by notice in writing to the Company given within six weeks after receipt of the Termination Request Notice confirm whether he considers that:

(a) in the light of the Company's representations in its Termination Request Notice, there are measures which the Secretary of State requires the Company to carry out, with associated deadlines for the implementation and review of such measures and the date after which a further Termination Request Notice under 5.7 will be considered by the Secretary of State;

(b) he is satisfied that the Academy has no reasonable prospect of becoming financially sustainable in the foreseeable future, in which case the Secretary of State will consent to the Company terminating the Agreement on 31 August following the Termination Request Notice or on such other date as the parties may mutually agree and



- (c) the Academy is or will become financially sustainable in the foreseeable future and the basis for his view. In such circumstances, the Secretary of State will consider a further Termination Request Notice under 5.7 where the Company can demonstrate in that Notice a material change affecting the financial sustainability of the Academy.

5.11 Both parties recognise that if a Termination Request Notice is given by the company they will need to engage in a constructive dialogue about how best to provide education for the pupils at the Academy and undertake to use their respective best endeavours to agree a practical solution to the problem identified by the Termination Request Notice and, if possible, to seek ways in which the financial sustainability of the Academy can be achieved.

5.12 If the agreement is terminated in accordance with clause 5.10 the parties shall agree as soon as practical arrangements for the closure of the Academy and the future teaching of the pupils at the Academy.

#### **Termination with Immediate Effect**

5.13 If on or after [ ] 201[ ] or at any time after signing this Agreement and before the Academy opens, the total number of prospective pupils having accepted offers of places to attend at the Academy in [ ] 201[ ] is fewer than [#], the Secretary of State may by written notice to the Academy Trust:-

- (a) require the Academy Trust not to open the Academy until [#] prospective pupils have accepted offers of places to attend at the Academy; or
- (b) terminate this Agreement such termination to take effect on the date specified in the notice.

5.14 [If at any time after signing this Agreement and after the Academy has opened, the Secretary of State is of the opinion that, by virtue of low pupil numbers, the Academy is not financially viable, then the Secretary of State may:-

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

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

5.15 If the Company has not obtained full planning permission (including where relevant listed building consent), in respect of the site on which it is proposed that the Academy will be situated, by date [XX/YY/20XX], the Secretary of State may terminate this Agreement by notice in writing to the Company such termination to take effect on the date of the notice.

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

- (1.) the Academy would, on opening, provide an unacceptably low standard of education; or
- (2.) the safety of pupils or staff at the Academy would, on opening, be threatened; or
- (3.) the staff employed at the Academy are unsuitable;
- (4.) there is a serious breakdown in the way the Company is being managed or governed; or
- (5.) the buildings and other structures on the Land are unsuitable or the Company has not obtained Building Regulation approval;

he may in writing either:

- (a) require the Company (i) not to open the Academy; and/or (ii) not to admit pupils of a particular age range, to be determined by the

Secretary of State; and/or (iii) not to use any building or other structure on the Land until such time as the relevant matter or matters listed in 1. to 5. above has or have been resolved to the Secretary of State's satisfaction; or

- (b) terminate this Agreement by notice in writing to the Company such termination to take effect on the date of the notice.

5.17 If the Company has not entered into the Lease by date [XX/YY/20XX], the Secretary of State may terminate this Agreement by notice in writing to the Company such termination to take effect on the date of the notice.

## **6 EFFECT OF TERMINATION**

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

6.2 Subject to clauses 6.3 and 6.4, if the Secretary of State terminates this Agreement pursuant to clause 5.1 of this Agreement, the Secretary of State shall indemnify the Company. If the Secretary of State terminates this Agreement other than pursuant to clause 5.1 of this Agreement, the Secretary of State may in his absolute discretion indemnify or (to such extent if any as he may in his absolute discretion consider appropriate) compensate the Company.

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

6.4 The categories of expenditure incurred by the Company in consequence of the termination of the Agreement in respect of which the Secretary of State shall (where the Secretary of State terminates this Agreement pursuant to clause 5.1) indemnify the Company and may (where the Secretary of State terminates this Agreement otherwise than pursuant to clause 5.1) in his absolute discretion indemnify or compensate the Company include (but not by way of limitation), staff compensation and redundancy payments, compensation payments in respect of

broken contracts, expenses of disposing of assets or adapting them for other purposes, legal and other professional fees, and dissolution expenses.

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

- (a) promptly transfer a proportion of the assets to a person nominated by the Secretary of State, if the Secretary of State considers that all or some of those assets need to be used for any educational purpose by that nominee. The proportion of the assets to be transferred shall be the same as the proportion of the capital contribution made by the Secretary of State to the original value of those assets, whether that contribution was made on the establishment of the Academy or later; or
- (b) if the Secretary of State confirms that a transfer under clause 6.5(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.

6.6 The Secretary of State may waive in whole or in part the repayment due under clause 6.5(b) if:

- (a) The Company 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 L A.

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

## **7 ANNEX**

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

## **8 GENERAL**

- 8.1 This Agreement shall not be assignable by the Company.
- 8.2 No delay, neglect or forbearance on the part of the Secretary of State in enforcing (in whole or in part) any provision of this Agreement or in exercising (in whole or in part) any right conferred on him by this Agreement shall be or be deemed to be a waiver of such provision or right or a waiver of any other provision or right or shall in any way prejudice any right of the Secretary of State under this Agreement or shall amount to an election not to enforce such provision or exercise such right (including, for the avoidance of doubt, any right to terminate this Agreement).
- 8.3 Termination of this Agreement, for any reason, shall not affect the accrued rights, remedies, obligations or liabilities of the parties existing at termination.
- 8.4 This Agreement may be executed in any number of counterparts, each of which when executed and delivered shall constitute a duplicate original, but all the counterparts shall together constitute the one agreement.

## **9 THE MASTER AGREEMENT**

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

## **10 ENGLISH LAW**

- 10.1 This Agreement and any dispute or claim arising out of or in connection with it or its subject matter or formation (including non-contractual disputes or claims) shall be governed by and construed in accordance with the law of England and Wales.
- 10.2 The parties irrevocably agree that the courts of England and Wales shall have exclusive jurisdiction to settle any dispute or claim that arises out of or in connection with this agreement or its subject matter or formation (including non-contractual disputes or claims).

This Agreement was executed as a Deed on the day and year first before mentioned

Executed on behalf of **ARK Schools** by:

.....

In the presence of:

Witness.....

Address.....

.....

Occupation.....

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

.....

**Duly Authorised**

**ANNEX TO THIS SUPPLEMENTAL AGREEMENT**

Requirements for the Admission for pupils at the  
Academy

Annex 1

## **APPENDIX: Land clauses**

For the majority of Mainstream Free Schools, variations of all or some of the following clauses will need to be inserted. The clauses below are based on the school land being leasehold land. Some of the clauses will be removed / amended if the land is held as freehold land.

Clauses 10A, 10G, 10J to 10L, 10N and 10O will be inserted if the Secretary of State assists the Company to acquire the freehold of the school site or a premium is paid by the Secretary of State to acquire leasehold premises for the school. These clauses provide the Secretary of State with protection for the public monies invested in the site. Clause 10M will generally be inserted in such situations where clause 10H is also included (see below). Where 10H is not included, clause 10M will be removed and a minor amendment will be made to clause 10K to remove reference to the use of the option under clause 10E.

Clause 10B will generally be inserted in all Funding Agreements. The choice of restriction will depend upon whether a legal charge is being taken over the school site, as well as whether the Company is a non-exempt or exempt charity at the time the school site is being acquired. An additional sub-clause will apply where the land will be subject to a legal charge, but is acquired prior to the Company becoming an exempt charity.

Clauses 10C and 10D will be amended should the land in question be freehold land.

Clauses 10E and 10F will be inserted into the majority of Funding Agreements; this enables the Secretary of State to continue to use the school site for another Free School or Academy should the Funding Agreement be terminated in order to protect the public investment in the land. Minor amendments may be made to these clauses to reflect the way that the land is held.

Clause 10H will be inserted where there are possible conditions that may prevent the land being used as the permanent site of the Mainstream Free School – for example if it is deemed to be unsuitable prior to the opening of the Mainstream Free School (or where a temporary site is used in the first years of the Mainstream Free School before the Mainstream Free School moves to the permanent site). This enables the SoS to recover the land for use by another Free School or Academy, or to require the Company to sell the land in order to fund the purchase of an alternative site and to return any public monies not used to purchase the alternative site.

Clause 10I will generally be inserted in all Funding Agreements, but will be subject to amendment where no Legal Charge is in place.

Drafting included in square brackets may be optional or allow for a choice of drafting

dependent upon the particular land arrangements.

Further clauses (and potentially additional definitions) may also need to be inserted into the Funding Agreement specific to your Mainstream Free School dependent upon the specific land arrangements for the school site to further provide protection for the investment of public monies in the site. These may include further clauses to enable the Secretary of State to rectify any breaches of the terms of the lease, to intervene in the Company in order to secure a permanent site for your Mainstream Free School or to terminate the Funding Agreement if it is not possible to secure a permanent site for your Mainstream Free School. Companies should be aware that any disposal of land acquired with the assistance of the Secretary of State will require the consent of the Secretary of State, who will wish to ensure that the public funds will continue to be used for the purposes of the Mainstream Free School.

*The following definitions should be inserted at clause 1 should a legal charge be taken over the school property:*

“Debt” means the amount equal to 100% of the Land Value[,subject to any overage in the contractual arrangement for the acquisition of the Land by the Company];

[“Deed of Priority” means a contractual arrangement between the Secretary of State and any third party agreeing a ranking of legal charges over the Land”];

“Discharge Process”

means the removal of:-

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

“Land Value” means, at any time:-

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



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

*The following definition should be amended dependent upon when the legal charge is to be entered into:*

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

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

**AND**

*Insert the following headings and paragraphs after clause 10 to become 10A)-O):*

**Debt**

10A) a) The Secretary of State has agreed to make payments of Capital Grant to the Company pursuant to Clause 38 of the Master Agreement;

10A) b) The payments referred to at 10A(a) are made available to the Company on an interest free basis;

10A) c) In consideration of the Secretary of State making the payments referred to at 10A(a) and financing the acquisition of the Land, the Company shall pay the Debt upon termination of this Agreement or in accordance with clauses 10H(b) or 10K(a) or upon any disposition by way of sale of the whole or part of the Land, whether or not such sale has been consented to by the Secretary of State; and

10A) d) The Debt shall be secured by the Legal Charge.

**Restrictions on Land transfer**

10B) In consideration that it has or will be obtaining a legal interest in the Land, such acquisition being financed by the Secretary of State, the Company:

- a) [i)] shall, within 28 days from the acquisition of the legal interest in the Land or the signing of this Agreement, whichever is the latter, apply to the Land Registry for restrictions in the proprietorship register (under section 43(1)(a) of the Land Registration Act 2002 in Form RX1 as prescribed by Rule 91 and Schedule 4 of the Land Registration Rules 2003) ('LRR 2003')) in the following

terms:

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

*No disposition of the registered estate by the proprietor of the registered estate is to be registered without a written consent signed by the Secretary of State for Education of Sanctuary Buildings, Great Smith Street, London SW1P.]<sup>2</sup>*

*[No disposition of the registered estate by the proprietor of the registered estate or by the proprietor of any registered charge is to be registered without a written consent signed by the proprietor for the time being of the charge dated [date]<sup>3</sup> in favour of The Secretary of State for Education of Sanctuary Buildings, Great Smith Street, London SW1P 3BT referred to in the charges register or, if appropriate, signed on such proprietor's behalf by its conveyancer.]<sup>4</sup>*

- (a)ii) shall, within 28 days from date of the Legal Charge apply to the Land Registry to amend the restrictions entered in the proprietorship register (under section 43(1)(a) of the Land Registration Act 2002 in Form RX1 as prescribed by Rule 91 and Schedule 4 of the Land Registration Rules 2003) ('LRR 2003') in accordance with 10B(a)(i) in the following terms:

*No disposition of the registered estate by the proprietor of the registered estate or by the proprietor of any registered charge is to be registered without a written consent signed by the proprietor for the time being of the charge dated [date]<sup>5</sup> in favour of The Secretary of State for Education of Sanctuary Buildings, Great Smith Street, London SW1P 3BT referred to in the charges*

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<sup>2</sup> These restrictions should be registered against the title if the Company is a non-exempt charity at the time of entry into the lease / acquisition of the land.

<sup>3</sup> Date to be inserted should be date charge is entered into. This is not inserted into the clause in the Funding Agreement, but sets out what the restriction should be when registered with the Land Registry.

<sup>4</sup> This restriction will apply if the Company is an exempt charity at the time of the acquisition of the land and enters into the legal charge upon acquisition.

<sup>5</sup> Date to be inserted should be date charge is entered into. This is not inserted into the clause in the Funding Agreement, but sets out what the restriction should be when registered with the Land Registry.

*register or, if appropriate, signed on such proprietor's behalf by its conveyancer.]*<sup>6</sup>

- b) shall take any further steps reasonably required to ensure that the restriction[s] referred to in clause 10B(a) [is/are] entered on the proprietorship register,
- c) shall provide the Secretary of State with confirmation of the entry of the restriction[s] referred to in clause 10B(a) as soon as reasonably practicable after it receives notification from the Land Registry,
- d) in the event that it has not registered the restriction[s] referred to in clause 10B(a), hereby consents to the entering of the restriction[s] referred to in 10B(a) in the register by the Secretary of State (under s. 43(1)(b) of the Land Registration Act 2002); and
- e) shall not, without the consent of the Secretary of State, apply to dis-apply, modify or remove (by cancellation or otherwise) a restriction entered in accordance with clause 10B(a) or 10B(d) above, whether by itself, a holding company, a subsidiary company, or a receiver, administrator or liquidator acting in the name of the Company.

#### **Obligations of the Company**

10C) (i) The Company shall keep the Land clean and tidy and make good any damage it causes to the Land and / or any deterioration to the condition of the Land that may arise from the date of this Agreement, save that the Company shall ensure that any actions undertaken in compliance with this clause shall be consistent with the terms of the Lease. In compliance with this clause, the Company shall not do or cause or permit to be done anything to lessen the value or marketability of the Land save with the express written consent of the Secretary of State.

10C)(ii) The Company shall observe and comply with its obligations under the Lease and shall promptly enforce its rights against the Landlord.

10C)(iii) The Company agrees it shall seek and obtain the prior written consent of the Secretary of State, not to be unreasonably withheld or delayed before taking any steps to:

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<sup>6</sup> This sub-clause is inserted if the Company is a non-exempt charity at the time that the property is acquired and has applied for the first 2 restrictions to be entered against the legal title of the land (on the basis that the Company will not enter into the legal charge until 2 weeks after the Mainstream Free School has opened).

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

10C) iv) The Company agrees that prior to taking any steps, including but not limited to the service of any notice or waiver of any condition, under any contractual arrangement entered into in respect of the acquisition of the legal interest in the Land, it shall seek and obtain the written consent of the Secretary of State, not to be unreasonably withheld or delayed.

#### **Insurance**

10D) The Company shall, save where the terms of the Lease provide for the Landlord to obtain insurance in respect of the Land:-

- a) keep the Land insured as in accordance with the terms of the Lease and in any event with a reputable insurance office against loss or damage by the Insured Risks in the sum the Company is advised represents the reinstatement value of the Land from time to time;
- 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 Company provides premises not necessarily identical to the Land as the same existing prior to such damage or destruction occurring) as soon as may be reasonably practicable;
- d) produce to the Secretary of State a copy of the insurance policy whenever reasonably requested and the receipt for the last premium or other evidence of renewal and up to date details of the amount of cover (but no more often than once in any period of 12 months in both cases);

- e) not knowingly do anything whereby any policy of insurance relating to the 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**

10E) In consideration that it has or will be obtaining a legal interest in the Land, such acquisition being financed by the Secretary of State, the Company hereby grants and the Secretary of State hereby accepts an option, exercisable by the Secretary of State or his nominee, to acquire the said Land or any part thereof at nil consideration. The option hereby granted shall be exercisable (by notice in writing by or on behalf of the Secretary of State) on the termination of this Funding Agreement for whatever cause or in circumstances where the Company is unable to use all or part of the Land as the permanent site of the Academy in accordance with clauses 10H or 10K. On the exercise of this option, the Law Society's Standard Conditions of Sale for Commercial Property in force at the date of such exercise shall apply to the transaction and completion shall take place 28 days after such exercise.

10F) In consideration that it has or will be obtaining a legal interest in the Land, such acquisition being financed by the Secretary of State, the Company:

- a) shall, within 14 days from the transfer to it of the Land or the signing of this Agreement, whichever is the latter, apply to the Land Registry in Form AN1 as prescribed by Rule 81 of the Land Registration Rules 2003 for a notice to be entered in the register (under section 34(3)(a) of the Land Registration Act 2002) to protect the option granted under clause 10E and including a copy of this Agreement as evidence of that option,
- b) shall take any further steps required to ensure that the notice referred to in clause 10F(a) is entered on the proprietorship register,
- c) shall provide the Secretary of State with confirmation of the entry of the notice referred to in clause 10F(a) as soon as practicable after it receives notification from the Land Registry,
- d) in the event that it has not registered the notice referred to in clause 10F(a), hereby consents to the entering of the notice referred to in 10F(a) in the register by the Secretary of State (by application in Form UN1 under s.

34(3)(b) of the Land Registration Act 2002),

- e) shall not, without the consent of the Secretary of State, apply to dis-apply, modify or remove (by cancellation or otherwise) a notice entered in accordance with clause 10F(a) or 10F(d) above, whether by itself, a holding company, a subsidiary company, or a receiver, administrator or liquidator acting in the name of the Company, and
- f) in the case of previously unregistered land, for the further protection of the option granted in Clause 10E the Company shall within 14 days of the acquisition of the legal interest in the Land or the signing of this Agreement, whichever is the latter, make application to register a Class C (iv) land charge in the Land Charges Registry and a Caution against First Registration in the Land Registry and shall provide the Secretary of State with copies of the entries secured thereby within 7 days of completing each registration, respectively. If the Secretary of State is of the view that the Company has failed to perform the registration obligations in this sub-clause he shall be at liberty to make his own applications to secure these registrations.

#### **Legal Charge**

10G) In consideration that it has or will be obtaining a legal interest in the Land, such acquisition being financed by the Secretary of State, the Company:

- a) shall enter into the Legal Charge [within two weeks of the opening of the Academy] [upon completion of the acquisition of said interest]<sup>7</sup>;
- b) shall, within 21 days from the entry into of the Legal Charge [and where appropriate any Deed of Priority], register the Legal Charge [and any such Deed of Priority (if required)] with Companies House or if required by the Secretary of State shall use all reasonable endeavours to assist the Secretary of State to register the Legal Charge [and any such Deed of Priority (if required)] at Companies House, including signing and executing any documents, deeds and/or forms as required;

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<sup>7</sup> The choice here will depend upon whether or not the Company is an exempt or non-exempt charity at the time the land is acquired. Where the Academy is a non-exempt charity at that time the first option will apply, whilst the second option will apply if the Company is an exempt charity.

- c) shall, within 28 days from the date of the Legal Charge [and where appropriate any Deed of Priority], apply to the Land Registry for the Legal Charge [and any such Deed of Priority] to be entered on the charges register, using forms AP1 (Rule 13 LRR 2003) and CH1 (Rule 103 LRR 2003) or such form as may be required by the Secretary of State;
- d) shall take any further steps required to ensure that the Legal Charge [and where appropriate any Deed of Priority] [is/are] entered on the charges register;
- e) shall provide the Secretary of State with confirmation of the registration of the Legal Charge [and where appropriate any Deed of Priority] as soon as reasonably practicable after it receives notification from the Land Registry; and
- f) in the event that it has not registered the Legal Charge [and where appropriate and Deed of Priority], hereby consents to the registration of the Legal Charge [and Deed of Priority] by the Secretary of State. To enable the Secretary of State to do so, the Company shall use all reasonable endeavours to assist the Secretary of State to register the Legal Charge [and Deed of Priority], including signing and executing any documents, deeds and/or forms as required, specifically but not limited to providing the Secretary of State with the executed Legal Charge and completed AP1/CH1 forms, and dealing with any requisitions raised by the Land Registry.

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

10H) If the Company is unable to use the Land or any part thereof as the permanent site of the Academy but the Secretary of State agrees not to terminate this Agreement on that basis, the Secretary of State may give notice to the Company that:-

- a) he intends to exercise the option granted under clause 10E) to transfer the Land or the relevant part thereof for nil consideration to himself or his nominee;
- b) the Company pays the Debt or the Market Value; and/or
- c) the Company shall dispose of the Land or the relevant part thereof and that, pursuant to clause 86 of the Master Agreement, the Company may retain some or all of the proceeds of sale of the Land or the relevant part thereof in order to fulfil its charitable purposes by funding the purchase of an alternative permanent site for the Academy, save that any proceeds not

used to fund the purchase of an alternative permanent site shall be accounted for to the Secretary of State or his nominee.

#### **Sharing of the Land**

10I) The Company agrees that if:

- a) the Academy does not reach its planned capacity over a period of [X] Academy Funding Years; or
- b) notice of termination is served by either the Company or the Secretary of State in accordance with clause 5.1 of this Agreement; or
- c) in the reasonable opinion of the Secretary of State the operation of the Academy at planned capacity does not require the use of the full extent of the Land,
  - i. it will share occupation of the Land with such other Academies as the Secretary of State deems appropriate in the circumstances and enter into such legal arrangements in respect of the same as are required by the Secretary of State; or
  - ii. it will dispose of part of the Land as required by the Secretary of State and account for any proceeds of such disposal to the Secretary of State or his nominee as part payment of the Debt. Upon such disposal and part payment of the Debt, the Secretary of State will discharge the Legal Charge in respect of the part of the Land that has been disposed of.

#### **Exercise of Rights**

10J) On the termination of this Agreement, the Secretary of State may give notice of his intention to exercise the rights conferred upon the Secretary of State pursuant to clause 6.5, 6.6, 10E and the Legal Charge:

- a) any such notice shall be in writing and shall confirm which clause of this Agreement the Secretary of State intends to exercise without prejudice to the Secretary of State's right to exercise all and any other rights available to him;
- b) in the event that upon termination of this Agreement for whatever reason, the Secretary of State exercises his option granted and the legal interest in the Land is transferred to the Secretary of State or his nominee for nil consideration by the Company pursuant to clause 10E, the Company's



obligation to pay the Debt shall be deemed to have been satisfied in full, the obligation on the Company to pay a proportion of the proceeds of sale of the Land to the Secretary of State under clause 6.5(b) shall be deemed to have been complied with, and the Secretary of State shall take all steps reasonably required to carry out the Discharge Process;

- c) in the event that upon termination of this Agreement for whatever reason the Secretary of State enforces the Legal Charge, the Company's obligation to pay the Debt shall be deemed to have been satisfied in full following the realisation of the Debt by any receiver, the obligation on the Company to pay a proportion of the proceeds of sale of the Land to the Secretary of State under clause 6.5(b) shall be deemed to have been complied with, and the Secretary of State shall take all steps reasonably required to carry out the Discharge Process;
- d) in the event that upon termination of this Agreement for whatever reason, the Secretary of State exercises his rights under clause 6.5, the Company's obligations to pay the Debt shall be deemed to have been satisfied in full and the Secretary of State shall take all steps reasonably required to carry out the Discharge Process; and
- e) in the event that upon termination of this Agreement for whatever reason, the Secretary of State agrees that pursuant to clause 6.6 the Company may invest the proceeds of the sale of the Land for its charitable objects or directs the Company to pay all or part of the proceeds of sale of the Land to the LA, the Company's obligations to pay the Debt shall be deemed to have been satisfied in full and the Secretary of State shall take all steps reasonably required to carry out the Discharge Process.

10K) On the Company applying to the Secretary of State for consent to the disposal of all or part of the Land during the lifetime of this Agreement, the Secretary of State shall, should he agree that the Land is no longer required or cannot be used for the purposes of the Academy, subject to clause 84 of the Master Agreement,

- a) consent to the disposal subject to any one or a combination of the following conditions:-
  - i. that (notwithstanding the provisions of clause 86 of the Master Agreement the Company pays the Debt in full or, in the event of a proposed disposal of part, repays to the Secretary of State the

Market Value;

- ii. that pursuant to clause 86 of the Master Agreement, the Company may retain some or all proceeds of the disposal for its charitable purposes, subject to the Company accounting to the Secretary of State for any remaining proceeds of sale that the Secretary of State does not agree that the Company may retain for such charitable purposes; or
- iii. that pursuant to clause 87 of the Master Agreement, the Company pays all or some of the proceeds of sale to the LA and / or may reinvest all or some of the proceeds of sale for its charitable purposes,

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

- b) exercise the option granted to him pursuant to clause 10E to transfer the relevant part of the Land to him or his nominee for nil consideration.

10L) In the event that the Secretary of State consents to the disposal of the Land during the lifetime of this Agreement, subject to any of the conditions set out in clause 10K(a):

- a) if the Secretary of State enforces the Legal Charge, the Company's obligation to pay the Debt shall be deemed to have been satisfied in full following the realisation of the Debt by any receiver, the obligations on the Company to pay a proportion of the proceeds of sale of the Land to the Secretary of State under clause 86 of the Master Agreement shall be deemed to have been complied with, and the Secretary of State shall take all steps reasonably required to carry out the Discharge Process.
- b) if the Secretary of State agrees that the Company may retain some or all proceeds of the disposal for its charitable purposes, subject to the Company accounting to the Secretary of State for any remaining proceeds of sale that the Secretary of State does not agree that the Company may retain for such charitable purposes, the Company's obligations to pay the Debt shall be deemed to have been satisfied in full, the obligations on the Company to pay a proportion of the proceeds of sale of the Land to the Secretary of State under clause 86 of the Master Agreement shall be deemed to have been complied with and the Secretary of State shall take all steps reasonably required to carry out the Discharge Process, provided that in the event of a disposal of part of the Land, the Company's obligation to pay the

Debt shall be deemed to have been satisfied to the extent of the Market Value, the Company's obligation under clause 86 of the Master Agreement shall be deemed to have been satisfied in relation to the relevant part of the Land, the Legal Charge shall be released and the restriction and the notice shall be removed in relation to such part and the Legal Charge, the restriction and the notice shall remain in place in relation to the balance of the Land.

- c) if the Secretary of State directs the Company to pay all or part of the proceeds of sale of the Land to the LA pursuant to clause 87 of the Master Agreement or agrees that the Company may reinvest the proceeds of the sale for its charitable purposes, the Secretary of State shall take all steps reasonably required to carry out the Discharge Process, provided that in the event of a disposal of part of the Land the restriction and notice shall remain in place in relation to the balance of the Land.

10M) In the event that the Secretary of State exercises his option during the lifetime of this Agreement under clause 10K(b) and the legal interest in the Land is transferred to the Secretary of State or his nominee for nil consideration by the Company pursuant to clause 10E, the Company's obligation to pay the Debt shall be deemed to have been satisfied in full, the obligations on the Company to pay a proportion of the proceeds of sale of the Land to the Secretary of State under clause 86 of the Master Agreement shall be deemed to have been complied with, and the Secretary of State shall take all steps reasonably required to carry out the Discharge Process, provided that in the event of the exercise of the option in relation to part of the Land, the Company's obligation to pay the Debt shall be deemed to have been satisfied to the extent of the Market Value, the Company's obligation under clause 86 of the Master Agreement shall be deemed to have been satisfied in relation to the relevant part of the Land and the Legal Charge shall be released and the restriction and notice shall be removed in relation to such part and the Legal Charge, the restriction and the notice shall remain in place in relation to the balance of the Land.

#### **Payment of Debt**

10N) In the event that the Company pays all the Debt, upon termination of this Agreement or at any other time, the Secretary of State shall take all steps reasonably required to carry out the Discharge Process.

10O) Should the Company:

- a) dispose of any or all parts of the Land, in accordance with clause 10K, or
- b) make payment to the Secretary of State to pay the Debt in full,

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

THE COMPANIES ACTS 1985 AND 1989

A COMPANY LIMITED BY GUARANTEE  
AND NOT HAVING A SHARE CAPITAL

MEMORANDUM OF ASSOCIATION  
OF  
**ARK ACADEMIES**

COMPANY NUMBER: 5112090

(Amended by written resolution passed on 2006)

THE COMPANIES ACTS 1985 AND 1989

A COMPANY LIMITED BY GUARANTEE AND NOT HAVING A SHARE CAPITAL

MEMORANDUM OF ASSOCIATION OF ARK ACADEMIES

1. The Company's name is ARK Academies (and in this document it is called "the Trust").
2. The Trust's registered office is to be situated in England and Wales.
3. The Trust's objects ("the Objects") are to advance for the public benefit education in the United Kingdom, in particular but without prejudice to the generality of the foregoing by establishing, maintaining, carrying on, managing and developing schools ("the Academies") offering a broad curriculum with a strong emphasis on, but in no way limited to one or a combination of the specialisms specified in the funding agreements entered into between the Trust and the Secretary of State for Education and Skills ("Secretary of State").
4. In furtherance of the Objects but not further or otherwise the Trust may exercise the following powers:-
  - (a) to draw, make, accept, endorse, discount, execute and issue promissory notes, bills, cheques and other instruments, and to operate bank accounts in the name of the Trust;
  - (b) to raise funds and to invite and receive contributions provided that in raising funds the Trust shall not undertake any substantial permanent trading activities and shall conform to any relevant statutory regulations;
  - (c) to acquire, alter, improve and (subject to such consents as may be required by law) to charge or otherwise dispose of property;
  - (d) subject to clause 5(f) below to employ such staff, as are necessary for the proper pursuit of the Objects and to make all reasonable and necessary provision for the payments of pensions and superannuation to staff and their dependants: Provided that such staff shall not be Directors, save for any staff or teacher Directors elected or appointed in accordance with the Trust's Articles of Association;

- (e) to establish or support, whether financially or otherwise, any charitable trusts, associations or institutions formed for all or any of the Objects;
- (f) to co-operate with other charities including Absolute Return for Kids (ARK) ("the Principal Sponsor"), other independent and maintained schools, voluntary bodies and statutory authorities operating in furtherance of the Objects and to exchange information and advice with them;
- (g) to pay out of funds of the Trust the costs, charges and expenses of and incidental to the formation and registration of the Trust;
- (h) to establish, maintain, carry on, manage and develop the Academies at locations to be determined by the Directors and the Secretary of State;
- (i) to offer scholarships, exhibitions, prizes and awards to pupils and former pupils, and otherwise to encourage and assist pupils and former pupils;
- (j) to provide educational facilities and services to students of all ages and the wider community for the public benefit;
- (k) to carry out research into the development and application of new techniques in education in particular in relation to the Academies' areas of curricular specialisation and to their approach to curriculum development and delivery and to publish the results of such research, and to develop means of benefiting from application of the experience of industry, commerce, other schools and the voluntary sector to the education of pupils in Academies;
- (l) subject to such consents as may be required by law to borrow and raise money for the furtherance of the Objects in such manner and on such security as the Trust may think fit;
- (m) to invest the moneys of the Trust not immediately required for the furtherance of its Objects in or upon such investments, securities or property as may be thought fit, to hold the same as investments and to sell, exchange, carry and dispose of the same, subject nevertheless to such conditions (if any) and such consents (if any) as may for the time being be imposed or required by law;
- (n) subject to the provisions of the Companies Act 1985 (as amended from time to

time) to provide indemnity insurance and / or make loans to cover the liability of Directors which by virtue of any rule of law would otherwise attach to them in respect of any negligence, default, breach of trust or breach of duty of which they may be guilty in relation to the Trust: Provided that any such insurance shall not extend to any claim arising from any act or omission which the Directors knew to be a breach of trust or breach of duty or which was committed by the Directors in reckless disregard of whether it was a breach of trust or breach of duty or not and provided also that any such insurance shall not extend to the costs of any unsuccessful defence to a criminal prosecution brought against the Directors in their capacity as Directors;

(o) to establish subsidiary companies to carry on any trade or business for the purpose of raising funds for the Academies;

(p) to purchase, take on lease or in exchange, hire or otherwise acquire any real or personal property and any rights or privileges and to construct, maintain, fit out, equip and alter any buildings or erections which the Trust may think necessary for the promotion of its Objects;

(q) to act as trustees or managers of any property, endowment, legacy, bequest or gift for charitable purposes only;

(r) to do all such other lawful things as are necessary for or are incidental to or conducive to the achievement of the Objects.

5. The income and property of the Trust shall be applied solely towards the promotion of the Objects and no part shall be paid or transferred, directly or indirectly, by way of dividend, bonus or otherwise by way of profit, to members of the Trust, and no director of the Trust ("Director") shall be appointed to any office of the Trust paid by salary or fees or receive any remuneration or other benefit in money or money's worth from the Trust. Provided that nothing in this document shall prevent the payment in good faith by the Trust:-

(a) of reasonable and proper remuneration or other material benefit to any Director or to any firm or company of which a Director is a partner, member, employee, director or officer, for the supply of goods or services, including legal, accountancy or other professional services: Provided that the goods or services



- are actually required by the Trust, the nature and level of remuneration or other material benefit is no more than is reasonable in relation to the goods or services, that at no time shall a majority of the Directors benefit under this provision and/or clause 5(f) and that a Director shall withdraw from any meeting at which his or her appointment or remuneration, or that of his or her firm or company, is under discussion;
- (b) of reasonable and proper remuneration for any services rendered to the Trust by any member, officer or servant of the Trust who is not a Director;
  - (c) of interest on money lent by any member of the Trust or Director at a reasonable and proper rate per annum not exceeding 2 per cent less than the published base lending rate of a clearing bank to be selected by the Directors;
  - (d) of reasonable and proper rent (as determined by an independent valuer appointed by the Trust) for premises demised or let by any member of the Trust or a Director;
  - (e) to any Director of reasonable out-of-pocket expenses;
  - (f) of reasonable and proper remuneration to any Director who is employed by the Trust: Provided that at no time shall a majority of the Directors benefit under this provision and/or clause 5(a) and that a Director shall withdraw from any meeting at which his or her appointment, remuneration or terms or conditions specific to him or her are under discussion;
  - (g) of any premium in respect of any indemnity insurance and/or any loan made to a Director to cover the liability of the Directors 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 Trust: Provided that any such insurance shall not extend to any claim arising from any act or omission which Directors knew to be a breach of trust or breach of duty or which was committed by the Directors 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 Directors in their capacity as directors of the Trust.

6. The liability of the members of the Trust is limited.
7. Every member of the Trust undertakes to contribute such amount as may be required (not exceeding £10) to the Trust's assets if it should be wound up while he or she is a member or within one year after he or she ceases to be a member, for payment of the Trust's debts and liabilities before he or she ceases to be a member, and of the costs, charges and expenses of winding up, and for the adjustment of the rights of the contributories among themselves.
8. If the Trust is wound up or dissolved and after all its debts and liabilities (including any under section 483 of the Education Act 1996) have been satisfied there remains any property it shall not be paid to or distributed among the members of the Trust, but shall be given or transferred to the Principal Sponsor or to some other charity or charities having objects similar to the Objects which prohibits the distribution of its or their income and property to an extent at least as great as is imposed on the Trust by clause 4 above, chosen by the members of the Trust at or before the time of dissolution and if that cannot be done then to some other charitable object.
9. No alteration or addition shall be made to or in the provisions of the Memorandum or Articles of Association which would have the effect (a) that the Trust would cease to be a company to which section 30 of the Companies Act 1985 applies; or (b) that the Trust would cease to be a charity.

Revised 20.3.2007

THE COMPANIES ACTS 1985 AND 1989

A COMPANY LIMITED BY GUARANTEE  
AND NOT HAVING A SHARE CAPITAL

ARTICLES OF ASSOCIATION

OF

**ARK ACADEMIES**

COMPANY NUMBER: 5112090

(Adopted by written resolution passed on

)

*Ami Spielman*  
(SECRETARY)

5.9.07

Lewis Silkin LLP  
5 Chancery Lane  
Clifford's Inn  
London EC4A 1BL

Ref GRD/89215 1/819245-7

A COMPANY LIMITED BY GUARANTEE  
AND NOT HAVING A SHARE CAPITAL

ARTICLES OF ASSOCIATION  
OF  
ARK ACADEMIES

INTERPRETATION

In these Articles:-

- "the Act" means the Companies Act 1985 including any statutory modification or re-enactment thereof for the time being in force;
- "the Trust" means the company intended to be regulated by these articles;
- "the articles" means these Articles of Association of the Trust;
- "Associated Company" means any other company which is for the time being and from time to time a subsidiary or associated undertaking of the Trust (as defined in the Act);
- "clear days" in relation to the period of a notice means the period excluding the day when the notice is given or deemed to be given and the day of which it is given or on which it is to take effect;
- "executed" includes any mode of execution;
- "the memorandum" means the memorandum of association of the Trust;
- "office" means the registered office of the Trust;
- "the Directors" means the directors of the Trust (and "Director" has a corresponding meaning);
- "the Academies" means all those Academies as referred to in Clause 3 of the memorandum and established by the Trust and "Academy" shall mean any one of them;

"head teachers"	means the head teachers of each of the Academies (and "head teacher" has a corresponding meaning);
"the LEAs"	means all the Local Education Authorities covering the areas in which the Academies operate (and "the LEA" shall mean any one of these LEAs);
"the Local Governing Bodies"	means the committees appointed pursuant to article 78 (and "Local Governing Body" has a corresponding meaning);
"the LGB Director"	means the Director appointed pursuant to article 37;
"Member"	means a member of the Trust and someone who as such is bound by the undertaking contained in Clause 7 of the memorandum;
"Principal Sponsor"	means Absolute Return for Kids (ARK), a registered charity number 1095322, the sole subscriber to the memorandum and articles;
"the relevant Funding Agreements"	means the funding agreements entered into by the Trust and the Secretary of State relating to each of the Academies;
"the seal"	mean the common seal of the Trust if it has one;
"secretary"	means the secretary of the Trust or any other person appointed to perform the duties of the secretary of the Trust, including a joint, assistant or deputy secretary;
"Secretary of State"	means the Secretary of State for Education and Skills;
"teacher"	means a teacher employed under a contract of employment or a contract for services or otherwise engaged to provide his services as a teacher ;
"the United Kingdom"	means Great Britain and Northern Ireland.

Words importing the masculine gender only shall include the feminine gender, and vice versa. Words importing the singular number only shall include the plural number, and vice versa.

Subject as aforesaid, words or expressions contained in these articles shall, unless the context requires otherwise, bear the same meaning as in the Act.

## OBJECTS

1. The Trust is established for the objects expressed in the Memorandum

("Objects").

#### MEMBERS

2. The Members of the Trust shall comprise:
  - a) The Principal Sponsor; and
  - b) One person appointed by the Secretary of State.
3. The Secretary of State shall have the right from time to time by written notice delivered to the Trust's registered office to remove any Member appointed by him or her and, subject to that person complying with article 4, to appoint a replacement Member to fill a vacancy whether resulting from such removal or otherwise.
4. Every person nominated to be a Member of the Trust shall either sign a written consent to become a Member or sign the register of Members on becoming a Member.
5. A Member may in his absolute discretion permit the other Member to resign. A Member's membership of the Trust shall cease immediately on the receipt by the Trust of a notice in writing signed by the person or persons entitled to remove him under article 3 (provided that no such notice shall take effect when the number of Members is one unless it contains or is accompanied by the appointment of a replacement Member).

#### GENERAL MEETINGS

6. The Trust shall hold an Annual General Meeting each year in addition to any other meetings in that year, and shall specify the meeting as such in the notices calling it; and not more than fifteen months shall elapse between the date of one Annual General Meeting of the Trust and that of the next. Provided that so long as the Trust holds its first Annual General Meeting within eighteen months of its incorporation, it need not hold it in the year of its incorporation or in the following year. The Annual General Meeting shall be held at such time and place as the Directors shall appoint. All General Meetings other than Annual General Meetings shall be called Extraordinary General Meetings.
7. The Directors may call general meetings and, on the requisition of Members pursuant to the provisions of the Act, shall forthwith proceed to convene an Extraordinary General Meeting for a date not later than eight weeks after the receipt of the requisition. If there are not within the United Kingdom sufficient Directors to call a general meeting, any Director or any Member may call a general meeting.

#### NOTICE OF GENERAL MEETINGS

8. An Annual General Meeting and an Extraordinary General Meeting called for

the passing of a special resolution appointing a person as a Director shall be called by at least twenty-one clear days' notice. All other Extraordinary 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

- a) in the case of an Annual General Meeting, by all the members entitled to attend and vote; and
- b) in the case of any other meeting by a majority in number of members having a right to attend and vote, being a majority together holding not less than 95 per cent of the total voting rights at the meetings of all the Members.

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 be given to all the Members, to the Directors and auditors.

9. 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.

10. No business shall be transacted at any meeting unless a quorum is present. A Member counts towards the quorum by being present either in person or by proxy. Two persons entitled to vote upon the business to be transacted, each being a Member or a duly authorised representative of a Member organisation, or one tenth of the total number of such persons for the time being, whichever is the greater, shall constitute a quorum.
11. 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 Directors may determine.
12. The chairman, if any, of the Directors or in his absence some other Director nominated by the Directors shall preside as chairman of the meeting, but if neither the chairman nor such other Director (if any) be present within fifteen minutes after the time appointed for the holding the meeting and willing to act, the Directors present shall elect one of their number to be chairman and, if there is only one Director present and willing to act, he shall be the chairman.
13. If no Director is willing to act as chairman, or if no Director is present within fifteen minutes after the time appointed for holding the meeting, the Members present and entitled to vote shall choose one of their number to be chairman.

14. A Director shall, notwithstanding that he is not a Member, be entitled to attend and speak at any general meeting.
15. The chairman may, with the consent of a meeting at which a quorum is present (and shall if so directed by the meeting), adjourn the meeting from time to time and from place to place, but no business shall be transacted at any adjourned meeting other than the business which might properly have been transacted at the meeting had the adjournment not taken place. When a meeting is adjourned for fourteen days or more, at least seven clear days notice shall be given specifying the time and place of the adjourned meeting and the general nature of the business to be transacted. Otherwise it shall not be necessary to give any such notice.
16. A resolution put to the vote of the meeting shall be decided on a show of hands unless before, or on the declaration of the result of the show of hands a poll is duly demanded. Subject to the provisions of the Act, a poll may be demanded:-
  - a) by the chairman; or
  - b) by at least two Members having the right to vote at the meeting; or
  - c) by a Member or Members representing not less than one-tenth of the total voting rights of all the Members having the right to vote at the meeting.
17. Unless a poll is duly demanded a declaration by the chairman that a resolution has been carried or carried unanimously, or by a particular majority, or lost, or not carried by a particular majority and an entry to that effect in the minutes of the meeting shall be conclusive evidence of the fact without proof of the number or proportion of the votes recorded in favour of or against such resolution.
18. The demand for a poll may be withdrawn, before the poll is taken, but only with the consent of the chairman. The withdrawal of a demand for a poll shall not invalidate the result of a show of hands declared before the demand for the poll was made.
19. A poll shall be taken as the chairman directs and he may appoint scrutineers (who need not be Members) and fix a time and place for declaring the results. The result of the poll shall be deemed to be the resolution of the meeting at which the poll was demanded.
20. A poll demanded on the election of the chairman or on a question of adjournment shall be taken immediately. A poll demanded on any other question shall be taken either immediately or at such time and place as the chairman directs not being more than thirty days after the poll is demanded. The demand for a poll shall not prevent continuance of a meeting for the transaction of any business other than the question on which the poll is demanded. If a poll is demanded before the declaration of the result of a



show of hands and the demand is duly withdrawn, the meeting shall continue as if the demand had not been made.

21. No notice need be given of a poll not taken immediately if the time and place at which it is to be taken are announced at the meeting at which it is demanded. In other cases at least seven clear days' notice shall be given specifying the time and place at which the poll is to be taken.
22. A resolution in writing executed by or on behalf of each Member who would have been entitled to vote upon it if it had been proposed at a general meeting at which he was present shall be as effectual as if it had been passed at a general meeting duly convened and held and may consist of several instruments in the like form each executed by or on behalf of one or more Members.

#### VOTES OF MEMBERS

23. On the show of hands every Member present in person, and on a poll every Member present in person or by proxy, shall have the following number of votes:

The Principal Sponsor: 3 votes

The person appointed by the Secretary of State: 1 vote

24. A Member in respect of whom an order has been made by any court having jurisdiction (whether in the United Kingdom or elsewhere) in matters concerning mental disorder may vote, whether on a show of hands or on a poll, by his receiver, curator bonis or other person authorised in that behalf appointed by that court, and any such receiver, curator bonis or other person may, on a poll, vote by proxy. Evidence to the satisfaction of the Directors of the authority of the person claiming to exercise the right to vote shall be deposited at the office, or at such other place as is specified in accordance with the articles for the deposit of instruments of proxy, not less than 48 hours before the time appointed for holding the meeting or adjourned meeting at which the right to vote is to be exercised and in default the right to vote shall not be exercisable.
25. No objections shall be raised to the qualification of any voter 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.
26. An instrument appointing a proxy shall be in writing, executed 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 Directors may approve) -

"I/We, ... .., of . . . , being a member/members of the above named trust, hereby appoint . . . of . . . , or failing him, . . . of . . . as my/our proxy to vote in my/our name[s] and on my/our behalf at the annual/extraordinary general meeting of the Trust to be held on ..200[ ], and at any adjournment thereof.

Signed on ... 200[ ]"

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

"I/We, . . . , of . . . , being a member/members of the above-named trust, hereby appoint . . . of . . . , or failing him . . . of . . . , as my/our proxy to vote in my/our name[s] and on my/our behalf at the annual/extraordinary general meeting of the Trust, to be held on .. 200[ ], and at any adjournment thereof.

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

Resolution No. 1 \*for \* against

Resolution No. 2 \*for \* against.

\* Strike out whichever is not desired.

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

Signed on .. 200[ ]"

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

- a) be deposited at the office or at such other place within the United Kingdom as is specified in the notice convening the meeting or in any instrument of proxy sent out by the Trust in relation to the meeting not less than 48 hours before the time for holding the meeting or adjourned meeting at which the person named in the instrument proposes to vote, or
- b) in the case of a poll taken more than 48 hours after it is demanded, be deposited as aforesaid after the poll has been demanded and not less than 24 hours before the time appointed for the taking of the poll;
- c) where the poll is not taken forthwith but is taken not more than 48 hours after it was demanded, be delivered at the meeting at which the

poll was demanded to the chairman or to the secretary or to any Director;

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

29. 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 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.
30. Any organisation which is a Member 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 Trust, and the person so authorised shall be entitled to exercise the same powers on behalf of the corporation which he represents as that corporation could exercise if it were an individual Member.

#### DIRECTORS

31. The number of Directors shall be not less than three but and no more than 21 (excluding any Additional Directors that may be appointed under Article 40).
32. Subject to article 34 the Trust shall have the following Directors:
  - a) up to eighteen Directors appointed under article 35;
  - b) one LGB Director appointed under article 37;
  - c) up to two Directors appointed under article 34; and
  - d) up to 20 Additional Directors appointed under article 40.
33. The first Directors shall be those persons named in the statement delivered pursuant to section 10(2) of the Act, who shall be deemed to have been appointed under article 35. Future Directors shall be appointed or elected, as the case may be, under these articles.

#### APPOINTMENT OF DIRECTORS

34. The Directors shall appoint up to two Directors if required to do so by the Secretary of State in accordance with the terms of any of the relevant Funding Agreements.
35. The Principal Sponsor shall appoint up to eighteen Directors.

36. The Principal Sponsor shall, in making its appointments under article 35, ensure that each of the Academies is represented on the board of the Trust.

#### LGB DIRECTOR

37. The LGB Director shall be elected by the chairmen of each Local Governing Body (who shall themselves have been elected in accordance with terms of reference determined by the Directors from time to time) from amongst their number.

#### APPOINTMENT OF ADDITIONAL DIRECTORS

38. The Secretary of State may give a warning notice to the Directors where—
- a) he is satisfied—
    - i) that the standards of performance of pupils at any of the Academies are unacceptably low and are likely to remain so unless the Secretary of State exercises his powers under article 40, or
    - ii) that there has been a serious breakdown in the way any of the Academies are managed or governed which is prejudicing, or likely to prejudice, such standards of performance, or
    - iii) that the safety of pupils or staff of any of the Academies are threatened (whether by a breakdown of discipline or otherwise); and
  - b) the Secretary of State has previously informed the Directors of the matters on which that conclusion is based; and
  - c) those matters have not been remedied to the Secretary of State's satisfaction within a reasonable period.
39. For the purposes of article 38 a 'warning notice' is a notice in writing by the Secretary of State setting out—
- a) the matters referred to in Article 38(a);
  - b) the action which he requires the Directors to take in order to remedy those matters; and
  - c) the period within which that action is to be taken by the Directors ('the compliance period').
40. The Secretary of State may appoint up to 20 Additional Directors as he thinks fit if the Secretary of State has:
- a) given the Directors a warning notice in accordance with articles 38 and

39; and

- b) the Directors have failed to comply, or secure compliance, with the notice to the Secretary of State's satisfaction within the compliance period; and
- c) the Secretary of State has given reasonable notice in writing to the Directors that he proposes to exercise his powers under this article.

#### TERM OF OFFICE

41. The term of office for any Director shall be 4 years except in the case of the LGB Director who shall hold office for one year only. Subject to remaining eligible to be a Director, and to Articles 45 to 55 below, any Director may be re-appointed or re-elected for two further consecutive periods of office after which any Director shall not be re-appointed or re-elected unless and until one full year has elapsed, save that if any Director's term of office expires after he has attained the age of 75, that Director shall only be entitled to be re-appointed or re-elected annually (without limitation) for further terms of one year.

#### RESIGNATION AND REMOVAL

42. A Director shall cease to hold office if he resigns his office by notice to the Trust (but only if at least three Directors will remain in office when the notice of resignation is to take effect).
43. A Director 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 the LGB Director.
44. Where a Director resigns his office or is removed from office, the Director or, where he is removed from office, those removing him, shall give written notice thereof to the secretary.

#### DISQUALIFICATION OF DIRECTORS

45. No person shall be qualified to be a Director unless he is aged 18 or over at the date of his election or appointment. No pupil of any Academy shall be a Director.
46. A Director shall cease to hold office if he becomes incapable by reason of mental disorder, illness or injury of managing or administering his own affairs.
47. A Director shall cease to hold office if he is absent without the permission of the governing body from all their meetings held within a period of six months and the Directors resolve that his office be vacated.
48. A person shall be disqualified from holding or continuing to hold office as a Director if—

- a) he has been adjudged bankrupt or sequestration of his estate has been awarded and (in either case) he has not been discharged and the bankruptcy order has not been annulled or rescinded; or
  - b) he has made a composition or arrangement with, or granted a trust deed for, his creditors and has not been discharged in respect of it.
49. A person shall be disqualified from holding or continuing to hold office as a Director at any time when he is subject to a disqualification order 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).
50. A Director shall cease to hold office if he ceases to be a Director by virtue of any provision in the Act or is disqualified from acting as a trustee by virtue of section 72 of the Charities Act 1993 (or any statutory re-enactment or modification of that provision).
51. A person shall be disqualified from holding or continuing to hold office as a Director if he has been removed from the office of charity trustee or trustee for a charity by an order made by the Charity Commissioners or the High Court on the grounds of any misconduct or mismanagement in the administration of the charity for which he was responsible or to which he was privy, or which he by his conduct contributed to or facilitated.
52. A person shall be disqualified from holding or continuing to hold office as a Director at any time when he is:
- a) included in the list of teachers and workers with children or young persons whose employment is prohibited or restricted under section 1 of the Protection of Children Act 1999;
  - b) subject to a direction of the secretary of State under section 218 of the Education Reform Act 1988;
  - c) disqualified from working with children under sections 28 and 29 of the Criminal Justice and Court Services Act 2000;
  - d) by virtue of an Order made under section 142 of the Education Act 2002 disqualified from being the proprietor of any independent school or from being a teacher or other employee in any school.
53. A person shall be disqualified from holding or continuing to hold office as a Director where he has, at any time, refused a request by the secretary to make an application under section 113 of the Police Act 1997 for a criminal records certificate.
54. Where, by virtue of these articles a person becomes disqualified from holding, or continuing to hold office as a Director; and he is, or is proposed, to become

such a Director, he shall upon becoming so disqualified give written notice of that fact to the secretary.

55. Articles 45 to 54 also apply to any member of any committee of the Directors who is not a Director.

#### ALTERNATE DIRECTORS

56. Subject to Article 57, the LGB Director only shall have the power at any time to appoint an Alternate Director either (i) another chairman of a Local Governing Body or (ii) any other person approved by the chairmen of the Local Governing Bodies in consultation with the Directors and, at any time, to terminate such appointment in consultation with the Directors. Every appointment and removal of an Alternate Director shall be in writing by the appointer and (subject to any approval required) shall (unless the Directors agree otherwise) only take effect upon receipt of such written appointment or removal at the registered office. A LGB Director appointing an alternate shall remain liable for the actions of his alternate when acting (or purporting to act) as such alternate. An Alternate Director shall not be counted in reckoning the maximum and minimum number of Directors allowed or required by these Articles.
57. A LGB Director who is appointed as Chairman or Vice-Chairman of the Directors under Article 62 shall not be entitled to appoint an Alternate Director.
58. An Alternate Director shall (subject to his giving to the Trust an address within the United Kingdom at which notices may be served upon him) be entitled to receive notices of all meetings of the Directors and any sub-committee or local committee of the Directors of which his appointer is a member and to attend and vote as a Director at any such meeting at which his appointer is not personally present and generally in the absence of his appointer to perform and exercise all functions, rights, powers and duties as Director of his appointer, and to receive notices of all general meetings.
59. The appointment of an alternate Director shall automatically determine on the happening of any event which if he were a Director would cause him to vacate such office or if his appointer shall cease for any reason to be a Director otherwise than by retiring and being re-appointed at the same meeting.
60. A Director or any other person may act as an Alternate Director to represent the LGB Director and an Alternate Director shall be entitled at meetings of the Directors or any committee of the Directors to one vote for each Director whom he represents in addition to his own vote (if any) as a Director, but shall count as only one for the purposes of determining whether a quorum be present.

#### SECRETARY TO THE GOVERNING BODY

61. Subject to the provisions of the Act, the secretary shall be appointed by the Directors 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 Director or a head teacher. Notwithstanding this article, the Directors may, where the secretary fails to attend a meeting of theirs, appoint any one of their number to act as secretary for the purposes of that meeting.

#### CHAIRMAN AND VICE-CHAIRMAN OF THE DIRECTORS

62. In each school year, at the first meeting of the Directors in that year, the Directors shall appoint a chairman and a vice-chairman from among the Directors. A Director who is employed to work at any of the Academies or by the Trust shall not be eligible for election as chairman or vice-chairman.
63. The chairman or vice-chairman shall hold office as such until his successor has been appointed in accordance with Article 62.
64. 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 Director;
  - b) he is employed to work at any of the Academies;
  - c) he is removed from office in accordance with these articles; or
  - d) in the case of the vice-chairman, he is elected in accordance with these articles to fill a vacancy in the office of chairman.
65. Where by reason of any of the matters referred to in article 5, a vacancy arises in the office of chairman or vice-chairman, the Directors shall at their next meeting elect one of their number to fill that vacancy.
66. Where the chairman is absent from any meeting or there is at the time a vacancy in the office of the chairman, the vice-chairman shall act as the chairman for the purposes of the meeting.
67. Where in the circumstances referred to in article 66 the vice-chairman is also absent from the meeting or there is at the time a vacancy in the office of vice-chairman, the Directors shall elect one of their number to act as a chairman for the purposes of that meeting, provided that the Director elected shall not be a person who is employed to work at any of the Academies or the Trust.
68. The secretary to the Directors shall act as chairman during that part of any meeting at which the chairman is appointed.
69. The Directors may remove the chairman or vice-chairman from office in



accordance with this article:

- a) a resolution to remove the chairman or vice-chairman from office which is passed at a meeting of the Governing Body shall not have effect unless:
  - i) it is confirmed by a resolution passed at a second meeting of the Directors held not less than fourteen days after the first meeting ('the second meeting'); and
  - ii) the matter of the chairman's or vice-chairman's removal from office is specified as an item of business on the agenda for each of those meetings.
- b) before the Directors resolve at the relevant meeting on whether to confirm the resolution to remove the chairman or vice-chairman from office, the Director or Directors proposing his removal shall at that meeting state their reasons for doing so and the chairman or vice-chairman shall be given an opportunity to make a statement in response.

#### POWERS OF DIRECTORS

70. Subject to provisions of the Act, the memorandum and the articles and to any directions given by special resolution, the business of the Trust shall be managed by the Directors who may exercise all the powers of the Trust. No alteration of the memorandum or the articles and no such direction shall invalidate any prior act of the Directors 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 Directors by the articles and a meeting of Directors at which a quorum is present may exercise all the powers exercisable by the Directors.
71. In addition to all powers hereby expressly conferred upon them and without detracting from the generality of their powers under the articles the Directors shall have the following powers, namely:
  - a) to expend the funds of the Trust in such manner as they shall consider most beneficial for the achievement of the Objects and to invest in the name of the 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 Objects;
  - b) to enter into contracts on behalf of the Trust.
72. The Directors shall appoint a chief executive officer to whom the head teachers shall report.
73. The Directors shall exercise their powers and functions with a view to fulfilling

a largely strategic role in the running of the Academies and shall consider any advice given by the head teachers either directly or via the chief executive officer and by the chief executive officer.

74. Any bank account in which any part of the assets of the Trust is deposited shall be operated by the Directors and shall indicate the name of the Trust. All cheques and orders for the payment of money from such account shall be signed by at least two signatories authorised by the Directors in respect of their activities as Directors.

#### DIRECTORS' EXPENSES

75. The Directors may at the discretion of the Governing Body be paid all reasonable and proper out of pocket travelling, hotel and other expenses, excluding foreign travel (unless specifically authorised by the Directors for the proper conduct of the operation of the Trust), properly incurred by them in connection with their attendance at meetings of Directors or committees of Directors or general meetings or otherwise in connection with the discharge of their duties, but shall otherwise be paid no remuneration.
76. Except to the extent permitted by clause 5 of the memorandum and subject to articles 102 to 104, no Director shall take or hold any interest in property belonging to the Trust or receive remuneration or be interested otherwise than as a Director in any contract to which the Trust is a party.

#### THE MINUTES

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

#### LOCAL GOVERNING BODIES

78. The Directors shall appoint separate committees to be known as the Local Governing Bodies for each of the Academies which shall comprise in the case of each Academy a maximum of 15 individuals to include:
- a) the head teacher of the Academy;
  - b) one parent of a pupil registered at the Academy ("Parent member");
  - c) one person employed to work at the Academy as a non-teaching staff

member ("non-teaching staff member");

- d) one person employed to work at the Academy as a teacher ("teacher member");
- e) one person appointed by the appropriate LEA; and
- f) such other members as the Directors decide.

79. Each Local Governing Body shall have a chairman and a vice chairman. The first chairman and vice chairman of each Local Governing Body shall be appointed by the Directors and shall serve in such capacities until the third anniversary of the date on which the Academy to be served by that Local Governing Body shall have opened. Thereafter the chairman and vice chairman shall be elected in consultation with the Directors annually by the relevant Local Governing Body from amongst its members for a term of one year. The head teacher, the teacher member and the non-teaching staff member shall not be eligible to serve as chairman or vice chairman of a Local Governing Body. The parent member, non-teaching staff member and teacher member for each Local Governing Body shall be appointed by election in accordance with the process determined by the Directors.

#### DELEGATION

80. Subject to these articles the Directors may delegate any of their powers or functions to any committee. They may also delegate to the head teacher or any other holder of an executive office such of their powers or functions as they consider desirable to be exercised by him. Any such delegation may be made subject to any conditions the Directors may impose, and either collaterally with or to the exclusion of their own powers and may be revoked or altered.
81. Where any function of the Directors has been delegated to or is otherwise exercisable by a Director (including the chairman or vice-chairman), the head teacher, or a committee established by them; any member, head teacher or committee to whom a function of the Directors has been delegated or who has otherwise exercised a function of the Directors shall report to the Directors in respect of any action taken or decision made with respect to the exercise of that function at the meeting of the Directors immediately following the taking of the action or the making of the decision.
82. The Directors may establish any committee, including the Local Governing Bodies, to exercise, subject to these articles, powers and functions of the Directors. The constitution, membership and proceedings of any committee of the Directors shall be determined by the Directors. The establishment, terms of reference, constitution and membership of any committee of the Directors shall be reviewed at least once in every four years. The membership of any committee of the Directors may include persons who are not Directors. The Directors may determine that some or all of the members

of a committee who are not Directors shall be entitled to vote in any proceedings of the committee.

#### HEAD TEACHER

83. The Directors shall appoint a head teacher for each of the Academies. Subject to these articles, each head teacher shall be responsible for the internal organisation, management and control of his or her respective Academy, the implementation of all policies approved of by the Directors and for the direction of the teaching and curriculum. For these purposes the Directors shall delegate those powers and functions required by the head teachers.

#### MEETINGS OF THE DIRECTORS

84. Subject to these articles, the Directors may regulate their proceedings as they think fit.
85. The Directors shall hold at least one meeting in every school term. Meetings of the Governing Body shall be convened by the secretary. In exercising his functions under this article the secretary shall comply with any direction:
- a) given by the Directors; or
  - b) given by the chairman of the Directors or, in his absence or where there is a vacancy in the office of chairman, the vice-chairman of the Directors, so far as such direction is not inconsistent with any direction given as mentioned in article 85 a).
86. Any three Directors may, by notice in writing given to the secretary, requisition a meeting of the Directors; and it shall be the duty of the secretary to convene such a meeting as soon as is reasonably practicable.
87. Each Director shall be given at least fourteen clear days before the date of a meeting:
- a) notice in writing thereof, signed by the secretary, and sent to each Director at the address provided by each Director 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 therefore are given within such shorter period as he directs.
88. The convening of a meeting and the proceedings conducted thereat shall not be invalidated by reason of any individual not having received written notice of the meeting or a copy of the agenda therefor.

89. A resolution to rescind or vary a resolution carried at a previous meeting of the Directors shall not be proposed at a meeting of the Governing Body unless the consideration of the rescission or variation of the previous resolution is a specific item of business on the agenda for that meeting.
90. A meeting of the Governing Body shall be terminated forthwith if:
  - a) the Directors so resolve; or
  - b) the number of Directors present ceases to constitute a quorum for a meeting of the Directors in accordance with article 93, subject to article 94.
91. Where in accordance with article 90 a meeting is not held or is terminated before all the matters specified as items of business on the agenda for the meeting have been disposed of, a further meeting shall be convened by the secretary as soon as is reasonably practicable, but in any event within seven days of the date on which the meeting was originally to be held or was so terminated.
92. Where the Directors resolve in accordance with article 90 to adjourn a meeting before all the items of business on the agenda have been disposed of, the Directors shall before doing so determine the time and date at which a further meeting is to be held for the purposes of completing the consideration of those items, and they shall direct the secretary to convene a meeting accordingly.
93. Subject to Article 95 the quorum for a meeting of the Directors shall be any three Directors, or, where greater, any one third (rounded up to a whole number) of the total number of Directors holding office at the date of the meeting.
94. The Directors may act notwithstanding any vacancies in their number, but, if the numbers of Directors is less than the number fixed as the quorum, the continuing Directors may act only for the purpose of filling vacancies or of calling a General Meeting.
95. The quorum for the purposes of any vote on the removal of the chairman of the Directors in accordance with Article 69 shall be any two-thirds (rounded up to a whole number) of the persons who are at the time Directors entitled to vote on that matter.
96. Subject to these articles, every question to be decided at a meeting of the Directors shall be determined by a majority of the votes of the Directors present and voting on the question. Every Director shall have one vote.
97. Subject to articles 93 to 95, where there is an equal division of votes the chairman or, as the case may be, the person who is acting as chairman for the purposes of the meeting, shall have a second or casting vote.

98. The proceedings of the Directors shall not be invalidated by:
- a) any vacancy among their number, or
  - b) any defect in the election, appointment or nomination of any Director.
99. A resolution in writing, signed by all the Directors entitled to receive notice of a meeting of Directors or of a committee of Directors, shall be valid and effective as if it had been passed at a meeting of Directors (or as the case may be) a committee of Directors duly convened and held. Such a resolution may consist of several documents in the same form, each signed by one or more of the Directors.
100. Subject to article 101, the Directors shall ensure that a copy of:
- a) the agenda for every meeting of the Directors;
  - b) the draft minutes of every such meeting, if they have been approved by the person acting as chairman of that meeting;
  - c) the signed minutes of every such meeting; and
  - d) any report, document or other paper considered at any such meeting,
- are, as soon as is reasonably practicable, made available at every Academy to persons wishing to inspect them.
101. There may be excluded from any item required to be made available in pursuance of Article 100, any material relating to:
- a) a named teacher or other person employed, or proposed to be employed, at any Academy;
  - b) a named pupil at, or candidate for admission to, any Academy; and
  - c) any matter which, by reason of its nature, the Directors are satisfied should remain confidential.
102. The Trust shall not enter into any contract or arrangement where a Director has a duty or pecuniary interest (direct or indirect), which conflicts or may conflict with it. Any Director who has any such duty or pecuniary interest shall disclose that fact to the Governing Body as soon as he becomes aware of it.
103. Without limitation to the generality of article 102, a Director shall be treated as having a pecuniary interest in a contract or proposed contract or other arrangement with the Trust if:
- a) he is a director or a member holding more than 1/100<sup>th</sup> of the issued share capital of a company with which the contract or arrangement

was made or is proposed to be made or which has a direct pecuniary interest in the matter under consideration; or

- b) he is a partner in a partnership or member of an unincorporated association or any other body with whom the contract or arrangement was made or is proposed to be made or which has a direct pecuniary interest in the matter under consideration; or
- c) he, or a partner of his, is in the employment of a person with whom the contract was made or is proposed to be made or who has a direct pecuniary interest in the matter under consideration.

104. For the purposes of articles 102 and 103, an interest of a person who is, within the meaning of section 346 of the Act, connected with a Director shall be treated as an interest of the Director. This shall include:

- a) that Director's spouse, child or stepchild; or
- b) a body corporate with which the Director is associated (i.e. if that Director and persons connected with him together are interested in shares comprising at least one fifth of the share capital of the company or are entitled to exercise more than one fifth of the voting power at any general meeting of that company); or
- c) a person acting in his capacity as trustee of any trust the beneficiaries of which include:
  - i) the Director, his spouse or any children or stepchildren of his; or
  - ii) a body corporate with which he is associated; or
  - iii) a person acting in his capacity as a partner of that Director or of any person who, by virtue of paragraphs (a), (b) or (c) above, is connected with that Director.

#### PATRONS AND HONORARY OFFICERS

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

#### THE SEAL

106. The seal shall only be used by the authority of the Directors or of a committee of Directors authorised by the Directors. The Directors may determine who shall sign any instrument to which the seal is affixed and unless otherwise so determined it shall be signed by a Director and by the secretary or by a second Director.

#### ACCOUNTS

107. Accounts shall be prepared in accordance to the provisions of Part VII of the Act.

#### ANNUAL REPORT

108. The Directors shall comply with their obligations under the Charities Act 1993 (or any statutory re-enactment or modification of that Act) with regard to the preparation of an annual report and its transmission to the Commissioners.

#### ANNUAL RETURN

109. The Directors shall comply with their obligations under the Charities Act 1993 (or any statutory re-enactment or modification of that Act) with regard to the preparation of an annual return and its transmission to the Commissioners.

#### NOTICES

110. Any notice to be given to or by any person pursuant to the articles shall be in writing except that a notice calling a meeting of the Directors need not be in writing.
111. A notice may be given by the 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. A Member whose registered address is not within the United Kingdom and who gives to the Trust an address, within the United Kingdom at which notices may be given to him 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 Trust.
112. A Member present in person at any meeting shall be deemed to have received notice of the meeting and, where necessary, of the purposes for which it was called.
113. Proof that an envelope containing a notice was properly addressed, prepaid and posted shall be conclusive evidence that the notice was given. A notice shall be deemed to be given at the expiration of 48 hours after the envelope containing it was posted.

#### INDEMNITY

114. Subject to the provisions of the Act but without prejudice to any indemnity to which a Director may otherwise be entitled, every Director or other officer of the Trust may be indemnified out of the assets of the Trust against any liability incurred by him in defending any proceedings, whether civil or criminal, in which relief is granted to him by the court from liability for negligence, default, breach of duty or breach of trust in relation to the affairs of the Trust.
115. Subject to the provisions of the Act but without prejudice to any other



indemnity to which a Director may be entitled, every Director or other officer of the Trust may be indemnified out of the Trust's assets against any liability incurred by him:

- a) in defending civil proceedings, brought by a person other than the Trust or an Associated Company, connected with any liability of the Director for negligence, default, breach of duty or breach of trust in relation to the affairs of the Trust; or
- b) in defending civil proceedings, brought by the Trust or an Associated Company (unless judgment is given against him and the judgment is final), connected with any liability of the Director for negligence, default, breach of duty or breach of trust in relation to the affairs of the Trust; or
- c) in defending criminal proceedings (unless he is convicted and the conviction is final) connected with any liability of the Director for negligence, default, breach of duty or breach of trust in relation to the affairs of the Trust; or
- d) in connection with any application for relief from liability under the provisions for relief in the Act (unless the court refuses to grant him relief, and the refusal is final).

116. Subject to the full extent permitted by law, the Trust may provide a Director with funds to meet any liability incurred or to be incurred by him or do any other thing to enable a Director to avoid incurring such liability:

- a) in defending civil proceedings brought by a person other than the Trust or an Associated Company connected with any liability of the Director for negligence, default, breach of duty or breach of trust in relation to the affairs of the Trust; or
- b) in defending civil proceedings brought by the Trust or an Associated Company (unless judgment is given against him and the judgment is final) connected with any liability of the Director for negligence, default, breach of duty or breach of trust in relation to the affairs of the Trust; or
- c) in defending criminal proceedings connected with any liability of the Director for negligence, default, breach of duty or breach of trust in relation to the affairs of the Trust; or
- d) in connection with any application for relief from liability under the provisions for relief in the Act

provided that the Director shall repay any such funds or discharge any other liability to the Trust if:

- e) he is convicted (and the conviction is final) in any criminal proceedings; or
- f) judgment is given against him (and the judgment is final) in any civil proceedings; or

- e) the court refuses to grant him relief (and the refusal is final) in connection with any application for relief from liability under the provisions for relief in the Act.
117. For the purposes of Articles 115 and 116, a judgment, conviction or refusal becomes final if:
- a) the period for bringing an appeal (or any further appeal) has ended; and
  - b) any appeal brought is determined, abandoned or otherwise ceases to have effect.

## RULES

118. The Directors may from time to time make such rules or bye laws as they may deem necessary or expedient or convenient for the proper conduct and management of the Trust and for purposes of prescribing classes of and conditions of membership, and in particular but without prejudice to the generality of the foregoing, they may by such rules or bye laws regulate:
- a) the admission and classification of Members (including the admission of organisations to membership) and the rights and privileges of such Members, and the conditions of membership and the terms on which Members may resign or have their membership terminated and the entrance fees, subscriptions and other fees or payments to be made by Members;
  - b) the conduct of Members in relation to one another, and to the Trust's servants;
  - c) the setting aside of the whole or any part or parts of the Trust's premises at any particular time or times or for any particular purpose or purposes;
  - d) the procedure at general meetings and meetings of the Directors and committees of the Directors and meetings of the governing body in so far as such procedure is not regulated by the articles;
  - e) generally, all such matters as are commonly the subject matter of company rules.
119. The Trust in general meeting shall have power to alter, add or to repeal the rules or bye laws and the Directors shall adopt such means as they think sufficient to bring to the notice of Members all such rules or bye laws, which shall be binding on all Members. Provided that no rule or bye law shall be inconsistent with, or shall affect or repeal anything contained in, the memorandum or the articles.