

**The JCB Academy Trust**

**DEED OF VARIATION OF FUNDING AGREEMENT**

~~XXXXXXXXXX~~

The Parties to this Deed are:

(1) **The Secretary of State for Education** of Sanctuary Buildings, Great Smith Street, London SW1P 3BT (the "**Secretary of State**");

- and -

(2) **The JCB Academy Trust**, a charitable company limited by Guarantee incorporated in England and Wales with registered Company Number 06346630 whose registered address is at Mill Street, Rocester, Staffordshire, ST14 5JX (the "**Company**").

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

### **INTRODUCTION**

- A. The Parties have entered into a Funding Agreement on 6 November 2008, a copy of which is contained in Schedule 2, (the "**Existing FA**").
- B. The Parties have agreed to amend and re-state the terms of the Existing FA, and wish to record their agreement as to such variations/amendments as set out in this Deed.

### **LEGAL AGREEMENT**

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

### **GOVERNING LAW AND JURISDICTION**

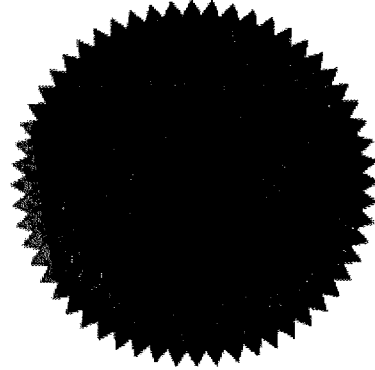
3. This Deed, and any dispute or claim arising out of or in connection with it, its subject matter or formation (including non-contractual disputes or claims) shall be governed by and interpreted in accordance with the law of England and Wales.
4. The Parties irrevocably agree that the courts of England and Wales shall have exclusive jurisdiction to settle any dispute or claim that arises out of, or in connection with, this deed or its subject matter or formation (including non-contractual disputes or claims).

### **COUNTERPARTS**

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

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

**EXECUTED** as a Deed by affixing the corporate seal of the **Secretary of State for Education** authenticated by:- )



*[Handwritten Signature]*  
.....  
Duly authorised by the Secretary of State for Education  
Date 6/8/19.....

**EXECUTED** as a Deed by **The JCB Academy Trust** acting by:

*[Handwritten Signature]* X  
.....  
Director

Print name ST. WADE.....

Date 23/07/19.....

Witnessed by *[Handwritten Signature]*.....  
Signature

Full name John Andrew Cox.....

Address % JCB Academy Mill Street Rochester  
ST14 5JX.....

Occupation Financial Director.....

**Schedule 1**

**Restated form of Funding Agreement**

**UTC/Studio  
school: single  
funding agreement**

**March 2018 v4**

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## SUMMARY

### Information about the Academy:

<b>Name of Academy Trust</b>	The JCB Academy Trust
<b>Company number</b>	06346630
<b>Name of academy</b>	The JCB Academy
<b>Opening date</b>	1 September 2010
<b>Type of academy (indicate whether UTC or Studio School)</b>	University Technical College
<b>Capacity</b>	600
<b>Age range</b>	13-19
<b>Number of sixth form places</b>	300
<b>Land arrangements</b>  - other	See annex A
<b>Address and title number of Land</b>	Tutbury Mill, Rocester, Staffordshire, SF432218, SF284955
<b>Contact details for the Chair of Board of Charity Trustees</b>	David Bell C/O J.C. Bamford Excavators Ltd Rocester, Staffordshire, ST14 5JP <a href="mailto:david.bell@jcb.com">david.bell@jcb.com</a>

## 1. ESTABLISHING THE ACADEMY

### Introduction to this agreement

- 1.1. This Agreement is between the Secretary of State for Education (the "Secretary of State") and The JCB Academy Trust (the "Academy Trust"), and is an Academy agreement as defined by section 1 of the Academies Act 2010.



- 1.2. The Academy Trust is a Company limited by Guarantee incorporated in England and Wales with company number 06346630. The Academy Trust is a charity and its directors are the Charity Trustees of the Academy Trust.
- 1.3. In order for the Academy Trust to establish and run an independent school in England, according to the provisions of the Academies Act 2010, to be known as The JCB Academy (the "**Academy**"), and in order for the Secretary of State to make payments to the Academy Trust, the Academy Trust must meet the requirements in this Agreement.
- 1.4. In this Agreement these capitalised words and expressions will have the following meanings:

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

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

**"Articles"** means the Academy Trust's articles of association.

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

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

**"Chief Inspector"** means Her Majesty's Chief Inspector of Education, Children's Services and Skills.

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

**"Control"** means the power of an organisation or individual ('A') to ensure that the affairs of another organisation are conducted in accordance with A's wishes, whether through share ownership or voting power, by agreement,

because of powers conferred by articles of association or any other document, or otherwise; and **"Controls"** will be construed accordingly.

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

**"ESFA"** means the Education and Skills Funding Agency.

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

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

**"LA"** means a local authority.

**"Parents"** means parents\* or guardians.

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

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

Any reference to **"Secretary of State"** includes a reference to the ESFA acting on the Secretary of State's behalf.

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

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

**"Start-Up Period"** means up to the period up to the first Academy Financial Year in which it is planned that the Academy will be at 90% capacity, with all year groups present.

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

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

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\* Parent" has the meaning set out in section 576 of the Education Act 1996.

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

- 1.5. The Interpretation Act 1978 applies to this Agreement as it applies to an Act of Parliament.
- 1.6. A reference in this Agreement to any party or body includes its successors.
- 1.7. Any words following the terms 'include', 'including' or 'in particular' are by way of illustration, not limitation.
- 1.8. A reference in this Agreement to land includes any buildings or structures on the land.
- 1.9. References to this Agreement include any and all annexes.
- 1.10. Where any legislation, legal requirement or published guidance is referred to, unless otherwise stated, the following terms should be interpreted as follows:
  - a) the "school" refers to the Academy;
  - b) the "head teacher" may refer to the Academy's head teacher or principal;
  - c) the Academy Trust will be deemed to be the "responsible authorities"; and
  - d) references to registered pupils will be treated as references to registered pupils at the Academy.
- 1.11. References in this Agreement to any named legislation, legal requirement or published guidance, should be taken to include any amendment to or replacement of it.
- 1.12. If any questions arise about how this Agreement should be interpreted, the answer will be decided by the Secretary of State, after discussion with the Academy Trust.

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

- 1.13. The Academy Trust must ensure that the Academy meets the requirements in section 1A of the Academies Act 2010.
- 1.14. To the extent that it is compatible with the Academy Trust fulfilling its charitable purpose of advancing education in the United Kingdom for the public benefit, the Academy Trust must ensure that the Academy is at the heart of its community, promoting community cohesion and sharing facilities with other schools and the wider community.
- 1.15. The Academy Trust must conduct the Academy within the terms and requirements of:
  - a) the Articles;
  - b) any legislation or legal requirement that applies to academies, including the Independent School Standards and legislation about meeting the needs of pupils with SEN and disabilities;
  - c) the Academies Financial Handbook, as stated in clauses 4.6–4.8; and
  - d) this Agreement.
- 1.16. The Academy Trust must, as soon as is reasonable, establish an appropriate mechanism for receiving and managing donations for the purpose of its aims as specified in the Articles.
- 1.17. The Academy Trust must obtain the Secretary of State's consent before applying for the Academy to be designated as a school with religious character. The Secretary of State may at his discretion refuse or consent to the Academy Trust making such an application.
- 1.18. The Academy Trust agrees to be bound by the prohibition against discrimination in section 85 of the Equality Act 2010.
- 1.19. The Academy Trust must ensure that so far as is reasonably practicable and consistent with clauses 2.51 and 2.52 of this Agreement and the Equality Act 2010, the policies and practices adopted by the Academy (in particular regarding curriculum, uniform

and school food) enable pupils of all faiths and none to play a full part in the life of the Academy, and do not disadvantage pupils or parents of any faith or none. For the avoidance of doubt, this requirement applies irrespective of the proportion of pupils of any faiths or none currently attending or predicted to join the school.

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

#### **Academy opening date**

- 1.21. The Academy Trust will open the Academy on 1 September 2010.

#### **Governance**

- 1.22. The Academy will be governed by a board comprising the Charity Trustees of the Academy Trust (the "**Board of Charity Trustees**").
- 1.23. The Board of Charity Trustees must have regard to any Guidance on the governance of Academy Trusts.
- 1.24. The Academy Trust must provide to the Secretary of State the names of all new or replacement Charity Trustees and members of the Academy Trust, stating whether they have been appointed or elected, the date of their appointment or election and, where applicable, the name of the Charity Trustee or member they replaced as soon as is practicable and in any event within 14 days of their appointment or election.
- 1.25. The Academy Trust must not appoint any new or replacement Charity Trustees or members until it has first informed them, and they have agreed, that their names will be shared with the Secretary of State to enable him to assess their suitability.
- 1.26. The Academy Trust must not amend or remove the provisions in its Articles relating to the appointment, election, resignation or removal of Charity Trustees or members ("the Governance Articles") without the Secretary of State's consent.

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

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

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

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

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

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

### **Teachers and staff**

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

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

2.4. Subject to clause 2.5 and section 67 of the Children and Families Act 2014, the Academy Trust may, in accordance with any relevant Guidance, employ anyone it believes is suitably qualified or is otherwise eligible to plan and prepare lessons and courses for pupils, teach pupils, and assess and report on pupils' development, progress and attainment.

- 2.5. The Academy Trust must designate a staff member at the Academy as responsible for promoting the educational achievement of registered pupils at the Academy who are being looked after by an LA, or are no longer looked after by an LA because of an adoption, special guardianship or child arrangements order, or because they have been adopted from 'state care' outside England and Wales, and in doing so must comply with the law, regulations and guidance that apply to maintained schools. The Academy Trust must ensure the designated person undertakes appropriate training and has regard to any guidance issued by the Secretary of State..
- 2.6. Teachers' pay and conditions of service are the responsibility of the Academy Trust.
- 2.7. The Academy Trust must ensure that all teachers employed at the Academy have access to the Teachers' Pension Scheme and, in so doing, must comply with the requirements of this scheme and with Fair Deal for staff pensions guidance published by HM Treasury.
- 2.8. The Academy Trust must ensure that all affected staff employed in the Academy other than teachers have access to the Local Government Pension Scheme in line with that Scheme's main regulations being the Local Government Pension Scheme Regulations 2013 and the Local Government Pension Scheme (Transitional Provisions, Savings and Amendment) Regulations 2014. Access to the Scheme must also be in accordance with HM Treasury's published guidance on New Fair Deal which sets out how pensions issues are to be dealt with when staff are compulsorily transferred from the public sector to independent providers. These requirements don't apply if an individual chooses to opt out of the Scheme in line with the relevant legal provisions.
- 2.9. Where a member of the Teaching Staff employed at the Academy applies for a teaching post at another Academy, a maintained school, or a further education institution, the Academy Trust must at the request of the board of governors or Academy trust of that other educational institution:

- a) advise in writing whether or not, in the previous two years, there have been any formal capability considerations or proceedings for that teacher at the Academy or the Predecessor School;
- b) give written details of the concerns which gave rise to any such consideration of that teacher's capability, the duration of the proceedings and their outcome.

### **Pupils**

- 2.10. The planned capacity of the Academy is 600 in the age range 13-19, including a sixth form of 300 places. The Academy will be an all ability inclusive school.
- 2.11. The Academy Trust must ensure that the Academy meets the needs of individual pupils, including pupils with SEN and disabilities, both those with and without statements of SEN.

### **Safeguarding**

- 2.12 The Academy Trust will abide by the requirements of and have regard to any Guidance on:
  - a) safeguarding, in particular that contained in the guidance document entitled "Safeguarding Children and Safer Recruitment in Education" as amended from time to time; and
  - b) the employment and work placement/work experience opportunities for pupils, in particular that contained in the document named "Guidance on the Employment of Children" as amended from time to time.
- 2.13 The Academy Trust will take appropriate steps to ensure that any work placement/work experience opportunities for pupils are suitable, so as to safeguard the health, safety and welfare of pupils whilst employed or on work placement/work experience either on or off the school premises.

### **School meals**



- 2.14. The Academy Trust must provide school lunches and free school lunches in accordance with the provisions of sections 512(3) and 512ZB(1) of the Education Act 1996 as if references in sections 512 and 512ZB to a local authority were to the Academy Trust and as if references to a school maintained by the local authority were to the Academy.
- 2.15. The Academy Trust must comply with school food standards legislation as if it were a maintained school.
- 2.16. Not used.

### **Pupil Premium**

- 2.17. For each Academy Financial Year the Academy Trust must publish, on the Academy's website, information about:
- a) the amount of Pupil Premium allocation that it will receive during the Academy Financial Year;
  - b) what it intends to spend its Pupil Premium allocation on;
  - c) what it spent its Pupil Premium allocation on in the previous Academy Financial Year; and
  - d) the impact of the previous year's Pupil Premium allocation on educational attainment.
- 2.18. Not used.

### **Charging**

- 2.19. The Academy Trust must comply with sections 402, 450-457 and 459-462 of the Education Act 1996 with regard to public examinations, charging, providing information, inviting voluntary contributions and recovering civil debts, as if the Academy were a maintained school.
- 2.20. There must be no charge for admission to or attendance at the Academy and the Academy will only charge pupils where the law allows maintained schools to charge.

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

### **Admissions**

- 2.25. The Academy Trust will act in accordance with, and will ensure that its Independent Appeal Panel is trained to act in accordance with, the School Admissions Code and School Admission Appeals Code published by the DfE (the "Codes") and all relevant admissions law as they apply to maintained schools, and with equalities law. Reference in the Codes or legislation to "admission authorities" will be deemed to be references to the Academy Trust.
- 2.26. Not used.
- 2.27. The Academy Trust must participate in the local Fair Access Protocol. The Academy Trust must participate in the coordinated admission arrangements operated by the LA in whose area the Academy is situated unless it opts out of doing so in any admissions year by notifying the LA in writing no later than the date of determining its admissions policy for the Academy.
- 2.28. [Not used]
- 2.29. [Not used]
- 2.30. [Not used]
- 2.31. The Secretary of State may:

- a) direct the Academy Trust to admit a named pupil to the Academy:
  - i. following an application from an LA including complying with a school attendance order as defined in section 437 of the Education Act 1996. Before doing so the Secretary of State will consult the Academy Trust; or
  - ii. where in relation to a specific child or children the Academy Trust has failed to act in accordance with the Codes or this Agreement or has otherwise acted unlawfully; or
- b) direct the Academy Trust to amend its admission arrangements where they do not comply with the Codes or this Agreement, or are otherwise unlawful.

2.32. Not used.

2.33. Not used.

2.34. Not used.

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

2.36. Subject to clause 2.37, the meaning of "**relevant area**" for the purposes of consultation requirements in relation to admission arrangements is that determined by the relevant LA for maintained schools in the area in accordance with the Education (Relevant Areas for Consultation on Admission Arrangements) Regulations 1999.

2.37. If the Academy does not consider the relevant area determined by the LA for the maintained schools in the area to be appropriate, it must apply to the Secretary of State by 1 August before the academic year in question for a determination of the appropriate relevant area for the Academy, setting out the reasons for this view. The Secretary of State will consult the Academy Trust and the LA in whose area the Academy is situated in reaching a decision.

2.38. The Office of the Schools Adjudicator ("**OSA**") will consider objections to the Academy's admission arrangements (except objections against any agreed derogations from the provisions of the Codes specified in this funding agreement, over which it has no jurisdiction). The Academy Trust must therefore make it clear, when determining the Academy's admission arrangements, that objections should be submitted to the OSA. The OSA's determination of an objection is binding on the Academy and the Academy Trust must make appropriate changes to its admission arrangements to give effect to the Adjudicator's decision within two months of the decision (or by 28 February following the decision, whichever is sooner), unless an alternative timescale is specified by the Adjudicator..

2.39. Not used.

### **Exclusions**

2.40. If asked to by an LA, the Academy Trust must enter into an agreement with that LA that has the effect that where:

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

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

## **Curriculum**

- 2.41. The curriculum is the responsibility of the Academy Trust.
- 2.42. The Academy Trust must ensure that the curriculum provided to pupils up to the age of 16 is balanced and broadly based,[and] includes English, mathematics, science and (subject to the provisions in clause 2.49) religious education, and includes provision for technical education with an emphasis on Engineering.
- 2.43. The Academy Trust must publish on the Academy's website information about its curriculum, including:
- a) the content of the curriculum;
  - b) its approach to the curriculum;
  - c) the GCSE options and other Key Stage 4 qualifications, or other future qualifications specified by the Secretary of State, offered by the Academy; and
  - d) how parents (including parents of prospective pupils) can obtain more information about the Academy's curriculum.
- 2.44. The Academy Trust must not allow any view or theory to be taught as evidence-based if it is contrary to established scientific or historical evidence and explanations. This clause applies to all subjects taught at the Academy.
- 2.45. The Academy Trust must provide for the teaching of evolution as a comprehensive, coherent and extensively evidenced theory.
- 2.46. The Academy Trust must prevent political indoctrination, and secure the balanced treatment of political issues, in line with the requirements for maintained schools set out in the Education Act 1996, and have regard to any Guidance.
- 2.47. The Academy Trust must ensure the Academy actively promotes the fundamental British values of democracy, the rule of law, individual

liberty, and mutual respect and tolerance of those with different faiths and beliefs.

- 2.47A The Academy Trust must ensure the Academy promotes principles that support equality of opportunity for all.
- 2.48. The Academy Trust must provide for the teaching of religious education and a daily act of collective worship at the Academy.
- 2.49. The Academy Trust must comply with section 71(1)-(6) and (8) of the School Standards and Framework Act 1998 as if the Academy were a community, foundation or voluntary school, and as if references to "religious education" and "religious worship" in that section were references to the religious education and religious worship provided by the Academy in accordance with clauses 2.51 and 2.52.
- 2.50. Not used
- 2.51. Provision must be made for religious education to be given to all pupils at the Academy in accordance with the requirements for agreed syllabuses in section 375(3) of the Education Act 1996 and paragraph 2(5) of Schedule 19 to the School Standards and Framework Act 1998;
- 2.52. The Academy must comply with section 70(1) of, and Schedule 20 to, the School Standards and Framework Act 1998 as if it were a community, foundation or voluntary school which does not have a religious character, except that paragraph 4 of that Schedule does not apply. The Academy may apply to the Secretary of State for consent to be relieved of the requirement imposed by paragraph 3(2) of that Schedule.
- 2.53. Not used.
- 2.54. The Academy Trust must have regard to any Guidance, further to section 403 of the Education Act 1996, on sex and relationship education to ensure that children at the Academy are protected from inappropriate teaching materials and that they learn the nature of marriage and its importance for family life and for bringing up children.

The Academy Trust must also have regard to the requirements in section 405 of the Education Act 1996, as if the Academy were a maintained school.

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

### **Assessment**

- 2.56. The Academy Trust must:

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

- 2.57. Unless specifically approved in writing by the Secretary of State, the Academy Trust must not use GAG to offer any course of education or training which leads to a qualification, if that qualification is not approved by the Secretary of State for the purpose of section 96 of the Learning and Skills Act 2000.

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

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

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

### 3. GRANT FUNDING

#### **Recurrent Expenditure grants**

- 3.1. The Secretary of State will pay grants towards Recurrent Expenditure and may pay grants towards Capital Expenditure for the Academy.
- 3.2. "**Recurrent Expenditure**" means any money spent on the establishment, conduct, administration and maintenance of the Academy which does not fall within Capital Expenditure.
- 3.3. In respect of Recurrent Expenditure, the Secretary of State will pay **General Annual Grant ("GAG")**, and may additionally pay **Earmarked Annual Grant ("EAG")**. These are two separate and distinct grants.
- 3.4. Except with the Secretary of State's consent, the Academy Trust must not make commitments to spending which have substantial implications



for future grant. No decision by the Academy Trust will commit the Secretary of State to paying any particular amount of grant.

### **Capital Grant**

- 3.5. The Secretary of State may pay a grant ("**Capital Grant**") to the Academy Trust for the purpose of spending on items of Capital Expenditure.
- 3.6. "**Capital Expenditure**" means expenditure on:
- a) acquiring land and buildings;
  - b) erecting, enlarging, improving or demolishing any building including any fixed plant, installation, wall, fence or other structure, or any playground or hard standing;
  - c) installing electrical, mechanical or other services other than necessary repairs and maintenance due to normal wear and tear;
  - d) buying vehicles;
  - e) installing and equipping premises with furnishings and equipment, other than necessary repairs and maintenance due to normal wear and tear;
  - f) installing and equipping premises with computers, networking for computers, operating software and ICT equipment, other than necessary updates or repairs and maintenance due to normal wear and tear;
  - g) providing and equipping premises, including playing fields and other facilities for social activities and physical recreation other than necessary repairs and maintenance due to normal wear and tear;
  - h) works of a permanent character other than the purchase or replacement of minor day-to-day items;

- i) any major repairs or replacements which are specified as capital expenditure in any grant letter relating to them;
- j) such other items (whether like or unlike any of the foregoing) of a substantial or enduring nature which the Secretary of State agrees are capital expenditure for the purposes of this Agreement;
- k) professional fees properly and reasonably incurred in connection with the provision of any of the above; and
- l) VAT and other taxes payable on any of the above.

- 3.7. Any Capital Grant funding that may be made available to the Academy Trust will be notified to it by the Secretary of State.
- 3.8. The Academy Trust must spend Capital Grant only on items of Capital Expenditure approved by the Secretary of State and in accordance with conditions specified by the Secretary of State. Further, the Academy Trust must provide evidence that it has obtained all planning and other consents required for any proposed building and infrastructure development to be funded using Capital Grant.
- 3.9. In order to receive payments of Capital Grant, the Academy Trust must provide supporting invoices and certificates in the format specified by the Secretary of State.
- 3.10. The Academy Trust must provide an account of Capital Grant received, and associated spending on Capital Expenditure using Capital Grant, in the Academy Trust's financial statements and any other financial reports or returns that the Secretary of State may require.
- 3.11. If in its use of Capital Grant the Academy Trust does not comply with this Agreement or any of the conditions specified by the Secretary of State, or the project does not accord with the original specification or has not been completed, the Secretary of State may at his discretion not make any further payments of Capital Grant and require the Academy Trust to repay all or part of the Capital Grant.

**General Annual Grant (GAG)**

3.12. The Secretary of State will pay GAG to the Academy Trust to cover the Academy's normal running costs or capital expenditure, including:

- a) teachers' salaries and related costs (including pension contributions, full- and part-time teaching staff and payments in respect of seconded teachers);
- b) non-teaching staff salaries and related costs (including pension contributions);
- c) employees' expenses;
- d) buying, maintaining, repairing and replacing teaching and learning materials and other educational equipment, including books and stationery;
- e) buying, maintaining, repairing and replacing other assets including ICT equipment and software, sports equipment and laboratory equipment and materials;
- f) examination fees;
- g) repairs, servicing and maintenance of buildings (including redecoration, heating, plumbing and lighting); maintenance of grounds (including boundary fences and walls); insurance; cleaning materials and contract cleaning; water and sewerage; fuel and light (including electricity and gas); rents; rates; purchase, maintenance, repairs and replacement of furniture and fittings;
- h) medical equipment and supplies;
- i) staff development (including in-service training);
- j) curriculum development;
- k) the costs of providing school meals for pupils (including the cost of providing free school lunches to pupils who are eligible to

receive them), and any discretionary grants to pupils to meet the cost of pupil support, including support for pupils with SEN or disabilities;

- l) administration; and
- m) establishment expenses and other institutional costs.

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

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

3.14. The Academy Trust must use GAG only for maintaining, carrying on, managing and developing the Academy in accordance with this Agreement, except where the Secretary of State has given specific consent for the Academy Trust to use GAG for another charitable purpose.

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

- a) education and training for adults who are not pupils of the Academy, other than staff professional development and governance training and development; or
- b) nursery provision for which parents are charged a fee;

- c) nursery provision to children outside the Academy's age range in clause 2.10;
- d) any additional cost of providing sport and leisure facilities for a purpose not permitted in clause 3.14.

### **Calculation of GAG**

- 3.16. Subject to clause 3.18, the basis of the pupil number count for the purposes of determining GAG for an Academy Financial Year will be the Academy Trust's most recent estimate provided in accordance with clause 3.17.
- 3.17. The Secretary of State will, in advance of each Academy Financial Year for the Academy, request that the Academy Trust provides an estimate of the number of pupils on roll in the following September for the purposes of determining GAG for an Academy Financial Year. The Academy Trust must provide the requested estimate to the Secretary of State as soon as reasonably practicable.
- 3.18. From the Academy Financial Year 2020/21 the basis of the pupil number count for the purpose of determining GAG will no longer be the estimate provided in accordance with clause 3.17, but in that and all following Academy Financial Years will be determined in accordance with clause 3.21.
- 3.19. For any Academy Financial Year in which GAG for the Academy has been calculated in accordance with clauses 3.16 and 3.17, an adjustment may be made to the following Academy Financial Year's formula funding element of GAG for the Academy to recognise any variation from that estimate. The Secretary of State may for this purpose use the Census for the relevant month (determined at the Secretary of State's discretion) for the Academy Financial Year in question as a means of determining pupil numbers. The additional or clawed-back grant will be only the amount relevant to the number of pupils above or below that estimate.
- 3.20. Not used.

3.21. In the Academy Financial Year after 2019/20 and all following Academy Financial Years, the basis of the pupil count for determining GAG will be:

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

3.22. The Secretary of State may, at his discretion, adjust the basis of the pupil count to take account of any diseconomies of scale which may affect the Academy if it is operating below the planned capacity in clause 2.10. If such an adjustment is made in any Academy Financial Year, this will not change the basis of the pupil count for calculating the following Academy Financial Year's GAG. If the Secretary of State has indicated that additional grant may be payable in such circumstances, the Academy Trust will bid for this additional grant based on need and providing appropriate supporting evidence. The Secretary of State may accept or refuse the bid at his discretion.

3.23. The Secretary of State may pay a further element of GAG to the Academy Trust during the Start-Up Period in order to allow the Academy to:

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

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

3.24. The Secretary of State recognises that if a Termination Notice or a Termination Warning Notice is served, the intake of new pupils during the notice period may decline and therefore payments based on the number of pupils attending the Academy may be insufficient to meet the Academy's needs. In these circumstances the Secretary of State may pay a larger GAG in the notice period, to enable the Academy to operate effectively.

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

3.25. The Secretary of State may pay EAG to the Academy Trust for specific purposes, agreed between the Secretary of State and the Academy Trust, and described in the relevant funding letter. The Academy Trust must spend EAG only in accordance with that letter.

3.26. Where the Academy Trust is seeking a specific EAG for any Academy Financial Year, it must send a letter to the DfE outlining its proposals and the reasons for the request.

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

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

3.28. The amount of GAG for an Academy Financial Year will be decided annually by the Secretary of State, and notified to the Academy Trust in a funding letter sent before the relevant Academy Financial Year begins (the "**Annual Letter of Funding**").

3.29. Amounts of EAG will be notified to the Academy Trust wherever possible in the Annual Letter of Funding or as soon as is practicable afterwards.

3.30. The Annual Letter of Funding will, as well as stating the grant amounts, set out how they have been calculated. It will not include grants which cannot be calculated in time because there is not enough information,

or for other administrative reasons. Any such grants will be notified as soon as practicable.

- 3.31 The Secretary of State will pay GAG in monthly instalments on or before the first day of each month ('the relevant month'), to fund the salaries and other payroll costs of all monthly paid employees and all other costs payable during the relevant month. The detailed arrangements for payment will be set out in the Annual Letter of Funding, or an equivalent.
- 3.32. If GAG or EAG is miscalculated:
- a) because of a mistake by the Secretary of State, which leads to an underpayment to the Academy Trust, the Secretary of State will correct the underpayment in the same or subsequent Academy Financial Years;
  - b) because the Academy Trust provided incorrect information, which leads to an underpayment to the Academy Trust, the Secretary of State may correct the underpayment in the same or subsequent Academy Financial Years;
  - c) for any reason which results in an overpayment to the Academy Trust, the Secretary of State may recover any overpaid grant in the same or subsequent Academy Financial Years, having considered all the relevant circumstances and taking into account any representations from the Academy Trust.

**Other relevant funding**

3.33. Not used

3.34. Not used.

3.35. The Academy Trust may receive additional funding from an LA under an agreement with that LA for the provision of support for pupils with SEN who require high levels of such support. The Academy Trust must ensure that all support required under that agreement is provided for those pupils.



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

##### **General**

- 4.1. In order for the Secretary of State to provide grant funding to the Academy Trust, the Academy Trust must be fulfilling the financial and reporting requirements in this Agreement, which for the avoidance of doubt apply both before and after the Academy has opened.
- 4.2. In its conduct and operation, the Academy Trust must apply financial and other controls which meet the requirements of regularity, propriety and value for money.
- 4.3. The Academy Trust must appoint an accounting officer and must notify the Secretary of State of that appointment. The Academy Trust must assign to the accounting officer the responsibilities of the role set out in the Academies Financial Handbook and HM Treasury's publication 'Managing Public Money'.
- 4.4. The Academy Trust must abide by the obligations of, and have regard to the guidance for, charities and charity trustees issued by the Charity Commission and, in particular, the Charity Commission's guidance on 'Protecting Charities from Harm'. Any references in this document which require charity trustees to report to the Charity Commission should instead be interpreted as reporting to the body or person prescribed as the principal regulator under the Charities Act 2011.
- 4.5. The Academy Trust must comply with the 16 to 19 Funding Guidance published by the Secretary of State, in respect of its provision for pupils above compulsory school age until the academic year in which they reach the age of 19.
- 4.5A If the Secretary of State pays any grant to or on behalf of the Academy Trust which includes an amount to cover VAT, the Academy Trust shall, having paid the VAT, promptly submit a VAT reclaim application to Her Majesty's Revenue and Customs (HMRC). Any failure by the Academy Trust to submit a VAT reclaim application to HMRC, or to pursue the application diligently, or to repay any reclaimed amount to

the Secretary of State as soon as reasonably practicable following receipt will be taken into account by the Secretary of State in:

- a) calculating and paying any subsequent grant to the Academy Trust; or
- b) adjusting GAG payable to the Academy Trust in subsequent Academy Financial Years.

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

- 4.6. In relation to the use of grant paid to the Academy Trust by the Secretary of State, the Academy Trust must follow the requirements of, and have regard to the guidance in, the Academies Financial Handbook.
- 4.7. The Academy Trust must have adequate insurance cover or opt in to the Department's arrangements as set out in the Academies Financial Handbook.
- 4.8. The Academy Trust must submit information about its finances to the Secretary of State in accordance with the Academies Financial Handbook, or as otherwise specified by the Secretary of State.

#### **Budgeting for funds**

- 4.9. The Academy Trust must balance its budget from each Academy Financial Year to the next. For the avoidance of doubt, this does not prevent the Academy Trust from:
  - a) subject to clause 4.14, carrying a surplus from one Academy Financial Year to the next; or
  - b) carrying forward from previous Academy Financial Years sufficient cumulative surpluses on grants from the Secretary of State to meet an in-year deficit on such grants in a subsequent financial year, in accordance with clauses 4.14-4.17; or
  - c) incurring an in-year deficit on funds from sources other than grants from the Secretary of State in any Academy Financial

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

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

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

- 4.14. At the end of any Academy Financial Year the Academy Trust may carry forward unspent GAG from previous Academy Financial Years without limit (unless a limit is specified in the Academies Financial Handbook, or otherwise specified in writing by the Secretary of State, in which case that limit will apply).
- 4.15. The Academy Trust must use any GAG carried forward only for the purposes of GAG as set out in this Agreement, or otherwise as specified in the Academies Financial Handbook or in writing by the Secretary of State.
- 4.16. Any additional grant made in accordance with clause 3.23 for the Start-Up Period may be carried forward, without limitation or deduction, until the Start-Up Period ends.
- 4.17. Any additional grant made in accordance with clause 3.24, for a period after the Secretary of State has served a Termination Notice or a Termination Warning Notice, may be carried forward without limitation

or deduction until the circumstances set out in clause 3.24 cease to apply, or the Academy closes.

- 4.18. Any unspent grant not allowed to be carried forward under clauses 4.14-4.17 may be taken into account in the payment of subsequent grant.

#### **Annual accounts and audit**

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

- 4.25. The Academy Trust must publish on its website its annual reports and accounts, current memorandum of association, Articles and Funding Agreement and the names of its Charity Trustees and members. The Secretary of State may also publish the Academy Trust's annual reports and accounts, and the audit report, as he sees fit.

#### **Keeping financial records**

- 4.26. The Academy Trust must keep proper accounting records. Statements of income and expenditure, statements of cash flow and balance sheets must be produced in such form and frequency as the Secretary of State directs.

#### **Access to financial records**

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

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

- 4.29. In relation to Publicly Funded Assets, the Academy Trust must not, without the Secretary of State's consent:
- a) acquire or dispose of freehold land;
  - b) take up or grant a lease of land; or

- c) dispose of any other class of capital asset,

except as expressly permitted in the Academies Financial Handbook, and subject to Part 3 of Schedule 1 to the Academies Act 2010.

- 4.30. The Academy Trust must give the Secretary of State 30 days' notice of its intention to take any of the actions in clause 4.29 (a) – (c), regardless of whether the Secretary of State's consent is required.

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

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

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

- 4.33. In relation to Publicly Funded Assets, the Academy Trust must not, without the Secretary of State's consent:
- a) give any guarantees, indemnities or letters of comfort, except such as are given in normal contractual relations; or
  - b) write off any debts or liabilities owed to it; or
  - c) offer to make any special payments as defined in HM Treasury's publication 'Managing Public Money' (including ex gratia payments, staff severance payments and compensation payments)

if the value of those transactions would be above any threshold specified in the Academies Financial Handbook.

- 4.34. The Academy Trust must give the Secretary of State 30 days' notice (or such shorter period as the Secretary of State may agree) of its intention to take any of the actions in clause 4.33 (a) – (c), regardless of whether the Secretary of State's consent is required.
- 4.35. The Academy Trust must promptly notify the Secretary of State of any loss arising from suspected theft or fraud in line with the requirements in the Academies Financial Handbook, or otherwise specified by the Secretary of State.

### **Borrowing**

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

## **5. LAND CLAUSES**

The provisions in relation to the land and buildings utilised by the Academy Trust remain as set out in the Existing FA and the various legal documents relating thereto. A convenience summary of those documents are set out in Schedule 3.

## **6. TERMINATION**

### **Termination by either party**

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

### **Termination Warning Notice**

- 6.2. The Secretary of State may serve a Termination Warning Notice where he considers that:
- a) the Academy Trust has breached the provisions of this Agreement; or

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

6.3. A Termination Warning Notice served under clause 6.2 will specify:

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

6.4. The Secretary of State will consider any representations from the Academy Trust which he receives by the date specified in the Termination Warning Notice. The Secretary of State may amend the Termination Warning Notice to specify further action which the Academy Trust must take, and the date by which it must be completed.

6.5. If the Secretary of State considers that the Academy Trust has not responded to the Termination Warning Notice as specified under clause 6.3(c), or has not completed the action required in the Termination Warning Notice under clauses 6.3(a) and (b) (and any further action specified under clause 6.4) he may serve a Termination Notice.

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

6.6. If the Chief Inspector gives notice to the Academy Trust that:



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

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

6.7. If the Secretary of State has served a Termination Warning Notice under clause 6.6 and:

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

the Secretary of State may serve a Termination Notice.

6.8. Not used.

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

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

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

- a) the Academy Trust calls a formal or informal meeting of its creditors or enters into any formal or informal composition or arrangement with its creditors; or
- b) the Academy Trust proposes a voluntary arrangement within section 1 of the Insolvency Act 1986; or
- c) the Academy Trust cannot pay its debts within the meaning of section 123 of the Insolvency Act 1986 with, for the purposes of

this clause, section 123 (1)(a) of this Act having an effect as if £10,000 were substituted for £750. The Academy Trust will not be considered unable to pay its debts for the purposes of this clause if it is contesting any such demand in good faith ; or

- d) the Academy Trust has a receiver and manager (except those appointed by the Charity Commission under the Charities Act 2011), administrator or administrative receiver appointed over all or part of its undertakings, assets or income; or
- e) any distraint, execution or other process is levied or enforced on any of the Academy Trust's property and is not paid out, withdrawn or discharged within 15 business days; or
- f) the Academy Trust has passed a resolution for its winding up; or
- g) an order is made for the winding up or administration of the Academy Trust.

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

6.12. If

- a) any Charity Trustee or member of the Academy Trust refuses to consent to any checks required under this Agreement, or as otherwise requested by the Secretary of State; or
- b) the Secretary of State determines that any Charity Trustee or member of the Academy Trust is unsuitable, the Secretary of State may:
  - i. direct the Academy Trust to ensure that the Charity Trustee or member resigns or is removed within 42 days, failing which the Secretary of State may serve a Termination Notice; or
  - ii. serve a Termination Notice.

6.13. For the purposes of clause 6.12 a Charity Trustee or member of the Academy Trust will be "unsuitable" if that Charity Trustee or member:

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

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

6.14. For the purposes of clause 6.13:

- a) a Charity Trustee or member of the Academy Trust will be subject to a "relevant finding" in respect of an offence if:
  - i. that Charity Trustee or member has been found not guilty of the offence by reason of insanity;
  - ii. that Charity Trustee or member has been found to be under a disability and to have done the act charged against them in respect of the offence; or
  - iii. a court outside the United Kingdom has made a finding equivalent to that described in paragraphs (i) and (ii) above.
- b) "relevant conduct" is conduct by a Charity Trustee or member of the Academy Trust which is:
  - i. aimed at undermining the fundamental British values of democracy, the rule of law, individual liberty and mutual respect and tolerance of those with different faiths and beliefs; or
  - ii. found to be in breach of professional standards by a professional body; or

- iii. so inappropriate that, in the opinion of the Secretary of State, it makes that Charity Trustee or member unsuitable to take part in the management of the Academy.

6.15 Not used.

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

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

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

6.18 Not used.

6.19 If at any time before the Academy opening date, the Secretary of State considers that:

- a) the Academy would, on opening, provide an unacceptably low standard of education; or
- b) the safety of pupils or staff at the Academy would, on opening, be threatened; or
- c) the staff employed at the Academy are unsuitable; or
- d) there is a serious breakdown in the way the Academy Trust is being managed or governed; or
- e) the buildings and other structures on the Land are unsuitable or the Academy Trust has not obtained Building Regulations approval,

he may either:

- A. require the Academy Trust:

- i. not to open the Academy; or
- ii. not to admit pupils of a particular age range, to be determined by the Secretary of State; or
- iii. not to use any building or other structure on the Land,

until each relevant matter in paragraphs (a) to (e) above has been resolved to the Secretary of State's satisfaction; or

B. serve a Termination Notice.

### **Change of Control**

6.20 The Secretary of State may at any time, subject to clause 6.21, serve a Termination Notice if there is a change:

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

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

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

6.23 When notifying the Secretary of State under clause 6.22, the Academy Trust must seek his agreement that, if he is satisfied with the change of Control, he will not exercise his right to terminate this Agreement under clause 6.20.

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

6.24 If the Secretary of State serves a Termination Notice under clause 6.1, the Academy Trust may continue during the notice period to admit pupils to the Academy, and to receive GAG and EAG, in accordance with this Agreement.

6.25 If the Secretary of State serves a Termination Warning Notice or a Termination Notice otherwise than under clause 6.1, the Academy Trust may continue during the notice period to admit pupils to the Academy (unless the Secretary of State specifies otherwise), and to receive GAG and EAG, in accordance with this Agreement.

#### **Effect of Termination**

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

6.27 Subject to clauses 6.28 and 6.29, if the Secretary of State terminates this Agreement under clause 6.1, he will indemnify the Academy Trust. If the Secretary of State terminates this Agreement otherwise than under clause 6.1, he may at his discretion indemnify or compensate the Academy Trust.

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

6.29 The categories of expenditure incurred by the Academy Trust in consequence of termination, for which the Secretary of State may indemnify the Academy Trust under clauses 6.27, may include:

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

- 6.30 If this Agreement is terminated, and the Academy Trust owns capital assets which have been partly or wholly funded by HM Government, the Academy Trust must, as soon as possible after the termination date:
- a) transfer a proportion of those capital assets, equal to the proportion of the original financial contribution made by HM Government, to a nominee of the Secretary of State to use for educational purposes; or
  - b) if the Secretary of State directs that a transfer under clause 6.30(a) is not required, pay to the Secretary of State at the termination date (or, by agreement with the Secretary of State, at the date of their subsequent disposal) a sum equivalent to the proportion of the original financial contribution made by HM Government.
- 6.31 The Secretary of State may:
- a) waive all or part of the repayment due under sub-clause 6.30(b) if the Academy Trust obtains his permission to invest the sale proceeds for its charitable purposes; or
  - b) direct the Academy Trust to pay all or part of the sale proceeds to the relevant LA.

## **7. OTHER CONTRACTUAL ARRANGEMENTS**

### **Information**

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

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

- 7.3 The Academy Trust must allow DfE officials to enter the Academy at any reasonable time. All records, files and reports relating to the running of the Academy must be available to them at any reasonable time. Two DfE officials may attend and speak at any meetings of the Board of Charity Trustees or any other meetings of Charity Trustees of the Academy Trust, but will withdraw from any discussion of the Academy's or the Academy Trust's relationship with the Secretary of State or any discussion of bids for funding to the Secretary of State.
- 7.4 The following documents must be provided to the Secretary of State or any person nominated by the Secretary of State on request:
- a) the agenda for every meeting of the Board of Charity Trustees or any committee to which it delegates any of its functions;
  - b) the draft minutes of every such meeting, if they have been approved by the chairman of that meeting;
  - c) the signed minutes of every such meeting; and
  - d) any report, document or other paper considered at any such meeting.
- 7.5 The Academy Trust may exclude from items provided under clause 7.4 any content relating to:
- a) a named teacher or other person employed, or proposed to be employed, at the Academy;
  - b) a named pupil at, or candidate for admission to, the Academy; and
  - c) any matter which, the Academy Trust reasonably believes should remain confidential.

#### **Notices**

- 7.6 A notice or communication to a party in connection with this Agreement:



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

<b>Name of party</b>	<b>Position of contact</b>	<b>Address</b>
Secretary of State	Head of Free Schools Division	Department for Education, Sanctuary Buildings, Great Smith Street, London SW1P 3BT
Academy Trust	Chair of Board of Charity Trustees	C/O J.C. Bamford Excavators Ltd Rocester, Staffordshire, ST14 5JP

### **General provisions**

7.7 The Academy Trust cannot assign this Agreement.

- 7.8 Failure to exercise, or a delay in exercising, any right or remedy of the Secretary of State under this Agreement (including the right to terminate it), or a single or partial exercise of such a right or remedy, is not a waiver of, and does not prevent or restrict any initial or further exercise of, that or any other right or remedy.
- 7.9 Termination of this Agreement will not affect the accrued rights, remedies, obligations or liabilities of the parties to this Agreement existing at termination.
- 7.10 This Agreement may be executed in any number of counterparts, each of which when executed and delivered will constitute a duplicate original, but all of which will together constitute the same agreement.
- 7.11 This Agreement and any dispute or claim arising out of or in connection with it or its subject matter or formation (including non-contractual disputes or claims) will be governed by and construed in accordance with the law of England and Wales, and submitted to the exclusive jurisdiction of the courts of England and Wales.

## **ANNEXES**

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

"EHC plan" means an Education, Health and Care plan made under sections 37 of the Children and Families Act 2014.

- 8.1 Except as set out in clause 9 below, the Children and Families Act 2014 imposes duties directly on Academies in respect of pupils with special educational needs, including the admission of pupils with EHC plans. If an Academy Trust considers that a LA should not have named the Academy in an EHC plan, it may ask the Secretary of State to determine whether the LA has acted unreasonably, and to make an order directing the LA to reconsider. The Academy Trust must admit the pupil if such a determination is pending. The Secretary of State's determination as to whether the LA acted unreasonably will be final, subject to any right of appeal which a pupil (if over compulsory school

age) or the parent of the pupil may have to the First Tier Tribunal (Special Educational Needs and Disability) or the Upper Tribunal Administrative Appeals Chamber.

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

(Clauses 9.1-9.7 only apply where the pupil has a statement of special educational needs (SEN) rather than an EHC plan and where they therefore continue to be subject to the relevant provisions of the Education Act 1996. EHC plans are replacing statements of SEN but although all statements of SEN should have been converted to an EHC plan by the 1 April 2018 this clause is retained to protect pupils who still have a statement of special education need after this date. The detail on the drafting of a statement below is retained to protect pupils in exceptional circumstances.

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

- 9.1 The Academy Trust must admit all children with a Statement of SEN naming the Academy.
- 9.2 The Academy Trust must have regard to the Special Educational Needs Code of practice 2001 when dealing with statements of SEN.
- 9.3 Where the LA sends the Academy Trust a draft statement with a proposal that the Academy is named in the final statement, the Academy Trust must respond within 15 working days unless the time period falls within a school holiday that is longer than two weeks in which case the Academy Trust should respond within 15 working days of the end of the school holiday.
- 9.4 In its response the Academy Trust must either:
  - a) consent to being named in the final statement; or
  - b) explain why it believes that admitting the child would be incompatible with the provision of efficient education for other children and the efficient use of resources, including why no reasonable steps could secure compatibility. In doing so the Academy Trust must have regard to the relevant legislation and

Code of Practice. If the LA does not agree with the Academy Trust's response, and names the Academy in the child's Statement of SEN, the Academy Trust must admit the child to the school as specified in the statement or otherwise by the LA. The final decision as to whether to name the Academy falls to the LA

- 9.5 If the Academy Trust considers that the LA should not have named the Academy in the statement of SEN, it may ask the Secretary of State to determine whether the LA has acted unreasonably, and to make an order directing the LA to reconsider. The Academy Trust must admit the pupil if such a determination is pending. The Secretary of State's determination will be final, subject only to any right of appeal which a parent of the child may have to the First-tier Tribunal (Special Educational Needs and Disability) or the Upper Tribunal Administrative Appeals Chamber..
- 9.6 If a parent of a child for whom the LA maintains a statement appeals to the First-tier Tribunal (Special Educational Needs and Disability) or the Upper Tribunal Administrative Appeals Chamber, either for or against the naming of the Academy in the child's statement, then the Tribunal's decision will be binding, even if it is different from that of the Secretary of State.
- 9.7 Where it has been finally determined that the Academy be named in a child's Statement of SEN, the Academy Trust must admit the child to the Academy, notwithstanding any other admissions requirements in this Agreement.
- 9.8 Clauses 9.1 to 9.7 only apply insofar as the relevant provisions of the Children and Families Act 2014 relating to SEN and disability do not apply to Academies and Free Schools.

Schedule 2

Existing Funding Agreement



FUNDING AGREEMENT

November  
October 2008

**THE JCB ACADEMY  
FUNDING AGREEMENT  
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## INTRODUCTION

1) This Agreement is made under section 482 of the Education Act 1996, as substituted by the Education Act 2002, between the Secretary of State for Children, Schools and Families ("the Secretary of State") and The JCB Academy Trust Limited (the "Academy Trust")-

2) The Academy Trust is a Company incorporated in England and Wales, limited by guarantee with registered Academy Trust number 06346630 and is registered as a charity (charity number 1120673).

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

- a) "Academies Financial Handbook" clause 94;
- b) "Academy Financial Year" - clause 88;
- c) "Accounting Officer" — clause 93;
- d) "annual letter of funding" - clause 87;
- e) "Chief Inspector" means Her Majesty's Chief Inspector of Education, Children's Services and Skills or his successor;
- f) "GAG" — clauses 61 ;
- g) "Capital Expenditure" - clause 62;
- h) "Capital Grant" — clause 62;
- i) "EAG" - clause 61;
- j) "Minimum Period" means a period determined according to the following table:

If at the time the Special Measures Notice is given the Academy shall have been opened for:	The Minimum Period will be
Less than 12 months	36 months
24 months or more	Less than 24 months but 12 months or more
	12 months

- k) "recurrent expenditure" — clause 61;
- l) "School Development Plan" — clause 19;
- m) "Start-up Period" — clause 77;

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

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

"DCSF" means Department for Children, Schools and Families;

"Further Governors" means Governors who may be appointed by the Secretary of State under the Articles if a Special Measures Termination Event, as defined in this Agreement, occurs;

"Principal" means the Head Teacher of the Academy;

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

"Memorandum" and "Articles" means the Memorandum and Articles of Association of the Academy Trust for the time being in force, a copy of the current version of which is annexed to this Agreement as Annex A;

"parents" means parents or guardians;

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

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

"SEN" means Special Educational Needs;

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

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

10) Section 482 (1) of the Education Act 1996 as substituted by the Education Act 2002 states that -

"(1) The Secretary of State may enter into an agreement with any person under which-

a) that person undertakes to establish and maintain, and to carry on or provide for the carrying on of, an independent school in England with the characteristics mentioned in subsection (2), and such other characteristics as are specified in the agreement, and

b) the Secretary of State agrees to make payments to that person in consideration of those undertakings."

#### **LEGAL AGREEMENT**

11) In consideration of the Academy Trust undertaking to establish and maintain, and to carry on or provide for the carrying on, an independent school to be known as The JCB Academy ("the Academy") and having such characteristics as are referred to in clause 12, the Secretary of State agrees to make payments to the Academy Trust in accordance with the conditions and requirements set out in this Agreement. For the avoidance of doubt, any obligations imposed upon or powers given to the Academy by this Agreement are also imposed upon the Academy Trust.

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

12) The characteristics of the Academy set down in section 482 (2) of the Education Act 1996, as substituted by the Education Act 2002, are that the school:

a) has a broad curriculum with an emphasis on a particular subject area, or particular subject areas, specified in the Agreement; and

b) provides education for pupils of different abilities and who are wholly or mainly drawn from the area in which the school is situated.

#### **CONDITIONS OF GRANT**

##### **General**

13) Section 482(4) of the Education Act 1996 provides for the agreement to specify other conditions and requirements. These conditions in respect of the Academy are that:

a) the school will be at the heart of its community, sharing facilities with other schools and the wider community;

- b) there will be the opportunity to study for external qualifications as defined by section 96 of the Learning and Skills Act 2000;
- c) the admissions policy and arrangements for the school will be in accordance with admissions law, and the DCSF Codes of Practice, as they apply to maintained schools;
- d) teachers will be required to have qualified teacher status; levels of pay and conditions of service for all employees will be the responsibility of the Academy Trust;
- e) there will be an emphasis on the needs of the individual pupils including pupils with special education needs (SEN), both those with and without statements of SEN;
- f) there will be no charge in respect of admission to the school and the school will only charge pupils where the law allows maintained schools to charge.

#### **Governance**

- 14) The Academy will be governed by a governing body ("the Governing Body") who are the

Directors of the company constituted under the Memorandum and Articles of the Academy Trust. The Governing Body shall exercise its powers and functions with a view to fulfilling a largely strategic role in the running of the school and shall consider any advice given by the Principal. The Governing Body may exercise its powers and fulfil its functions through its servants or agents.

- 15) Subject to the Memorandum and Articles and this Agreement, the Governing Body may regulate its own procedure and that of any of its committees.

#### **Conduct**

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

#### **Pupil well-being; Community Cohesion; and the Children & Young People Plan**

- 17) In conducting the Academy and in providing community facilities the Academy Trust shall, so far as is reasonably practicable —
  - a) promote the well-being of pupils at the Academy;
  - b) promote community cohesion; and
  - c) have regard to any plan published by the LA under section 17 of the Children Act 2004 or (where the LA is not required to publish such a plan) any plan published by the LA setting out their strategy in relation to children and relevant young people.

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

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

**School Development Plan and target setting**

19) The Academy Trust shall draw up a School Development Plan for the Academy each Academy Financial Year in accordance with a format and timetable to be advised by the Secretary of State. The School Development Plan shall, in particular:

- a) in accordance with a format and timetable to be advised by the Secretary of State, set out plans for ensuring that all pupils are supported to reach the highest standards of which they are capable; and
- b) describe the Academy Trust's proposals for the Academy to work with other schools and with the wider community.

20) The Academy Trust shall in relation to the Academy set targets each Academy Financial

Year in areas which are prescribed for maintained schools in regulations made by the Secretary of State under section 19 of the Education Act 1997 (or any statutory amendment or re-enactment of that section).

21) The Academy Trust shall consult the Secretary of State before setting these targets in respect of the Academy and shall take into account (but not be bound by) any comments received from the Secretary of State. The Academy Trust shall set its targets for the Academy in accordance with the timetable for target setting which applies to maintained schools.

**Pupils**

22) The Academy will be an all ability and inclusive school. The arrangements for:

- a) the admission of pupils to the Academy together with the arrangements for making changes to such arrangements, including the requirement to secure the consent of the Secretary of State to such changes, such consent not to be unreasonably withheld or delayed, are set out in Annex B to this agreement;
- b) the admission to the Academy of and support for pupils with SEN and with disabilities (for pupils who have and who do not have statements of SEN) (including the appointment of a responsible person) together with the arrangements for making changes to such arrangements, including the requirement to secure the consent of the Secretary of State, such consent not to be unreasonably withheld or delayed, are set out in Annex C to this Agreement;
- c) pupil exclusions are set out in Annex D to this Agreement.

**Teachers and other staff**

23) Subject to clause 24, the Academy Trust shall not employ anyone under a contract of employment or for services to carry out planning and preparing lessons and courses for pupils, delivering lessons to pupils, assessing the development, progress and attainment of pupils, and reporting on the development, progress and attainment of pupils ("specified work") who is not either:-

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

24) Clause 23 and the requirement in clause 13(d) for teachers to have qualified teacher status do not apply to anyone who:

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

c) immediately prior to the transfer, was not:

i) a qualified teacher within the meaning of regulations made under section 132 of the Education Act 2002 and registered with full registration with the General Teaching Council for England, or

ii) eligible to do specified work under the Education (Specified Work and Registration) (England) Regulations 2003 (SI 2003/1663) ("transferred staff member"). The Academy Trust shall use its best endeavors to ensure that any transferred staff member who undertakes specified work and does not meet the requirements of either clause 23(a) or clause 23(b) meets such requirements as soon as possible.

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

26) The Academy Trust shall ensure that all employees at the Academy other than teachers have access to the Local Government Pension Scheme.

27) Reasonable notice shall be given to the Secretary of State of any meeting of the Governing Body or any committee or sub-committee thereof (including any interview or appointments panel), at which the appointment of a Principal of the Academy is being considered and a representative of the Secretary of State shall be entitled to attend and speak at any such meeting whether or not they are also entitled to attend such meeting by virtue of clause 135 of this agreement. Advice given by any such representative shall be taken into account by those persons considering the appointment of the Principal before a decision is made.

28) It shall be the responsibility of the Academy Trust to agree levels of pay and conditions of service with its employees, and to determine and employ such numbers of staff as may be appropriate. The Academy Trust shall approve policies for:

- a) staffing structure, and staff remuneration
- b) staff discipline and performance management.

#### **14-19 entitlement**

29) The Academy Trust shall make arrangements to ensure that, so far as reasonably practicable, a pupil at the Academy in the fourth key stage has the same curriculum entitlements as are conferred on such a pupil at a maintained school by section 85A(1) of the Education Act 2002.

30) The Academy Trust shall make arrangements to ensure that, so far as reasonably practicable, a course of study in the core subjects and a course of study in one of the entitlement areas is made available (whether at the Academy or otherwise) to any pupil at the Academy who is above compulsory school age.

31) Nothing in clauses 29 and 30-

(a) requires the Academy Trust to incur disproportionate expenditure in making these arrangements;

(b) confers any greater entitlements on a pupil than are conferred by section 85A(1) of the Education Act 2002 and section 3A of the Learning and Skills Act 2000.

32) In making arrangements under clauses 29-30 the Academy Trust shall have regard to any guidance issued from time to time by the Secretary of State or the Qualifications and Curriculum Authority.

33) For the purpose of clauses 29-30, "course of study", "core subjects" and "entitlement areas" have the same meaning as in sections 3A, 3B and 3C respectively of the Learning and Skills Act 2000.

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

34) The curriculum provided by the Academy to pupils up to the age of 16 shall be broad and balanced with an emphasis on engineering, manufacturing and international business.

35) The Academy Trust shall ensure that the National Curriculum programmes of study for English, Mathematics and Science and ICT for the time being prescribed by the Secretary of State under section 87 of the Education Act 2002 are taught so far as appropriate to any pupils admitted to the Academy in Years 10-11. In any event, the Academy Trust must ensure that such programmes of study have been covered in full at the Academy by the end of the final year of the Key Stage relevant for each Year group.

36) The Academy Trust shall ensure that if the Academy admits pupils in Years 1-6, the curriculum for these Years is sufficiently broad and has such depth as to enable such pupils to be adequately prepared for study at Key Stage 3 whether at the Academy or any other mainstream educational institution, including those institutions not sharing the Academy's specialism.

37) Despite clauses 35-36, the Academy Trust is not required to teach an individual pupil or group of pupils in one or more subjects where, in the opinion of the Principal, it is inappropriate to do so by reason of the pupil's or group's ability or attainment.

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

39) Where the Academy is designated with a religious character in accordance with section 124B of the School Standards and Framework Act 1998;

a) subject to clause 41, the Academy Trust shall ensure that provision is made for Religious Education to be given to all pupils at the Academy in accordance with the tenets of the specified religion or religious denomination of the Academy;

b) subject to clause 41, the Academy Trust shall comply with the requirements of section 70(1) of, and Schedule 20 to: the School Standards and Framework Act 1998 as if the Academy were a foundation school with a religious character or a voluntary school, and as if references to 'the required collective worship' were references to collective worship in accordance with the tenets and practices of the specified religion or religious denomination of the Academy;

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

40) Where the Academy has not been designated with a religious character in accordance with section 124B of the School Standards and Framework Act 1998:

a) subject to clause 41, the Academy Trust shall ensure that provision shall be made for religious education to be given to all pupils at the Academy in accordance with the requirements for agreed syllabuses in section 375(3) of the Education Act 1996 and paragraph 2(5) of Schedule 19 to the School Standards and Framework Act 1998, and having regard to the requirements of the Qualifications and Curriculum Authority's national framework for religious education in schools;

b) subject to clause 41, the Academy Trust shall ensure that the Academy complies with the requirements of section 70(1) of, and Schedule 20 to, the School Standards and Framework Act 1998 as if it were a community, foundation or voluntary school which does not have a religious character, except that the provisions of paragraph 4 of that Schedule do not apply. The Academy may apply to the Secretary of State for consent to be relieved of the requirement imposed by paragraph 3(2) of that Schedule, the Secretary of State's consent to such an application not to be unreasonably withheld or delayed.

41) Section 71(1) — (4) of the School Standards and Framework Act • 1998 shall apply as if the Academy were a community, foundation or voluntary school, and as if references to "Religious Education" and to "Religious Worship" in that section were references to the religious education and religious worship provided by the Academy in accordance with clauses 39 or 40 as appropriate.

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

#### **Assessment**

43) The Secretary of State will notify the National Assessment Agency (NAA) about the Academy.

44) Not used.

45) Not used.

46) In respect of all Key Stages, the Academy Trust will submit the Academy to monitoring and moderation of its assessment arrangements. The Academy Trust shall choose for the Academy to be monitored either:-

a) by the LA, with the consent of that LA; or

b) by an Agency accredited by the NAA.

47) The Academy Trust shall notify the Secretary of State about the basis upon which it has chosen to have the Academy monitored, or any change to that choice. The NAA will conduct an annual audit of the monitoring arrangements.

48) The Academy Trust shall ensure that the Academy complies with the relevant provisions of the 'Assessment and Reporting Arrangements' as published from time to time by the Qualifications and Curriculum Authority, as they apply to maintained schools.

49) Not used.

50) The Academy Trust may not offer courses at the Academy which lead to external qualifications, as defined in section 96 of the Learning and Skills Act 2000, unless the Secretary of State gives approval for such courses under section 98 of that Act.

#### **Crisis Management Plan**

51) Before the Academy opens to pupils it shall have in place a Crisis Management Plan setting out steps to be taken in the event of an emergency situation at the Academy.

#### **Exclusions Agreement**

52) From 1 April 2009, the Academy Trust shall, if invited to do so by an LA, enter into an agreement in respect of the Academy with that LA, which has the effect that where:

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

b) the Academy Trust permanently excludes a pupil from the Academy

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

#### **School Meals**

53) The Academy Trust shall, if requested to do so by or on behalf of any pupils at the Academy, provide school lunches for those pupils unless it would be unreasonable for it to do so. Subject to the provisions of clauses 54 and 55 charges may be levied for lunches.

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

55) All food and drink provided by or on behalf of the Academy shall comply with legislation governing the provision of food and drink in maintained schools as this applies from time to time. In particular, the Academy Trust shall ensure that school meals (breakfasts, lunches, or other meals) and food and drink available on the Academy's premises through other outlets such as tuck shops and vending machines comply with the relevant standards set out in regulations.

### **Charging**

56) Sections 402 (Obligation to enter pupils for public examinations), 450 - 457 (charges), 459 (regulations about information about charges and school hours) and 460 (voluntary contributions), 461 (recovery of sums as civil debt) - 462 (Interpretation re charges) of the Education Act 1996 shall be deemed to apply to the Academy with the following modifications:

- a) references to any maintained school shall be treated as references to the Academy;
- b) references to registered pupils shall be treated as references to registered pupils at the Academy;
- c) references to the governing body or the local education authority shall, in each case, be treated as references to the Academy Trust;
- d) the charging and remissions policies required to be determined under section 457, and any amendment thereto, shall require the approval of the Secretary of State; and
- e) the Academy Trust may charge persons who are not registered pupils at the Academy for education provided or for facilities used by them at the Academy.

### **Provision of information to parents and others**

57) The Academy Trust shall publish a prospectus for the Academy annually. The Academy Trust shall send the prospectus free of charge to parents of pupils at the Academy and the Secretary of State, upon request. The Academy Trust shall also make the prospectus available for inspection by other persons at the Academy.

58) The prospectus for the Academy shall include details of admissions arrangements and, except insofar as such information is published in a document known as a School Profile which must accompany the prospectus, include the following information:

- a) details of the curriculum offered, of assessment arrangements and of the results of attainment tests and public examinations at school level, but this shall not include details of individual pupils' attainment and examination results;
- b) the details of any religious affiliation of the school;
- c) the policy on providing for children with SEN;
- d) the arrangements for pupils with disabilities (as specified in Annex C to this Agreement);
- e) the pupil absence rates
- f) the destination of school leavers;
- g) any further information as set out in Schedule 3 of the Education (School Information) (England) Regulations 2002 (SI 2002/2897) as applies to maintained schools; and



h) such other information as the Academy Trust may determine.

59) The prospectus referred to in clauses 57-58 shall be published in the Academy Financial Year immediately preceding the Academy Financial Year to which it relates and shall be published at least six weeks before the closing date for applying for a place at the Academy, provided always that, in the case of the first Academy Financial Year of the Academy, it is recognised that it might not be possible to publish the prospectus within this timeframe, in which case the prospectus shall be published before the opening of the Academy.

59A The Secretary of State may provide to the LA the information which the Academy Trust has provided to the Secretary of State:

a) under Schedules 2-5 to the Education (School Performance Information) (England) Regulations 2007 ; and

b) under paragraphs 1-3 of Part 3 to Schedule 1 to the Education (Information about Individual Pupils) (England) Regulations 2006.

59B The Academy Trust shall ensure that all pupils at the Academy and their parents are informed via Fair Processing Notices that the pupils' personal data may be transferred in accordance with clause 59A.

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

### **General**

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

61) "Recurrent expenditure" means any expenditure of the establishment, conduct, administration and maintenance of the Academy which does not fall within the categories of capital expenditure set out at clause 62. 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**

62) "Capital Expenditure" means expenditure on:

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

- h) works of a permanent character other than the purchase or replacement of minor day-to day items;
- i) any major repairs or replacements which are specified as constituting capital expenditure in any grant letter relating to them;
- j) such other items (whether of a like or dissimilar nature to any of the foregoing) of a substantial or enduring nature as the Secretary of State may agree shall constitute capital expenditure for the purposes of the Agreement;
- k) all professional fees properly and reasonably incurred in connection with the provision of any of the above;
- l) VAT and other taxes payable on any of the above.

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

63. The Academy Trust has agreed with the Secretary of State the Capital Cost Spreadsheet attached as Annex E to this Agreement. The Capital Cost Spreadsheet shows the limit of the capital costs which the parties have agreed the Academy Trust may incur in order to establish the Academy. Annex E includes capital costs incurred prior to the execution of the Agreement and capital costs to be incurred after the execution of this Agreement and before the Academy opens. The Academy opens on the first day that its pupils attend school at the Academy.

63A. Annex F of this Agreement shows the capital expenditure incurred before execution of this Agreement. The Academy Trust has agreed with the Secretary of State the Capital Cash Flow Programme attached as Annex G to the Agreement which shows the projected cash flow of capital expenditure by the Academy Trust after execution of this Agreement. 63B. Both parties recognise that as the project develops it may be necessary to revise costs in the Capital Cost Spreadsheet (Annex E) and to move costs between spreadsheet elements in order to ensure that the project remains within its approved budget. Where the Academy Trust wishes to make such adjustments of over £10,000, it must submit the requested adjustment with the reasons for it to the Secretary of State for approval.

63B. Where the Academy Trust foresees a significant change in the timing of capital expenditure, that is a change to the figures in Annex G of over £1003000, a revised Capital Cash Flow Programme must be submitted to the Secretary of State for approval. The Academy Trust must ensure that no pattern of spending is allowed to develop which cannot be contained within the approved capital expenditure limits. The Secretary of State must be informed immediately if any danger of any of the capital costs set out in Annex E being exceeded is foreseen so that steps can be taken to rectify the situation and ensure that the project remains within its capital Cash Limit.

#### **Capital Expenditure Necessary to Establish the Academy**

63D. The Secretary of State and the Academy Trust hereby agree that the Academy will be constructed/refurbished in accordance with the architect's drawings and specification on materials set out at Annex H of the Agreement and that:

- a) the amount of capital expenditure necessary to establish the Academy is £24,786,751 ("the Cash Limit"). The Cash Limit includes capital expenditure incurred for the purposes of or in connection with the establishment of the Academy prior to the date of this agreement as described in Annexes F and G;
- b) the Secretary of State will bear £23,036,751 of the Cash Limit and the Academy Trust will bear £1,750,000 Of the Cash Limit;
- c) the arrangements (including timing) for payments for these costs are set out in clause 66 and Annex G of this Agreement. Payment by the Secretary of State will be dependent on his approval of the matters set out in Annex I to this Agreement;

- d) if the costs finally incurred for the purposes set out in clause 63D(a) above are less than the Cash Limit, the costs borne by the Secretary of State shall be reduced accordingly and the Academy Trust shall pay the same amount as indicated in clause 63D(b);
- e) if at any stage it appears that the costs incurred for the purposes set out in clause 63D(a) are likely to exceed the Cash Limit, the parties to this Agreement shall urgently consider how to reduce those costs, if necessary by amending the specification of the Academy;
- f) if the costs incurred for the purposes set out in clause 63D(a) exceed the Cash Limit and the parties have not agreed to meet such excess in accordance with clause 63D(g), the additional costs shall be the responsibility of the Academy Trust except that in circumstances where it is agreed that any necessary additional costs could not have been reasonably foreseen at the time the Cash Limit was set, and where the additional costs are agreed with the Secretary of State before the work is undertaken, and provided that clause 63D(e) has been complied with then the parties shall divide such additional costs between them as to 90% to be paid by the Secretary of State and as to 10% to be paid by the Academy;
- g) if the parties agree that additional capital expenditure to establish the Academy, other than that specified in clause 63D(a) may be incurred then the parties shall divide such additional costs between them as to 90% to be paid by Secretary of State and as to 10% to be paid by the Academy. No such additional expenditure is to be incurred without prior agreement in writing between the parties.

#### **Other Capital Expenditure**

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

#### **Conditions on Capital Grant**

65. Any payment of capital grant under the Agreement is subject to the fulfilment of the following conditions:

- a) such grants are used solely to provide accommodation constructed and equipped to standards agreed by the Secretary of State as described in Annex I, or to defray other expenditure approved by the Secretary of State;
- b) the payment of such grants is subject to the Academy Trust certifying and providing evidence that all planning and other consents necessary for the development and all related infrastructure to be completed have been obtained or put in place.

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

66) Capital Grant will be paid by the Secretary of State to the Academy Trust on the basis of claims for grant submitted to the Secretary of State in the notified format with supporting invoices and certificates as required by the Secretary of State. Capital Grant will be paid within 21 days from the day on which a claim for grant is received if the claim is in the proper format, supported by the appropriate documentation and the conditions on its payment set out at clause 65 are complied with. If a dispute arises as to whether a claim is or is not acceptable both parties undertake to attempt to resolve it in good faith. In the event of such a dispute, the Secretary of State shall pay to the Academy Trust so much of the claim as shall not be in dispute.

#### **Implementation Grant**

67) "Implementation Grant" means payments towards recurrent expenditure incurred for the establishment of the Academy prior to it opening.

68) The Secretary of State may enter into an agreement with a third party ("Project Management Company") for the provision of project management services to assist in the establishment of the Academy. Where such an agreement has been entered into, the

Secretary of State shall pay Implementation Grant to the Project Management Company in accordance with that agreement.

68A) The Academy Trust shall prepare and submit to the Secretary of State a budget showing expected recurrent expenditure to be incurred by the Academy Trust before the Academy opens and for which grant is sought. This budget must either be agreed to or modified, by the Secretary of State as he considers appropriate ("Approved Implementation Budget").

68B) Both parties recognise that as the project develops it may be necessary to revise individual costs in the Approved Implementation Budget and to move costs between budget headings in order to ensure that the project remains within its approved budget. Where the Academy Trust wishes to make such an adjustment of over £10,000, the reason for the change and a revised budget must be submitted to the Secretary of State for approval.

68C) The Secretary of State will pay Implementation Grant to the Academy Trust on the basis of claims for grant submitted to the Secretary of State in accordance with the Approved Implementation Budget and in the notified format with supporting invoices, receipts and documents as required by the Secretary of State. If the grant claim is acceptable, the Secretary of State undertakes to pay the amount due within 21 days from the day on which it was received. If a dispute arises over whether a grant claim or part of it is acceptable, both parties undertake to attempt to resolve the dispute in good faith.

68D) Any amount in the Approved Implementation Budget in respect of which the expenditure has not been incurred by the Academy Trust by the date on which the Academy opens will lapse and no Implementation Grant will be payable in respect of that part of the Approved Implementation Budget. Any amount of Implementation Grant which has been paid but remains unexpended on relevant expenditure by the date on which the Academy opens will, without prejudice to any other mode of recovery, be taken into account in determining the total amount of grant to be paid to the Academy Trust after the Academy has opened. Any amount of Implementation Grant which is found to have been used on ineligible expenditure will, without prejudice to any other mode of recovery, be taken into account in determining the total amount of grant to be paid to the Academy Trust.

#### **General Annual Grant**

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

- a) teachers' salaries and related costs (including full and part time teaching staff and seconded teachers);
- b) non-teaching staff salaries and related costs (including pension contributions, educational support staff, administrative and clerical staff and manual and premises related staff);
- c) employees' expenses;
- d) the purchase, maintenance, repair and replacement:
  - (i) of teaching and learning materials and other educational equipment, including books, stationery and ICT equipment and software, sports equipment and laboratory equipment and materials;
  - (ii) of other supplies and services;
- e) examination fees;
- f) repairs, servicing and maintenance of buildings (including redecoration, heating, plumbing, lighting etc); maintenance of grounds (including boundary fences and walls); cleaning materials and contract cleaning; water and sewage; fuel and light (including fuel oil, solid and other 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.
- 70) Subject to clauses 78-79, GAG for each Academy Financial Year for the Academy will be the total of the following areas of funding:
- a) **Formula Funding:** Funding equivalent to the level of funding which would be provided through the funding formula of the LA to a maintained school which had all of that Academy's relevant characteristics, including its number of pupils;
  - b) **Local Authority Central Spend Equivalent:** Funding representing a proportion of the LA Education Budget money which the LA would be able to retain, from the nondelegated elements of the Schools Budget and the relevant items in the LA Block, if the Academy were a maintained school. The proportion which this funding will represent will be based on the elements of the LA's Section 52 Budget Return which are relevant to that Academy.
  - c) **Specialist Schools Allowance:** Funding equivalent to that which a maintained school with the Academy's characteristics would receive in respect of their participation in the specialist schools programme;
- 71) The GAG for each Academy Financial Year for the Academy will also include, payable on a basis equivalent to that applied to maintained schools:
- a) funding for matters for which it is necessary for the Academy to incur extra costs, for as long as those costs are deemed necessary by the Secretary of State; and
  - b) payments in respect of further, specific grants made available to maintained schools, where the Academy meets the requisite conditions and criteria necessary for a maintained school to receive these grants.
- 72) Subject to clause 73, the basis of the pupil number count for the purposes of determining GAG for an Academy Financial Year for the Academy will be the Academy Trust's estimate each November for numbers on roll in the following September for the Academy.
- 73) Once the conditions specified in clause 74 have been satisfied with respect to the Academy for the Academy Financial Year for which funding is being calculated, the basis of the pupil number count for the purpose of determining GAG for the Academy will be:
- a) for the pupil number count for pupils in Year 11 and below, the Schools Census for the January preceding the Academy Financial Year in question; and
  - b) for the pupil number count for pupils in Year 12 and above, the formula which for the time being is in use for maintained schools for the calculation of pupil numbers for pupils in Year 12 and above for the purpose of calculating their level of funding.
- 74) For the purpose of clause 73, the conditions are:
- a) all planned Year-groups will be present at the Academy (that is, all the pupil cohorts relevant to the age-range of the Academy will have some pupils present); and
  - b) the total number of pupils as measured in the Schools Census for the preceding January is 90% or more of the planned final size of the Academy, which is 540.
- 75) For any Academy Financial Year in which GAG for the Academy has been calculated in accordance with clause 72, an adjustment will be made to the following Academy Financial

Year's formula funding element of GAG for the Academy to recognise any variation from that estimate greater than or lower than 2.5%. The additional or clawed-back grant will be only that amount relevant to the number of pupils beyond the 2.5% variation.

76) For any Academy Financial Year in which GAG for the Academy is calculated in accordance with clause 73, no adjustment will be made to the formula funding element in the following Academy Financial Year's formula funding element of GAG unless the Academy Trust demonstrates to the satisfaction of the Secretary of State that there has been a significant impact on costs, such as an extra classroom. 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.

77) The Secretary of State recognises that:

a) Where the Academy opens with an intake representing only a proportion of the final planned size of the Academy, payments based simply upon the number of pupils present are unlikely to be sufficient to meet the Academy's needs in the Academy Financial Years before all age groups are present at their planned size (the "Start-up Period") because of a lack of economies of scale. The Secretary of State undertakes to 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 70-76, in order to enable the Academy to operate effectively. The Academy Trust will make a bid to the Secretary of State for this addition to GAG based upon need and providing appropriate supporting evidence;

b) Where the Academy opens with pupils transferred from one or more maintained schools which have closed, additional GAG resources will 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.

78) 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 70-76 to allow the Academy to:

a) purchase a basic stock of teaching and learning materials (including library books, text books, software, stationery, science equipment and equipment for physical education) and other consumable materials;

b) meet the costs associated with the recruitment and induction of additional teaching and other staff.

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

79) The Secretary of State recognises that if he serves notice of intention to terminate this Agreement, the intake of new pupils during the notice period is likely to decline and that in such circumstances payments based simply upon the number of pupils attending the Academy are unlikely to be sufficient to meet the Academy's needs during the notice period. The Secretary of State undertakes to pay a reasonable and appropriately larger GAG with respect to the Academy in the notice period than would be justified solely on the basis of the methods set out in clauses 70-76, in order to enable the Academy to operate effectively.

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

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

#### **Earmarked Annual Grant**

82) Earmarked Annual Grant ("EAG") shall be paid by the Secretary of State to the Academy Trust in respect of either recurrent or Capital Expenditure for such specific purposes

as may from time to time be agreed between the Secretary of State and the Academy Trust and as described in the relevant funding letter. The Academy Trust shall only spend EAG in accordance with the scope, terms and conditions of the grant set out in the relevant funding letter.

83) Where the Academy Trust is seeking a specific EAG in relation to any Academy Financial Year, it shall submit a letter outlining its proposals and the reasons for its request to Academies Division, Sanctuary Buildings, Great Smith Street, London SW1P 3BT.

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

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

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

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

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

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

87) The amounts of GAG for an Academy Financial Year will be determined annually by the Secretary of State. The amount of GAG for the Academy will be notified to the Academy Trust in a funding letter not later than 1 April preceding that Academy Financial Year (the "annual letter of funding"). The annual letter of funding will not include the amount that the Academy Trust will receive in respect of grants for which information to enable timely calculation is not available or is incomplete, such grants will be notified as soon as practicable later in the year. Amounts of EAG will be notified to the Academy Trust wherever possible in the annual letter of funding or as soon as practicable thereafter.

88) For the purposes of this Agreement, an Academy Financial Year shall be deemed to run from September to August, in order to align it to the school academic year. The Secretary of State undertakes to pay GAG in monthly instalments on or before the twenty fifth day of each month, each such instalment to fund the salaries and other payroll costs for the relevant month of all monthly paid employees and all other costs payable during the next following month. The detailed arrangements for payment will be set out in the annual letter of funding.

#### **Other relevant funding**

89) The Secretary of State shall meet a proportion of the Academy Trust's costs arising from the inclusion of Academies in the Schedules to the Redundancy Payments (Continuity of Employment in Local Government) (Modification) Order 1999. The Secretary of State shall meet the costs of the employees' prior eligible service, being service prior to the opening of the Academy, and the Academy Trust will meet the costs of service after the opening of the Academy. The Academy Trust shall seek the Secretary of State's consent for these redundancies, such consent not to be unreasonably withheld or delayed, before committing to the redundancies.

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

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

92) The Academy Trust may also receive funding for the Academy from the LA's Standards Fund. This is a scheme under which the Standards Fund money is to be distributed by the Secretary of State to LAS and schools and permits LAS to receive grants on behalf of Academies in the same way as they can do for maintained schools. The Academy Trust must ensure that the Academy uses any grants received under the Standards Fund in accordance with any conditions specified in relation to that grant. Grants paid to the Academy Trust from the Standards Fund are not paid under this Agreement.

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

93) The Principal of the Academy Trust shall be the Academy Trust's Accounting Officer. The Accounting Officer will be personally responsible to the Academy Trust for ensuring regularity and propriety, and for the economic, efficient and effective use of resources (i.e. ensuring value for money), and administration of the financial affairs of Academy Trust. The Accounting Officer may delegate or appoint others, such as a Finance- 31-Director, to assist in carrying out these responsibilities.

94) The Academy Trust shall abide by the provisions within the Academies Financial Handbook published by the DCSF and amended from time to time, which sets out in detail provisions for the financial management of the Academy including guidance on financial systems and controls and accounting and reporting requirements.

95) The formal budget plan should take into account items in the School Development Plan requiring expenditure and must be approved each Academy Financial Year by the Governing Body.

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

- a) in its conduct and operation it shall apply financial and other controls which conform to the requirements both of propriety and of good financial management;
- b) arrangements have been made to maintain proper accounting records and that statements of income and expenditure and balance sheets may be produced in such form and frequency as the Secretary of State may from time to time reasonably direct;
- c) such financial statements are published at the end of each Academy Financial Year in such form and manner as the Secretary of State may reasonably direct and a copy sent to him by 31 December each Academy Financial Year. These should carry an audit report stating that, in the opinion of the auditors, the statements show a true and fair view of the Academy Trust's affairs and that the grants were used for the purposes intended;
- d) the Academy Trust prepares and files with the Companies Registry such annual accounts as are required by the Companies Act 2006;
- e) a statement of the accounting policies used is sent to the Secretary of State with the financial statements,
- f) the Academy Trust insures or procures insurance by another person of its assets in accordance with normal commercial practice or under the terms of any subsisting leases in respect of the leasehold interest of the site upon which the Academy is situated;



- g) the Academy Trust prepares and files with the Charity Commission annual accounts prepared in accordance with the Statement of Recommended Practice;
- h) the Academy Trust shall comply with their obligation under the Charities Act 1993 and the Charities Act 2006 (or any statutory re-enactment or modification of those Acts) with regard to the preparation of an annual report and its transmission to the Charity Commission;
- i) the Academy Trust shall ensure that its accounts are audited annually by independent auditors appointed under arrangements approved by the Secretary of State.
- 97) In addition, and at his expense, the Secretary of State may instruct auditors to report to him on the adequacy and effectiveness of the accounting systems and internal controls maintained by the Academy Trust to standards determined by the Secretary of State and to make recommendations for improving the financial management of the Academy Trust.
- 98) The books of accounts and all relevant records, files and reports of the Academy Trust including those relating to financial controls, shall be open at all reasonable times to officials of the DCSF and the National Audit Office and to contractors retained by the DCSF or the National Audit Office for inspection or the carrying out of value for money studies; and the Academy Trust shall secure that those officials and contractors are given reasonable assistance with their enquiries. For the purposes of this clause 'relevant' means in any way relevant to the provision and use of grants provided by the Secretary of State under this Agreement.
- 99) The Academy Trust shall submit indicative budgets relating to the Academy to the Secretary of State by not later than 15 February before the start of each Academy Financial Year. Such budgets shall set out clearly the prospective income and expenditure of the Academy and shall differentiate, and give adequate details of:
- a) a statement of expected income for that Academy Financial Year including cash donations and gifts in kind from sources other than GAG, EAG and grants from the Secretary of State towards capital and revenue expenditure, distinguishing between income from public funds including the national lottery and income from other sources. Income from cash donations and gifts in kind from sources other than GAG, EAG and grants from the Secretary of State towards capital expenditure will not be taken into account by the Secretary of State in the calculation of GAG;
  - b) a statement of proposed recurrent expenditure for that Academy Financial Year;
  - c) a statement of proposed capital expenditure for that Academy Financial Year.
- 100) At the beginning of any Academy Financial Year the Academy Trust may hold unspent GAG from previous Academy Financial Years amounting to 12% of the total GAG payable for the Academy in the Academy Financial Year just ended or such higher amount as may from time to time be agreed. This carried forward amount may be used as follows:
- a) equivalent to 2% of the total GAG payable in the Academy Financial Year just ended may be used by the Academy Trust for any of the purposes for which GAG is paid;
  - b) equivalent to 12% of the total GAG payable in the Academy Financial Year just ended, or such higher figure as may from time to time be agreed, minus any amount used under sub-clause (a) above, may be used on the upkeep and improvement of premises, including the costs of equipment and routine repairs and maintenance of the Academy, and on capital expenditure relating to the Academy.
- 101) Notwithstanding clause 100, any additional grant provided over and above that set out in clauses 70-76 and made in accordance with clauses 77-79 may be carried forward without limitation or deduction until the Start-up Period or the circumstances set out in clause 79 come to an end.
- 102) Any savings of GAG not allowed to be carried forward under clauses 100-101 will be taken into account in the payment of subsequent grant.
- 103) The Academy Trust may also accumulate funds from private sources or public sources other than grants from the Secretary of State for application to the benefit of the

Academy as it sees fit. Any surplus arising from private sources or public sources other than grants from the Secretary of State shall be separately identified in the Academy Trust's balance sheet.

104) The Academy Trust shall not, without the prior written consent of the Secretary of State which shall not be unreasonably withheld or delayed:

- a) except such as are given in normal contractual relations, give any guarantees, indemnities or letters of comfort;
- b) write off any debts or liabilities owed to it above a value to be set out in the annual letter of funding, nor offer to make any ex gratia payments;
- c) make any sale or purchase of freehold property; or
- d) other than the underlease relating to the land at Tutbury Mill, Mill Street, Rocester, Staffordshire to which the Secretary of State has given his consent, grant or take up any leasehold or tenancy agreement for a term exceeding three years.

105) Each discovered loss of an amount exceeding the amount set out in the annual letter of funding, and arising from suspected theft or fraud, shall be reported by the Academy Trust to the Secretary of State at the earliest opportunity.

106) It is the responsibility of the Academy Trust to ensure that the Academy balances its budget from Academy Financial Year to Academy Financial Year.

#### **Borrowing Powers**

107) The Academy Trust shall not borrow without specific approval of the Secretary of State, such approval may only be granted in limited circumstances. The Academy Trust shall not operate an overdraft except to cover irregularities in cash flow. Such an overdraft, and the maximum amount to be borrowed, shall require approval by the Academy Trust in General Meeting and in writing by the Secretary of State, and shall be subject to any conditions which the Secretary of State may reasonably impose.

#### **Disposal of Assets**

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

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

- a) the Secretary of State paid capital grant in excess of £20,000 for the asset; or
- b) the asset was transferred to the Academy Trust from an LA for no or nominal consideration.

Furthermore, reinvestment of a percentage of the proceeds of disposal of a capital asset paid for with a capital grant from the Secretary of State shall require the Secretary of State's consent in the circumstances set out above and reinvestment exceeding £1 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.

110) This clause applies in the event, during the lifetime of this agreement, of the disposal of a capital asset for which capital grant of any amount was paid by the Secretary of State, where the asset was acquired by the Academy Trust. In this event, the Academy Trust shall repay to the Secretary of State the same proportion of the proceeds of the disposal as equates with the proportion of the original cost met by the Secretary of State, unless the

Secretary of State agrees to some or all of the proceeds being retained by the Academy Trust for its charitable purposes.

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

112) Except with the consent of the Secretary of State, the Academy Trust shall not dispose of assets for a consideration less than the best price that can reasonably be obtained, such consent not to be unreasonably withheld or delayed.

#### **TERMINATION**

113) Either party may give not less than seven Academy Financial Years' written notice to terminate this Agreement, such notice to expire on 31 August in any year.

114) If the Secretary of State is of the opinion that the Academy no longer has the characteristics set out in clause 12 of this Agreement or that the conditions and requirements set out in clauses 13-61 of this Agreement are not being met, or that the Academy Trust is otherwise in material breach of the provisions of this Agreement, the Secretary of State may give notice of his provisional intention to terminate this Agreement.

115) Any such notice shall be in writing and shall'

a) state the grounds on which the Secretary of State considers the Academy no longer has the characteristics set out in clause 12 of this Agreement or is not meeting the conditions and requirements of clauses 13-61 of this Agreement or the Academy

Trust is otherwise in material breach of the provisions of this Agreement;

b) specify the measures needed to remedy the situation or breach;

c) specify a reasonable date by which these measures are to be implemented; and

d) state the form in which the Academy Trust is to provide its response and a reasonable date by which it must be provided.

116) If no response is received by the date specified in accordance with clause 115(d), the Secretary of State may give the Academy Trust 12 months, or such lesser period as he considers appropriate in the circumstances, written notice to terminate this Agreement.

117) If a response is received by the date specified in accordance with clause 115(d) the Secretary of State shall consider it, and any representations made by the Academy Trust, and shall, within three months of its receipt, indicate that:

a) he is content with the response and/or that the measures which he specified are being implemented; or

b) he is content, subject to any further measures he reasonably specifies being implemented by a specified date or any evidence he requires that implementation of such measures have been successfully completed; or

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

118) In the circumstances of clause 117(c) the Secretary of State shall notify the Academy Trust why he believes that he cannot be reasonably satisfied and, if so requested by the Academy Trust within thirty days from such notification, he shall meet a deputation including representatives from Governing Body to discuss his concerns. If following such meeting he has good reasons for remaining satisfied that the Academy does not and will not have the characteristics set out in clause 12 of this Agreement or does not and will not meet the conditions and requirements set out in clauses 13-61 of this Agreement or the Academy Trust

is in material breach of the provisions of this Agreement and such breach will not be remedied to his reasonable satisfaction, he shall give the Academy Trust twelve months written notice to terminate this Agreement.

119) If the Secretary of State has cause to serve a notice on the Academy Trust under section 165 of the Education Act 2002 and a determination (from which all rights of appeal have been exhausted) has been made that the Academy shall be struck off the Register of Independent Schools, the period of twelve months notice referred to in clause 118 may be shortened to a period deemed appropriate by the Secretary of State.

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

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

121) If a Special Measures Termination Event occurs, the Secretary of State may:

- a) by notice in writing to the Academy Trust terminate this Agreement forthwith; or
- b) appoint such Further Governors to the Academy Trust as he thinks fit in accordance with the Academy Trust's Articles and/or may provide up to 12 months' notice in writing to terminate this Agreement.

122) In the event that the Secretary of State appoints Further Governors in accordance with clause 121 (b), the Academy Trust must, upon the request of the Secretary of State, procure the resignation of the Sponsor Governors (as defined in the Articles) in accordance with the Academy Trust's Articles.

123) The Secretary of State may at any time by notice in writing terminate this Agreement forthwith on the occurrence of any of the following events:-

- a) the Academy Trust calls a meeting of its creditors (whether formal or informal) or enters into any composition or arrangement (whether formal or informal) with its creditors; or
- b) the Academy Trust proposes a voluntary arrangement within Section 1 of the Insolvency Act 1986; or
- c) the Academy Trust is unable to pay its debts within the meaning of Section 123 of the Insolvency Act 1986 provided that, for the purposes of this clause, Section 123 (1)(a) of the Insolvency Act 1986 shall have effect as if the amount of £10,000 was substituted for £750. The Academy Trust shall not be deemed unable to pay its debts for the purposes of this clause if any such demand as is mentioned in the said Section is being contested in good faith by the Academy Trust; or
- d) the Academy Trust has a receiver and manager (with the exception of Receivers and Managers or Interim Managers appointed by the Charity Commission under the Charity Act 1993 or any subsequent re-enactment of that Act), administrator or administrative receiver appointed over all or any part of its undertakings, assets or income; or

e) any distraint, execution or other process is levied or enforced on any of the Academy Trust's property and is not paid out, withdrawn or discharged within fifteen Business Days; or

f) the Academy Trust has passed a resolution for its winding up;

g) an order is made for the winding up or administration of the Academy Trust; or

h) the lease or sub-lease, further to which the Academy occupies the land and buildings at Tutbury Mill, Mill Street, Rocester, Staffordshire, is determined.

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

#### **Effect of Termination**

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

126) In the event of termination of this Agreement however occurring, the school shall cease to be an Academy within the meaning of Section 482 of the Education Act 1996.

127) Subject to clause 128, if the Secretary of State terminates this Agreement for reasons other than that a Special Measures Termination Event occurs, that the Academy no longer has the characteristics set out in clause 12 of this Agreement, or is no longer meeting the conditions and requirements set out in clauses 13-61 of this Agreement or that the Academy Trust is otherwise in material breach of the provisions of this Agreement, the Secretary of State shall indemnify the Academy Trust.

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

129) The categories of expenditure incurred by the Academy Trust in consequence of the termination of this Agreement in respect of which the Secretary of State shall indemnify the Academy Trust include (but not by way of limitation), staff compensation and redundancy payments, compensation payments in respect of broken contracts, expenses of disposing of assets or adapting them for other purposes, legal and other professional fees, and dissolution expenses.

130) Subject to clause 131, on the termination of this agreement however occurring, the Academy Trust shall in respect of any of its capital assets that are fixed to the land occupied by the Academy Trust for the purposes of the Academy as at the date of termination:

a) promptly transfer a proportion of the assets to a person nominated by the Secretary of State, if the Secretary of State considers that all or some of those assets need to be used for educational purposes by that nominee. The proportion of the assets to be transferred shall be the same as the proportion of the capital contribution made by the Secretary of State to the original value of those assets (namely the value of the land as at the date of this agreement plus the total value of capital contributions made by the parties under clauses 63D-64 above), and whether such capital contribution(s) was/were made on the establishment of the Academy or later; or

b) if the Secretary of State confirms that a transfer under clause 130(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 (namely the value of the land as at the date of this agreement plus the total value of capital

contributions made by the parties under clauses 63D-64 above), and whether such capital contribution(s) was/were made on the establishment of the Academy or later.

130A) Subject to clause 131, on the termination of this agreement however occurring, the Academy Trust shall in respect of any of its capital assets that are not fixed to the land occupied by the Academy Trust for the purposes of the Academy as at the date of termination:

(a) promptly transfer these assets to a person nominated by the Secretary of State, if the Secretary of State considers that all or some of those assets need to be used for educational purposes by that nominee, or.

(b) if the Secretary of State confirms that a transfer under clause 130A (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 and whether such capital contribution(s) was/were made on the establishment of the Academy or later.

131) The Secretary of State may waive in whole or in part the repayment due under clause 130(b) if:

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

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

131A). The Academy agrees, within 3 months of the date of this agreement, to enter into a charge in the form appended hereto as Annex J in favour of the Secretary of State over all the Academy's property and/or assets so as to secure any liability to make to the Secretary of State any transfer/repayment under clause 130 A above.

132) If any land or premises of the Academy were acquired by the Academy Trust from an LA by a scheme under Schedule 35A of the Education Act 1996 or otherwise at less than the market value of the land at the date of acquisition, and the Secretary of State does not make a scheme as provided for in Schedule 35A (Paragraph 8) of the Education Act 1996, the Academy Trust may dispose of its interest in that land or premises but only with the consent of the Secretary of State, who shall have regard to any representations from the Academy Trust and the LA from which the land was transferred before giving or withholding that consent.

## **GENERAL**

### **Information**

133) Without prejudice to any other provision of this Agreement, the Secretary of State acting reasonably may from time to time call for information on, inter alia, the Academy's:

a) curriculum;

b) arrangements for the assessment of pupils;

c) targets, including those set in accordance with the provisions of clause 20;

d) teaching staff including numbers, qualifications, experience, salaries, and teaching loads; class sizes;

f) outreach work with other schools and the local community;

g) 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;

h) numbers of pupils excluded (including permanent and fixed term exclusions);

- i) levels of authorised and unauthorised attendance;
- j) charging and remissions policies and the operation of those policies;
- k) organisation, operation and building management;
- l) financial controls; and
- m) membership and proceedings of the Governing Body.

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

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

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

136) The Academy Trust shall ensure that:

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

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

137) 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 136, any material relating to:

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

#### **Amendment to Articles of Association**

137A) The Academy agrees, within 28 days of the date of this Agreement, to amend Article 48 of its Articles of Association by the addition, into the existing text, of the words highlighted in underlining/italics below:

"The Secretary of State may give a warning notice to the Governing Body where -

(a) he is satisfied:

that there has been a serious breakdown in the way the Academy is managed or overned which is re'udicin or likel to re·udice the Academ 's abilit to (i) effect a Material Operation (within the meaning of the Underlease under which the Academy occupies the land at Tutbury Mill) by 1 January 2010 or (ii) achieve Practical Completion (within the meaning of the

Underlease under which the Academy occupies the land at Tutbu Mill within 5 years of the date of the said Underlease, or

that the standards of performance of pupils at the Academy are unacceptably low and are likely to remain so..."

**Notices**

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

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

**General**

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



### Schedule 3

#### Convenience Summary of Property Provisions.

##### The Site

The site is split into two parts:-

1. The Mill Site (land and buildings).
2. The Adjoining Land (excluding the area occupied by Rocester FC).

##### Transfer Structure

J C Bamford Excavators Ltd ("JCB") retained the freehold in both sites. A long head lease (125 years) was granted to Staffordshire County Council ("SCC") which then sub-leased the sites to the JCB Academy Trust ("JCBAT") on similar terms.

The only reason SCC are included in the transfer structure is to ensure that if the JCB Academy failed as an institution, a protective procedure is in place to provide continued education for the students who are at the Academy at that time (in accordance with SCC statutory obligations).

In those circumstances SCC can therefore elect to continue occupation of the site as a Maintained School (subject to the Special Protections for JCB set out below).

##### JCB - Special Protections

1. In the event that the JCB Academy failed and SCC elects to continue occupation as a Maintained School then they must pay to JCB the agreed valuation of the sites (as donated). The freehold title would then be transferred (*Clause 7.3*).
2. The agreed valuation is £725,000 index linked year by year based on RPI (*Schedule 6*).
3. If SCC subsequently decided not to continue in occupation of the site as a Maintained School then JCB has the right (but not the obligation) to acquire the whole site (as developed) for the higher of:-

(i) The Capital Expenditure incurred by DCFS on developing the site (the depreciation being on a straight line basis over 50 years) OR

(ii) The Open Market Value of the Mill Site at that time. Both parties have the right to obtain valuations and would then seek to agree a figure. In default of agreement the valuation to be determined by an independent third party valuer.

The reason that only the Mill Site is valued in this scenario is that it was agreed with the DCFS that, whilst the whole site would be bought back, the Adjoining Land would

be transferred at nil consideration (irrespective of any development that had taken place on it).

Once the higher value is determined there is then a deduction from that figure of the agreed valuation of the site (£650,000 index linked – the Mill Site valuation).

4. If SCC, having had the freehold title transferred to it, subsequently decide to sell the sites in future years, then JCB has a pre-emptive right of purchase, at an open market valuation with no deduction being made in respect of the agreed value of £725,000 as that would already have been paid to JCB on transfer of the freehold (*Schedule 6 Part B*).