

**THE SECKFORD FOUNDATION FREE SCHOOLS TRUST**

**MASTER FUNDING AGREEMENT**

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## **SCHEDULE 1**

Model Supplemental Funding Agreement for a Free School

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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 Seckford Foundation Free Schools Trust (the “Company”).
- 2) The Company is a company incorporated in England and Wales, limited by guarantee with registered Company number 8077362.
- 3) The Company intends to establish and maintain, and to carry on or provide for the carrying on of a number of Academies in accordance with this Agreement and the Supplemental Agreements.
- 4) This Agreement and the Supplemental Agreements will apply in respect of an Academy from such time as a Supplemental Agreement relating to that Academy shall have been entered into between the Secretary of State and the Company.
- 5) The following expressions used in this Agreement have the respective meanings assigned to them by the numbered clauses of this Agreement referred to immediately after the reference to the expressions -
  - (a) “Academies Financial Handbook” - clause 67;
  - (b) "Annual Letter of Funding" - clause 60;
  - (c) "GAG" – clause 36;
  - (d) "Capital Expenditure" - clause 37;
  - (e) “Capital Grant” – clause 37;
  - (f) "EAG" - clause 36;
  - (g) “Local Governing Body” – clause 15;
  - (h) “Recurrent Expenditure” – clause 36;
- 6) In this Agreement the following words and expressions shall have the

following meanings:-

“Academy” means an academy (as more particularly described in Clauses 11 and 12) in respect of which a Supplemental Agreement has been entered into between the Secretary of State and the Company and the expression “Academies” shall refer to all or any of such academies;

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

“Academy Funding Year” means the year from 1<sup>st</sup> September to 31<sup>st</sup> August in any year;

“Additional Directors” means Directors who may be appointed by the Secretary of State under the Articles;

“admission requirements” – are as annexed to the relevant Supplemental Agreement;

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

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

“Control” in relation to a body corporate (‘Entity’) means 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) 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 or any powers conferred by the articles of association or other document regulating that Entity or any other Entity or partnership including, without limitation, the power to appoint or remove a majority of the 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;

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

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

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

"parents" means parents or guardians;

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

"Principal Regulator" means the body or person appointed under the Charities Act 2011 as the principal regulator of qualifying Academy proprietors (within the meaning of Section 12(2) of the Academies Act 2010);

"relevant qualification" has the same meaning as that given to the expression in section 96 of the Learning and Skills Act 2000;

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

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

"Start-up Period" means. in respect of any particular Academy. up to a maximum of 7 Academy Funding Years and covers the period up to and including the first Academy Funding Year in which all age groups are present at that Academy (that is, all the pupil cohorts relevant to the age-range of that Academy will have some pupils present);

“Supplemental Agreement” means an agreement supplemental to this Agreement, substantially in the form set out in Schedule 1 to this Agreement, to be entered into by the Secretary of State and the Company pursuant to which the Company agrees to establish and maintain, and to carry on or provide for the carrying on, and the Secretary of State agrees to fund, an Academy in accordance with the terms and conditions of that Supplemental Agreement and this Agreement;

- 7) The Interpretation Act 1978 shall apply for the purposes of interpretation of this Agreement and any Supplemental Agreement as it applies for the purposes of interpretation of an Act of Parliament.
- 8) Expressions defined in this Agreement shall have the same meaning where used in any Annex to this Agreement or Supplemental Agreement.
- 9) Subject to Clause 7 above, questions arising on the interpretation of the arrangements in this Agreement shall be resolved by the Secretary of State after consultation with the Company.
- 10) Section 1 (3) of the Academies Act 2010 states that -
  - "(3) An Academy agreement is an agreement between the Secretary of State and the other party under which-
    - (a) the other party gives the undertakings in subsection (5), and

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

## **LEGAL AGREEMENT**

- 11) In consideration of the Company undertaking to establish and maintain, and to carry on or provide for the carrying on of, a number of educational institutions in England having the characteristics referred to in clause 12 ("**the Academies**"), the Secretary of State agrees to make payments to the Company in accordance with the conditions and requirements set out in this Agreement and Supplemental Agreements. If it is agreed between the Secretary of State and the Company that the Company will establish and maintain, and carry on or provide for the carrying on of an Academy, the parties will enter into a Supplemental Agreement in relation to that Academy. For the avoidance of doubt, any obligations imposed upon or powers given to an Academy by this Agreement or any Supplemental Agreement are also imposed upon or given to the Company.

## **CHARACTERISTICS OF AN ACADEMY**

- 12) The characteristics of an **Academy** are as set down in Sections 1A, 1B or 1C of the Academies Act 2010.

## **CONDITIONS OF GRANT**

### **General**

- 13) Other conditions and requirements in respect of an Academy, unless specified otherwise in a Supplemental Agreement, are that:
- (a) in so far as its object permits 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 relevant qualifications, subject to clause 30(d);



- (c) the admissions policy and arrangements for the school will be in accordance with admissions law, and the DfE Codes of Practice, as they apply to maintained schools;
- (d) teachers' levels of pay and conditions of service for all employees will be the responsibility of the Company;
- (e) there will be an emphasis on the needs of the individual pupils including pupils with SEN, both those with and without statements of SEN; 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**

- 14) Each Academy will be governed by the Company. The Company shall have regard to (but for the avoidance of doubt shall not be bound by) any guidance as to the governance of Academies that the Secretary of State may publish.
- 15) The Company shall establish, for each Academy, an Advisory Body, whose role shall be to provide advice to the Company in relation to the functioning of that Academy. The role of the Advisory Body and the membership of it shall be for the Company to decide, but the Company will, as a minimum, ensure that:
  - (a) a minimum of two parents of pupils at the Academy (to be elected by the parents of registered pupils of the Academy) shall be members of the Advisory Body;
  - (b) up to two employees at the Academy (to be elected by employees of the Academy) shall be members of the Advisory Body (provided always that such members shall always be in the minority on the Advisory Body);
  - (c) a representative of the local authority for the area in which the

Academy is situated shall be a member of the Advisory Body;

- (d) any advice of the Advisory Body is brought to the attention of the Directors of the Company;
- (e) to the extent that the Company may, in accordance with the Articles, choose to establish a Local Governing Body, then the Company may additionally constitute the Advisory Body as the Academy's Local Governing Body.

### **Conduct**

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

### **Criminal Records Bureau Checks**

- 17) The Company shall comply with the requirements of the Education (Independent School Standards) (England) Regulations 2010 (or such regulations as may for some time being be applicable) in relation to carrying out enhanced criminal records checks, obtaining enhanced criminal records certificates and making any further checks, as required and appropriate for members of staff, supply staff, individual Directors and the Chair of the Local Governing Body.
- 17A) The Company shall, on receipt of information from the Criminal Records Bureau in response to an application for 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**

- 18) Each **Academy** will be an all ability inclusive school whose requirements for:
- (a) the admission of pupils to the Academy are set out in the relevant annex to the Supplemental Agreement;
  - (b) the admission to the Academy of and support for pupils with SEN and with disabilities (including pupils who have and who do not have statements of SEN) are set out in Annex B to this Agreement;
  - (c) pupil exclusions are set out in regulations made by virtue of Section 51A of the Education Act 2002 (as may be amended or modified from time to time, and includes any successor provision(s)).

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

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

## **Teachers and other staff**

- 19) Subject to clause 20, the Company shall, in accordance with any guidance which the Secretary of State may issue on the qualifications of teaching and other staff in Academies, employ anyone it deems is suitably qualified or is otherwise eligible under a contract of employment or for services to carry out

planning and preparing lessons and courses for pupils, delivering lessons to pupils, assessing the development, progress and attainment of pupils, and reporting on the development, progress and attainment of pupils.

- 20) Clause 19 does not apply to anyone who (a) is appointed as the SENCO by the Company under section 317(3A) of the Education Act 1996, who must meet the requirements set out in Regulation 3 of the Education (Special Educational Needs Co-ordinators) (England) Regulations 2008 (SI 2008/2945); or (b) is appointed as a designated teacher for looked after children further to clause 18A .
- 21) The Company shall ensure that all teachers employed at each Academy have access to the Teachers Pension Scheme and, in so doing, will comply with the statutory provisions underlying the scheme.
- 22) The Company shall ensure that all employees at 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] (“the Regulations”), where the Regulations require this, or such other pension benefits as those Regulations, or any legislation which may in the future replace the Regulations, require for Non-teaching staff.

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

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

Academy; and

- (d) how parents (including prospective parents) can obtain further information in relation to the Academy's curriculum.
- 24) The Company shall ensure that the broad and balanced curriculum includes English, Mathematics and Science.
- 25) The Company shall make provision for the teaching of religious education and for a daily act of collective worship at each Academy.
- 25A) The Company 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.
- 26) Where the Academy is designated with a religious character in accordance with section 124B of the School Standards and Framework Act 1998 or further to section 6(8) of the Academies Act 2010:
- (a) subject to clause 28, and paragraph 4 of Schedule 19 to the School Standards and Framework Act 1998 which shall apply as if the Academy were a voluntary aided school with religious character, the Company shall ensure that provision is made for religious education to be given to all pupils at the Academy in accordance with the tenets of the specified religion or religious denomination of the Academy;
  - (b) subject to clause 28, the Company shall comply with the requirements of section 70(1) of, and Schedule 20 to, the School Standards and Framework Act 1998 as if the Academy were a foundation school with a religious character or a voluntary school, and as if references to 'the required collective worship' were references to collective worship in accordance with the tenets and practices of the specified religion or religious denomination of the Academy;
  - (c) the Company shall ensure that the quality of religious education given to pupils at the Academy and the contents of the Academy's collective worship given in accordance with the tenets and practice of the specific

religion or religious denomination are inspected. Such inspection shall be conducted by a person chosen by the Company and the Academy shall secure that such inspection shall comply with the requirements set out in any statutory provision and regulations as if the Academy were a foundation or voluntary school which has been designated under section 69(3) of the School Standards and Framework Act 1998 as having a religious character.

- 27) Where the Academy has not been designated with a religious character in accordance with section 124B of the School Standards and Framework Act 1998 or further to Section 6(8) of the Academies Act 2010:
- (a) subject to clause 28, the Company shall ensure that provision shall be made for religious education to be given to all pupils at the Academy in accordance with the requirements for agreed syllabuses in section 375(3) of the Education Act 1996 and paragraph 2(5) of Schedule 19 to the School Standards and Framework Act 1998;
  - (b) subject to clause 28, the Company shall ensure that the Academy complies with the requirements of section 70(1) of, and Schedule 20 to, the School Standards and Framework Act 1998 as if it were a community 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 Company:
    - (1) agrees that before making an application pursuant to the Religious Character of Schools (Designation Procedure) (Independent Schools) (England) Regulations 2003 for each Academy to be designated as a school with religious character it shall seek the prior written consent of the Secretary of State;

- (2) hereby acknowledges that the Secretary of State may in his absolute discretion refuse or consent to the Company making such an application.
- 28) Section 71(1) – (6) and (8) of the School Standards and Framework Act 1998 shall apply as if each Academy were a community, foundation or voluntary school, and as if references to “religious education” and to “religious worship” in that section were references to the religious education and religious worship provided by each Academy in accordance with clauses 26 or 27 as appropriate.
- 29) The Company shall have regard to any guidance issued by the Secretary of State, further to section 403 of the Education Act 1996, on sex and relationship education to ensure that children at the Academy are protected from inappropriate teaching materials and they learn the nature of marriage and its importance for family life and for bringing up children. The Company 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.
- 29A) The Company agrees to act in accordance with Sections 406 (Political Indoctrination) and 407 (Duty to secure balance treatment of political issues) of the Education Act 1996 as if it were a maintained school, subject to the following modifications:
- (a) references to any maintained school shall be treated as references to each Academy;
  - (b) references to registered pupils shall be treated as references to registered pupils at each Academy;
  - (c) references to the governing body or the local authority shall, in each case, be treated as references to the Company; and
  - (d) references to the head teacher shall, in each case, be treated as references to the head teacher of each Academy.

29B) The Company shall ensure that principles are promoted which support fundamental British values, including: respect for the basis upon 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**

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

(a) The Company shall ensure that the Academy complies with any guidance issued by the Secretary of State from time to time to ensure that pupils take part in assessments and in teacher assessments of pupil's performance as they apply to maintained schools.

(b) The Company shall report to any body on assessments under clause 30 as the Secretary of State shall prescribe and shall provide such information as may be required by that body as applies to maintained schools.

(c) In respect of all Key Stages, the Company will submit each Academy to monitoring and moderation of its assessment arrangements as prescribed by the Secretary of State.

(d) The Company may not offer courses at any Academy which lead to relevant qualifications, unless the Secretary of State gives specific approval for such courses.

### **Exclusions Agreement**

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



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

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

### **School Meals**

- 32) The Company shall, if requested to do so by or on behalf of any pupils at any Academy, provide school lunches for those pupils unless it would be unreasonable for it to do so. Subject to the provisions of clause 33 charges may be levied for lunches, but the Company shall otherwise fund the cost of such school lunches from its GAG.
- 33) In relation to a pupil who is himself or whose parents are in receipt of benefits mentioned in section 512ZB of the Education Act 1996 (or equivalent provision governing the entitlement to free school lunches of pupils at maintained schools), the Company shall ensure that a school lunch is provided for such a pupil free of charge to be funded out of the Company's GAG.

### **Charging**

- 34) 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 each Academy with the following modifications:

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

### **International Education Surveys**

34A) The Secretary of State may, by notice in writing to the Company, require the Company, in relation to an Academy, in the event that it is selected by the relevant international organisation, as part of a national sample of schools, to participate in an international education survey and the Company shall, upon receipt of such notice, participate in that survey and provide to the Secretary of State or to those carrying out the survey all such assistance and information as may reasonably be required for the purposes of that Academy's participation in that survey.

### **Pupil Premium**

34B) The Company shall publish in each Academy Financial Year information in relation to:

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

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

### **General**

- 35) The Secretary of State shall pay grants towards Recurrent Expenditure and may pay grants towards Capital Expenditure for each Academy. Except with the Secretary of State's prior agreement, the Company shall not budget for its expenditure in any Academy Financial Year in excess of expected income. The Company shall not enter into commitments which are likely to have substantial implications for future levels of grant, or for the period for which grant may be required. No decision by the Company shall commit the Secretary of State to paying any particular amount of grant.
- 36) "Recurrent Expenditure" means any expenditure on the establishment, conduct, administration and maintenance of the Academy which does not fall within the categories of Capital Expenditure set out at clause 37. The Secretary of State shall pay two separate and distinct grants in respect of Recurrent Expenditure: General Annual Grant ("GAG"), Earmarked Annual Grant ("EAG") and where appropriate Additional Funding under clause 64.

### **Capital Grant**

- 37) "Capital Expenditure" means expenditure on:
  - (a) the acquisition of land and buildings;

- (b) the erection, enlargement, improvement or demolition of any building including fixed plant, installation, wall, fence or other structure, or any playground or hard standing;
- (c) the installation of electrical, mechanical or other services other than necessary replacements, repairs and maintenance due to normal wear and tear;
- (d) the purchase of vehicles and other self-propelled mechanical equipment (and for these purposes 'purchase' may include leasing or hire-purchase);
- (e) the installation and equipping of premises with furnishings and equipment, other than necessary replacements, repairs and maintenance due to normal wear and tear;
- (f) the installation and equipping of premises with computers, networking for computers, operating software and information and communication technology equipment, other than necessary updates or necessary replacements, repairs and maintenance due to normal wear and tear;
- (g) the provision and equipping of premises, including playing fields and other facilities for social activities and physical recreation other than necessary replacements, repairs and maintenance due to normal wear and tear;
- (h) works of a permanent character other than the purchase or replacement of minor day-to day items;
- (i) any major repairs or replacements which are specified as constituting capital expenditure in any grant letter relating to them;
- (j) such other items (whether of a like or dissimilar nature to any of the foregoing) of a substantial or enduring nature as the Secretary of State may agree shall constitute capital expenditure for the purposes of this Agreement;

- (k) all professional fees properly and reasonably incurred in connection with the provision of any of the above;
- (l) VAT and other taxes payable on any of the above.

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

- 38) Where an Academy is to open in new premises, or where existing premises are to be substantially refurbished or remodelled to enable the Academy to open in such premises, the Secretary of State, may, in his absolute discretion, be responsible for meeting the incurred Capital Expenditure for that Academy. To that end, the Secretary of State will consider providing funding in accordance with any arrangements as he considers appropriate.
- 39) Any Capital Expenditure incurred in respect of each 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.
- 40) Any payment of Capital Grant to the Company under this Agreement is subject to the fulfilment of the following conditions:
  - (a) such grants are used solely to defray expenditure approved by the Secretary of State;
  - (b) the Company certifying and providing evidence that all planning and other consents necessary for the development and all related infrastructure to be completed have been obtained or put in place; and
  - (c) any other conditions that the Secretary of State may specify.

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

- 41) Capital Grant will be paid by the Secretary of State to the Company on the basis of claims for grant submitted to the Secretary of State in the notified format with supporting invoices and certificates as required by the Secretary of State. If a dispute arises as to whether a claim is or is not acceptable both

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

### **General Annual Grant**

- 42) GAG will be paid by the Secretary of State to the Company in order to cover the normal running costs of each 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, provided that the Secretary of State shall not be obliged to pay GAG in relation to insurance to the extent that insurance and/or

comparable arrangements are made available to the Company (whether at a cost to the Company or otherwise and whether made available by and/or on behalf of the Secretary of State or otherwise) save that, to the extent that such insurance and/or comparable arrangements as may be made available constitute a cost for the Company, the Secretary of State shall provide a contribution through GAG in relation to such cost;

- (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.

42A) Subject to clauses 44-45, GAG for each Academy Funding Year for each Academy will include:

- (a) Funding equivalent to that which would be received by a maintained school with similar characteristics, determined by the Secretary of State and notified in the Annual Letter of Funding or its equivalent, taking account of the number of pupils at each Academy;
- (b) Funding for the cost of functions which would be carried out by the local authority if each 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 relevant 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 relevant Academy meets the requisite conditions and criteria\_necessary for a maintained school to receive these grants, such payments to be at the discretion of the Secretary of State.
- 43) Subject to clause 43A, the basis of the pupil number count for the purposes of determining GAG for an Academy Funding Year for an Academy will be the Company's estimate each November for numbers on the roll in the following September for the relevant Academy, such estimate to be based on an objective assessment of pupil numbers.
- 43A) Once the condition specified in clause 43B has been satisfied with respect to an Academy for the Academy Funding Year for which funding is being calculated, the basis of the pupil number count for the purpose of determining GAG for that Academy will be:
- (a) for the pupil number count for pupils in Year 11 and below, the Schools Census for the January preceding the Academy Funding 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 43A, the condition is satisfied when 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 Funding Year in which GAG for an Academy has been calculated in accordance with clause 43, an adjustment will be made to the following Academy Funding Year's formula funding element of GAG for the Academy to recognise any variation from that estimate greater than or lower than 2.5%. The additional or clawed-back grant will be only that amount relevant to the number of pupils beyond the 2.5% variation.
- 43D) For any Academy Funding Year in which GAG for an Academy is calculated in accordance with clause 43A, no adjustment will be made to the equivalence funding element in the following Academy Funding Year's equivalence funding element of GAG unless the Company demonstrates to the satisfaction of the Secretary of State that there has been a significant impact on costs, such as an extra class. For any other element of GAG 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 or a Supplemental 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 relevant Academy or Academies are unlikely to be sufficient to meet the Academy's or Academies' needs during the notice period. In those circumstances, the Secretary of State may undertake to pay a reasonable and appropriately larger GAG with respect to that Academy or those Academies 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 or a Supplemental Agreement is terminated for any reason by either party the number of pupils at the relevant Academy or Academies is likely to decline. In

these circumstances both parties undertake to attempt to resolve issues arising from such termination in good faith and with the aim of protecting the interests and the education of the pupils at the relevant Academy or Academies.

- 47) Not used
- 48) Not used.
- 49) Not used.
- 50) Not used.
- 51) Not used.
- 52) Not used.
- 53) Not used.
- 54) Subject to clause 73, GAG paid by the Secretary of State in respect of an Academy shall only be spent by the Company towards the normal running costs of that Academy.

### **Earmarked Annual Grant**

- 55) Earmarked Annual Grant (“EAG”) shall be paid by the Secretary of State to the Company in respect of either Recurrent or Capital Expenditure for such specific purposes as may from time to time be agreed between the Secretary of State and the Company and as described in the relevant funding letter. The Company shall only spend EAG in accordance with the scope, terms and conditions of the grant set out in the relevant funding letter.
- 56) Where the Company is seeking a specific EAG in relation to any Academy Financial Year, it shall submit a letter outlining its proposals and the reasons for its request to the Secretary of State at an address notified from time to time.

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

- 57) The Secretary of State shall notify the Company at a date preceding the start of each Academy Financial Year of the GAG and EAG figures in respect of each Academy which, subject to Parliamentary approval, the Secretary of State plans for that Academy Financial Year and of the assumptions and figures on which these are based.
- 58) If GAG or EAG is calculated incorrectly due to a mistake of the Secretary of State then:
- (a) if this leads to an underpayment of GAG, the Secretary of State will correct the underpayment in subsequent Academy Financial Years;
  - (b) if this leads to an overpayment of GAG, the Secretary of State reserves the right to recover any overpaid grant in subsequent Academy Financial Years, as appropriate, having considered all the relevant circumstances and taking into account any representations from the Company.
- 59) If GAG or EAG is calculated incorrectly because the Company provides incorrect information to the Secretary of State then;
- (a) if this leads to an underpayment of GAG, the Secretary of State may correct the underpayment in subsequent Academy Financial Years;
  - (b) If this leads to an overpayment of GAG, the Secretary of State reserves the right to recover any overpaid grant in subsequent Academy Financial Years, as appropriate, having considered all the relevant circumstances and taking into account any representations from the Company.
- 60) The amounts of GAG for an Academy Financial Year will be determined annually by the Secretary of State. The amount of GAG for each Academy for the initial Academy Financial Year will be notified to the Company in a funding letter at a date preceding that year. For subsequent years the amount of GAG will be notified to the Company in a funding letter not later than 31

March preceding that Academy Financial Year (the "Annual Letter of Funding"). The Annual Letter of Funding will not include the amount that the Company will receive in respect of grants for which information to enable timely calculation is not available or is incomplete, such grants will be notified as soon as practicable later in the year. Amounts of EAG will be notified to the Company wherever possible in the Annual Letter of Funding or as soon as practicable thereafter.

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

### **Additional Funding**

- 62) Not used.
- 63) Not used.
- 64) The Company may also receive funding from an LA in respect of the provision detailed in statements of SEN for pupils attending an Academy in accordance with the provisions of Section 483A of the Education Act 1996 and regulations made under that section. The Company shall ensure that all provision detailed in statements of SEN is provided for such pupils.
- 65) Not used.

## **FINANCIAL AND ACCOUNTING REQUIREMENTS**

### **General**

- 66) The Company shall appoint an Accounting Officer and shall notify the Secretary of State of that appointment.
- 67) In relation to the use of grant paid to the Company by the Secretary of State, the Company shall abide by the requirements of and have regard to the

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

- 68) The formal budget plan must be approved each Academy Financial Year by the Directors of the Company.
- 69) Any payment of grant by the Secretary of State in respect of each Academy is subject to his being satisfied as to the fulfilment by the Company of the following conditions:
  - (a) in its conduct and operation it shall apply financial and other controls which conform to the requirements both of propriety and of good financial management;
  - (b) arrangements have been made to maintain proper accounting records and that statements of income and expenditure and balance sheets may be produced in such form and frequency as the Secretary of State may from time to time reasonably direct;
  - (c) in addition to the obligation to fulfil the statutory requirements referred to in sub-clause f) below, the Company shall prepare its financial statements, Directors' report, Annual Accounts and its Annual Return for each Academy Financial Year in accordance with the Statement of Recommended Practice as if the Company was a non-exempt Charity and/or in such form or manner and by such date as the Secretary of State may reasonably direct and shall file these with the Secretary of State and the Principal Regulator each Academy Financial Year;
  - (d) a statement of the accounting policies used should be sent to the Secretary of State with the financial statements and should carry an

audit report stating that, in the opinion of the auditors, the statements show a true and fair view of the Company's affairs and that the grants were used for the purposes intended;

- (e) the Company shall ensure that its accounts are audited annually by independent auditors appointed under arrangements approved by the Secretary of State;
  - (f) the Company prepares and files with the Companies Registry such annual accounts as are required by the Companies Act 2006;
  - (g) the Company shall publish on its website its Annual Accounts, Annual Report, Memorandum and Articles, Funding Agreement and a list of the names of the Directors of the Company;
  - (h) the Company insures or procures insurance by another person of its assets in accordance with normal commercial practice or under the terms of the lease of the relevant Academy.
- 70) In addition, and at his expense, the Secretary of State may instruct auditors to report to him on the adequacy and effectiveness of the accounting systems and internal controls maintained by the Company to standards determined by the Secretary of State and to make recommendations for improving the financial management of the Company.
- 71) The books of accounts and all relevant records, files and reports of the Company including those relating to financial controls, shall be open at all reasonable times to officials of the DfE and the National Audit Office and to contractors retained by the DfE or the National Audit Office for inspection or the carrying out of value for money studies; and the Company shall secure that those officials and contractors are given reasonable assistance with their enquiries. For the purposes of this clause 'relevant' means in any way relevant to the provision and use of grants provided by the Secretary of State under this Agreement.
- 72) The Company shall submit indicative budgets relating to each Academy to the

Secretary of State by not later than 15 February before the start of each Academy Financial Year. Such budgets shall set out clearly the prospective income and expenditure of the relevant Academy and shall differentiate, and give adequate details of:

- (a) a statement of expected income for that Academy Financial Year including cash donations and gifts in kind from sources other than GAG, EAG and grants from the Secretary of State towards Capital and Revenue Expenditure, distinguishing between income from public funds including the national lottery and income from other sources. Income from cash donations and gifts in kind from sources other than GAG, EAG and grants from the Secretary of State towards Capital Expenditure will not be taken into account by the Secretary of State in the calculation of GAG;
  - (b) a statement of proposed Recurrent Expenditure for that Academy Financial Year;
  - (c) a statement of proposed Capital Expenditure for that Academy Financial Year.
- 73) At the beginning of any Academy Financial Year the Company may hold unspent GAG for any Academy from previous Academy Financial Years amounting to such percentage (if any) as the Secretary of State may specify by notice in writing to the Company 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 Company shall use such carried forward amount for such purpose, or subject to such restriction on its use, as the Secretary of State may specify by notice in writing to the Company.
- 74) Notwithstanding clause 73 any additional grant provided over and above that set out in clauses 42A-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.

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

75A) If the Secretary of State pays grant not including GAG to the Company on condition either that such grant be used for a particular purpose or purposes or that such grant be used by a certain date, any failure on the part of the Company to use such grant for such a purpose or purposes or by such date may be taken into account by the Secretary of State either:

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

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

- (a) in the same Academy Funding Year that any such grant is paid to the Company; or
- (b) in the calculation and/or payment of any subsequent grant to the Company; or



- (c) by an adjustment to the GAG paid by the Secretary of State to the Company in the following Academy Funding Year or Academy Funding Years.
  
- 76) The Company may also spend or accumulate funds from private sources or public sources other than grants from the Secretary of State for application to the benefit of an Academy as it sees fit 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 Company's balance sheet.
  
- 77) The Company shall not, in relation to assets or property funded (whether in whole or in part) by the Secretary of State, without the prior written consent of the Secretary of State which shall not be unreasonably withheld or delayed:
  - (a) except such as are given in normal contractual relations, give any guarantees, indemnities or letters of comfort;
  - (b) write off any debts or liabilities owed to it above a value from time to time being specified by the Secretary of State nor offer to make any ex gratia payments;
  - (c) make any sale or purchase of freehold property; or
  - (d) grant or take up any leasehold or tenancy agreement for a term exceeding three years.
  
- 78) The Company shall provide 30 days notice to the Secretary of State, whether or not the circumstances require the Secretary of State's consent, of its intention to:
  - (a) except such as are given in normal contractual relations, give any guarantees, indemnities or letters of comfort;
  - (b) write off any debts owed to it or offer to make any ex gratia payments;
  - (c) make any sale or purchase of freehold property; or

- (d) grant or take up any leasehold or tenancy agreement for a term exceeding three years.
- 79) 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 Company to the Secretary of State at the earliest opportunity.
- 80) It is the responsibility of the Company to ensure that each Academy balances its budget from Academy Financial Year to Academy Financial Year. For the avoidance of doubt, this does not prevent the Company from:
  - (a) carrying a surplus from one Academy Financial Year to the next; or
  - (b) carrying forward from a previous Academy Financial Year or Academy Financial Years a sufficient surplus or sufficient cumulative surpluses on grants from the Secretary of State to meet an in-year deficit on such grants in a subsequent financial year; or
  - (c) incurring an in-year deficit on funds from sources other than grants from the Secretary of State in any Academy Financial Year, provided it does not affect the Company's responsibility to ensure that the Company balances its overall budget from Academy Financial Year to Academy Financial Year.
- 80A The Company shall abide by the requirements of and have regard to the Charity Commission's guidance to charities and charity trustees and in particular the Charity Commission's guidance in the Protecting Charities from Harm ('the compliance toolkit') insofar as such guidance is applicable to exempt charities and provided that nothing in this Clause shall require the Company to breach any part of the Articles, the Academies Financial Handbook or this Agreement. Any references in this document which require charity trustees to report to the Charity Commission should instead be interpreted as references to report to the Principal Regulator.

## **Borrowing Powers**

- 81) The Company shall not borrow against or so as to put at risk property or assets funded (whether in whole or in part) by the Secretary of State without specific approval of the Secretary of State, such approval at the absolute discretion of the Secretary of State. The Company shall not operate an overdraft except to cover irregularities in cash flow. Such an overdraft, and the maximum amount to be borrowed, must be approved by the Company 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.
- 82) The Company shall provide 30 days notice to the Secretary of State of its intention to borrow, whether or not such borrowing requires the Secretary of State's approval under clause 81 above.

## **Disposal of Assets**

- 83) Where the Company acquires assets for a nil consideration or at an under value it shall be treated for the purpose of this Agreement as having incurred expenditure equal to the market value of those assets at the time that they were acquired. This provision shall not apply to assets transferred to the Company at nil or nominal consideration and which were previously used for the purposes of an Academy and/or were transferred from an LA, the value of which assets shall be disregarded.
- 84) The sale or disposal by other means, or reinvestment of proceeds from the disposal, of a capital asset by the Company shall require the consent of the Secretary of State, such consent not to be unreasonably withheld or delayed, where:
- (a) the Secretary of State paid capital grant in excess of the value from time to time being specified by the Secretary of State for the asset; or
  - (b) the asset was transferred to the Company from an LA for no or nominal consideration.

- 85) Furthermore, reinvestment of a percentage of the proceeds of disposal of a capital asset paid for with a capital grant from the Secretary of State shall require the Secretary of State's consent in the circumstances set out above and reinvestment exceeding the value 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.
- 86) This clause applies in the event, during the lifetime of this Agreement, of the disposal of a capital asset for which capital grant of any amount was paid by the Secretary of State, where the asset was acquired by the Company. In this event, the Company shall repay to the Secretary of State the same proportion of the proceeds of the disposal as equates with the proportion of the original cost met by the Secretary of State, unless the Secretary of State agrees to some or all of the proceeds being retained by the Company for its charitable purposes.
- 87) This clause applies in the event, during the lifetime of this Agreement, that the Secretary of State consents to the disposal of an asset which was transferred to the Company from an LA for no or nominal consideration. In this event the Secretary of State may give consent on the basis that all or part of the proceeds of the disposal should be made over to the LA from which the asset was transferred, taking into account the amount of the proceeds to be reinvested by the Company. The Secretary of State will have regard to any representations from the Company and the LA from which the asset was transferred before giving consent under this clause.
- 88) Except with the consent of the Secretary of State, the Company shall not dispose of assets funded (whether in whole or in part) by the Secretary of State for a consideration less than the best price that can reasonably be obtained, such consent not to be unreasonably withheld or delayed.
- 89) The Company shall provide 30 days notice to the Secretary of State of its intention to dispose of assets for a consideration less than the best price that

can reasonably be obtained, whether or not such disposal requires the Secretary of State's consent under clause 88 above.

## **TERMINATION**

### **General**

- 90) This Agreement shall commence on the date hereof and continue until terminated in accordance with clause 91 or until all Supplemental Agreements have terminated.
- 91) The Secretary of State may at any time by notice in writing terminate this Agreement and each of the Supplemental Agreements forthwith on the occurrence of any of the following events:-
- (a) the Company calls a meeting of its creditors (whether formal or informal) or enters into any composition or arrangement (whether formal or informal) with its creditors; or
  - (b) the Company proposes a voluntary arrangement within Section 1 of the Insolvency Act 1986 (as amended); or
  - (c) the Company is unable to pay its debts within the meaning of Section 123 of the Insolvency Act 1986 provided that, for the purposes of this Clause, Section 123 (1)(a) of the Insolvency Act 1986 shall have effect as if the amount of £10,000 was substituted for £750. The Company shall not be deemed unable to pay its debts for the purposes of this clause if any such demand as is mentioned in the said Section is being contested in good faith by the Company; or
  - (d) the Company has a receiver and manager (with the exception of Receivers and Managers or Interim Managers appointed by the Charity Commission under the Charities Act 2011 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 Company's property and is not paid out, withdrawn or discharged within fifteen Business Days; or
- (f) the Company has passed a resolution for its winding up; or
- (g) an order is made for the winding up or administration of the Company.

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

91A) If the Secretary of State is satisfied that any Director or Member of the Company is not a suitable person he may:

- (a) in relation to such a Director or Member, without giving any reasons, serve notice in writing on the Company requiring the Company to procure the resignation or removal of the person(s) within 42 days; and if the Company fails to procure the said resignation or removal within the time specified, the Secretary of State may by notice terminate this Agreement forthwith or may provide up to 12 months' notice in writing to terminate this Agreement; or
- (b) appoint such Further Directors as he thinks fit and/or provide up to 12 months' notice in writing to terminate this Agreement; or
- (c) by notice in writing terminate this Agreement forthwith or on such date as the Secretary of State may determine.

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

this Agreement or, as the Secretary of State may in his absolute discretion decide any of the Supplemental Funding Agreements.

- 93) Following the Members passing a resolution as described in clause 92, the Secretary of State's right to terminate this Agreement or, as the Secretary of State may in his absolute discretion decide, any of the Supplemental Funding Agreements under clause 92 shall cease if he removes one or more Additional Directors or Further Directors and fails to replace at least one Additional Director or Further Director within the 30 days of their removal resulting in there being no remaining Additional Director or Further Director on the governing body of the Company.

### **Change of Control of the Company**

- 93A) The Secretary of State may at any time by notice in writing, subject to clause 93C) below, terminate this Agreement forthwith (or on such other date as he may in his absolute discretion determine) in the event that there is a change:

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

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

93B) The Company shall, 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 93A), give written notice to the Secretary of State of such change or proposed change of Control.

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

### **Effect of Termination**

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

## **GENERAL**

### **Information**

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

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



number and characteristics of pupils accepted for admission – for Mainstream Academies only;

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

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

96A) (i) The Company shall provide to the Secretary of State the name of any new or replacement Member or Director of the Company, 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 Director 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.

- 96A) (ii) In this regard, the Company shall not appoint any new or replacement Members or Directors of the Company 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 Directors of the Company that the reason their name is being shared with the Secretary of State is to enable the Secretary of State to assess their suitability.

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

- 97) The Company shall allow access to the premises of any Academy at any reasonable time to DfE officials. All records, files and reports relating to the running of the Company and each Academy shall be available to them at any reasonable time. The Company shall provide the Secretary of State in advance with papers relating to each Academy prepared for meetings of the Local Governing Body, of the Company's directors and of the members of the Company. Two DfE officials shall be entitled to attend and to speak at all such meetings, but shall withdraw from any discussion of an Academy's or the Company's relationship with the Secretary of State or any discussion of bids for funding to the Secretary of State. The Company shall take any steps which are required to secure its compliance with the obligations imposed by this clause of this Agreement.
- 98) The Company shall ensure that:
- (a) the agenda for every meeting of the relevant Local Governing Body and the Company's directors;
  - (b) the draft minutes of every such meeting, if they have been approved by the person acting as chairman of that meeting;
  - (c) the signed minutes of every such meeting; and
  - (d) any report, document or other paper considered at any such meeting,

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

- 99) There may be excluded from any item required to be made available for inspection by any interested party and to be sent to the Secretary of State by virtue of clause 98, any material relating to:
- (a) a named teacher or other person employed, or proposed to be employed, at any Academy;
  - (b) a named pupil at, or candidate for admission to, any Academy; and
  - (c) any matter which, by reason of its nature, the Company is satisfied should remain confidential.

## **Notices**

- 100) Any notice or other communication concerning this Agreement or a Supplemental Agreement shall be sent, in the case of a notice or communication from the Secretary of State to the Company at its registered office or such other addressee/address as may be notified in writing from time to time by the Company and, in the case of a notice or communication from the Company to the Secretary of State to the Department for Education, Sanctuary Buildings, Great Smith Street, London SW1P 3BT; or such other address as may be notified from time to time by the Secretary of State and where any such notice or communication is sent by post, unless the contrary is proved, it shall be deemed, subject to satisfactory proof of posting, to be effected at the time at which the letter would be received in the ordinary course of post.
- 101) The service by the Secretary of State of a notice of termination of a Supplemental Agreement shall not prejudice the ability of the Company (if it wishes to do so) during the notice period to admit pupils to the relevant Academy in accordance with the provisions of this Agreement and the relevant Supplemental Agreement and to receive GAG and EAG in respect of

them.

### **Appointment of Additional or Further Directors by the Secretary of State**

- 102) The Secretary of State undertakes to the Company not to exercise the powers under the Articles to appoint Additional Directors or Further Directors in the following circumstances:-
- (a) if the matters giving rise to the appointment of the Additional or Further Directors relate, in the reasonable opinion of the Secretary of State, to the affairs of only one Academy; and
  - (b) if the Company has delegated, and continues to delegate, to a Local Governing Body of such Academy all decisions and powers that the Secretary of State reasonably considers are necessary to enable such Local Governing Body to address the matters that gave rise to the appointment of the Additional or Further Directors and to ensure that the relevant Local Governing Body is capable of properly conducting the affairs of the relevant Academy on the Company's behalf; and
  - (c) if the Company replaces such members of the Local Governing Body and/or appoints additional members of that Local Governing Body as, in either case, the Secretary of State may by notice in writing to the Company specify; and
  - (d) provided that such delegation is not subsequently revoked or, without the prior written consent of the Secretary of State, varied in any material respect.

### **General**

- 103) This Agreement shall not be assignable by the Company.
- 104) The Secretary of State and the Company recognise the difficulties in catering in this Agreement and the Supplemental Agreements for all the circumstances which may arise in relation to the Academies and undertake in good faith to conduct such consultations as may from time to time be desirable in order to

promote the interests of the Academies throughout the currency of this Agreement.

105) The Secretary of State and the Company agree that, notwithstanding the termination of this Agreement, any obligation upon the Company and/or the Secretary of State expressed as arising upon the termination of this Agreement shall continue to subsist.

This Agreement was executed as a Deed on 2012

Executed on behalf of The Seckford Foundation Free Schools Trust by:

.....

**Director**

.....

**Director/Secretary**

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

.....

**Duly Authorised**

**THE SECKFORD FOUNDATION FREE SCHOOLS TRUST**

**MASTER FUNDING AGREEMENT**

**Schedule**

**Supplemental Funding Agreement**

**THE SECKFORD FOUNDATION FREE SCHOOLS TRUST**

**MASTER FUNDING AGREEMENT**

**Annex A**

**Memorandum and Articles of the Company**

**THE SECKFORD FOUNDATION FREE SCHOOLS TRUST**

**Annex B**

**Arrangements for Pupils with SEN and disabilities at each Free School**



## **Annex B: Arrangements for pupils with SEN and disabilities at each Free School**

1. The Board of Directors of the Company must comply with all the duties imposed upon the governing bodies of maintained schools in:
  - (a) Part 4 of the Education Act 1996 as amended from time to time<sup>1</sup>
  - (b) The Education (Special Educational Needs) (information) Regulations 1999 as amended from time to time.
  - (c) The Education (special Education Needs Co-ordinators) (England) (Amendment) Regulations 2008 as amended from time to time.<sup>2</sup>
2. Notwithstanding any provision in this Agreement, the Secretary of State may (whether following a complaint made to him or otherwise) direct the Company to comply with an obligation described in this Annex where the Company has failed to comply with any such obligation.
3. Where a child who has SEN is being educated in an Academy, those concerned with making special education provision for the child must secure that the child engages in the activities of the Academy together with children who do not have SEN, so far as is reasonably practicable and is compatible with:
  - (a) the child receiving the special educational provision which his learning difficulty calls for,
  - (b) the provision of efficient education for the children with whom he will be educated, and

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

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

- (c) the efficient use of resources.
4. In addition to complying with the duties imposed upon the governing bodies of maintained schools set out in The Education (Special Educational Needs) (Information) Regulations 1999 (as amended from time to time) the Company must ensure that the Company's website (or, if relevant, the websites relating to each of the Academies) includes details of the arrangements for the admission of disabled students; the steps taken to prevent disabled students from being treated less favourably than other students; and the facilities provided to assist access to the relevant Academy by disabled students (disabled students meaning students who are disabled for the purposes of the Equality Act 2010<sup>3</sup>).
  5. The Company must ensure that pupils with SEN are admitted on an equal basis with others in accordance with its Admissions Policy.
  6. Where a local authority ("LA") proposes to name the Company or an Academy in a statement of SEN made in accordance with section 324 of the Education Act 1996, it must give the Company written notice that it so proposes. Within 15 days of receipt of the LA's notice that it proposes to name the Company or the relevant Academy in a statement, the Company must consent to being named, except where admitting the child would be incompatible with the provision of efficient education for other children: and where no reasonable steps may be made to secure compatibility. In deciding whether a child's inclusion would be incompatible with the efficient education of other children, the Company must have regard to the relevant guidance issued by the Secretary of State to maintained schools.
  7. If the Company determines that admitting the child would be incompatible with the provision of education, it must within 15 days of receipt of the LA's notice, notify the LA in writing that it does not agree that the Company or the relevant Academy should be named in the pupil's statement. Such notice must set out

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

all the facts and matters the Company relies upon in support of its contention that:

- (a) admitting the child would be incompatible with efficiently educating other children; and
  - (b) the Company cannot take reasonable steps to secure this compatibility.
8. After service by the Company on the LA of any notice (further to paragraph 7 above) stating that it does not agree with the LA's proposal that the Company or the relevant Academy be named, the Company must seek to establish from the LA, as soon as is reasonably practicable, whether or not the LA agrees with the Company. If the LA notifies the Company that it does not agree with the Company's response, and names the Company or the relevant Academy in the child's statement, the Company must admit the child to the relevant Academy on the date specified in the statement or on the date specified by the LA.
9. Where the Company considers that the Company or the relevant Academy should not have been named in a child's statement, they may ask the Secretary of State to determine that the LA has acted unreasonably in naming the Company or the relevant Academy and to make an order directing the LA to reconsider.
10. The Secretary of State's determination shall, subject only to any right of appeal which any parent or guardian of the child may have to the First-tier Tribunal (Special Educational Needs and Disability) be final.
11. If a parent or guardian of a child in respect of whom a statement is maintained by the LA appeals to the First-tier Tribunal (Special Educational Needs and Disability) either against the naming of the Company or the relevant Academy in the child's SEN statement or asking the Tribunal to name the Company or the relevant Academy, then the decision of the Tribunal on any such appeal shall be binding and shall, if different from that of the Secretary of State under paragraph 9 above, be substituted for the Secretary of State's decision.

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