

**PARTNERSHIP LEARNING**

**DEED OF VARIATION  
OF FUNDING AGREEMENT**

30 January 2015

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) **Partnership Learning** a charitable company incorporated in England and Wales with registered number 08339345 whose registered office is at Roger Leighton, Chief Executive, The Sydney Russell School, Parsloes Avenue, Dagenham, Essex, England RM9 5QT ("**the Academy Trust**")

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

## INTRODUCTION

- A. The Parties have entered into a funding agreement on 19 August 2013 a copy of which is contained in Schedule 1, (the "**Existing FA**").
- B. The Parties have agreed to amend and re-state the terms of the Existing FA, in accordance with the terms of this Deed to form a multi academy trust.
- C. The Company intends to establish and maintain, and to carry on or provide for the carrying on of a number of Academies in accordance with the **Master Funding Agreement** (as defined below) and any agreement entered into between the parties which is supplemental to it.

## 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 Master Funding Agreement (as defined in clause 2 below). For the avoidance of doubt, the Schedules form part of this Deed.
- 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 Master Funding Agreement contained in Schedule 2 (the "**Master Funding Agreement**") and the Supplemental Funding Agreement contained in Schedule 3 (the "**Supplemental Funding Agreement**").

## GOVERNING LAW AND JURISDICTION

- 2. 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.
- 3. 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

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

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

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

.....  
Duly authorised by the Secretary of State for Education  
Date..... 30 January 2015 .....



EXECUTED as a deed by  
**Partnership Learning** acting  
by:

.....  
Director

Print name..... ALAN LAZELL .....

Date..... ..

Witnessed by .....  
Signature

Full name..... CAROLINE POOLE .....

Address..... 29 CHADWAY, DAGENHAM, ESSEX, RM8 1HH .....

Occupation..... WELFARE OFFICER .....

**Schedule 1**

**Existing FA**

**RIVERSIDE SCHOOL**

**FUNDING AGREEMENT**

*19<sup>th</sup> August, 2013*

**RIVERSIDE SCHOOL  
FUNDING AGREEMENT**

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## **INTRODUCTION**

- 1) This Agreement is made under section 1 of the Academies Act 2010 between the Secretary of State for Education ("the Secretary of State") and The Partnership Learning Trust (the "Academy Trust").
- 2) The Academy Trust is a Company incorporated in England and Wales, limited by guarantee with registered Company number 8339345.
- 3) The following expressions used in this Agreement have the respective meanings assigned to them by the numbered clauses of this Agreement referred to immediately after the reference to the expressions -
  - a) "Academies Financial Handbook" - clauses 59 and 68;
  - b) "Accounting Officer" – clause 58;
  - c) "Annual Letter of Funding" - clause 53;
  - d) "GAG" – clause 41;
  - e) "Capital Expenditure" - clause 36;
  - f) "Capital Grant" – clause 36;
  - g) "EAG" - clause 48
  - h) "Governing Body" – clause 13;
  - i) "Recurrent Expenditure" – clause 35.
- 4) In this Agreement the following words and expressions shall have the following meanings:-

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

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



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

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

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

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

**(b) by virtue of any powers conferred by the Articles or other document regulating that Entity or any other Entity or partnership including, without limitation, the power to appoint or remove a majority of the governing body thereof, or**

**(c) by virtue of any agreement, understanding or arrangement between any person or persons,**

**that the affairs of the first-mentioned Entity are conducted in accordance with the wishes of A and 'Control' shall be construed accordingly;**

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

**"Insured Risks" means fire, lightning, explosion, earthquake, storm, tempest, flood, subsidence, landslip, heave, impact, terrorism, bursting or overflowing of water tanks and pipes, damage by aircraft and other aerial devices or articles dropped there from, riot and civil commotion,**

labour disturbance and malicious damage and such other risks as the Academy Trust insures against from time to time, subject in all cases to any exclusions or limitations as may from time to time be imposed by the insurers or underwriters;

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

"the Land" means the land (including for the avoidance of doubt all buildings, structures landscaping and other erections) situated at and known as Barking Riverside, off Renwick Road, Barking (which land is for the purposes of identification shown hatched/dotted red and labelled "Secondary School Site Area 23,280 sq m" on the plan attached as Annex D to this Agreement) making up the permanent site of the Academy;

"the Lease" means the leasehold agreement or its equivalent between the Academy Trust and the London Borough of Barking and Dagenham ("the Landlord") in respect of the Land;

"the Lease of the Temporary Site" means the leasehold agreement or its equivalent between the Academy Trust and the Landlord in respect of the Temporary Site.

"Memorandum" means the Memorandum of Association of the Academy Trust for the time being in force;

"parents" means parents or guardians;

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

"Principal" means the head teacher of the Academy;

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

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

**"SEN" means Special Educational Needs;**

**"SENCO" means Special Educational Needs Co-ordinator;**

**"Start-up period" means up to a maximum of five Academy Financial Years and covers the period up to and including 2018/19 the first Academy Financial Year in which all age groups are present at the Academy (that is, all the pupil cohorts relevant to the age-range of the Academy will have some pupils present); and**

**"the Temporary Site" means the land (including for the avoidance of doubt all buildings structures landscaping and other erections) situated at and known as City Farm, off Thames Road, Barking (which land forms part of registered title number EGL201689 and which is for the purposes of identification shown edged red on the plan attached as Annex E to this Agreement) making up the temporary site of the Academy.**

- 5) The Interpretation Act 1978 shall apply for the interpretation of this Agreement as it applies for the interpretation of an Act of Parliament.**
- 6) Expressions defined in this Agreement shall have the same meaning where used in any Annex to this Agreement.**
- 7) Questions arising on the interpretation of the arrangements in this Agreement shall be resolved by the Secretary of State after consultation with the Academy Trust.**
- 8) Section 1 (3) of the Academies Act 2010 states that:**
  - (3) An Academy agreement is an agreement between the Secretary of State and the other party under which-**
    - (a) the other party gives the undertakings in subsection (5), and**
    - (b) the Secretary of State agrees to make payments to the other party in consideration of those undertakings.**



## **LEGAL AGREEMENT**

9) In consideration of the Academy Trust undertaking to establish and maintain, and to carry on or provide for the carrying on of, an independent school in England to be known as Riverside School ("the Academy") and meeting such requirements as are referred to in clause 10, the Secretary of State agrees to make payments to the Academy Trust in accordance with the conditions and requirements set out in this Agreement. For the avoidance of doubt, any obligations imposed upon or powers given to the Academy by this Agreement are also imposed upon the Academy Trust.

## **ACADEMY REQUIREMENTS**

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

## **ACADEMY OPENING DATE**

11) The Academy shall open as a school on 1 September 2013 replacing Barking Riverside School which shall cease to be maintained by the Local Authority on that date, which date shall be the conversion date within the meaning of the Academies Act 2010.

## **CONDITIONS OF GRANT**

### **General**

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

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

apply to maintained schools, subject to any exceptions in Annex B;

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

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

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**

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

14) The Governing Body shall have regard to (but for the avoidance of doubt shall not be bound by) any guidance as to the governance of Academy Trusts that the Secretary of State may publish.

### **Conduct**

15) The Academy Trust will conduct the Academy in accordance with:

(a) the Articles;

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

(c) the terms of this Agreement.

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

16) The Academy Trust shall comply with the requirements of the Education

(Independent School Standards) (England) Regulations 2010 (SI 2010/1997) (or such other regulations as may for the time being be applicable) in relation to requiring enhanced criminal records checks, obtaining enhanced criminal records certificates and making any further checks, as required and appropriate for members of staff, supply staff, individual Governors and the Chair of the Governing Body.

16A) The Academy Trust shall, on receipt of a copy of an enhanced criminal record certificate, on request from the Secretary of State or his agents, as soon as possible thereafter submit such information to the Secretary of State in accordance with section 124 of the Police Act 1997.

### **Pupils**

17) The planned capacity of the Academy is 1824 places in the age range 11-19, including a sixth form of 324 places. The Academy will be an all ability inclusive school whose requirements for:

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

### **Designated Teacher for Looked After Children**

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

For the purpose of this clause, any reference to the governing body of a maintained school in such statutory and regulatory provisions, or in any guidance and code of practice issued pursuant to such provisions, shall be deemed to be references to the Governing Body of the Academy Trust.

#### **Teachers and other staff**

18) Subject to clause 19, the Academy Trust shall, in accordance with any guidance which the Secretary of State may issue on the qualifications of teaching and other staff in Academies, employ anyone it deems is suitably qualified or is otherwise eligible under a contract of employment or for services to carry out planning and preparing lessons and courses for pupils, delivering lessons to pupils, assessing the development, progress and attainment of pupils, and reporting on the development, progress and attainment of pupils.

19) Clause 18 does not apply to anyone who (a) is appointed as the SENCO by the Academy Trust under section 317(3A) of the Education Act 1996, who must meet the requirements set out in Regulation 3 of the Education (Special Educational Needs Co-ordinators) (England) Regulations 2008 (SI 2008/2945); or (b) is appointed as a designated teacher for looked after children further to clause 17A.

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

21) The Academy Trust shall ensure that all employees at the Academy other than teachers ("Non-teaching Staff") have access to either the Local Government Pension Scheme in accordance with the Local Government Pension Scheme (Administration) Regulations 2008 [SI 2008/239] (or such other regulations as may for the time being be applicable).

21A) Where a teacher employed at the Academy applies for a teaching post at another Academy, 16 to 19 Academy, alternative provision Academy, maintained school, school maintained by a local authority, or institution within



the further education sector the Academy Trust must at the request of the governing body or Academy Trust of that other educational institution:

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

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

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

22A) The Academy Trust shall publish information in relation to its current curriculum provision. Such information shall include details relating to

- a) the content of the curriculum;
- b) its approach to the curriculum;
- c) the GCSE options (and other Key Stage 4 qualifications) or other future qualifications, as specified by the Secretary of State, offered by the Academy;
- d) how parents (including prospective parents) can obtain further information in relation to the Academy's curriculum.

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

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

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

- a) the Academy shall be treated as falling within the meaning of "a school" under section 42A (2);
  - b) the Academy Trust shall be deemed to be the "responsible authorities" for the purposes of subsection 42A(3); and
  - c) references to registered pupils shall be treated as references to registered pupils at the Academy.
- 24) The Academy Trust shall make provision for the teaching of religious education and for a daily act of collective worship at the Academy.
- 24A) The Academy Trust shall not make provision in the context of any subject for the teaching, as an evidence-based view or theory, of any view or theory that is contrary to established scientific and/or historical evidence and explanations.
- 24B) The Academy Trust shall make provision for the teaching of evolution as a comprehensive, coherent and extensively evidenced theory.
- 25) Not used.
- 26) Where the Academy has not been designated with a religious character in accordance with section 124B of the School Standards and Framework Act 1998:
- a) subject to clause 27, the Academy Trust shall ensure that provision shall be made for religious education to be given to all pupils at the Academy in accordance with the requirements for agreed syllabuses in section 375(3) of the Education Act 1996 and paragraph 2(5) of Schedule 19 to the School Standards and Framework Act 1998;
  - b) subject to clause 27, the Academy Trust shall ensure that the Academy complies with the requirements of section 70(1) of, and Schedule 20 to, the School Standards and Framework Act 1998 as if it were a community or foundation school which does not have a religious character, except that the provisions of paragraph 4 of that Schedule do not apply. The Academy may apply to the Secretary of

State for consent to be relieved of the requirement imposed by paragraph 3(2) of that Schedule, the Secretary of State's consent to such an application not to be unreasonably withheld or delayed.

**c) the Academy Trust:**

(1) agrees that before making an application pursuant to the Religious Character of Schools (Designation Procedure) (Independent Schools) (England) Regulations 2003 for the Academy to be designated as a school with religious character it shall seek the prior written consent of the Secretary of State<sup>1</sup>;

(2) hereby acknowledges that the Secretary of State may in his absolute discretion refuse or consent to the Academy Trust making such an application.

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

27) Section 71(1) – (6) and (8) of the School Standards and Framework Act 1998 shall apply as if the Academy were a community, foundation or voluntary school, and as if references to "Religious Education" and to "Religious Worship" in that section were references to the religious education and religious worship provided by the Academy in accordance with clauses 25 or 26 as appropriate.

28) The Academy Trust shall have regard to any guidance issued by the Secretary of State, further to section 403 of the Education Act 1996, on sex and relationship education to ensure that children at the Academy are protected from inappropriate teaching materials and they learn the nature of

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<sup>1</sup> The Academy Trust must undertake consultation on the proposal for designation prior to seeking the Secretary of State's consent.

marriage and its importance for family life and for bringing up children. The Academy Trust shall also have regard to the requirements set out in section 405 of the Education Act 1996 which shall apply to the Academy as if it were a maintained school.

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

- a) references to any maintained school shall be treated as references to the Academy;
- b) references to registered pupils shall be treated as references to registered pupils at the Academy;
- c) references to the governing body or the local authority shall, in each case, be treated as references to the Academy Trust; and
- d) references to the head teacher shall, in each case, be treated as references to the Principal of the Academy<sup>2</sup>.

28B) The Academy Trust shall ensure that principles are promoted which support fundamental British values, including: respect for the basis on which the law is made and applied in England; respect for democracy and support for participation in the democratic processes; support for equality of opportunity for all; support and respect for the liberties of all within the law; and respect for and tolerance of different faiths and religious and other beliefs.

### **Assessment**

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

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<sup>2</sup> Please also see the Charity Commission guidance (CC9): "Speaking out: Guidance on Campaigning and Political Activities by Charities" <http://www.charity-commission.gov.uk/Publications/cc9.aspx>

- a. The Academy Trust shall ensure that the Academy complies with any guidance issued by the Secretary of State from time to time to ensure that pupils take part in assessments and in teacher assessments of pupils' performance as they apply to maintained schools.
- b. The Academy Trust shall report to any body on assessments under clause 29 as the Secretary of State shall require and shall provide such information as may be required by that body as applies to maintained schools.
- c. In respect of all Key Stages, the Academy Trust will submit the Academy to monitoring and moderation of its assessment arrangements as required by the Secretary of State.
- d) The Academy Trust may offer:
  - (i) any course of education or training at the Academy which leads to a qualification that is approved by the Secretary of State for the purposes of section 96 of the Learning and Skills Act 2000; and
  - (ii) any course of education or training not falling within paragraph (i) if the Secretary of State gives his specific written approval for it.

29A) The Academy Trust shall ensure that the following information is published on the Academy's website:

- a) The school's most recent Key Stage 4 results as published by the Secretary of State under the following column headings in the School Performance Tables published on the Department for Education's website:
  - (i) "% achieving 5 + A\* - C GCSEs (or equivalent) including English and maths GCSEs";
  - (ii) "% achieving the English Baccalaureate"; and

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

- b) Information as to where and by what means parents (including prospective parents) may access the most recent report about the school published by the Chief Inspector.
- c) Information as to where and by what means parents (including prospective parents) may access the School Performance Tables published by the Secretary of State on the Department for Education's website.

#### **International Education Surveys**

29B) Section 538A of the Education Act 1996 (power to direct participation in international surveys) shall be deemed to apply to the Academy with the following modifications:

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

#### **Exclusions Agreement**

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

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

payment will flow between the Academy Trust and the LA in the same

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

### **School Meals**

31)The Academy Trust shall, if requested to do so by or on behalf of any pupils at the Academy, provide school lunches for those pupils unless it would be unreasonable for it to do so. Subject to the provisions of clause 32 charges may be levied for lunches, but the Academy Trust shall otherwise fund the cost of such school lunches from its GAG.

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

### **Charging**

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

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

- b) references to registered pupils shall be treated as references to registered pupils at the Academy;
- c) references to the governing body or the local authority shall, in each case, be treated as references to the Academy Trust;
- d) Not used.
- 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;

### **Pupil Premium**

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

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

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

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

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

#### **General**

**34) The Secretary of State shall pay grants towards Recurrent Expenditure and may pay grants towards Capital Expenditure for the Academy. Except with the Secretary of State's prior agreement, the Academy**



Trust shall not budget for its expenditure in any Academy Financial Year in excess of expected income (subject to clause 72). The Academy Trust shall not enter into commitments which are likely to have substantial implications for future levels of grant, or for the period for which grant may be required. No decision by the Academy Trust shall commit the Secretary of State to paying any particular amount of grant.

35) "Recurrent Expenditure" means any expenditure on the establishment, conduct, administration and maintenance of the Academy which does not fall within the categories of capital expenditure set out at clause 36. The Secretary of State shall pay separate and distinct grants in respect of Recurrent Expenditure: General Annual Grant ("GAG"), Earmarked Annual Grant ("EAG") and where appropriate Additional Funding under clause 56.

#### **Capital Grant**

36) "Capital Expenditure" means expenditure on:

- a. the acquisition of land and buildings;
- b. the erection, enlargement, improvement or demolition of any building including fixed plant, installation, wall, fence or other structure, or any playground or hard standing;
- c. the installation of electrical, mechanical or other services other than necessary replacements, repairs and maintenance due to normal wear and tear;
- d. the purchase of vehicles and other self-propelled mechanical equipment;
- e. the installation and equipping of premises with furnishings and equipment, other than necessary replacements, repairs and maintenance due to normal wear and tear;

- f. the installation and equipping of premises with computers, networking for computers, operating software and information and communication technology equipment, other than necessary updates or necessary replacements, repairs and maintenance due to normal wear and tear;
- g. the provision and equipping of premises, including playing fields and other facilities for social activities and physical recreation other than necessary replacements, repairs and maintenance due to normal wear and tear;
- h. works of a permanent character other than the purchase or replacement of minor day-to-day items;
- i. any major repairs or replacements which are specified as constituting capital expenditure in any grant letter relating to them;
- j. such other items (whether of a like or dissimilar nature to any of the foregoing) of a substantial or enduring nature as the Secretary of State may agree shall constitute capital expenditure for the purposes of this Agreement;
- k. all professional fees properly and reasonably incurred in connection with the provision of any of the above;
- l. VAT and other taxes payable on any of the above.

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

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

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

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

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

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

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

#### **General Annual Grant**

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

- a) teachers' salaries and related costs (including full and part-time teaching staff and seconded teachers);**

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

Needs);

l) administration;

m) establishment expenses and other institutional costs.

42) Subject to clauses 44–45, GAG for each Academy Financial Year for the Academy will include:

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

43) Subject to clause 43AA, 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 43A.

43A) The Secretary of State shall in advance of each Academy Financial Year for the Academy, at such time or times as he shall determine, request that the Academy Trust provides an estimate of the number of pupils on roll in the following September for the Academy for the purposes of determining

GAG for an Academy Financial Year, and the Academy Trust shall provide the requested estimate (such estimate to be based on an objective assessment of numbers) to the Secretary of State as soon as reasonably practicable.

43AA) Once the condition specified in clause 43B) has 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 relevant month (determined at the discretion of the Secretary of State) preceding the Academy Financial Year in question;

and

- b) for the pupil number count for pupils in Year 12 and above, the formula which for the time being is in use for maintained schools for the calculation of pupil numbers for pupils in Year 12 and above for the purpose of calculating their level of funding.

43B) For the purpose of clause 43AA), the condition is satisfied [in the Academy Financial Year which immediately follows the Academy Financial Year in which all planned Year-groups will be present at the Academy (that is, all the pupil cohorts relevant to the age-range of the Academy will have some pupils present.

43C) For any Academy Financial Year in which GAG for the Academy has been calculated in accordance with clauses 43)and 43A), 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 the purpose of calculating any adjustment to the formula funding element of GAG under this clause, use the Census for the

relevant month (determined at the discretion of the Secretary of State) for the Academy Financial Year in question as a means of determining pupil numbers in an Academy Financial Year. The additional or clawed-back grant will be only that amount relevant to the number of pupils above or below that estimate.

43D) For any Academy Financial Year in which GAG for the Academy is calculated in accordance with clause 43AA), no adjustment will be made to the equivalence funding element in the following Academy Financial Year's equivalence funding element of GAG unless the Academy Trust demonstrates to the satisfaction of the Secretary of State that there has been a significant impact on balances. For any other element of GAG the Secretary of State may make adjustments to recognise a variation in pupil numbers from that used to calculate the element of grant in question; the basis of these will be set out in the Annual Letter of Funding or its equivalent.

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

45) The Secretary of State recognises that if he serves notice of intention to terminate this Agreement, the intake of new pupils during the notice period is likely to decline and that in such circumstances payments based simply upon the number of pupils attending the Academy are unlikely to be sufficient to meet the Academy's needs during the notice period. In those circumstances, the Secretary of State may undertake to pay a reasonable and appropriately larger GAG with respect to the Academy in the notice period than would be justified solely on the basis of the methods set out in clauses 42-43D, in order to enable the Academy to operate effectively.

46) The Secretary of State also recognises that if this Agreement is terminated for any reason by either party the number of 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.

47) 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**

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

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

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

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

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

a) if this leads to an underpayment of GAG, the Secretary of State will correct the underpayment in subsequent Academy Financial Years;

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



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

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

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

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

#### **Additional Funding**

55) Not used.

**56) Not used.**

**57) The Academy Trust may also receive funding from a 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.**

## **Financial and Accounting Requirements**

### **General**

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

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

**59A) The Academy Trust shall abide by the requirements of the current 16 to 19 Funding Guidance published by the Secretary of State and as amended from time to time, or such other guidance on 16 to 19 funding issued by the Secretary of State as may from time to time be applicable, in respect of any of its provision for persons who are above compulsory school age until the academic year in which they reach the age of 19.**

**60) The formal budget plan must be approved each Academy Financial Year by the Governing Body of the Academy Trust.**

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

**a) in its conduct and operation it shall apply financial and other controls which conform to the requirements both of propriety and of good financial management;**

**b) arrangements have been made to maintain proper accounting records and that statements of income and expenditure and balance sheets may be produced in such form and frequency as the Secretary of State may from time to time reasonably direct;**

**c) in addition to the obligation to fulfil the statutory requirements referred to in sub-clause f) below, the Academy Trust shall prepare its financial statements, Directors' report, Annual Accounts and its Annual Return for each Academy Financial Year in accordance with the Statement of Recommended Practice as issued by the Charity Commission and updated from time to time as if the Academy Trust was a non-exempt Charity and/or in such form or manner as the Secretary of State may reasonably direct and shall file these with the Secretary of State and the Principal Regulator by 31 December each Academy Financial Year;**

**d) a statement of the accounting policies used should be sent to the Secretary of State with the financial statements and should carry an audit report stating that, in the opinion of the auditors, the statements show a true and fair view of the Academy Trust's affairs and that the grants were used for the purposes intended;**

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

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

**g) the Academy Trust shall publish on its website its Annual Accounts, Annual Report, Memorandum and Articles, Funding Agreement and a list of the names of the Governors of the Academy Trust;**

**h) the Academy Trust insures or procures insurance by another person of its assets in accordance with normal commercial practice or under the terms of the Lease.**

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

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

**64) The Academy Trust shall submit information relating to the Academy's finances to the Secretary of State in accordance with the requirements of the Academies Financial Handbook as amended from time to time or as otherwise specified from time to time by the Secretary of State .**

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

of State may specify by notice in writing to the Academy Trust.

66) Notwithstanding clause 65, any additional grant provided over and above that set out in clauses 42-43D, and made in accordance with clauses 44-45 may be carried forward without limitation or deduction until the Start-up Period or the circumstances set out in clause 45 come to an end.

67) Any unspent GAG not allowed to be carried forward under clauses 65-66 will be taken into account in the payment of subsequent grant.

67A) If the Secretary of State pays grant not including GAG to the Academy Trust on condition either that such grant be used for a particular purpose or purposes or that such grant be used by a certain date, any failure on the part of the Academy Trust to use such grant for such a purpose or purposes or by such date may be taken into account by the Secretary of State either:

- (i) in the same Academy Financial Year that such grant is paid to the Academy Trust; or
- (ii) in the calculation and/or payment of any subsequent grant to the Academy Trust; or
- (iii) by an adjustment to the GAG paid by the Secretary of State to the Academy Trust in the following Academy Financial Year or Academy Financial Years.

67B) If the Secretary of State or his agents pay any grant to the Academy Trust which includes an amount to cover the VAT which will be payable by the Academy Trust in using any such grant for the purposes intended, the Academy Trust shall, having paid the VAT to a third party for any goods or services it has purchased from such a third party, where entitled, promptly and, in any event, as soon as is reasonably practicable, submit a VAT reclaim application to Her Majesty's Revenue and Customs (HMRC) in respect of such VAT payment. Any failure, on the part of the Academy Trust, to submit a VAT reclaim application to HMRC or repay the amount recouped to the Secretary of State as soon as reasonably practicable following the receipt of any such payment from HMRC may be taken into account by the Secretary of

State either:

- (a) in the same Academy Financial Year that any such grant is paid to the Academy Trust; or
- (b) in the calculation and/or payment of any subsequent grant to the Academy Trust; or
- (c) by an adjustment to the GAG paid by the Secretary of State to the Academy Trust in the following Academy Financial Year or Academy Financial Years.

67C) GAG paid by the Secretary of State shall only be used by the Academy Trust for the educational charitable purpose of advancing for the public benefit education in the United Kingdom, in particular but without prejudice to the generality of the foregoing by establishing, maintaining, carrying on, managing and developing an Academy offering a broad and balanced curriculum. Such funds shall not be used by the Academy Trust for any other charitable purpose without the prior written consent of the Secretary of State, except where the use of such funds for that charitable purpose is merely incidental to their use for the educational charitable purpose of advancing for the public benefit education in the United Kingdom.

68) The Academy Trust may also spend or accumulate funds from private sources or public sources other than grants from the Secretary of State for application to the benefit of the Academy as it sees fit provided that it complies with all applicable requirements relating to the proper and regular use of funds in the Academies Financial Handbook. Any surplus arising from private sources or public sources other than grants from the Secretary of State shall be separately identified in the Academy Trust's balance sheet.

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

- a) except such as are given in normal contractual relations, give any

guarantees, indemnities or letters of comfort above a value as for the time being specified in the Academies Financial Handbook or otherwise as the Secretary of State may specify by notice in writing to the Academy Trust from time to time;

b) write off any debts or liabilities owed to it, nor offer to make any ex gratia payments (such as staff severance or compensation payments), above a value as for the time being specified in the Academies Financial Handbook or otherwise as the Secretary of State may specify by notice in writing to the Academy Trust from time to time ;

c) except as may be permitted in the Academies Financial Handbook or otherwise as the Secretary of State may specify by notice in writing to the Academy Trust, make any sale or purchase of or otherwise dispose of freehold or leasehold property including entering into a contract to dispose of land or granting an option to acquire an interest in land; or

d) take up any leasehold or tenancy agreement.

70) The Academy Trust shall provide 30 days' prior written notice to the Secretary of State, whether or not the circumstances require the Secretary of State's approval, of its intention to:

a) give any guarantees, indemnities or letters of comfort;

b) write off any debts owed to it or offer to make any ex gratia payments;

c) make any sale or purchase of or otherwise dispose of freehold or leasehold property including entering into a contract to dispose of land or granting an option to acquire an interest in land; or

d) take up any leasehold or tenancy agreement.

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

irregularities in cash flow. Such an overdraft, and the maximum amount to be borrowed, must be approved by the Academy Trust in a General Meeting and in writing by the Secretary of State, and shall be subject to any conditions which the Secretary of State may reasonably impose.

74) The Academy Trust shall provide 30 days written notice to the Secretary of State of its intention to borrow, whether or not such borrowing requires the Secretary of State's approval under clause 73 above.

### **Disposal of Assets**

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

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

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

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



needed is the percentage of the initial price of the asset which was paid by capital grant from the Secretary of State.

78) This clause applies in the event, during the lifetime of this Agreement, of the disposal of a capital asset for which capital grant of any amount was paid by the Secretary of State, where the asset was acquired by the Academy Trust. In this event, the Academy Trust shall repay to the Secretary of State the same proportion of the proceeds of the disposal as equates with the proportion of the original cost met by the Secretary of State, unless the Secretary of State agrees to some or all of the proceeds being retained by the Academy Trust for its charitable purposes.

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

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

81) The Academy Trust shall provide 30 days notice to the Secretary of State of its intention to dispose of assets for a consideration less than the best price that can reasonably be obtained, whether or not such disposal requires the Secretary of State's consent under clause 80 above.

## **TERMINATION**

### **General**

82) Either party may give not less than seven Academy Financial Years' written notice to terminate this Agreement, such notice to expire on 31 August 2020 or any subsequent anniversary of that date.

#### **Termination Warning Notice**

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

- a) the Academy is no longer meeting the requirements referred to in clause 10 of this Agreement (subject to clause 89);
- b) the conditions and requirements set out in clauses 12-33A of this Agreement are no longer being met;
- c) the standards of performance of pupils at the Academy are unacceptably low;
- d) there has been a serious breakdown in the way the Academy is managed or governed;
- e) the safety of pupils is threatened (whether by breakdown of discipline or otherwise); or
- f) the Academy Trust is otherwise in material breach of the provisions of this Agreement.

83A) A Termination Warning Notice issued by the Secretary of State in accordance with clause 83 shall specify:

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

## **Notice of Intention to Terminate**

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

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

or

(b) the Academy requires significant improvement.

87) Any notice issued by the Secretary of State in accordance with clause 86 shall invite the Academy Trust to respond with any representations within a specified timeframe.

88) Where the Secretary of State has given notice of his intention to terminate this Agreement in accordance with clauses 86 and 87 and

(a) he has not received any representations from the Academy Trust within the timeframe specified in clause 87; or

(b) having considered the representations made by the Academy Trust pursuant to clause 87, the Secretary of State remains satisfied that it is appropriate to terminate this Agreement

he may by notice in writing terminate this Agreement with effect from a specified date.

## **Termination with Immediate Effect**

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

90) The Secretary of State may at any time by notice in writing terminate this

Agreement, such termination to take effect on the date of the notice, on the occurrence, or where in his reasonable opinion there is a serious risk of occurrence, of any of the following events:

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

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

**91A) If the Secretary of State is satisfied that any Governor or Member of the Academy Trust is not a suitable person he may:**

- (a) in relation to such a Governor or Member serve notice in writing to the Academy Trust requiring the Academy Trust to procure the resignation or removal of the person(s) within 42 days of the date of the notice; and if the Academy Trust fails to procure the said resignation or removal within the time specified, the Secretary of State may terminate this Agreement by notice in writing to the Academy Trust such termination to take effect on the date of the notice; or**
- (b) terminate this Agreement by notice in writing to the Academy Trust such termination to take effect on the date of the notice.**

**92) If the Academy Trust has not obtained full planning permission (including where relevant listed building consent), in respect of either of (i) the Temporary Site by 01/08/2013 or (ii) the Permanent Site by 01/03/2014, the Secretary of State may terminate this Agreement by notice in writing to the Academy Trust such termination to take effect on the date of the notice.**

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

- I. the Academy would, on opening, provide an unacceptably low standard of education; or**
- II. the safety of pupils or staff at the Academy would, on opening, be threatened; or**
- III. the staff employed at the Academy are unsuitable; or**
- IV. there is a serious breakdown in the way the Academy Trust is being managed or governed; or**
- V. the buildings and other structures on the Temporary Site are unsuitable or the Academy Trust has not obtained Building Regulation approval;**

he may either:

(a) require the Academy Trust (i) not to open the Academy; and/or (ii) not to admit pupils of a particular age range, to be determined by the Secretary of State; and/or (iii) not to use any building or other structure on the Land until such time as the relevant matter or matters listed in I. to V. above has or have been resolved to the Secretary of State's satisfaction; or

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

93A) If at any time after the signing of this Agreement but before the relocation of the Academy to the Permanent Site the Secretary of State is of the view that:

- I. the safety of the pupils or staff at the Academy would, on relocation to the Permanent Site be threatened; or
- II. the buildings or other structures on the Permanent Site are unsuitable or the Academy Trust has not obtained Building Regulation approval;

he may either:

(a) require the Academy Trust (i) not to open the Academy; and/or (ii) not to admit pupils of a particular age range, to be determined by the Secretary of State; and/or (iii) not to use any building or other structure on the Land until such time as the relevant matter or matters listed in 93A I. to V. above has or have been resolved to the Secretary of State's satisfaction; or

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

94) If the Academy Trust has not entered into either of (i) the Lease of the Temporary Site by 24/08/2013, or the Lease by 24/08/2015, the Secretary of State may terminate this Agreement by notice in writing to the Academy Trust such termination to take effect on the date of the notice.

#### **Change of Control of the Academy Trust**

95) (i) The Secretary of State may at any time, subject to sub-clause (iii) below, terminate this Agreement by notice in writing to the Academy Trust such termination to take effect on the date of the notice in the event that there is a change:

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

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

(ii) The Academy Trust shall, as soon as it is reasonably practicable to do so after it has become aware of any change or proposed change of Control within the meaning of clause 95)(i), give written notice to the Secretary of State of such change or proposed change of control.

(iii) At the time of notifying the Secretary of State in accordance with sub-clause (ii) above, the Academy Trust may seek the Secretary of State's agreement that, if the Secretary of State is satisfied that the person assuming the Control is suitable, he will not in those circumstances exercise his right to terminate this Agreement further to clause 95)(i).

#### **Effect of Termination**

96)Not used.

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

98) Subject to clauses 99 and 100, if the Secretary of State terminates this Agreement pursuant to clause 82 of this Agreement, the Secretary of State shall indemnify the Academy Trust. If the Secretary of State terminates this Agreement otherwise than pursuant to clause 82 of this Agreement, the Secretary of State may in his absolute discretion indemnify or (to such extent

if any as he may in his absolute discretion consider appropriate) compensate the Academy Trust.

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

100) The categories of expenditure incurred by the Academy Trust in consequence of the termination of this Agreement in respect of which the Secretary of State shall (where the Secretary of State terminates this Agreement pursuant to clause 82) indemnify the Academy Trust and may (where the Secretary of State terminates this Agreement otherwise than pursuant to clause 82) in his absolute discretion indemnify or compensate the Academy Trust include (but not by way of limitation), staff compensation and redundancy payments, compensation payments in respect of broken contracts, expenses of disposing of assets or adapting them for other purposes, legal and other professional fees, and dissolution expenses.

101) Subject to clause 102, on the termination of this Agreement however occurring, the Academy Trust shall in respect of any of its capital assets at the date of termination:

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

b) if the Secretary of State confirms that a transfer under clause 101(a) is not required, promptly repay to the Secretary of State a sum equivalent to the percentage of the value of the assets at the date of termination, or, by agreement with the Secretary of State, at the date of subsequent disposal of those assets. Such percentage to be the same as the percentage of the



capital contribution made by the Secretary of State to the original value of those assets, whether that contribution was made on the establishment of the Academy or later.

102) The Secretary of State may waive in whole or in part the repayment due under clause 101(b) if:

- a) The Academy Trust obtains his permission to invest the proceeds of sale for its charitable objects; or
- b) The Secretary of State directs all or part of the repayment to be paid to the LA.

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

## **GENERAL**

### **Information**

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

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

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

h) levels of authorised and unauthorised absence;

i) charging and remissions policies and the operation of those policies;

j) organisation, operation and building management;

k) financial controls;

l) compliance with the requirements of the Charity Commission's guidance to charities and charity trustees and in particular the Charity Commission's guidance in the Protecting Charities from Harm ('the compliance toolkit') and in CC9: Speaking Out, Campaigning and Political Activities by Charities, as amended from time to time;

m) membership and proceedings of the Governing Body together with any other relevant information concerning the management or governance of the Academy which, subject to clause 108), is reasonably necessary for the Secretary of State to carry out his functions generally and in relation to this Agreement.

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

105A) (i) The Academy Trust shall provide to the Secretary of State the name of any new or replacement Member or Governor of the Academy Trust, whether such a person has been appointed or elected, together with the date of such an appointment or election and, where applicable, the name of the Member or Governor such a person replaces as soon as is practicable and in any event within 14 days of the appointment or election of such a person.

105A) (ii) In this regard, the Academy Trust shall not appoint any new or

replacement Members or Governors of the Academy Trust until it has first (a) notified such persons that their name shall be shared with the Secretary of State and (b) explained to the new or replacement Members or Governors of the Academy Trust that the reason their name is being shared with the Secretary of State is to enable the Secretary of State to assess their suitability.

105B) i) If the Academy Trust is in material breach of the provisions of the Lease or the Lease of the Temporary Site, or if it is reasonably foreseeable that the Academy Trust will be in material breach of the Lease or the Lease of the Temporary Site, the Academy Trust shall forthwith give written notice to the Secretary of State specifying the exact nature of the material breach or reasonably foreseeable material breach and such notice shall set out the steps taken or to be taken by the Academy Trust to remedy the material breach or reasonably foreseeable material breach and, where appropriate, shall include the timescales relating to any remedial action.

105B) ii) The Academy Trust will at its own cost provide all information reasonably required by the Secretary of State in respect of any material breach or reasonably foreseeable material breach.

105C) Following the receipt by the Secretary of State of the written notice under clause 105B), the Academy Trust shall permit the Secretary of State to take all such steps in conjunction with or instead of the Academy Trust as may be necessary to remedy or prevent the material breach referred to in the said notice. The Academy Trust shall, in such circumstances, use its best endeavours to assist the Secretary of State to remedy or prevent such material breach.

105D)(i) The Academy Trust shall, within 14 days of receiving any order, notice, proposal, demand or any other requirement materially affecting the ability of the Academy Trust to use the Temporary Site or the Land for the purposes of the Academy from any competent authority (including the Landlord), give full particulars by written notice to the Secretary of State and deliver to the Secretary of State copies of such documents as he may

require. Such notice shall state what steps, if any actions are required, the Academy Trust intends to take in response to the order, notice, proposal, demand or other requirement affecting the Temporary Site or the Land.

105D) (ii) The Academy Trust will at its own cost provide all information reasonably required by the Secretary of State in respect of order, notice, proposal, demand or any other requirement affecting the Temporary Site or the Land as referred to in clause 105D(i).

105E) Following the receipt by the Secretary of State of the written notice under clause 105D)(i), the Academy Trust shall permit the Secretary of State to take all steps in conjunction with or instead of the Academy Trust as may be necessary to comply with any order, notice, proposal, demand or other requirement affecting the Temporary Site or the Land referred to in the said notice. The Academy Trust shall, in such circumstances, use all reasonable endeavours to assist the Secretary of State to take the appropriate required steps.

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

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

107) The Academy Trust shall ensure that:

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

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

108) There may be excluded from any item required to be made available for inspection by any interested party and to be sent to the Secretary of State by virtue of clause 107, any material relating to:

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

## **LAND CLAUSES**

### **Debt**

108A) Not used.

### **Restrictions on Land transfer**

108B) The Academy Trust:

- a) shall, within 28 days from the acquisition of the legal interest in the Land or the signing of this Agreement, whichever is the latter,

apply to the Land Registry for restrictions in the proprietorship register (under section 43(1)(a) of the Land Registration Act 2002 in Form RX1 as prescribed by Rule 91 and Schedule 4 of the Land Registration Rules 2003) ('LRR 2003')) in the following terms:

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

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

- b) shall take any further steps reasonably required to ensure that the restrictions referred to in clause 108B(a) are entered on the proprietorship register,
- c) shall provide the Secretary of State with confirmation of the entry of the restrictions referred to in clause 108B(a) as soon as reasonably practicable after it receives notification from the Land Registry,
- d) in the event that it has not registered the restriction[s] referred to in clause 108B(a), hereby consents to the entering of the restrictions referred to in 108B(a) in the register by the Secretary of State (under s. 43(1)(b) of the Land Registration Act 2002); and
- e) shall not, without the consent of the Secretary of State, apply to dis-apply, modify or remove (by cancellation or otherwise) a

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<sup>3</sup> These restrictions should be registered against the title if the Academy Trust is a non-exempt charity at the time of entry into the lease / acquisition of the land.

restriction entered in accordance with clause 108B(a) or 108B(d) above, whether by itself, a holding company, a subsidiary company, or a receiver, administrator or liquidator acting in the name of the Academy Trust.

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

108C) (i) The Academy Trust shall keep the Temporary Site and the Land clean and tidy and make good any damage it causes to the Temporary Site or the Land and / or any deterioration to the condition of the Temporary Site or the Land that may arise from the date of this Agreement, save that the Academy Trust shall ensure that any actions undertaken in compliance with this clause shall be consistent with the terms of the Lease or the Lease of the Temporary Site as applicable. In compliance with this clause, the Academy Trust shall not do or cause or permit to be done anything to lessen the value or marketability of the Temporary Site or the Land save with the express written consent of the Secretary of State.

108C)(ii) The Academy Trust shall observe and comply with its obligations under the Lease and the Lease of the Temporary Site and shall promptly enforce its rights against the Landlord.

108C)(iii) The Academy Trust agrees it shall seek and obtain the prior written consent of the Secretary of State, not to be unreasonably withheld or delayed before taking any steps to:

- a) terminate, vary, surrender or dispose of the Lease or the Lease of the Temporary Site; and / or
- b) grant any consent or licence in respect of the Land or the Temporary Site or any part of either; and / or
- c) create or permit to arise or continue any encumbrance affecting the Land or the Temporary Site or any part of either; and / or
- d) part with or share possession or occupation of the Land or the

**Temporary Site or any part of either; and / or**

- e) enter into any onerous or restrictive obligations affecting the Land or the Temporary Site or any part of either.**

**108C) iv) The Academy Trust agrees that prior to taking any steps, including but not limited to the service of any notice or waiver of any condition, under any contractual arrangement entered into in respect of the acquisition of the legal interest in the Land or the Temporary Site, it shall seek and obtain the written consent of the Secretary of State, not to be unreasonably withheld or delayed.**

#### **Insurance**

**108D) The Academy Trust shall, save where the terms of the Lease provide for the Landlord to obtain insurance in respect of the Land or the Temporary Site:-**

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



Land or the Temporary Site as the same existing prior to such damage or destruction occurring) as soon as may be reasonably practicable;

- d) produce to the Secretary of State a copy of the insurance policy whenever reasonably requested and the receipt for the last premium or other evidence of renewal and up to date details of the amount of cover (but not more often than once in any period of 12 months in both cases);
- e) not knowingly do anything whereby any policy of insurance relating to the Land or the Temporary Site may become void or voidable.
- f) insure against liability in respect of property owners' and third party risks including occupiers liability.

#### **Transfer of Land**

108E) The Academy Trust hereby grants and the Secretary of State hereby accepts an option, exercisable by the Secretary of State or his nominee, to acquire the Academy Trust's interest in the said Land at nil consideration. The option hereby granted shall be exercisable (by notice in writing by or on behalf of the Secretary of State) on the termination of this Funding Agreement for whatever cause or in circumstances where the Academy Trust is unable to use the Land as the permanent site of the Academy in accordance with clause 108H. On the exercise of this option, the Law Society's Standard Conditions of Sale for Commercial Property in force at the date of such exercise shall apply to the transaction and completion shall take place 28 days after such exercise.

108F) The Academy Trust:

- a) shall, within 14 days from the transfer to it of the Land or the signing of this Agreement, whichever is the latter, apply to the Land

Registry in Form AN1 as prescribed by Rule 81 of the Land Registration Rules 2003 for a notice to be entered in the register (under section 34(3)(a) of the Land Registration Act 2002) to protect the option granted under clause 108E and including a copy of this Agreement as evidence of that option,

b) shall take any further steps required to ensure that the notice referred to in clause 108F(a) is entered on the proprietorship register,

c) shall provide the Secretary of State with confirmation of the entry of the notice referred to in clause 108F(a) as soon as practicable after it receives notification from the Land Registry,

d) in the event that it has not registered the notice referred to in clause 108F(a), hereby consents to the entering of the notice referred to in 108F(a) in the register by the Secretary of State (by application in Form UN1 under s. 34(3)(b) of the Land Registration Act 2002),

e) shall not, without the consent of the Secretary of State, apply to dis-apply, modify or remove (by cancellation or otherwise) a notice entered in accordance with clause 108F(a) or 108F(d) above, whether by itself, a holding company, a subsidiary company, or a receiver, administrator or liquidator acting in the name of the Trust, and

f) in the case of previously unregistered land, for the further protection of the option granted in Clause 108E the Academy Trust shall within 14 days of the acquisition of the legal interest in the Land or the signing of this Agreement, whichever is the latter, make application to register a Class C (iv) land charge in the Land Charges Registry and a Caution against First Registration in the Land Registry and shall provide the Secretary of State with copies of the entries secured thereby within 7 days of completing each registration, respectively. If the Secretary of State is of the view that the Academy Trust has failed to perform the registration obligations in this sub-clause he shall be at

liberty to make his own applications to secure these registrations.

### **Legal Charge**

108G) Not used.

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

108H) If the Academy Trust is unable to use the Land or any part thereof as the permanent site of the Academy but the Secretary of State agrees not to terminate this Agreement on that basis, the Secretary of State may give notice to the Academy Trust that:

- a) he intends to exercise the option granted under clause 108E) to transfer the Land or the relevant part thereof for nil consideration to himself or his nominee; or
- b) the Academy Trust shall dispose of the Land and that, pursuant to clause 78, the Academy Trust may retain some or all of the proceeds of sale of the Land or the relevant part thereof in order to fulfil its charitable purposes by funding the purchase of an alternative permanent site for the Academy Trust, save that any proceeds not used to fund the purchase of an alternative permanent site shall be accounted for to the Secretary of State or his nominee.

### **Sharing of the Land**

108I) The Academy Trust agrees that if:

- a) the Academy does not reach its planned capacity over a period of ten Academy Funding Years; or
- b) notice of termination is served by either the Academy Trust or the Secretary of State in accordance with clause 82 of this Agreement; or
- c) in the reasonable opinion of the Secretary of State the operation of the Academy at planned capacity does not require the use of the full extent

of the Land, it will share occupation of the Land with such other Academy as the Secretary of State deems appropriate in the circumstances and enter into such legal arrangements in respect of the same as are required by the Secretary of State.

### **Exercise of Rights**

108J)-108K) Not used.

### **Notices**

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

- (a) shall be in writing and in English;
- (b) shall be sent to the party for the attention of the contact and at the address listed in clause 109A;
- (c) shall be sent by a method listed in clause 109C; and
- (d) is deemed received as set out in clause 109C if prepared and sent in accordance with this clause.

109A) The parties' addresses and contacts are:

Name of Party	Position of Contact	Address
Secretary of State	Head of Free Schools Division	Department for Education, Sanctuary Buildings, Great Smith Street, London SW1P 3BT
The Academy Trust	Chair of the Governing Body	The Partnership Learning Trust, Lifeline House, Neville Road, Dagenham, Essex, RM8 3QS

109B) A party may change its details given in the table in clause 109A) by giving notice, the change taking effect for the party notified of the change at 9.00 am on the date five Business Days after deemed receipt of the notice.

109C) Any notice or other communication required to be given to a party under or in connection with this Agreement shall be delivered by hand or

sent by pre-paid first-class post or other next working day delivery service. Any notice or communication shall be deemed to have been received if delivered by hand, on signature of a delivery receipt or at the time the notice is left at the address specified in Clause 109A, or otherwise at 9.00 am on the second Business Day after posting.

109D) This clause does not apply to the service of any proceedings or other documents in any legal action. For the purposes of clause 109, "writing" shall not include e-mail.

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

#### **General**

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

111A) No delay, neglect or forbearance on the part of the Secretary of State in enforcing (in whole or in part) any provision of this Agreement or in exercising (in whole or in part) any right conferred on him by this Agreement shall be or be deemed to be a waiver of such provision or right or a waiver of any other provision or right or shall in any way prejudice any right of the Secretary of State under this Agreement or shall amount to an election not to enforce such provision or exercise such right (including, for the avoidance of doubt, any right to terminate this Agreement)..

112) The Secretary of State and the Academy Trust recognise the difficulties in catering in this Agreement for all the circumstances which may arise in relation to the 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.

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

termination.

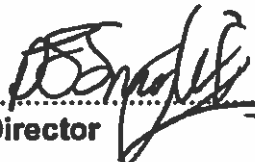
113A) This Agreement may be executed in any number of counterparts, each of which when executed and delivered shall constitute a duplicate original, but all the counterparts shall together constitute the one agreement.

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

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

This Agreement was executed as a Deed on 19 AUGUST 2013

Executed on behalf of The Partnership Learning Trust by:

  
.....  
Director

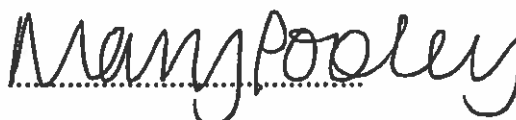
In the presence of:

Witness   
.....

Address 54 NIRTHRIE RD, 1G3 9QY

Occupation POLICY & PROGRAMME OFFICER

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

  
.....

Duly Auth



## **Annex A**

### **Memorandum and Articles of the Academy Trust**

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

**A COMPANY LIMITED BY GUARANTEE**

**MEMORANDUM OF ASSOCIATION  
OF  
THE PARTNERSHIP LEARNING TRUST**



THE COMPANIES ACT 2006

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

SCHEDULE 2

A COMPANY LIMITED BY GUARANTEE

Regulation 2(b)

MEMORANDUM OF ASSOCIATION OF

THE PARTNERSHIP LEARNING TRUST

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

*Name of each subscriber*      *Authentication by each subscriber*

Name

Signature

Daniel John Singleton



Name

Signature

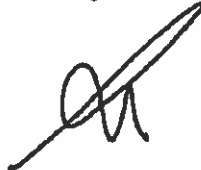
Angela Ruth Moore



Name

Signature

Peter Joseph McPartland



20 December 2012

Dated

**8<sup>th</sup> May 2013**

**THE COMPANIES ACT 2006**

**A COMPANY LIMITED BY GUARANTEE**

**ARTICLES OF ASSOCIATION**

**OF**

**The Partnership Learning Trust**

**COMPANY NUMBER: 8339345**

**THE COMPANIES ACT 2006**  
**COMPANY LIMITED BY GUARANTEE**

**ARTICLES OF ASSOCIATION**

**OF**

**The Partnership Learning Trust INTERPRETATION**

**1. In these Articles:-**

- a. "the Academy" means the school referred to in Article 4a and established by the Academy Trust;
- b. "Academy Financial Year" means the academic year from 1<sup>st</sup> of September to 31<sup>st</sup> of August the following year;
- c. "the Academy Trust" means the company intended to be regulated by these Articles and referred to in Article 2;
- d. "the Articles" means these Articles of Association of the Academy Trust;
- e. "Chief Inspector" means Her Majesty's Chief Inspector of Education, Children's Services and Skills or his successor;
- f. "clear days" in relation to the period of a notice means the period excluding the day when the notice is given or deemed to be given and the day on which it is to take effect;
- g. "Clerk" means the clerk to the Governors or any other person appointed to perform the duties of the clerk to the Governors, including a joint, assistant or deputy clerk;
- h. "financial expert" means an individual, company or firm who is authorised to give investment advice under the Financial Services and Markets Act 2000;
- i. "Funding Agreement" means the agreement made under section 1 of the Academies Act 2010 between the Academy Trust and the Secretary of State to establish the Academy;

- j. "the Governors" means the directors of the Academy Trust (and "Governor" means any one of those directors), subject to the definition of this term at Article 6.10(b) in relation to Articles 6.2-6.10;
- k. "Local Authority Associated Persons" means any person associated with any local authority within the meaning given in section 69 of the Local Government and Housing Act 1989;
- l. "Member" means a member of the Academy Trust and someone who as such is bound by the undertaking contained in Article 8;
- m. "the Memorandum" means the Memorandum of Association of the Academy Trust;
- n. "Office" means the registered office of the Academy Trust;
- o. "the Parent Governors" means the Governors appointed pursuant to Articles 53 to 58 inclusive;
- p. "Principal" means the head teacher of the Academy;
- q. "Principal Regulator" means the body or person appointed as the Principal Regulator under the Charities Act 2011;
- r. "the seal" means the common seal of the Academy Trust if it has one;
- s. "Secretary of State" means the Secretary of State for Education or successor;
- t. "Staff Governor" means an employee of the Academy Trust who may be appointed as a Governor pursuant to Article 50A;
- u. "teacher" means a person employed under a contract of employment or a contract for services or otherwise engaged to provide his services as a teacher at the Academy;
- v. "the United Kingdom" means Great Britain and Northern Ireland;
- w. words importing the masculine gender only shall include the feminine gender. Words importing the singular number shall include the plural number, and vice versa;

- x. subject as aforesaid, words or expressions contained in these Articles shall, unless the context requires otherwise, bear the same meaning as in the Companies Act 2006, as appropriate;
  - y. any reference to a statute or statutory provision shall include any statute or statutory provision which replaces or supersedes such statute or statutory provision including any modification or amendment thereto.
2. The company's name is The Partnership Learning Trust (and in this document it is called "the Academy Trust").
3. The Academy Trust's registered office is to be situated in England and Wales.

#### **OBJECTS<sup>1</sup>**

4. The Academy Trust's object ("the Object") are specifically restricted to the following:
- (a) to advance for the public benefit education in the United Kingdom, in particular but without prejudice to the generality of the foregoing by establishing, maintaining, carrying on, managing and developing a school offering a broad and balanced curriculum ("the Academy").
5. In furtherance of the Object but not further or otherwise the Academy Trust may exercise the following powers:-
- (a) to draw, make, accept, endorse, discount, execute and issue promissory notes, bills, cheques and other instruments, and to operate bank accounts in the name of the Academy Trust;
  - (b) to raise funds and to invite and receive contributions provided that in raising funds the Academy Trust shall not undertake any substantial permanent trading activities and shall conform to any

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<sup>1</sup> Both (a) and (b) should be included and as (b) is intended to be ancillary to (a), (a) must not be deleted. In circumstances where 'b' does not apply it can be removed.

**relevant statutory regulations;**

- (c) to acquire, alter, improve and (subject to such consents as may be required by law) to charge or otherwise dispose of property;**
- (d) subject to Article 6 below to employ such staff, as are necessary for the proper pursuit of the Object and to make all reasonable and necessary provision for the payments of pensions and superannuation to staff and their dependants;**
- (e) to establish or support, whether financially or otherwise, any charitable companies, trusts, associations or institutions formed for all or any of the Object;**
- (f) to co-operate with other charities, other independent and maintained schools, schools maintained by a local authority, voluntary bodies and statutory authorities operating in furtherance of the Object and to exchange information and advice with them;**
- (g) to pay out of funds of the Academy Trust the costs, charges and expenses of and incidental to the formation and registration of the Academy Trust;**
- (h) to establish, maintain, carry on, manage and develop the Academy at a site or sites to be determined;**
- (i) to offer scholarships, exhibitions, prizes and awards to pupils and former pupils, and otherwise to encourage and assist pupils and former pupils;**
- (j) to provide educational facilities and services to students of all ages and the wider community for the public benefit;**
- (k) to carry out research into the development and application of new techniques in education in particular in relation to its approach to curriculum development and delivery and to publish the results of such research, and to develop means of benefiting from application**

of the experience of industry, commerce, other schools and the voluntary sector to the education of pupils in academies;

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

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

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

- (i) the investment policy is set down in writing for the financial expert by the Governors;
- (ii) every transaction is reported promptly to the Governors;
- (iii) the performance of the investments is reviewed regularly with the Governors;
- (iv) the Governors are entitled to cancel the delegation arrangement at any time;
- (v) the investment policy and the delegation arrangement are reviewed at least once a year;
- (vi) all payments due to the financial expert are on a scale or at a level which is agreed in advance and are notified promptly to the Governors on receipt; and
- (vii) the financial expert must not do anything outside the powers of the Governors.

(o) to arrange for investments or other property of the Academy Trust

to be held in the name of a nominee company acting under the control of the Governors or of a financial expert acting under their instructions, and to pay any reasonable fee required;

(p) to provide indemnity insurance to Governors in accordance with, and subject to the conditions of section 232 to 235 of the Companies Act 2006, section 189 of the Charities Act 2011 or any other provision of law applicable to charitable companies and any such indemnity is limited accordingly;

(q) to establish subsidiary companies to carry on any trade or business for the purpose of raising funds for the Academy Trust;

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

**6.1** The income and property of the Academy Trust shall be applied solely towards the promotion of the Object.

**6.2** None of the income or property of the Academy Trust may be paid or transferred directly or indirectly by way of dividend bonus or otherwise by way of profit to any member of the Academy Trust. Nonetheless a member of the Academy Trust who is not also a Governor may:

- a) benefit as a beneficiary of the Academy Trust;
- b) be paid reasonable and proper remuneration for any goods or services supplied to the Academy Trust;
- c) be paid rent for premises let by the member of the Academy Trust if the amount of the rent and other terms of the letting are reasonable and proper; and
- d) be paid interest on money lent to the Academy Trust at a reasonable and proper rate, such rate not to exceed 2 per cent per annum below the base lending rate of a UK clearing bank selected by the Governors, or 0.5%, whichever is the higher.



**6.3** A Governor may benefit from any indemnity insurance purchased at the Academy Trust's expense to cover the liability of the Governors which by virtue of any rule of law would otherwise attach to them in respect of any negligence, default or breach of trust or breach of duty of which they may be guilty in relation to the Academy Trust: provided that any such insurance shall not extend to (i) any claim arising from any act or omission which the Governors knew to be a breach of trust or breach of duty or which was committed by the Governors in reckless disregard to whether it was a breach of trust or breach of duty or not; and (ii) the costs of any unsuccessful defence to a criminal prosecution brought against the Governors in their capacity as directors of the Academy Trust. Further, this Article does not authorise a Governor to benefit from any indemnity insurance that would be rendered void by any provision of the Companies Act 2006, the Charities Act 2011 or any other provision of law.

**6.4** A Company, which has shares listed on a recognised stock exchange and of which any one Governor holds no more than 1% of the issued capital of that company, may receive fees, remuneration or other benefit in money or money's worth from the Academy Trust.

**6.5** A Governor may at the discretion of the Governors be reimbursed from the property of the Academy Trust for reasonable expenses properly incurred by him or her when acting on behalf of the Academy Trust, but excluding expenses in connection with foreign travel.

**6.6** No Governor may:

- (a) buy any goods or services from the Academy Trust;
- (b) sell goods, services, or any interest in land to the Academy Trust;
- (c) be employed by or receive any remuneration from the Academy Trust (other than the Principal or a Staff Governor whose employment and/or remuneration is subject to the procedure and conditions in Article 6.8);
- (d) receive any other financial benefit from the Academy Trust;

**unless:**

- (i) the payment is permitted by Article 6.7 and the Governors follow the procedure and observe the conditions set out in Article 6.8; or**
- (ii) the Governors obtain the prior written approval of the Charity Commission and fully comply with any procedures it prescribes.**

**6.7 Subject to Article 6.8, a Governor may:**

- a) receive a benefit from the Academy Trust in the capacity of a beneficiary of the Academy Trust.**
- b) be employed by the Academy Trust or enter into a contract for the supply of goods or services to the Academy Trust, other than for acting as a Governor.**
- c) receive interest on money lent to the Academy Trust at a reasonable and proper rate not exceeding 2% per annum below the base rate of a clearing bank to be selected by the Governors, or 0.5%, whichever is the higher.**
- d) receive rent for premises let by the Governor to the Academy Trust if the amount of the rent and the other terms of the lease are reasonable and proper.**

**6.8 The Academy Trust and its Governors may only rely upon the authority provided by Article 6.7 if each of the following conditions is satisfied:**

- (a) the remuneration or other sums paid to the Governor do not exceed an amount that is reasonable in all the circumstances.**
- (b) the Governor is absent from the part of any meeting at which there is discussion of:**
  - i) his or her employment, remuneration, or any matter concerning the contract, payment or benefit; or**
  - ii) his or her performance in the employment, or his or her**

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

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

**6.10 In Articles 6.2-6.10:**

**(a) "Academy Trust" shall include any company in which the Academy Trust:**

- holds more than 50% of the shares; or
- controls more than 50% of the voting rights attached to the shares; or
- has the right to appoint one or more directors to the board of the company.

**(b) "Governor" shall include any child, stepchild, parent, grandchild, grandparent, brother, sister or spouse of the governor or any person living with the governor as his or her partner**

**(c) the employment or remuneration of a Governor includes the engagement or remuneration of any firm or company in which the Governor is:**

- (i) a partner;**
- (ii) an employee;**
- (iii) a consultant;**
- (iv) a director;**
- (v) a member; or**
- (vi) a shareholder, unless the shares of the company are listed on a recognised stock exchange and the Governor holds less than 1% of the issued capital.**

**7. The liability of the members of the Academy Trust is limited.**

**8. Every member of the Academy Trust undertakes to contribute such amount as may be required (not exceeding £10) to the Academy Trust's assets if it should be wound up while he or she is a member or within one year after he or she ceases to be a member, for payment of the Academy Trust's debts and liabilities before he or she ceases to be a member, and of the costs, charges and expenses of winding up, and for the adjustment of the**

rights of the contributories among themselves.

9. If the Academy Trust is wound up or dissolved and after all its debts and liabilities (including any under section 2 of the Academies Act 2010 ) have been satisfied there remains any property it shall not be paid to or distributed among the members of the Academy Trust, but shall be given or transferred to some other charity or charities having objects similar to the Object which prohibits the distribution of its or their income and property to an extent at least as great as is imposed on the Academy Trust by Article 6 above, chosen by the members of the Academy Trust at or before the time of dissolution and if that cannot be done then to some other charitable object.

10. Not used.

11. No alteration or addition shall be made to or in the provisions of the Articles which would have the effect (a) that the Academy Trust would cease to be a company to which section 60 of the Companies Act 2006 applies; or (b) that the Academy Trust would cease to be a charity.

## **MEMBERS**

12. The Members of the Academy Trust shall comprise

- a. the signatories to the Memorandum;
- b. Up to one person who may be appointed by each of the following:

- i) University of East London
- ii) Barking and Dagenham College of Further Education
- iii) Lifeline Community Projects
- iv) Barking and Dagenham Association of Secondary Headteachers

Providing that each body/entity listed in this Article 12.b. has itself been appointed as a Member in accordance with these Articles.

- c. the chairman of the Governors, or if the chairman of the Governors is already a member under another category the vice-chair of the

Governors, or if the vice-chair of the Governors is already a member under another category a Governor appointed by the Governing Body; and

d. any person appointed under Article 16.

13. Each of the persons entitled to appoint Members in Article 12 shall have the right from time to time by written notice delivered to the Office to remove any Member appointed by them and to appoint a replacement Member to fill a vacancy whether resulting from such removal or otherwise.

14. If any of the persons entitled to appoint Members in Article 12:

- a) in the case of an individual, die or become legally incapacitated;
- b) in the case of a corporate entity, cease to exist and are not replaced by a successor institution;
- c) becomes insolvent or makes any arrangement or composition with their creditors generally; or
- d) ceases to be a Member;

their right to appoint Members under these Articles shall vest in the remaining Members.

15. Membership will terminate automatically if:

- a) a Member (which is a corporate entity) ceases to exist and is not replaced by a successor institution;
- b) a Member (which is an individual) dies or becomes incapable by reason of illness or injury of managing and administering his own affairs; or
- c) a Member becomes insolvent or makes any arrangement or composition with that Member's creditors generally.

15A. The Members may agree unanimously in writing to remove any