

**DEED OF NOVATION AND VARIATION
OF THE
SUPPLEMENTAL FUNDING AGREEMENT FOR TWEENDYKES SCHOOL**

This Deed is dated the 24 day of May 2019

(1) **THE SECRETARY OF STATE FOR EDUCATION** of Sanctuary Buildings, Great Smith Street, London SW1P 3BT (the "**Secretary of State**");

(2) **HUMBER EDUCATION TRUST**, a company limited by guarantee incorporated in England and Wales with registered company number 08682547 whose registered address is at Clifton Primary School, Burslem Street, Hull, England, HU2 9BP (the "**Humber Education Trust**"); and

(3) **TWEENDYKES SCHOOL**, a company limited by guarantee incorporated in England and Wales with registered company number 0842506 whose registered address is at Tweendykes School, Midmere Learning Village, Midmere Avenue, Leads Road, Hull, HU7 4PW (the "**Company**"),

together referred to as the "Parties".

INTRODUCTION

- A. Tweendykes School is an academy within the meaning of the Academies Act 2010 (the "academy") and is currently operated by the Company (a multi academy trust).
- B. The Secretary of State and the Company entered into a Supplemental Funding Agreement on 29th April 2013 (the "**Agreement**") for the maintenance and funding of the academy (attached as Schedule 1).
- C. It is proposed that, with effect from 00.01 am on 1st June 2019 ("Transfer Date"), Humber Education Trust will assume responsibility for the management and operation of the academy in succession to the Company.
- D. The Parties wish to novate the Agreement to Humber Education Trust and the Secretary of State and Humber Education Trust wish to vary the terms of the Agreement subject to the provisions of this Deed.

LEGAL AGREEMENT

- 1. Any word or phrase used in this Deed shall, if that word or phrase is defined in the Agreement, bear the meaning given to it in the Agreement.

NOVATION

2. The Company transfers all its rights and obligations under the Agreement to Humber Education Trust with effect from the Transfer Date. With effect from the Transfer Date, Humber Education Trust shall enjoy all the rights and benefits of the Company under the Agreement and all references to the Company in the Agreement shall be read and construed as references to Humber Education Trust.

3. The references in the Agreement to the Master Funding Agreement between the Company and the Secretary of State shall be read as a reference to the Master Funding Agreement between the Humber Education Trust and the Secretary of State.

4. With effect from the Transfer Date, Humber Education Trust agrees to perform the Agreement and be bound by its terms in every way as if it were the original party to it in place of the Company.

5. With effect from the Transfer Date, The Secretary of State agrees to perform the Agreement and be bound by its terms in every way as if Humber Education Trust were the original party to it in place of the Company.

OBLIGATIONS AND LIABILITIES

6. With effect from the Transfer Date, the Company and the Secretary of State release each other from all future obligations to the other under the Agreement.

7. Each of the Company and the Secretary of State release and discharge the other from all claims and demands under or in connection with the Agreement arising after the Transfer Date.

8. Each of Humber Education Trust and the Secretary of State will have the right to enforce the Agreement and pursue any claims and demands under the Agreement against the other with respect to matters arising before, on or after the date of this Deed as though Humber Education Trust were the original party to the Agreement instead of the Company.

INDEMNITY

9. The Company agrees to indemnify Humber Education Trust against any losses, liabilities, claims, damages or costs that Humber Education Trust suffers or incurs under

or in connection with the Agreement as a result of the Company's failure to perform or satisfy its obligations under the Agreement on or before the Transfer Date.

10. Humber Education Trust agrees to indemnify the Company against any losses, liabilities, claims, damages or costs the Company suffers or incurs under or in connection with the Agreement as a result of Humber Education Trust's failure to perform or satisfy its obligations under the Agreement on or after the Transfer Date.

VARIATION

11. The Secretary of State and Humber Education Trust agree that with effect from the Transfer Date the Agreement shall be amended and restated so as to take effect in the form set out in Schedule 2 to this Deed.

12. As varied by this Deed, the Agreement shall remain in full force and effect.

13. This Deed shall be governed by and interpreted in accordance with English law.

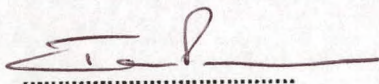
14. The Parties irrevocably agree that the courts of England and Wales shall have exclusive jurisdiction to settle any dispute or claim that arises out of, or in connection with, this deed or its subject matter or formation (including non-contractual disputes or claims).

COUNTERPARTS

15. 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.

This document has been executed as Deed and is delivered and takes effect on the date stated at the beginning of it.


EXECUTED as a deed by affixing the corporate seal)
of **THE SECRETARY OF STATE FOR EDUCATION**)
authenticated by:- IAN PALMER)

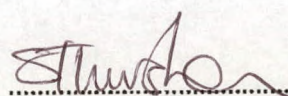


Duly authorised by the **SECRETARY OF STATE FOR EDUCATION**



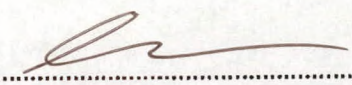
EXECUTED as a deed by **Humber Education**
Trust acting by one director in the presence
of a witness:

Director 
Print name RACHEL WILKES

Witness 
Print name SARAH THURSTON
Address [REDACTED]

Occupation HEAD OF SCHOOL, CLIFTON PS

EXECUTED as a deed by **the Company**
acting by one director in the presence of a
witness:

Director 
Print name AMANDA CUSUMANO

Witness B. Manf

Print name..... BRENDAETTE MARCRAFT.

Address

Occupation..... HEAD TEACHER.

Schedule 1
Supplemental Funding Agreement

SINGLE ACADEMY MODEL
Special

TWEENDYKES SCHOOL

FUNDING AGREEMENT

TWEENDYKES 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 Tweendykes School (the "Academy Trust").

2) The Academy Trust is a Company incorporated in England and Wales, limited by guarantee with registered Company number 8432506.

2A) As part of the Academy Trust's conversion to academy status, it is the parties' intention for the Academy Trust to enter into the School Agreement, the Principal Agreement and the Lease.

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

a) "Academies Financial Handbook" - clause 64;

b) "Academy Trust Insolvency Notice" - clause 59A.2;

c) "Accounting Officer" - clause 63;

d) "Annual Letter of Funding" - clause 58;

e) "Critical Years" - clause 59A.1;

f) "Current Funding" - clause 59A.1;

g) "GAG" - clause 44;

h) "Capital Expenditure" - clause 39;

i) "Capital Grant" - clause 39;

j) "EAG" - clause 38;

k) "Governing Body" - clause 13;

l) "PFI EAG Refusal" - clause 59A.1;

m) "Recurrent Expenditure" – clause 38;

n) "Shortfall" – clause 59A.5;

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

"Academy" means an Academy school (within the meaning of the Academies Act 2010);

"Academy Financial Year" means the year from 1st September to 31st August 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 the 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 'Controls' shall be construed accordingly;

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

"Further Remedial Measures" has the meaning given in clause 90;

"Insolvency" has the meaning given to it in section 123 of the Insolvency Act 1986;

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

"the Land" means part of the publicly funded land (including for the avoidance of doubt all buildings, structures landscaping and other erections) situated at and known as Midmere Avenue, Kingston upon Hull HU2 4PW registered under HS335769.

"Lease" means the lease granted by the LA to the Academy Trust on or around the date hereof;

"Memorandum" means the memorandum of association of the Academy Trust, for the time being in force;

"Normal Payment Matters" has the meaning given to it in the Principal Agreement;

"parents" means parents or guardians;

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

"PFI Contractor" means Hull Esteem Consortium ProjectCo1 Limited, the counterparty of the LA to the Project Agreement;

"Principal" means the head teacher of the Academy;

"Principal Agreement" means the principal agreement entered into by the Secretary of State, the Academy Trust and the LA in connection with the

Academy and dated on or around the date of this Agreement;

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

"Project Agreement" means the PFI project agreement dated 4 March 2010 and entered into by the LA and the PFI Contractor (as may be amended from time to time);

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

"School Agreement" means the school agreement entered into by the Academy Trust and the LA relating to the provision of facilities and services to the Academy and dated on or around the date of this Agreement;

"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;

"Specified Remedial Measures" has the meaning given in clause 89;

"Termination Warning Notice" has the meaning given in clause 88.

- 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 Tweendykes School ("the Academy") which is specially organised to make special educational provision for pupils with SEN and meeting such requirements as referred to in clause 11A, 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 Trust must ensure special educational provision is made at the Academy for one or more categories of SEN. These categories may include, but are not limited to, Severe Learning Difficulty (SLD), Profound and Multiple Learning Difficulty (PMLD) and Autistic Spectrum Disorder (ASD).

11) The Academy Trust may not refuse to admit a child whose statement names the Academy on the sole basis that some, or all, of the child's SEN do not feature in the categories referred to in clause 10 of this agreement.

11A) The Academy requirements are those set down in Section 1A of the Academies Act 2010.

THE SEN OBLIGATIONS

12) The Academy Trust must comply with all of the obligations imposed upon the governing bodies of maintained special schools in Chapter 1 of Part 4 of the Education Act 1996 and in Regulations in force at the date of this agreement or made from time to time under any provision in that Chapter (as

amended from time to time¹).

13) Notwithstanding any provision in this Agreement, the Secretary of State may (whether following a complaint made to him or otherwise) direct the Academy Trust to comply with an obligation imposed by this Agreement where the Academy Trust has failed to comply with any such obligation.

14) The Academy Trust must ensure that the Academy's website includes details of the arrangements for the admission of disabled pupils; the steps taken to prevent disabled pupils from being treated less favourably than other pupils; the facilities provided to assist access to the Academy by disabled pupils; and the plan prepared by the Academy Trust under paragraph 3 of Schedule 10 to the Equality Act 2010. Disabled pupils in this paragraph mean pupils who are disabled for the purposes of the Equality Act 2010².

ACADEMY OPENING DATE

15) The Academy shall open as a school on 1 May 2013 replacing Tweendykes School (a community special 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

16) 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

¹ Currently these duties are in section 313 (Duty to have regard to the Special Educational Needs Code of Practice 2001); section 317(5), (6) and (6A) (Duties in relation to the publication of information relating to arrangements and facilities for disabled pupils at the school); and 324(5)(b) (Duty to admit the child where a school is named in the statement); and the Education (Special Educational Needs)(Information)(England) Regulations 1999 (S.I. 1999/2506). For the avoidance of doubt, the obligations in clauses 12 to 13 of this agreement are in addition to any obligations imposed upon Academy proprietors directly in legislation or regulations.

² This obligation is in addition to the obligation to comply with the duties to publish information imposed upon the governing bodies of maintained special schools set out in the Education (Special Educational Needs) (Information) Regulations 1999 (as amended from time to time) which clauses 12 to 13 have the effect of imposing.

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 33 (d);

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

(cc) there will be an emphasis on the needs of the individual pupils;

(d) there will be no charge in respect of admission to the school and the school will only charge pupils where the law allows maintained special schools to charge; and

(e) the Academy Trust shall as soon as reasonably practicable establish an appropriate mechanism for the receipt and management of donations and shall use reasonable endeavours to procure donations through that mechanism for the purpose of the objects specified in the Articles.

16A) Clause 16(d) does not prevent the Academy Trust receiving funds from a local authority or a charity in respect of the admission of a pupil to the school

Governance

17) 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.

18) 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

19) 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;

d) the Principal Agreement;

e) the School Agreement;

f) the Lease.

Disclosure and Barring Service Checks

20) The Academy Trust shall comply with the requirements of the Education (Independent School Standards) (England) Regulations 2010 (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.

20A) 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 information contained in the certificate to the Secretary of State in accordance with section 124 of the Police Act 1997.

Pupils

21) The planned number of places at the Special Academy is 130 places in the age range 3 to 19, including a sixth form of 30 places. The planned number of places and the age ranges is/are not determinative of GAG. GAG for each Academy Funding Year will be determined by the Secretary of State in accordance with clauses 47 and 48.

21A) The Academy will be a special school whose requirements for:

a) the admission of pupils to the Academy are set out in Annex B to this Agreement;

b) 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).

21B) Where the Academy Trust considers that there is a need to increase the planned number of places stated in clause 21, the Academy Trust must seek the approval of the Secretary of State and the requirements of this Agreement may be amended accordingly by agreement between the Secretary of State and the Academy Trust.

Designated Teacher for Looked After Children

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

Teachers and other staff

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

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

maintained school.

24) Clause 23 does not apply to anyone who:

- a) was transferred to the employment of the Academy Trust by virtue of the Transfer of Undertakings (Protection of Employment) Regulations 2006;
- b) immediately prior to the transfer, was employed to do specified work; and
- c) immediately prior to the transfer, was not:
 - (i) a qualified teacher within the meaning of regulations made under section 132 of the Education Act 2002 and registered with full registration with the appropriate body, or
 - (ii) eligible to do specified work under the Education (Specified Work) (England) Regulations 2012 (SI 2012/762)

("transferred staff member"). The Academy Trust shall use its best endeavours to ensure that any transferred staff member who undertakes specified work and does not meet the requirements of clause 23(a) or clause 23(b) meets such requirements as soon as possible.

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

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

26A) 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, or the school the Academy replaced (as referred to in clause 11 above); 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

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

27A) 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) the names of any phonics or reading schemes in operation for Key Stage 1; and
- e) how parents (including prospective parents) can obtain further information in relation to the Academy's curriculum.

27B) Subject to the requirements of clauses 27, 27A and 28 to 32A, the curriculum will be the responsibility of the Academy Trust.

28) The Academy Trust shall ensure that the broad and balanced

curriculum includes English, mathematics and science.

28A) 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

29) The Academy Trust shall, so far as practical, make provision for the teaching of religious education and for acts of collective worship at the Academy.

30) RE and collective worship

a) subject to clause 31, 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 31, the Academy Trust shall ensure that the Academy complies with the requirements of regulation 5A of the Education (Special Educational Needs) (England) (Consolidation) Regulations 2001 as if it were a maintained special school.

31) Regulation 5A of the Education (Special Educational Needs) (England) (Consolidation) Regulations 2001 shall apply as if the Academy were a community or foundation special school, and as if references to "Religious Education" and to "Religious Worship" in that section were references to the religious education and religious worship provided by the Academy in

accordance with clause 30.

31A) Where the Academy is listed in the Register of Independent Schools as having a religious ethos, the Academy Trust agrees that paragraph 5(b) of Schedule 11 of the Equality Act 2010 shall not apply to the Academy.

32) 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 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.

32A) 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 Academy³.

Assessment

33) The Secretary of State will notify the appropriate body for assessment

³ 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>

purposes about the Academy:

- a) The Academy Trust shall ensure that the Academy complies with any guidance issued by the Secretary of State from time to time to ensure that pupils take part in assessments and in teacher assessments of pupils' performance as they apply to maintained schools.
- b) The Academy Trust shall report to any body on assessments 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) In relation to courses of education or training at the Academy which are funded from its GAG, the Academy Trust may offer:-
 - (i) any course of education or training which leads to a qualification that is approved by the Secretary of State for the purposes of section 96 of the Learning and Skills Act 2000, and
 - (ii) any course of education or training not falling within paragraph (i) if the Secretary of State gives his specific written approval for it.

33A) Where appropriate the Academy Trust shall ensure that the following information is published on the Academy's website:

a) [if applicable] The school's most recent Key Stage 2 results as published by the Secretary of State under the following column headings in the School Performance Tables published on the Department for Education's website:

- (i) "% achieving Level 4 or above in English and maths";
- (ii) "% making expected progress";
- (iii) in relation to English, "% achieving Level 5 or above";

and

(iv) in relation to maths, "%achieving Level 5 or above".

b) [if applicable] The 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".

c) 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.

d) 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.

33B) There is no requirement to publish information under clause 33A if to do so would be in breach of the Academy Trust's obligations under the Data Protection Act 1998.

School Meals

34) 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 35 charges may be levied for lunches, but the Academy Trust shall otherwise fund the cost of such school lunches from its resources.

35) 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 by the Academy Trust.

Charging

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

International Education Surveys

36A) 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 a community, foundation or voluntary school shall be treated as references to the Academy.

Pupil Premium

36B) 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 the Academy Financial Year;
- b) on what it intends to spend the Pupil Premium allocation;
- c) on what it spent its Pupil Premium in the previous Academy Financial Year;
- d) the impact in educational attainment, arising from expenditure of the previous Academy Financial Year's Pupil Premium.

GRANTS TO BE PAID BY THE SECRETARY OF STATE

General

37) 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 77). 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.

38) "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 39. The Secretary of State shall pay two separate and distinct grants in respect of Recurrent Expenditure: General Annual Grant ("GAG") and Earmarked Annual Grant ("EAG").

Capital Grant

39) "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.

40) 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.

41) 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.

42) 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;
- c) any other conditions that the Secretary of State may specify.

Arrangements for Payment of Capital Grant

43) 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

44) GAG will be paid by the Secretary of State to the Academy Trust as a

contribution towards 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; and
- m) establishment expenses and other institutional costs.

The Academy Trust shall use the GAG funding it receives:

- (i) prudently as a contribution towards the normal reasonable running costs of the Academy; and
- (ii) in order to make relevant payments to the LA pursuant to the School Agreement which will in turn form a contribution to the LA's obligations to pay the unitary charge pursuant to the Project Agreement.

45) Subject to clauses 49, 50 and 58B GAG for each Academy Financial Year for the Academy will include:

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

46) Subject to clause 58B, the GAG for each Academy Financial Year for the Academy will also include, payable on a basis equivalent to that applied to maintained special schools:

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

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

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

49) The Secretary of State recognises that a larger GAG may be appropriate to meet additional costs during the start-up period, and may pay start-up grant, on a basis determined by him, during that period, the length of which will be stipulated in the Annual Letter of Funding⁴.

50) 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 on a number of places related to the number of pupils attending the Academy are unlikely to be sufficient to meet the Academy's needs during the notice period. The Secretary of State 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 45-47, in order to enable the Academy to operate effectively.

51) 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.

52) GAG paid by the Secretary of State shall only be spent by the Academy Trust towards the normal running costs of the Academy and any payments falling due pursuant to the School Agreement and/or Principal Agreement.

Earmarked Annual Grant

53) Earmarked Annual Grant ("EAG") maybe paid by the Secretary of State

⁴ Note that a larger GAG for the Start-Up Period is only applicable to Academies with approved Academy Action Plans.

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.

54) 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

55) 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.

56) 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.

57) 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.

58) 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 (including any deductions made in accordance with clause 58B) 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 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 as soon as practicable thereafter.

58A) In the event that the Secretary of State pays the LA any sums pursuant to the Principal Agreement the Secretary of State may, subject to clause 58B, set off or abate an amount equal to such sums from any GAG payable to the Academy Trust pursuant to this Agreement in the following financial year.

58B) Before exercising its right of set off or abatement pursuant to clause 58A above, the Secretary of State shall:

- (a) notify the Academy Trust that such sums have been paid by the Secretary of State to the LA;
- (b) take into account (acting reasonably) any representations made by the Academy Trust providing reasons why the relevant liabilities were not settled;
- (c) take into account (acting reasonably) any representations made by the Academy Trust as to the nature of the liabilities under consideration.

59) 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.

59A.1) For the purposes of clauses 59A.1 to 59A.11:

"Critical Years" means the then current financial year and, if an annual letter of funding or its equivalent has been received for the following financial year, that following financial year;

"Current Funding" means the funding specified in the annual letters of funding (or their equivalent) for the Critical Years and all other resources available and likely to be available to the Academy Trust, including such funds as are set out in clause 41 of this Agreement;

A **"PFI EAG Refusal"** occurs where:

(a) the Academy Trust has made a request for EAG funding to cover any costs that the Academy Trust has incurred or reasonably considers is likely to incur as a result of meeting its obligations and/or discharging its liabilities under the School Agreement or the Principal Agreement; and

(b) the Secretary of State has not agreed, in accordance with clauses 53 and 54, to provide such EAG funding to the Academy Trust.

59A.2) Within 30 days of being notified by the Secretary of State of a PFI EAG Refusal, the Academy Trust may provide written notice that it considers that, after taking into account its Current Funding, it is likely that the running costs during the Critical Years would cause the Academy Trust to go into Insolvency (**"Academy Trust Insolvency Notice"**).

59A.3) Any Academy Trust Insolvency Notice must specify:

(a) the grounds and evidence, including any professional accounting advice, upon which the Academy Trust's opinion is based;

(b) a detailed statement of steps which the Academy Trust proposes to take with a view to ensuring that as soon as reasonably practicable the running costs are reduced sufficiently in the Critical Years to ensure that such costs are less than its Current Funding and the period of time within which such steps will be taken;

(c) the shortfall in the Critical Years between the Current Funding expected to be available to the Academy Trust to cover the running costs and the projected expenditure of the Academy Trust; and

(d) a detailed budget of income and expenditure for the Academy during the Critical Years.

59A.4) Within 15 days of the provision of the Academy Trust Insolvency Notice, both parties shall discuss and if possible (using reasonable endeavours) agree whether or not on the basis of the Current Funding, it is likely that the running costs during the Critical Years would cause the Academy Trust to go into Insolvency and such Insolvency could not be avoided through prudent financial management (including, but not limited to, using GAG funding prudently in order to cover the normal reasonable running costs of the Academy).

59A.5) If the parties are unable to reach an agreement in accordance with clause 59A.4 within 15 days of the Academy Trust Insolvency Notice being served, then the following questions shall be referred to an independent expert (the "**Expert**") for determination:

- (i) whether, on the basis of the Current Funding, it is likely that the running costs during the Critical Years would cause the Academy Trust to go into Insolvency;
- (ii) whether the Academy Trust is using the funds provided under this Funding Agreement prudently; and
- (iii) whether the Academy Trust is using the funds provided under this Funding Agreement in accordance with the requirements of this Funding Agreement.

The Expert's determination shall be final and binding on both parties. The Expert shall be requested to specify in his determination:

- (a) the amount of the shortfall (if any) in funding between the running costs and the Current Funding during the Critical Years (the "**Shortfall**"); and

- (b) (if appropriate) recommendations as to future spending and the running costs.

The Expert shall be an insolvency practitioner with significant professional experience of educational institutions or academies. If the parties fail to agree upon the appointment of the Expert then the Expert shall be appointed by the President for the time being of the Institute of Chartered Accountants in England and Wales.

59A.6) The parties shall procure that the Expert (together with any educational specialist appointed pursuant to this clause) will act promptly in determining the matters referred to him. The Expert shall be required in performing his role to take account of advice from an educational specialist who is professionally familiar with the issues arising from the budget management of schools. If the parties fail to agree upon the appointment of the educational specialist then the educational specialist shall be appointed by the Chairman for the time being of the Specialist Schools and Academies Trust.

59A.7) The Expert's and the educational specialist's fees shall be borne equally between the parties.

59A.8) For the purposes of clauses 59A.9 and 59A.11, "Insolvency Decision" means either:

(a) in accordance with clause 59A.4, the Secretary of State agrees with the Academy Trust that on the basis of the Current Funding it is likely that the running costs during the Critical Years would cause the Academy Trust to go into Insolvency which could not be avoided through prudent financial management (including, but not limited to, using GAG funding prudently in order to cover the normal reasonable running costs of the Academy); or

(b) an Expert determines in accordance with clause 59A.5 that on the basis of the Current Funding it is likely that the running costs during the Critical Years would cause the Academy Trust to go into Insolvency or

that the Academy Trust is not using the funds provided under this Funding Agreement prudently and in accordance with the requirements of this Funding Agreement.

59A.9) Within 10 Business Days of an Insolvency Decision, the Secretary of State may either at its option:

- (a) withdraw the PFI EAG Refusal and promptly pay to the Academy Trust the amount of requested EAG funding or such other sum as shall be appropriate; or
- (b) terminate this agreement on not less than 20 Business Days notice to the Academy Trust.

59A.10) In the event that the Secretary of State provides additional EAG funding in accordance with clause 59A.9(a), the Secretary of State may within 12 months of paying the additional EAG funding, terminate this Agreement at any time.

59A.11) In the event that there is no Insolvency Decision, this Agreement shall continue and the Secretary of State shall not be obliged to pay to the Academy Trust the requested EAG funding.

Other relevant funding

60)⁵Not used

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

62) The Academy Trust may also receive funding from an LA in respect of

⁵ NOTE. For Academies with approved Expressions of Interest see appropriate wording to be included as set out in Section C of the Appendix below.

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

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

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

64A) 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.

65) The formal budget plan must be approved each Academy Financial Year by the Governing Body.

66) 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 in such form or manner and by such a 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 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, Articles, Funding Agreement and a list of the names of the Governors of the Academy Trust; and

h) the Academy Trust insures or procures insurance by another person of its assets in accordance with normal commercial practice or under the terms of any subsisting leases in respect of the leasehold interest of the

site upon which the Academy is situated.

67) 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.

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

69) 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.

70) 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.

71) Notwithstanding clause 70, any additional grant provided over and above that set out in clauses 44-47 and made in accordance with clause 49 may be carried forward without limitation or deduction until the Start-up Period comes to an end.

72) Any unspent GAG not allowed to be carried forward under clauses 70-71 may be taken into account in the payment of subsequent grant.

72A) 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.

73) 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. 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.

74) 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 or as provided for in the Principal Agreement, 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, not 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 land or granting and option to acquire and interest in land; or
- d) take up any leasehold or tenancy agreement for a term exceeding three years.

75) 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 (other than guarantees or indemnities contained in the Principal Agreement);
- 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 and interest in land; or
- d) take up any leasehold or tenancy agreement for a term exceeding three years.

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

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

- a) Subject to clause 70, carrying a surplus from one Academy Financial Year to the next; or

- b) carrying forward from a previous Academy Financial Year or Academy Financial Years a sufficient surplus or sufficient cumulative surpluses on grants from the Secretary of State to meet an in-year deficit on such grants in a subsequent financial year; or
- c) incurring an in-year deficit on funds from sources other than grants from the Secretary of State in any Academy Financial Year, provided it does not affect the Academy Trust's responsibility to ensure that the Academy balances its overall budget from Academy Financial Year to Academy Financial Year.

77A) The Academy Trust shall abide by the requirements of and have regard to the Charity Commission's guidance to charities and charity trustees and in particular the Charity Commission's guidance in Protecting Charities from Harm ('the compliance toolkit'). 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

78) Except as may be permitted in the Academies Financial Handbook (as amended from time to time) or otherwise as the Secretary of State may specify by notice in writing to the Academy Trust, the Academy Trust shall not borrow against or so as to put at risk property or assets funded (whether in whole or in part) by the Secretary of State without specific approval of the Secretary of State, such approval may only be granted in limited circumstances. The Academy Trust shall not operate an overdraft except to cover irregularities in cash flow. Such an overdraft, and the maximum amount to be borrowed, shall require approval by the Academy Trust in General Meeting and in writing by the Secretary of State, and shall be subject to any conditions which the Secretary of State may reasonably impose.

79) 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 78 above.

Disposal of Assets

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

81) 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 for the time being specified by the Secretary of State for the asset; or
- b) the asset was transferred to the Academy Trust from an LA for no or nominal consideration.

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

83) 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.

84) 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.

85) 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.

86) The Academy Trust shall provide 30 days' written notice to the Secretary of State of its intention to dispose of assets for a consideration less than the best price that can reasonably be obtained, whether or not such disposal requires the Secretary of State's consent under clause 85 above.

TERMINATION

87) 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

88) 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 clauses 10 – 11A of this Agreement (subject to clause 95);

- b) the conditions and requirements set out in clauses 12 – 36B 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 or staff is threatened (whether by breakdown of discipline or otherwise);
- f) the Academy Trust is in material breach of the provisions of this Agreement;
- g) the Secretary of State is under a liability to make a payment to the LA pursuant to the Principal Agreement and/or the LA has recovered any sums from the Secretary of State pursuant to the Principal Agreement;
- h) the Secretary of State considers that in the immediately preceding 12 month period, the aggregate of payments made by the Academy Trust to the LA pursuant to the Principal Agreement in respect of Normal Payment Matters has reached a level which the Secretary of State considers to be excessive and which may (assessed objectively) cause the Academy Trust material financial difficulties;
- i) the Secretary of State considers (acting reasonably) that the Academy Trust's compliance with its obligations under the School Agreement and/or the Principal Agreement (including its approach to contract management and cooperation) is such that claims and/or disputes under such contracts are of a number and/or nature likely to materially and adversely impact on the provision of educational services at the Academy;
- j) the Academy Trust has committed a material breach of the School Agreement and/or Principal Agreement;
- k) the Secretary of State has received a notice from the LA sent pursuant to the Principal Agreement informing it of instances of breaches or non-compliance by the Academy Trust of its obligations under the School Agreement and/or Principal Agreement that may have the consequence of causing the LA to be in breach or default

of the Project Agreement;

- l) the Academy has acted or omitted to act such that any Specified Remedial Measures and/or Further Remedial Measures as may have been specified by the Secretary of State have been or may be undermined or circumvented; or
- m) the circumstances envisaged by clauses 59A.9 and 59A.10 of this Agreement in respect of EAG funding are applicable.

Each of (a) to (m) (inclusive) above is a default event for the purposes of this Agreement.

89) A Termination Warning Notice issued by the Secretary of State in accordance with clause 88 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.

90) The Secretary of State shall consider any response and representations from the Academy Trust which are received by the date specified in accordance with clause 89(c) and shall confirm whether he considers that

- a) in the light of the Academy Trust's representations in response to the Termination Warning Notice, some or all of the Specified Remedial Measures are not required to be implemented (and if so which) and/or the Specified Remedial Measures are being implemented or will be implemented within the specified timeframe; or

b) subject to any further measures he reasonably ("Further Remedial Measures") being implemented by a specified date or any evidence he requires being provided, the implementation of such measures has been or will be successfully completed within the specified timeframes; or

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

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

a) the Academy Trust has not, by the date specified in clause 89(c), responded to the Termination Warning Notice either confirming that it accepts and agree to undertake the Specified Remedial Measures or providing its representations with regard to the Specified Remedial Measures; or

b) the Academy Trust has not carried out the Specified Remedial Measures and/or Further Remedial Measures within the specified timeframes;

provided that having considered any representations made by the Academy Trust pursuant to clause 89(c), the Secretary of State remains satisfied that it is appropriate to terminate the Agreement.

Notice of Intention to Terminate

92) The Secretary of State may at any time give written notice of his intention to terminate this 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.

93) Any notice issued by the Secretary of State in accordance with clause 92 shall invite the Academy Trust to respond with any representations within a specified timeframe.

94) Where the Secretary of State has given notice of his intention to terminate this Agreement in accordance with clauses 92 and 93 and –

- a) he has not received any representations from the Academy Trust within the timeframe specified in clause 93; or
- b) having considered the representations made by the Academy Trust pursuant to clause 93, 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

95) 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.

96) 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.

97) 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.

Change of Control

97A) The Secretary of State may at any time, subject to clause 97C) 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;

(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.

97B) The Academy Trust shall notify the Secretary of State in writing of any change or proposed change of Control within the meaning of clause 97A) above, as soon as reasonably practicable after it has become aware of any such change, or proposed change, of Control.

97C) When notifying the Secretary of State further to clause 97B) the Academy Trust must 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 97A).

Effect of Termination

98) Not used.

99) 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.

100) Subject to clause 101 and 102, if the Secretary of State terminates this Agreement pursuant to clause 87 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 87 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.

101) 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.

102) 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 87) indemnify the Academy Trust and may (where the Secretary of State terminates this Agreement otherwise than pursuant to clause 87) 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.

103) Subject to clause 104, 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 at a later date; or

b) if the Secretary of State confirms that a transfer under clause 103(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.

104) The Secretary of State may waive in whole or in part the repayment due under clause 103(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.

105) 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

106) 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) 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: Guidance on Campaigning and Political Activities by Charities", as amended from time to time; and

- 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 110), is reasonably necessary for the Secretary of State to carry out his functions generally and in relation to this Agreement.

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

Access by the Secretary of State's Officers

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

109) 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.

110) 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 109, any material relating to:

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

LAND

Restrictions on Land transfer

110A) Recognising that they are or will be receiving publicly funded land at nil consideration (which for the purposes of this transaction shall include leases granted at a peppercorn rent) the Academy Trust:

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

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

Smith Street, London SW1P 3BT

- b) shall take any further steps required to ensure that the restriction referred to in clause 110A(a) is entered on the proprietorship register.
- c) shall provide the Secretary of State with confirmation of the entry of the restriction referred to in clause 110A(a) as soon as practicable after it receives notification from the Land Registry.
- d) in the event that it has not registered the restriction referred to in clause 110A(a), hereby consents to the entering of the restriction referred to in 110A(a) in the register by the Secretary of State (under s. 43(1)(b) of the Land Registration Act 2002).
- e) shall not, without the consent of the Secretary of State, apply to dis-apply, modify or remove (by cancellation or otherwise) a restriction entered in accordance with clause 110A(a) or 110A(d) above, whether by itself, a holding company, a subsidiary company, or a receiver, administrator or liquidator acting in the name of the Trust.

Notices

111) 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 111A;
- (c) shall be sent by a method listed in clause 111C; and
- (d) is deemed received as set out in clause 111C if prepared and sent in accordance with this clause.

111A) The parties' addresses and contacts are:

Name of Party	Position of Contact	Address
Secretary of State	Head of Academies Division	Department for Education, Sanctuary Buildings, Great Smith Street, London SW1P 3BT
The Academy Trust	The Principal	Tweendykes School Tweendykes Road Hull HU7 4XJ

111B) A party may change its details given in the table in clause 111A) 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.

111C) 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 111A, or otherwise at 9.00 am on the second Business Day after posting.

111D) This clause does not apply to the service of any proceedings or other documents in any legal action. For the purposes of clause 111, "writing" shall not include e-mail.

112) 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.

Complaints

112A) If a complaint is made about matters arising in whole or in part prior to the opening of the Academy, as referred to in clause 15 above, and all or part of that complaint was being or had been investigated by the Local Government Ombudsman under Part III of the Local Government Act 1974 ("Part III") or that complaint in whole or in part could have been investigated under Part III had the school the Academy replaced remained a maintained school, the Academy Trust:

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

112B)) If at the time of the opening of the Academy the investigation of a complaint made to the governing body of the school the Academy replaced (as referred to in clause 15 above) has not yet been completed, the Academy Trust shall continue to investigate that complaint in accordance with the complaints procedures established by that governing body.

112C) If a complaint is made to the Academy Trust about matters arising in

whole or in part during the 12 months prior to the opening of the Academy, the Academy Trust agrees to investigate that complaint as if the matter complained of had taken place after the opening of the Academy.

112D) If the Secretary of State could have given an order and/or a direction under section 496 and/or section 497 of the Education Act 1996 to the governing body of the school the Academy replaced (as referred to in clause 15 above) and that order and/or direction related to matters occurring within the 12 months immediately prior to conversion, the Academy Trust agrees:

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

General

113) This agreement shall not be assignable by the Academy Trust.

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

115) 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.

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

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

118) 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.

119) 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 29th April 2013

Executed on behalf of by:


Director

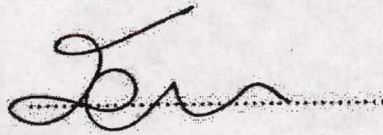
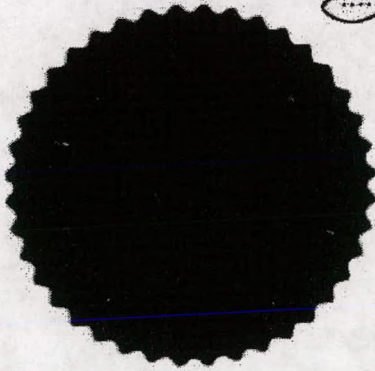
In the presence of:

× Witness 

× Address Three Rykes School Midmore Ave Hull

× Occupation Head teacher

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



Duly Authorised

**SINGLE ACADEMY MODEL
(Special)**

Model Memorandum of Association

THE COMPANIES ACT 2006

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

A COMPANY LIMITED BY GUARANTEE

MEMORANDUM OF ASSOCIATION

OF

TWEENDYKES SCHOOL

SINGLE ACADEMY MODEL
(Special)

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

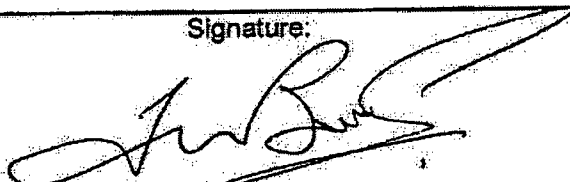
TWEENDYKES SCHOOL

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

Name of each subscriber Authentication by each subscriber

Name: John Barnes

Signature:



Name: Emma Clarke *EC*

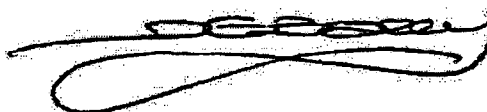
Signature:



Name: Gavin ~~Barnes~~

Signature:

BARNLEY



Name: Gerard Gibbons

Signature:



Dated

3 March 2013

THE COMPANIES ACT 2006

A COMPANY LIMITED BY GUARANTEE

ARTICLES OF ASSOCIATION

OF

Tweendykes School

THE COMPANIES ACT 2006
COMPANY LIMITED BY GUARANTEE
ARTICLES OF ASSOCIATION
OF
Tweendykes School

INTERPRETATION

1. In these Articles:-

- a. "the Special Academy" means the school referred to in Article 4a and established by the Academy Trust;
- b. "Academy Financial Year" means the academic year from 1st of September to 31st 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 Special 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 Special 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 Special 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 Tweendykes School (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

4. The Academy Trust's object (**"the Object"**) is 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 specially organised to make special educational provision for pupils with Special Educational Needs offering a broad and balanced curriculum (**"the Special Academy"**);

- (b) promoting for the benefit of the inhabitants of Hull and the surrounding area the provision of facilities for recreation or other leisure time occupation of individuals who have need of such facilities by reason of their youth, age, infirmity or disablement, financial hardship or social and economic circumstances or for the public at large in the interests of social welfare and with the object of improving the condition of life of the said inhabitants.

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 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/16-19

Academies/alternative provision Academies/ institutions within the further education sector, 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 Special Academy at Tweendykes School, Tweendykes Road, Hull HU7 4XJ

(i) to offer scholarships, exhibitions, prizes and awards to pupils/students and former pupils/former students, and otherwise to encourage and assist pupils/students and former pupils/former students;

(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/educational institutions and the voluntary sector to the education of pupils/students in academies/special academies/ alternative provision academies/16 to 19 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.

MEMBERS¹

12. The Members of the Academy Trust shall comprise

- a. the signatories to the Memorandum;
- b. not used;
- c. the chairman of the Governors; and
- d. any person appointed under Article 16.

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

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

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

¹ The Department's preference is for employees of the Academy Trust not to be members.

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 Member(s) who is a signatory to the Memorandum (save that the agreement of a signatory to the Memorandum who is to be removed shall not be required), provided that it is in the interests of the Academy Trust to remove such a Member(s).

16. The Members may agree by passing a special resolution in writing to appoint such additional Members as they think fit and may agree by passing a special resolution in writing to remove any such additional Members, provided that such appointment or removal is in the interests of the Academy Trust.

17. Every person nominated to be a Member of the Academy Trust shall either sign a written consent to become a Member or sign the register of Members on becoming a Member.

18. Any Member may resign provided that after such resignation the number of Members is not less than three. A Member shall cease to be one immediately on the receipt by the Academy Trust of a notice in writing signed by the person or persons entitled to remove him under Articles 13 or 16

provided that no such notice shall take effect when the number of Members is less than three unless it contains or is accompanied by the appointment of a replacement Member.

GENERAL MEETINGS

19. Not used.

20. The Governors may call general meetings and, on the requisition of Members pursuant to the provisions of the Companies Act 2006, shall forthwith proceed to convene a general meeting in accordance with that Act. If there are not within the United Kingdom sufficient Governors to call a general meeting, any Governor or any Member of the Academy Trust may call a general meeting.

NOTICE OF GENERAL MEETINGS

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

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

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

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

PROCEEDINGS AT GENERAL MEETINGS

23. No business shall be transacted at any meeting unless a quorum is present. A Member counts towards the quorum by being present either in person or by proxy. Two persons entitled to vote upon the business to be

transacted, each being a Member or a proxy of a Member or a duly authorised representative of a Member organisation shall constitute a quorum.

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

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

26. If no Governor is willing to act as chairman, or if no Governor is present within fifteen minutes after the time appointed for holding the meeting, the Members present and entitled to vote shall choose one of their number to be chairman.

27. A Governor shall, notwithstanding that he is not a Member, be entitled to attend and speak at any general meeting.

28. The chairman may, with the consent of a majority of the Members at a meeting at which a quorum is present (and shall if so directed by the meeting), adjourn the meeting from time to time and from place to place, but no business shall be transacted at any adjourned meeting other than the business which might properly have been transacted at the meeting had the adjournment not taken place. When a meeting is adjourned for fourteen days or more, at least seven clear days' notice shall be given specifying the time, date and place of the adjourned meeting and the general nature of the business to be transacted. Otherwise it shall not be necessary to give any such notice.

29. A resolution put to the vote of the meeting shall be decided on a show

of hands unless before, or on the declaration of the result of the show of hands a poll is duly demanded. Subject to the provisions of the Companies Act 2006, a poll may be demanded:-

(a) by the chairman; or

(b) by at least two Members having the right to vote at the meeting;
or

(c) by a Member or Members representing not less than one-tenth of the total voting rights of all the Members having the right to vote at the meeting.

30. Unless a poll is duly demanded a declaration by the chairman that a resolution has been carried or carried unanimously, or by a particular majority, or lost, or not carried by a particular majority and an entry to that effect in the minutes of the meeting shall be conclusive evidence of the fact without proof of the number or proportion of the votes recorded in favour of or against such resolution.

31. The demand for a poll may be withdrawn, before the poll is taken, but only with the consent of the chairman. The withdrawal of a demand for a poll shall not invalidate the result of a show of hands declared before the demand for the poll was made.

32. A poll shall be taken as the chairman directs and he may appoint scrutineers (who need not be Members) and fix a time, date and place for declaring the results. The result of the poll shall be deemed to be the resolution of the meeting at which the poll was demanded.

33. A poll demanded on the election of the chairman or on a question of adjournment shall be taken immediately. A poll demanded on any other question shall be taken either immediately or at such time, date and place as the chairman directs not being more than thirty days after the poll is demanded. The demand for a poll shall not prevent continuance of a meeting for the transaction of any business other than the question on which the poll is demanded. If a poll is demanded before the declaration of the result of a

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

34. No notice need be given of a poll not taken immediately if the time, date and place at which it is to be taken are announced at the meeting at which it is demanded. In other cases at least seven clear days' notice shall be given specifying the time, date and place at which the poll is to be taken.

35. A resolution in writing agreed by such number of Members as required if it had been proposed at a general meeting shall be as effectual as if it had been passed at a general meeting duly convened and held provided that a copy of the proposed resolution has been sent to every Member. The resolution may consist of several instruments in the like form each agreed by one or more Members.

VOTES OF MEMBERS

36. On the show of hands every Member present in person shall have one vote. On a poll every Member present in person or by proxy shall have one vote.

37. Not used.

38. No Member shall be entitled to vote at any general meeting unless all moneys then payable by him to the Academy Trust have been paid.

39. No objections shall be raised to the qualification of any person to vote at any general meeting except at the meeting or adjourned meeting at which the vote objected to is tendered, and every vote not disallowed at the meeting shall be valid. Any objection made in due time shall be referred to the chairman whose decision shall be final and conclusive.

40. An instrument appointing a proxy shall be in writing, signed by or on behalf of the appointer and shall be in the following form (or in a form as near thereto as circumstances allow or in any other form which is usual or which the Governors may approve) -

"I/We, of, being a Member/Members of the above named Academy Trust, hereby appoint of, or in his absence, of as my/our proxy to attend, speak and vote in my/our names and on my/our behalf at the annual general meeting/ general meeting of the Academy Trust to be held on20 , and at any adjournment thereof.

Signed on 20 "

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

"I/We, of, being a Member/Members of the above named Academy Trust, hereby appoint of, or in his absence, of, as my/our proxy to attend, speak and vote in my/our names and on my/our behalf at the annual general meeting/ general meeting of the Academy Trust, to be held on 20 , and at any adjournment thereof.

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

Resolution No. 1 *for * against

Resolution No. 2 *for * against.

- Strike out whichever is not desired.

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

Signed on 20 "

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

(a) be deposited at the office or at such other place within the United Kingdom as is specified in the notice convening the meeting or in any instrument of proxy sent out by the Academy Trust in relation to the meeting not less than 48 hours before the time for holding the meeting or adjourned meeting at which the person named in the instrument proposes to vote; or

(b) in the case of a poll taken more than 48 hours after it is demanded, be deposited as aforesaid after the poll has been demanded and not less than 24 hours before the time appointed for the taking of the poll;

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

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

43. A vote given or poll demanded by proxy or by the duly authorised representative of a corporation shall be valid notwithstanding the previous determination of the authority of the person voting or demanding a poll unless notice of the determination was received by the Academy Trust at the office or at such other place at which the instrument of proxy was duly deposited before the commencement of the meeting or adjourned meeting at which the vote given or the poll demanded or (or in the case of a poll taken otherwise than on the same day as the meeting or adjourned meeting) the time appointed for taking the poll.

44. Any organisation which is a Member of the Academy Trust may by resolution of its board of directors or other governing body authorise such person as it thinks fit to act as its representative at any meeting of the Academy Trust, and the person so authorised shall be entitled to exercise the same powers on behalf of the organisation which he represents as that organisation could exercise if it were an individual Member of the Academy

Trust.

GOVERNORS

45. The number of Governors shall be not less than three but (unless otherwise determined by ordinary resolution) shall not be subject to any maximum.

46. Subject to Articles 48 and 49, the Academy Trust shall have the following Governors:

- a. Up to 16 Governors, appointed under Article 50;
- b. a minimum of two Parent Governors appointed under Articles 53- 58;
- c. the Principal, an ex officio Governor.

47. The Academy Trust may also have any Co-opted Governor appointed under Article 59.

48. The first Governors shall be those persons named in the statement delivered pursuant to sections 9 and 12 of the Companies Act 2006.

49. Future Governors shall be appointed or elected, as the case may be, under these Articles. Where it is not possible for such a Governor to be appointed or elected due to the fact that an Special Academy has not yet been established, then the relevant Article or part thereof shall not apply.

APPOINTMENT OF GOVERNORS

50. The Members may appoint up to 16 Governors.

50A. The Members may appoint Staff Governors through such process as they may determine.

50B. The total number of Governors (including the Principal) who are

employees of the Academy Trust shall not exceed one third of the total number of Governors.

51. Not used.

52. Not used.

53. Subject to Article 57, the Parent Governors shall be elected by parents of registered pupils at the Special Academy. A Parent Governor must be a parent of a pupil at the Special Academy at the time when he is elected.

54. The Governing Body shall make all necessary arrangements for, and determine all other matters relating to, an election of Parent Governors, including any question of whether a person is a parent of a registered pupil at the Special Academy. Any election of Parent Governors which is contested shall be held by secret ballot.

55. The arrangements made for the election of a Parent Governor shall provide for every person who is entitled to vote in the election to have an opportunity to do so by post or, if he prefers, by having his ballot paper returned to the Academy Trust by a registered pupil at the Special Academy.

56. Where a vacancy for a Parent Governor is required to be filled by election, the Governing Body shall take such steps as are reasonably practical to secure that every person who is known to them to be a parent of a registered pupil at the Special Academy is informed of the vacancy and that it is required to be filled by election, informed that he is entitled to stand as a candidate, and vote at the election, and given an opportunity to do so.

57. The number of Parent Governors required shall be made up by Parent Governors appointed by the Governing Body if the number of parents standing for election is less than the number of vacancies.

58. In appointing a Parent Governor the Governing Body shall appoint a person who is the parent of a registered pupil at the Special Academy; or where it is not reasonably practical to do so, a person who is the parent of a child of compulsory school age.

CO-OPTED GOVERNORS

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

60.to 64. Not used.

TERM OF OFFICE

65. The term of office for any Governor shall be four years, save that this shall not apply to the Principal. Subject to remaining eligible to be a particular type of Governor, any Governor may be re-appointed or re-elected.

RESIGNATION AND REMOVAL

66. A Governor shall cease to hold office if he resigns his office by notice to the Academy Trust (but only if at least three Governors will remain in office when the notice of resignation is to take effect).

67. A Governor shall cease to hold office if he is removed by the person or persons who appointed him. This Article does not apply in respect of a Parent Governor.

68. Where a Governor resigns his office or is removed from office, the Governor or, where he is removed from office, those removing him, shall give written notice thereof to the Clerk.

68A. Not used.

DISQUALIFICATION OF GOVERNORS

69. No person shall be qualified to be a Governor unless he is aged 18 or

over at the date of his election or appointment. No current pupil/current student of the Special Academy shall be a Governor.

70. A Governor shall cease to hold office if he becomes incapable by reason of illness or injury of managing or administering his own affairs.

71. A Governor shall cease to hold office if he is absent without the permission of the Governors from all their meetings held within a period of six months and the Governors resolve that his office be vacated.

72. A person shall be disqualified from holding or continuing to hold office as a Governor if -

a) his estate has been sequestrated and the sequestration has not been discharged, annulled or reduced; or

b) he is the subject of a bankruptcy restrictions order or an interim order.

73. A person shall be disqualified from holding or continuing to hold office as a Governor at any time when he is subject to a disqualification order or a disqualification undertaking under the Company Directors Disqualification Act 1986 or to an order made under section 429(2)(b) of the Insolvency Act 1986 (failure to pay under county court administration order).

74. A Governor shall cease to hold office if he ceases to be a Governor by virtue of any provision in the Companies Act 2006 or is disqualified from acting as a trustee by virtue of section 178 of the Charities Act 2011 (or any statutory re-enactment or modification of that provision).

75. A person shall be disqualified from holding or continuing to hold office as a Governor if he has been removed from the office of charity trustee or trustee for a charity by an order made by the Charity Commission or the High Court on the grounds of any misconduct or mismanagement in the administration of the charity for which he was responsible or to which he was privy, or which he by his conduct contributed to or facilitated.

76. Not used.

77. Not used.

78. A person shall be disqualified from holding or continuing to hold office as a Governor where he has, at any time, been convicted of any criminal offence, excluding any that have been spent under the Rehabilitation of Offenders Act 1974 as amended, and excluding any offence for which the maximum sentence is a fine or a lesser sentence except where a person has been convicted of any offence which falls under section 178 of the Charities Act 2011.

79. After the Special Academy has opened, a person shall be disqualified from holding or continuing to hold office as a Governor if he has not provided to the chairman of the Governors a criminal records certificate at an enhanced disclosure level under section 113B of the Police Act 1997. In the event that the certificate discloses any information which would in the opinion of either the chairman or the Principal confirm their unsuitability to work with children that person shall be disqualified. If a dispute arises as to whether a person shall be disqualified, a referral shall be made to the Secretary of State to determine the matter. The determination of the Secretary of State shall be final.

80. Where, by virtue of these Articles a person becomes disqualified from holding, or continuing to hold office as a Governor; and he is, or is proposed, to become such a Governor, he shall upon becoming so disqualified give written notice of that fact to the Clerk.

81. Articles 69 to 80 and Articles 98 to 99 also apply to any member of any committee of the Governors who is not a Governor.

CLERK TO THE GOVERNORS

82. The Clerk shall be appointed by the Governors for such term, at such remuneration and upon such conditions as they may think fit; and any Clerk so appointed may be removed by them. The Clerk shall not be a Governor or

a Principal. Notwithstanding this Article, the Governors may, where the Clerk fails to attend a meeting of theirs, appoint any one of their number or any other person to act as Clerk for the purposes of that meeting.

CHAIRMAN AND VICE-CHAIRMAN OF THE GOVERNORS

83. The Governors shall each school year elect a chairman and a vice-chairman from among their number. A Governor who is employed by the Academy Trust shall not be eligible for election as chairman or vice-chairman.

84. Subject to Article 85, the chairman or vice-chairman shall hold office as such until his successor has been elected in accordance with Article 86.

85. The chairman or vice-chairman may at any time resign his office by giving notice in writing to the Clerk. The chairman or vice-chairman shall cease to hold office if -

- a) he ceases to be a Governor;
- b) he is employed by the Academy Trust;
- c) he is removed from office in accordance with these Articles; or
- d) in the case of the vice-chairman, he is elected in accordance with these Articles to fill a vacancy in the office of chairman.

86. Where by reason of any of the matters referred to in Article 85, a vacancy arises in the office of chairman or vice-chairman, the Governors shall at their next meeting elect one of their number to fill that vacancy.

87. Where the chairman is absent from any meeting or there is at the time a vacancy in the office of the chairman, the vice-chairman shall act as the chair for the purposes of the meeting.

88. Not used.

89. Not used.

90. Not used.

91. The Governors may remove the chairman or vice-chairman from office in accordance with these Articles.

92. A resolution to remove the chairman or vice-chairman from office which is passed at a meeting of the Governors shall not have effect unless -

a) it is confirmed by a resolution passed at a second meeting of the Governors held not less than fourteen days after the first meeting; and

b) the matter of the chairman's or vice-chairman's removal from office is specified as an item of business on the agenda for each of those meetings.

93. Before the Governors resolve at the relevant meeting on whether to confirm the resolution to remove the chairman or vice-chairman from office, the Governor or Governors proposing his removal shall at that meeting state their reasons for doing so and the chairman or vice-chairman shall be given an opportunity to make a statement in response.

POWERS OF GOVERNORS

94. Subject to provisions of the Companies Act 2006, the Articles and to any directions given by special resolution, the business of the Academy Trust shall be managed by the Governors who may exercise all the powers of the Academy Trust. No alteration of the Articles and no such direction shall invalidate any prior act of the Governors which would have been valid if that alteration had not been made or that direction had not been given. The powers given by this Article shall not be limited by any special power given to the Governors by the Articles and a meeting of Governors at which a quorum is present may exercise all the powers exercisable by the Governors.

95. In addition to all powers hereby expressly conferred upon them and without detracting from the generality of their powers under the Articles the Governors shall have the following powers, namely:

a) to expend the funds of the Academy Trust in such manner as

they shall consider most beneficial for the achievement of the Object and to invest in the name of the Academy Trust such part of the funds as they may see fit and to direct the sale or transposition of any such investments and to expend the proceeds of any such sale in furtherance of the Object; and

b) to enter into contracts on behalf of the Academy Trust.

96. In the exercise of their powers and functions, the Governors may consider any advice given by the Principal and any other executive officer.

97. Any bank account in which any money of the Academy Trust is deposited shall be operated by the Governors in the name of the Academy Trust. All cheques and orders for the payment of money from such an account shall be signed by at least two signatories authorised by the Governors.

CONFLICTS OF INTEREST

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

99. For the purpose of Article 98, a Governor has a Personal Financial Interest in the employment or remuneration of, or the provision of any other benefit to, that Governor as permitted by and as defined by articles 6.5-6.10.

THE MINUTES

100. The minutes of the proceedings of a meeting of the Governors shall be drawn up and entered into a book kept for the purpose by the person acting as Clerk for the purposes of the meeting; and shall be signed (subject to the

approval of the Governors) at the same or next subsequent meeting by the person acting as chairman thereof.

COMMITTEES

101. Subject to these Articles, the Governors may establish any committee. Subject to these Articles, the constitution, membership and proceedings of any committee shall be determined by the Governors. The establishment, terms of reference, constitution and membership of any committee of the Governors shall be reviewed at least once in every twelve months. The membership of any committee of the Governors may include persons who are not Governors, provided that a majority of members of any such committee shall be Governors. The Governors may determine that some or all of the members of a committee who are not Governors shall be entitled to vote in any proceedings of the committee. No vote on any matter shall be taken at a meeting of a committee of the Governors unless the majority of members of the committee present are Governors.

DELEGATION

102. The Governors may delegate to any Governor, committee, the Principal or any other holder of an executive office, such of their powers or functions as they consider desirable to be exercised by them. Any such delegation may be made subject to any conditions the Governors may impose and may be revoked or altered.

103. Where any power or function of the Governors is exercised by any committee, any Governor, Principal or any other holder of an executive office, that person or committee shall report to the Governors in respect of any action taken or decision made with respect to the exercise of that power or function at the meeting of the Governors immediately following the taking of the action or the making of the decision.

PRINCIPAL

104. The Governors shall appoint the Principal. The Governors may

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

MEETINGS OF THE GOVERNORS

105. Subject to these Articles, the Governors may regulate their proceedings as they think fit.

106. The Governors shall hold at least three meetings in every school year. Meetings of the Governors shall be convened by the Clerk. In exercising his functions under this Article the Clerk shall comply with any direction -

a) given by the Governors; or

b) given by the chairman of the Governors or, in his absence or where there is a vacancy in the office of chairman, the vice-chairman of the Governors, so far as such direction is not inconsistent with any direction given as mentioned in (a).

107. Any three Governors may, by notice in writing given to the Clerk, requisition a meeting of the Governors; and it shall be the duty of the Clerk to convene such a meeting as soon as is reasonably practicable.

108. Each Governor shall be given at least seven clear days before the date of a meeting -

a) notice in writing thereof, signed by the Clerk, and sent to each Governor at the address provided by each Governor from time to time; and

b) a copy of the agenda for the meeting;

provided that where the chairman or, in his absence or where there is a vacancy in the office of chairman, the vice-chairman, so determines on the ground that there are matters demanding urgent

consideration, it shall be sufficient if the written notice of a meeting, and the copy of the agenda thereof are given within such shorter period as he directs.

109. The convening of a meeting and the proceedings conducted thereat shall not be invalidated by reason of any individual not having received written notice of the meeting or a copy of the agenda thereof.

110. A resolution to rescind or vary a resolution carried at a previous meeting of the Governors shall not be proposed at a meeting of the Governors unless the consideration of the rescission or variation of the previous resolution is a specific item of business on the agenda for that meeting.

111. A meeting of the Governors shall be terminated forthwith if -

- (a) the Governors so resolve; or
- (b) the number of Governors present ceases to constitute a quorum for a meeting of the Governors in accordance with Article 114, subject to Article 116.

112. Where in accordance with Article 111 a meeting is not held or is terminated before all the matters specified as items of business on the agenda for the meeting have been disposed of, a further meeting shall be convened by the Clerk as soon as is reasonably practicable, but in any event within seven days of the date on which the meeting was originally to be held or was so terminated.

113. Where the Governors resolve in accordance with Article 111 to adjourn a meeting before all the items of business on the agenda have been disposed of, the Governors shall before doing so determine the time and date at which a further meeting is to be held for the purposes of completing the consideration of those items, and they shall direct the Clerk to convene a meeting accordingly.

114. Subject to Article 116 the quorum for a meeting of the Governors, and any vote on any matter thereat, shall be any three Governors, or, where greater, any one third (rounded up to a whole number) of the total number of Governors holding office at the date of the meeting.

115. The Governors may act notwithstanding any vacancies in their number, but, if the numbers of Governors is less than the number fixed as the quorum, the continuing Governors may act only for the purpose of filling vacancies or of calling a general meeting.

116. The quorum for the purposes of -

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

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

117. Subject to these Articles, every question to be decided at a meeting of the Governors shall be determined by a majority of the votes of the Governors present and voting on the question. Every Governor shall have one vote.

118. Subject to Article 114-116, where there is an equal division of votes, the chairman of the meeting shall have a casting vote in addition to any other vote he may have.

119. The proceedings of the Governors shall not be invalidated by

- a. any vacancy among their number; or
- b. any defect in the election, appointment or nomination of any Governor.

120. A resolution in writing, signed by all the Governors entitled to receive

notice of a meeting of Governors or of a committee of Governors, shall be valid and effective as if it had been passed at a meeting of Governors or (as the case may be) a committee of Governors duly convened and held. Such a resolution may consist of several documents in the same form, each signed by one or more of the Governors.

121. Subject to Article 122, the Governors shall ensure that a copy of:

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

are, as soon as is reasonably practicable, made available at the Special Academy to persons wishing to inspect them.

122. There may be excluded from any item required to be made available in pursuance of Article 121, any material relating to—

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

123. Any Governor shall be able to participate in meetings of the Governors by telephone or video conference provided that:

- a. he has given notice of his intention to do so detailing the telephone number on which he can be reached and/or appropriate details of the video conference suite from which he shall be taking

part at the time of the meeting at least 48 hours before the meeting;
and

b. the Governors have access to the appropriate equipment if after all reasonable efforts it does not prove possible for the person to participate by telephone or video conference the meeting may still proceed with its business provided it is otherwise quorate.

PATRONS AND HONORARY OFFICERS

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

THE SEAL

125. The seal, if any, shall only be used by the authority of the Governors or of a committee of Governors authorised by the Governors. The Governors may determine who shall sign any instrument to which the seal is affixed and unless otherwise so determined it shall be signed by a Governor and by the Clerk or by a second Governor.

ACCOUNTS

126. Accounts shall be prepared in accordance with the relevant Statement of Recommended Practice as if the Academy Trust was a non-exempt charity and Parts 15 and 16 of the Companies Act 2006 and shall file these with the Secretary of State and the Principal Regulator by 31 December each Academy Financial Year.

ANNUAL REPORT

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

ANNUAL RETURN

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

NOTICES

129. Any notice to be given to or by any person pursuant to the Articles (other than a notice calling a meeting of the Governors) shall be in writing or shall be given using electronic communications to an address for the time being notified for that purpose to the person giving the notice. In these Articles, "Address" in relation to electronic communications, includes a number or address used for the purposes of such communications.

130. A notice may be given by the Academy Trust to a Member either personally or by sending it by post in a prepaid envelope addressed to the Member at his registered address or by leaving it at that address or by giving it using electronic communications to an address for the time being notified to the Academy Trust by the Member. A Member whose registered address is not within the United Kingdom and who gives to the Academy Trust an address within the United Kingdom at which notices may be given to him, or an address to which notices may be sent using electronic communications, shall be entitled to have notices given to him at that address, but otherwise no such Member shall be entitled to receive any notice from the Academy Trust.

131. A Member present, either in person or by proxy, at any meeting of the Academy Trust shall be deemed to have received notice of the meeting and, where necessary, of the purposes for which it was called.

132. Proof that an envelope containing a notice was properly addressed, prepaid and posted shall be conclusive evidence that the notice was given.

Proof that a notice contained in an electronic communication was sent in accordance with guidance issued by the Institute of Chartered Secretaries and Administrators shall be conclusive evidence that the notice was given. A notice shall be deemed to be given at the expiration of 48 hours after the envelope containing it was posted or, in the case of a notice contained in an electronic communication, at the expiration of 48 hours after the time it was sent.

INDEMNITY

133. Subject to the provisions of the Companies Act 2006 every Governor or other officer or auditor of the Academy Trust shall be indemnified out of the assets of the Academy Trust against any liability incurred by him in that capacity in defending any proceedings, whether civil or criminal, in which judgment is given in favour or in which he is acquitted or in connection with any application in which relief is granted to him by the court from liability for negligence, default, breach of duty or breach of trust in relation to the affairs of the Academy Trust.

RULES

134. The Governors may from time to time make such rules or bye laws as they may deem necessary or expedient or convenient for the proper conduct and management of the Academy Trust and for purposes of prescribing classes of and conditions of membership, and in particular but without prejudice to the generality of the foregoing, they may by such rules or bye laws regulate:

- a. the admission and classification of Members of the Academy Trust (including the admission of organisations to membership) and the rights and privileges of such Members, and the conditions of membership and the terms on which Members may resign or have their membership terminated and the entrance fees, subscriptions and other fees or payments to be made by Members;

- b. the conduct of Members of the Academy Trust in relation to one

another, and to the Academy Trust's servants;

c. the setting aside of the whole or any part or parts of the Academy Trust's premises at any particular time or times or for any particular purpose or purposes;

d. the procedure at general meetings and meetings of the Governors and committees of the Governors in so far as such procedure is not regulated by the Articles; and

e. generally, all such matters as are commonly the subject matter of Company rules.

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

AVOIDING INFLUENCED COMPANY STATUS

136. Notwithstanding the number of Members from time to time, the maximum aggregate number of votes exercisable by Local Authority Associated Persons shall never exceed 19.9% of the total number of votes exercisable by Members in general meeting and the votes of the other Members having a right to vote at the meeting will be increased on a pro-rata basis.

137. No person who is a Local Authority Associated Person may be appointed as a Governor if, once the appointment had taken effect, the number of Governors who are Local Authority Associated Persons would represent 20% or more of the total number of Governors. Upon any resolution put to the Governors, the maximum aggregate number of votes exercisable by any Governors who are Local Authority Associated Persons shall represent a maximum of 19.9% of the total number of votes cast by the Governors on

such a resolution and the votes of the other Governors having a right to vote at the meeting will be increased on a pro-rata basis.

138. No person who is a Local Authority Associated Person is eligible to be appointed to the office of Governor unless his appointment to such office is authorised by the local authority to which he is associated.

139. If at the time of either his becoming a Member of the Academy Trust or his first appointment to office as a Governor any Member or Governor was not a Local Authority Associated Person but later becomes so during his membership or tenure as a Governor he shall be deemed to have immediately resigned his membership and/or resigned from his office as a Governor as the case may be.

140. If at any time the number of Governors or Members who are also Local Authority Associated Persons would (but for Articles 136 to 139 inclusive) represent 20% or more of the total number of Governors or Members (as the case may be) then a sufficient number of the Governors or Members (as the case may be) who are Local Authority Associated Persons shall be deemed to have resigned as Governors or Members (as the case may be) immediately before the occurrence of such an event to ensure that at all times the number of such Governors or Members (as the case may be) is never equal to or greater than 20% of the total number of Governors or Members (as the case may be). Governors or Members (as the case may be) who are Local Authority Associated Persons shall be deemed to have resigned in order of their appointment date the most recently appointed resigning first.

141. The Members will each notify the Academy Trust and each other if at any time they believe that the Academy Trust or any of its subsidiaries has become subject to the influence of a local authority (as described in section 69 of the Local Government and Housing Act) 1989.

Annex B

REQUIREMENTS FOR THE ADMISSION OF PUPILS TO TWEENDYKES SCHOOL

GENERAL

1. This annex may be amended in writing at any time by agreement between the Secretary of State and the Academy Trust.
2. Except where paragraph 3 applies, Tweendykes School may not admit a child to the school unless a statement of SEN is maintained for that child and Tweendykes School (the academy trust) (or Tweendykes School (the community special school)) is named in the child's statement
3. Tweendykes School may admit a child without a statement to Tweendykes School if:
 - (i) he is admitted for the purposes of an assessment of his educational needs under section 323 of the Education Act 1996 and his admission to the Academy is with the agreement of the local authority, the Academy Trust, the child's parent and any person whose advice is to be sought in accordance with regulation 7 of the Education (Special Educational Needs) (England) (Consolidation) Regulations 2001;
 - (ii) he remains admitted following an assessment under section 323 of the Education Act 1996; or
 - (iii) he is admitted following a change in his circumstances, with the agreement of the local authority, the Academy Trust and the child's parents.
4. If a child without a statement has been admitted to Tweendykes School for the purpose of an assessment, in accordance with paragraph 3(i), the Academy Trust may allow the child to remain at that Academy:
 - (i) until the expiry of ten school days after the local authority serve a notice under section 325 of the Education Act 1996 that they do not propose to make a statement, or
 - (ii) until a statement is made.
5. Where the local authority intend to name Tweendykes School in a statement, and have served a copy of the proposed statement (or amended statement) on the Academy Trust, the Academy Trust must respond to the local authority's proposal within 15 days.
6. The Academy Trust 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 Academy Trust must have regard to the relevant guidance issued by the Secretary of State to maintained schools.

7. If the Academy Trust determines that admitting the child would be incompatible with the provision of efficient education, it must, within 15 days of receipt of the local authority's notice, notify the local authority in writing that it does not agree that the Academy should be named in the pupil's statement. Such notice must set out all the facts and matters the Academy relies upon in support of its contention that: (a) admitting the child would be incompatible with efficiently educating other children; and (b) the Academy Trust cannot take reasonable steps to secure this compatibility.
8. Where a local authority maintains a statement for a child under section 324 of the Education Act 1996 and the name of Tweendykes School (the academy trust) (or Tweendykes School (the community school)) is specified in that statement, the Academy Trust must admit that child to the Academy even if they consider that the Academy should not have been named in the child's statement.
9. Where the Academy Trust considers that the Academy should not have been named in a child's statement, they may ask the Secretary of State to determine that the local authority has acted unreasonably in naming the Academy and to make an order directing the authority to amend the child's statement by removing the name of the Academy. Where the Secretary of State makes an order to this effect, the Academy Trust will cease to be under an obligation to admit the child from the date of the Secretary of State's Order, or from such date as the Secretary of State specifies. In specifying a date, the Secretary of State must take into account both the welfare of the child in question and the degree of difficulty caused to the Academy by the child's continued admission.
10. Where the Secretary of State determines that a local authority has acted reasonably in naming Tweendykes School in a child's statement, the Academy Trust must continue to admit the child until the Academy ceases to be named in the statement.

THE FIRST-TIER TRIBUNAL (SPECIAL EDUCATIONAL NEEDS AND DISABILITY)

11. If a parent or guardian of a child in respect of whom a statement is maintained by a local authority appeals to the First-tier Tribunal (Special Educational Needs and Disability) either against the naming of the Academy in the child's statement or asking the Tribunal to name the Academy, the Academy Trust agrees to be bound by the decision of the Tribunal on any such appeal even if the decision is different to that of the Secretary of State under paragraph 9 or 10 above.

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

Schedule 2
Amended Supplemental Funding Agreement



Department
for Education

Special academy and free school: supplemental funding agreement

March 2018

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<i>[Version 4: new freehold site provided by ESFA with a legal charge in favour of the Secretary of State]</i>	Error! Bookmark not defined.

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[Version 6: new leasehold site provided by ESFA with a legal charge in favour of the Secretary of State] **Error! Bookmark not defined.**

[Version 7: new leasehold site provided by ESFA without a legal charge where the Secretary of State is not the landlord] **Error! Bookmark not defined.**

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SUMMARY

Information about the Academy:

Name of Academy Trust	Humber Education Trust
Company number	08682547
Date of Master Funding Agreement	24 th August 2017
Name of academy	Tweendykes School
Opening date	1 st May 2013
Type of academy (indicate whether academy or free school)	Special Academy
Name of predecessor school (where applicable)	Tweendykes School
Planned number of places	146
Age range	3 to 19
Number of sixth form places	30
Number of residential places	N/A
Land arrangements (Version 1-8 or other)	Version 2
Address and title number of Land	Tweendykes School, Midmere Avenue, Kingston Upon Hull, HU7 4PW Title Number: HS370635
Part of a PFI Scheme	

Please confirm which clause variations have been applied or marked as 'Not used'

Clause No.	Descriptor	Applied	Not used
1.J	Only applies to free schools and new provision academies		✓
2.D	Only applies to free schools admitting pupils without a statement of SEN or EHC plan		✓
2.G	Only applies where there was a predecessor independent school or non-maintained special school		✓
2.S to 2.EE	Only applies to free schools or new provision academies that admit pupils without a statement of SEN or EHC plan		✓
2.FF	Does not apply to free schools (unless there was a predecessor independent school or non-maintained special school), or new provision academies	✓	
2.GG	Only applies to free schools or new provision academies that admit pupils without a statement of SEN or EHC plan		✓
3.B – 3.G	Only applies to free schools or new provision academies that admit pupils without a statement of SEN or EHC plan		✓
3.H	Clause does not apply to academy converters or new provision academies		✓
3.J	Only applies to full sponsored and intermediate sponsored academies with approved Academy Action Plans		✓
3.K	Does not apply to free schools (unless there was a predecessor independent school or non-maintained special school), or new provision academies	✓	
5.G.1	Clause applies only to boarding academies/boarding free schools		✓
5.I	Clause only applies to sponsored academies		✓

Clause No.	Descriptor	Applied	Not used
5.K	Clause applies to free schools and may be applied to new provision academies		✓
5.L	Clause applies to free schools and may be applied to new provision academies		✓
5.M	Clause applies to free schools and may be applied to new provision academies		✓
5.N	Clause applies to free schools and may be applied to new provision academies		✓
5.O	Clause applies to free schools and may be applied to new provision academies		✓
5.P	Clause applies to free schools and may be applied to new provision academies		✓

Please identify any other variations from the model that apply to this academy (e.g. clauses relating to PFI):

Additional clauses will be supplied by your project lead if needed.

Descriptor	Clause No.	Applied	Not used
Only applies to academies which form part of a PFI arrangement	1.K	✓	
Only applies to academies which form part of a PFI arrangement	1.L	✓	
Only applies to academies which form part of a PFI arrangement	3.M	✓	
Only applies to academies which form part of a PFI arrangement	3.N	✓	
Only applies to academies which form part of a PFI arrangement	3.O	✓	
Only applies to academies which form part of a PFI arrangement	5B(d) – (k)	✓	

Descriptor	Clause No.	Applied	Not used
Only applies to academies which form part of a PFI arrangement	5Z – 5LL	✓	

1. ESTABLISHING THE ACADEMY

- 1.A This Agreement made between the Secretary of State for Education and Humber Education Trust is supplemental to the master funding agreement made between the same parties and dated _____ (the "**Master Agreement**").

Definitions and interpretation

- 1.B Except as expressly provided in this Agreement words and expressions defined in the Master Agreement will have those same meanings in this Agreement.

- 1.C The following capitalised words and expressions will have the following meanings:

"The **Academy**" means the Tweendykes School which is specially organised to make special educational provision for pupils with SEN.

"**Academy Trust Insolvency Notice**" has the meaning given to it by clause 5.CC.

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

"**Critical Years**" has the meaning given to it by clause 5.BB.

"**Current Funding**" has the meaning given to it by clause 5.BB.

"**EHC plan**" means an Education, Health and Care plan made under section 37(2) of the Children and Families Act 2014.

"**Insolvency**" has the meaning given to it in section 123 of the Insolvency Act 1986.

"**Lease**" has the meaning given to it in clause 4 of this Agreement.

"**Normal Payment Matters**" has the meaning given to it in the Principal Agreement.

"**PFI Contractor**" means Hull Esteem Consortium ProjectCo1 Limited the counterparty of the LA to the Project Agreement.

“PFI EAG Refusal” has the meaning given to it by clause 5.BB.

“Principal Agreement” means the principal agreement entered into by the Secretary of State, the Academy Trust and the LA in connection with the Academy and dated 29th April 2013.

“Project Agreement” means the PFI project agreement dated 4th March 2010 and entered into by the LA and PFI Contractor (as may be amended from time to time).

“Pupils with a statement of SEN or EHC plan” means those pupils, with a statement of SEN or EHC plan, admitted under clauses 2.C and 2.H to 2.R.

“Pupils without a statement of SEN or EHC plan” means those pupils, with SEN but without a statement of SEN or EHC plan, admitted under clauses 2.D and 2.S to 2.EE.

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

“Shortfall” – clause 5.FF

“School Agreement” means the school agreement entered into by the LA and the Academy Trust relating to the provision of facilities and services to the Academy and dated on or around the date of this Agreement.

“Statement of SEN” means a statement made under section 324 of the Education Act 1996.

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

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

1.D The Interpretation Act 1978 applies to this Agreement as it applies to an Act of Parliament.

- 1.E Reference in this Agreement to clauses and annexes will, unless otherwise stated, be to clauses and annexes to this Agreement.

The Academy

- 1.F The Academy is a Special Academy and a PFI Academy as defined in clause 1.4 of the Master Agreement.
- 1.G The Academy Trust will establish and maintain the Academy in accordance with the Master Agreement and this Agreement.
- 1.H The Academy Trust must ensure special educational provision is made at the Academy for one or more categories of SEN. These categories may include, but are not limited to SLD, and ASD.
- 1.I The Academy Trust may not refuse to admit a child whose statement of SEN or EHC plan names the Academy on the sole basis that some, or all, of the child's SEN do not feature in the categories referred to in clause 1.H of this agreement.
- 1.J Not used.
- 1.K The Academy Trust shall enter into the School Agreement, the Principal Agreement and the Lease.
- 1.L The Academy Trust must conduct the Academy within the terms and requirements of the Principal Agreement, the School Agreement and the Lease.

Academy opening date

- 1.M The Academy Trust will opened the Academy on 1st May 2013.

2. RUNNING OF THE ACADEMY

Length of school day and year

2.A.1 Further to clause 2.1 of the Master Agreement, the Academy Trust is responsible for setting the dates when the school terms and holidays are to begin and end, and the times of schools sessions.

Teachers and staff

2.A- Subject to clause 2.A.1b and 2.B of this Agreement the Academy Trust must not employ anyone under a contract of employment or for services to plan and prepare lessons and courses for pupils, teach pupils, and assess and report on pupils' development, progress and attainment ("specified work"), who is not either:

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

2.A.1b The Academy Trust must designate a staff member at the Academy as responsible for promoting the educational achievement of registered pupils at the Academy who are being looked after by an LA, or are no longer looked after by an LA because of an adoption, special guardianship or child arrangements order, or because they have been adopted from 'state care' outside England and Wales, and in doing so must comply with the law, regulations and guidance that apply to maintained schools. The Academy Trust must ensure the designated person undertakes appropriate training and has regard to any guidance issued by the Secretary of State.

2.B Clause 2.A will not apply to anyone who:

- a) transferred to the employment of the Academy Trust by virtue of the Transfer of Undertakings (Protection of Employment) Regulations 2006;

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

("transferred staff member"). The Academy Trust must ensure that any transferred staff member that carries out specified work and does not meet the requirements of clause 2.A(a) or 2.A(b), meets those requirements as soon as possible.

Places and Pupils

- 2.C The planned number of places at the Academy is 146 places in the age range 3 – 19, including a sixth form of 30 places.
- 2.D Not used.
- 2.E The Academy Trust must ensure that the Academy meets the needs of individual pupils.
- 2.F The Academy Trust must seek approval from the Secretary of State where they consider there is a need to increase the planned number of places stated in clause 2.C. The requirements of this Agreement may then be amended by agreement between the Secretary of State and the Academy Trust.

Charging

- 2.G Not used.

Admissions

- 2.H Except as set out in clauses 2.J – 2.Q below, the Children and Families Act 2014 imposes duties directly on Academies in respect of pupils with special

educational needs, including the admission of pupils with EHC plans. If an Academy Trust considers that a LA should not have named the Academy in an EHC plan, it may ask the Secretary of State to determine whether the LA has acted unreasonably, and to make an order directing the LA to reconsider. The Secretary of State's determination will be final, subject to any right of appeal which a parent of the child may have to the First Tier Tribunal (Special Educational Needs and Disability) or the Upper Tribunal Administrative Appeals Chamber.

- 2.I Except where clauses 2.D and 2.T apply and any relevant provisions of the Childrens and Families Act 2014 apply, the Academy Trust may not admit a child to the school unless a statement of SEN or EHC plan naming the Academy [or the predecessor school], is maintained for that child.

(Clauses 2.J-2.Q only apply where the pupil has a statement of special educational needs (SEN) rather than an EHC plan and where they therefore continue to be subject to the relevant provisions of the Education Act 1996. EHC plans are replacing statements of SEN but although all statements of SEN should have been converted to an EHC plan by 1 April 2018 this clause is retained to protect pupils who still have a statement of special education need after this date. The detail on the drafting of a statement below is retained to protect pupils in exceptional circumstances.)

“Statement of SEN” means a statement made under section 324 of the Education Act 1996.

- 2.J The Academy Trust must admit all children with a Statement of SEN naming the Acadent,
- 2.K The Academy Trust must have regard to the Special Educational Needs Code of practice 2001 when dealing with statements of SEN.
- 2.L Where the LA sends the Academy Trust a draft statement with a proposal that the Academy is named in the final statement, the Academy Trust must respond within 15 working days unless the time period falls within a school holiday that is longer than two weeks in which case the Academy Trust should respond within 15 working days of the end of the school holiday.

- 2.M In its response the Academy Trust must either:
- a. consent to being named in the final statement or
 - b. explain why it believes that admitting the child would be incompatible with the provision of efficient education for other children and the efficient use of resources, including why no reasonable steps could secure compatibility. In doing so the Academy Trust must have regard to the relevant legislation and Code of Practice. If the LA does not agree with the Academy Trust's response, and names the Academy in the child's Statement of SEN, the Academy Trust must admit the child to the school as specified in the statement or otherwise by the LA. The final decision as to whether to name the Academy falls to the LA.
- 2.N If the Academy Trust considers that the LA should not have named the Academy in the statement of SEN, it may ask the Secretary of State to determine whether the LA has acted unreasonably, and to make an order directing the LA to reconsider. The Academy Trust must admit the pupil if such a determination is pending. The Secretary of State's determination will be final, subject only to any right of appeal which a parent of the child may have to the First-tier Tribunal (Special Educational Needs and Disability) or the Upper Tribunal Administrative Appeals Chamber.
- 2.O If a parent of a child for whom the LA maintains a statement appeals to the First-tier Tribunal (Special Educational Needs and Disability) or the Upper Tribunal Administrative Appeals Chamber, either for or against the naming of the Academy in the child's statement, then the Tribunal's decision will be binding, even if it is different from that of the Secretary of State.
- 2.P Where it has been finally determined that the Academy be named in a child's Statement of SEN, the Academy Trust must admit the child to the Academy, notwithstanding any other admissions requirements in this Agreement.
- 2.Q Clauses 2.J-2.Q only apply insofar as the relevant provisions of the Children and Families Act 2014 relating to SEN and disability do not apply to Academies and Free Schools.
- 2.R Not used.
- 2.S Not used.

2.T Not used.

2.U Not used.

2.V Not used.

2.W Not used.

2.X Not used.

2.Y Not used.

2.Z Not used.

2.AA Not used.

2.BB Not used.

2.CC Not used.

2.DD Not used.

2.EE Not used.

2.FF Pupils on roll in a Predecessor School which was a maintained, a non-maintained special or independent school will transfer automatically to the Academy on opening. All children already offered a place at that Predecessor School must be admitted to the Academy.

Exclusions

2.GG Not used.

Curriculum

2.HH Subject to clauses 2.II and 2.JJ the Academy Trust, must provide for the teaching of religious education and for a daily act of collective worship at the Academy.

2.II Subject to clause 2.JJ provision must be made for religious education to be given to all pupils at the Academy in accordance with the requirements for

agreed syllabuses in section 375(3) of the Education Act 1996 and paragraph 2(5) of Schedule 19 to the School Standards and Framework Act 1998;

- 2.JJ the Academy must comply with the requirements of regulation 5A of the Education (Special Educational Needs)(England)(Consolidation) Regulations 2001 as if it were a maintained school. The Academy Trust must comply with regulation 5A of the Education (Special Educational Needs)(England)(Consolidation) Regulations 2001 as if the Academy were a community or foundation special school, and as if references to “Religious Education” and to “Religious Worship” in that regulation were references to religious education and religious worship provided by the Academy in accordance with clause 2.II.
- 2.KK The Academy Trust agrees that, where the Academy is listed in the register of Independent Schools as having a religious ethos, paragraph 5(b) of Schedule 11 of the Equality Act 2010 shall not apply to the Academy.
- 2.LL The Academy Trust must have regard to any Guidance, further to section 403 of the Education Act 1996, on sex and relationship education to ensure that children at the Academy are protected from inappropriate teaching materials and that they learn the nature of marriage and its importance for family life and for bringing up children. The Academy Trust must also have regard to the requirements in section 405 of the Education Act 1996, as if the Academy were a maintained school.
- 2.MM The Academy Trust must prevent political indoctrination, and secure the balanced treatment of political issues, in line with the requirements for maintained schools set out in the Education Act 1996, and have regard to any Guidance.

3. GRANT FUNDING

Calculation of GAG

- 3.A The Secretary of State will determine GAG for the Academy for each Academy Financial Year, taking into account relevant factors.

3.B Not used.

3.C Not used.

3.D Not used.

3.E Not used.

3.F Not used.

3.G Not used.

3.H Not used.

3.I The Secretary of State recognises that if he serves a Termination Notice or a Termination Warning Notice, or otherwise terminates the Master Agreement, the intake of new pupils during the notice period may decline and therefore payments based on the number of places related to the number of pupils attending the Academy may be insufficient to meet the Academy's needs. In these circumstances the Secretary of State may pay a larger GAG in the notice period, to enable the Academy to operate effectively.

Other relevant funding

3.J Not used.

3.K The Secretary of State may pay the Academy Trust's costs in connection with the transfer of employees from a Predecessor School under the Transfer of Undertakings (Protection of Employment) Regulations 2006. Such payment will be agreed on a case-by-case basis. The Academy Trust must not budget for such a payment unless the Secretary of State confirms in writing that it will be paid.

Carrying forward of funds

3.L Any additional grant made in accordance with clause 3.I, for a period after the Secretary of State has served a Termination Notice or a Termination Warning Notice under this Agreement, or otherwise terminates the Master Agreement,

may be carried forward without limitation or deduction until the circumstances set out in clause 3.I cease to apply or the Academy closes.

- 3.M The Academy Trust must use the GAG funding it receives prudently to cover the normal reasonable running costs of the Academy including payments which fall due pursuant to the School Agreement or the Principal Agreement and to make payments under the School Agreement which will in turn form a contribution to the LA's obligations to pay the unitary charge under the Project Agreement.
- 3.N If the Secretary of State makes a payment under the Principal Agreement the Secretary of State may, subject to clause 3.O, set off or abate an equivalent amount from any GAG payable to the Academy Trust pursuant to this Agreement in the following financial year.
- 3.O Before making any set off or abatement pursuant to clause 3.N above, the Secretary of State shall:
- 3.O.1. notify the Academy Trust of the payment under the Principal Agreement;
- 3.O.2. take into account (acting reasonably) any representations made by the Academy Trust providing reasons why the relevant liabilities were not settled; and
- 3.O.3. take into account (acting reasonably) any representations made by the Academy Trust as to the nature of the liabilities under consideration.

4. **LAND**

“**Land**” means the land at Tweendykes School, Midmere Avenue, Kingston Upon Hull, HU7 4PW, being the land registered with title number JS370635 and demised by the Lease.

“**Lease**” means the lease or other occupational agreement between the Academy Trust and a third party (the “**Landlord**”) under which the Academy Trust derives title to the Land.

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

Restrictions on Land transfer

4.A The Academy Trust must:

- a) within 28 days of the signing of this Agreement in circumstances where the Land is transferred to the Academy Trust prior to the date of this Agreement, or otherwise within 28 days of the transfer of the Land to the Academy Trust, apply to the Land Registry using Form RX1 for the following restriction (the “Restriction”) to be entered in the proprietorship register for the Land:

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

- b) take any further steps reasonably required to ensure that the Restriction is entered on the proprietorship register;
- c) promptly confirm to the Secretary of State when the Restriction has been registered;
- d) if it has not registered the Restriction, permit the Secretary of State to do so in its place; and
- e) not, without the Secretary of State’s consent, apply to disapply, modify, cancel or remove the Restriction, whether by itself, a holding company, a subsidiary company, or a receiver, administrator or liquidator acting in the name of the Academy Trust.

Obligations of the Academy Trust

4.B Save to the extent that any of the Academy Trust’s obligations are the responsibility of the PFI Contractor (whereupon the Academy Trust must use

reasonable endeavours to procure the PFI Contractor's compliance with its obligations under the Project Agreement), the Academy Trust must keep the Land clean and tidy and make good any damage or deterioration to the Land. The Academy Trust must not do anything to lessen the value or marketability of the Land without the Secretary of State's consent.

4.C The Academy Trust must comply with the Lease and promptly enforce its rights against the Landlord.

4.D The Academy Trust must not, without the Secretary of State's consent:

- a) terminate, vary, surrender, renew, dispose of or agree any revised rent under the Lease;
- b) grant any consent or licence; or
- c) create or allow any encumbrance; or
- d) part with or share possession or occupation; or
- e) enter into any onerous or restrictive obligations,

in respect of all or part of the Land.

Option

4.E The Academy Trust grants and the Secretary of State accepts an option (the "**Option**") to acquire the Land at nil consideration. The Secretary of State may exercise the Option in writing on termination of this Agreement. If the Option is exercised, completion will take place 28 days after the exercise date in accordance with the Law Society's Standard Conditions of Sale for Commercial Property in force at that date.

Option Notice

4.F The Academy Trust:

- a) must, within 14 days after acquiring the Land or, if later, after signing this Agreement, apply to the Land Registry on Form AN1 (including a

copy of this Agreement) for a notice of the Option (the “**Option Notice**”) to be entered in the register, taking any further steps required to have the Option Notice registered and promptly confirming to the Secretary of State when this has been done;

- b) if it has not registered the Option Notice, agrees that the Secretary of State may apply to register it using Form UN1;
- c) must not, without the Secretary of State’s consent, apply to disapply, modify or remove the Option Notice, whether by itself, a holding company, a subsidiary company, or a receiver, administrator or liquidator acting in the name of the Academy Trust, and
- d) must, in the case of previously unregistered land, within 14 days after acquiring the Land or, if later, after signing this Agreement, apply to register a Class C(iv) land charge in the Land Charges Registry, and send the Secretary of State a copy of the relevant entry within 7 days after the registration has been completed. If the Secretary of State considers that the Academy Trust has not complied with this clause, he may apply to secure the registration.

Property Notices

4.G If the Academy Trust receives a Property Notice, it must:

- a) send a copy of it to the Secretary of State within 14 days, stating how the Academy Trust intends to respond to it;
- b) promptly give the Secretary of State all the information he asks for about it;
- c) allow the Secretary of State to take all necessary action, with or instead of the Academy Trust, to comply with it, and
- d) use its best endeavours to help the Secretary of State in connection with it.

Breach of Lease

- 4.H If the Academy Trust is, or if it is reasonably foreseeable that it will be, in material breach of the Lease, the Academy Trust must immediately give written notice to the Secretary of State stating what the breach is and what action the Academy Trust has taken or proposes to take to remedy it, including timescales where appropriate.
- 4.I After notifying the Secretary of State under clause 4.H, the Academy Trust must:
- a) promptly give the Secretary of State all the information he asks for about the breach;
 - b) allow the Secretary of State to take all necessary action, with or instead of the Academy Trust, to remedy or prevent the breach, and
 - c) use its best endeavours to help the Secretary of State to remedy or prevent the breach.

Sharing the Land

- 4.J Where:
- a) the Secretary of State identifies basic or parental need for additional places in the area in which the Academy is situated and
 - b) the Secretary of State then considers that not all the Land is needed for the operation of the Academy at planned number of places,
- the Secretary of State must consult with the Academy Trust to determine whether part of the Land could be demised or sublet to another Academy Trust, as the Secretary of State considers appropriate, for the purpose of that Academy Trust establishing and maintaining an educational institution on the Land.
- 4.K To the extent the Academy Trust and the Secretary of State agree to part of the Land being demised or sublet in accordance with clause 4.J, the Academy Trust must use its best endeavours to procure either the approval of the Landlord or any necessary amendments to the Lease in order to enable it to share occupation of the Land with the incoming Academy Trust and to provide

the incoming Academy trust with security of tenure over the Land occupied by it, and shall enter into any legal arrangements which the Secretary of State requires for this purpose. The Secretary of State shall meet the necessary and reasonable costs incurred by the Academy Trust in connection with this clause.

4.L For the purposes of clause 4.J:

- a) a **basic need** will arise when the forecast demand for pupil places in the area where the Academy is situated is greater than the existing capacity to provide them;
- b) a **parental need** will arise when the DfE is actually aware of an additional demand for pupil places in the area where the Academy is situated, following representations from parents in that area; and
- c) **planned number of places** has the meaning given in clause 2.C

5. TERMINATION

Termination by either party

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

Termination Warning Notice

5.B The Secretary of State may serve a Termination Warning Notice where he considers that:

- a) the Academy Trust has breached the provisions of this Agreement or the Master Agreement; or
- b) the standards of performance of pupils at the Academy are unacceptably low; or

- c) there has been a serious breakdown in the way the Academy is managed or governed; or
- d) the safety of pupils or staff is threatened, including due to breakdown of discipline.
- e) the Academy is coasting provided he has notified the Academy Trust that it is coasting.
- f) the Secretary of State is obliged to make a payment under the Principal Agreement;
- g) the Secretary of State considers that in the immediately preceding 12 month period, the aggregate of payments made by the Academy Trust to the LA under the Principal Agreement has reached a level which the Secretary of State considers to be excessive and which may (assessed objectively) cause the Academy Trust material financial difficulties;
- h) the Secretary of State considers (acting reasonably) that the Academy Trust's compliance with the School Agreement or the Principal Agreement is such that claims or disputes are of a number or nature likely to materially and adversely impact on the provision of educational services at the Academy;
- i) the Academy Trust has committed a material breach of the School Agreement or the Principal Agreement;
- j) the Secretary of State has received a notice from the LA informing it of instances of breaches or non-compliance with the Academy Trust with the School Agreement or Principal Agreement that may have the consequence of causing the LA to be in breach or default of the Project Agreement;
- k) the Academy Trust has failed to take the action referred to in clause 5.C by the date specified in clause 5.C; or

- l) the circumstances envisaged by clauses 5.II and 5.JJ of this Agreement in respect of EAG funding are applicable

Each of a) to l) (inclusive) above is a default event for the purposes of this Agreement.

5.C A Termination Warning Notice served under clause 5.B will specify:

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

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

5.E If the Secretary of State considers that the Academy Trust has not responded to the Termination Warning Notice as specified under clause 5.C(c), or has not completed the action required in the Termination Warning Notice as specified under clauses 5.C(a) and (b) (and any further action specified under clause 5.D) he may serve a Termination Notice.

Termination by the Secretary of State after inspection

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

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

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

5.G In deciding whether to give notice of his intention to terminate under clause 5.F, the Secretary of State will have due regard to the overall performance of the Academy Trust.

5.G.1 Not used.

5.H If the Secretary of State has served a Termination Warning Notice under clause 5.F and:

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

he may serve a Termination Notice.

5.I Not used.

Termination by the Secretary of State

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

5.K Not used.

5.L Not used.

5.M Not used.

5.N Not used.

5.O Not used.

5.P Not used.

Funding and admission during notice period

- 5.Q If the Secretary of State serves a Termination Notice under clause 5.A, the Academy Trust may continue during the notice period to admit pupils to the Academy, and to receive GAG and EAG, in accordance with this Agreement.
- 5.R If the Secretary of State serves a Termination Warning Notice or a Termination Notice otherwise than under clause 5.A, the Academy Trust may continue during the notice period to admit pupils to the Academy (unless the Secretary of State specifies otherwise), and to receive GAG and EAG, in accordance with this Agreement.

Notice of intention to terminate by Academy Trust

- 5.S The provisions of the clause 5S and of clauses 5.T to 5Z (inclusive) shall apply when the Project Agreement has expired or terminated. The Secretary of State will, before the start of each Academy Financial Year, provide the Academy Trust with a final funding allocation indicating the level of GAG and EAG to be provided in the next Academy Financial Year (the “**Funding Allocation**”).
- 5.T If the Academy Trust is of the opinion that, after receipt of the Funding Allocation for the next Academy Financial Year (the “**Critical Year**”) and after taking into account all other resources likely to be available to the Academy, including other funds that are likely to be available to the Academy from other academies operated by the Academy Trust (“**All Other Resources**”), it is likely that the cost of running the Academy during the Critical Year would cause the Academy Trust to become insolvent (and for this reason only) then the Academy Trust may give written notice of its intention to terminate this Agreement on 31 August before the Critical Year.
- 5.U Any notice given by the Academy Trust under clause 5.T must be provided to the Secretary of State within six weeks of the Secretary of State issuing the Funding Allocation. The notice given by the Academy Trust under clause 5.T must specify:

- a) the grounds upon which the Academy Trust's opinion is based, including:
 - i. evidence of those grounds;
 - ii. any professional accounting advice the Academy Trust has received;
 - iii. a detailed statement of steps which the Academy Trust proposes to take to ensure that the running costs of the Academy are reduced such that costs are less than the Funding Allocation and All Other Resources, and the period of time within which such steps will be taken; and
- b) the shortfall in the Critical Year between the Funding Allocation and All Other Resources expected to be available to the Academy Trust to run the Academy and the projected expenditure on the Academy; and
- c) a detailed budget of income and expenditure for the Academy during the Critical Year (the "**Projected Budget**").

5.V Both parties will use their best endeavours to agree whether or not the cost of running the Academy during the Critical Year would cause the Academy Trust to become insolvent. Both parties recognise that they will need to engage in a constructive dialogue at the time about how best to provide education for the pupils at the Academy and use their best endeavours to agree a practical solution to the problem.

5.W If no agreement is reached by 30 April (or another date if agreed between the parties) as to whether the cost of running the Academy during the Critical Year would cause the Academy Trust to become insolvent, then that question will be referred to an independent expert (the "**Expert**") for resolution. The Expert's determination will be final and binding on both parties. The Expert will be requested to specify in his determination the amount of the shortfall in funding (the "**Shortfall**").

- 5.X The Expert will be an insolvency practitioner with significant professional experience of educational institutions or academies. If the parties fail to agree upon the appointment of the Expert then the Expert will be appointed by the President of the Institute of Chartered Accountants in England and Wales. The Expert's fees will be borne equally between the parties.
- 5.Y The Expert will be required in reaching his determination to take account of advice from an educational specialist who is professionally familiar with the issues arising from the budget management of schools. If the parties fail to agree upon the appointment of the educational specialist then the educational specialist will be appointed by the Chairman of the Specialist Schools and Academies Trust (or any successor or equivalent body). The educational specialist's fees will be borne equally between the parties.
- 5.Z If the Expert determines that the cost of running the Academy during the Critical Year would cause the Academy Trust to become insolvent, and the Secretary of State will not have agreed to provide sufficient additional funding to cover the Shortfall, then the Academy Trust will be entitled to terminate this Agreement, by notice expiring on 31 August before the Critical Year. Any such notice will be given within 21 days after (a) the Expert's determination will have been given to the parties or (b), if later, the Secretary of State will have given written notice of his refusal to provide sufficient additional funding for the Academy to cover the Shortfall.
- 5.AA The provisions of this clause 5.AA and of clauses 5.BB to 5.MM (inclusive) shall apply when the Project Agreement is subsisting.
- 5.BB The Secretary of State will, before the start of each Academic Financial Year, provide the Academy Trust with a final allocation indicating the level of GAG and EAG to be provided in the next following Academy Financial Year (the "Indicative Funding").
- 5.CC For the purposes of clauses 5.CC to 5.MM

“Critical Years” means the current financial year and, if an annual letter of funding or its equivalent has been received for the following financial year, that financial year;

“Current Funding” means the funding specified in the annual letters of funding (or their equivalent) for the Critical Years and all other resources available and likely to be available to the Academy Trust, including funds detailed in the Master Agreement;

A “PFI EAG Refusal” occurs where:

- (a) the Academy Trust has made a request for EAG funding in connection with its obligations or discharging its liabilities under the School Agreement or the Principal Agreement; and
- (b) the Secretary of State has not agreed, in accordance with clauses 3.16 and 3.17 of the Master Agreement, to provide such EAG funding to the Academy Trust.

5.DD Within 30 days of being notified by the Secretary of State of a PFI EAG Refusal, the Academy Trust may provide written notice that it considers that, after taking into account its Current Funding , it is likely that the running costs during the Critical Years would cause the Academy Trust to go into Insolvency (“Academy Trust Insolvency Notice”).

5.EE Any Academy Trust Insolvency Notice must specify the grounds upon which the Academy Trust’s opinion is based, including:

- a. evidence of those grounds;
- b. any professional accounting advice, upon which the Academy Trust’s opinion is based;
- c. a detailed statement of steps which the Academy Trust proposes to take to ensure that as soon as reasonably practicable the running costs are reduced sufficiently in the Critical Years to ensure that such costs

are less than its Current Funding and the period of time within which such steps will be taken;

- d. the shortfall in the Critical Years between the Current Funding expected to be available to the Academy Trust to cover the running costs and the projected expenditure of the Academy Trust; and
- e. a detailed budget of income and expenditure for the Academy during the Critical Years.

5.FF Within 15 days of the provision of the Academy Trust Insolvency Notice, both parties shall discuss and if possible (using reasonable endeavours) agree whether or not it is likely that the running costs during the Critical Years would cause the Academy Trust to go into Insolvency and such Insolvency could not be avoided through prudent financial management (including, by using GAG funding prudently). Both parties recognise that they will need to engage in a constructive dialogue at the time about how best to provide education for the pupils at the Academy and agree to use their reasonable endeavours to agree a practical solution to the problem.

5.GG If no agreement is reached in accordance with clause 5.FF within 15 days of the Academy Trust Insolvency Notice being served, then the following questions shall be referred to an independent expert (the "Expert") for determination:

- a. whether, on the basis of Current Funding, it is likely that the running costs during the Critical Years would cause the Academy Trust to go into Insolvency;
- b. whether the Academy Trust is using the funds provided under this Agreement and the Master Agreement prudently; and
- c. whether the Academy Trust is using the funds provided under this Agreement and the Master Agreement in accordance with the requirements of this Agreement and the Master Agreement.

The Expert's determination shall be final and binding on both parties. The Expert shall be requested to specify in his determination:

- (a) the amount of any shortfall (if any) in funding between the running costs and the Current Funding during the Critical Years (the "Shortfall"); and
- (b) (if appropriate) recommendations as to future spending and the running costs.

The Expert will be an insolvency practitioner with significant professional experience of educational institutions or academies. If the parties fail to agree upon the appointment of the Expert then the Expert shall be appointed by the President of the Institute of Chartered Accounts in England and Wales.

5.HH The Expert's and the educational specialist's fees shall be borne equally between the parties.

5.II For the purpose of clauses 5.JJ and 5.LL, "Insolvency Decision" means either:

5.II.1 in accordance with clause 5.FF, the Secretary of State agrees with the Academy Trust that on the basis of the Current Funding it is likely that the running costs during the Critical Years would cause the Academy Trust to go into Insolvency which could not be avoided through prudent financial management (including, using GAG funding prudently); or

5.II.2 an Expert determines in accordance with clause 5.GG that on the basis of the Current Funding it is likely that the running costs during the Critical Years would cause the Academy Trust to go into Insolvency or that the Academy Trust is not using the funds provided under this Agreement and the Master Agreement prudently and in accordance with the requirements of this Agreement and the Master Agreement.

5.JJ Within 10 Business Days of an Insolvency Decision, the Secretary of State may either at its options:

5.JJ.1 withdraw the PFI EAG Refusal and promptly pay to the Academy Trust the amount of requested EAG funding or such other sum as shall be appropriate; or

5.JJ.2 terminate this Agreement on not less than 20 Business Days notice to the Academy Trust.

5.KK In the event that the Secretary of State provided EAG funding in accordance with Clause 5.JJ, the Secretary of State may within 12 months of paying the additional EAG funding, terminate this Agreement at any time.

In the event that there is no Insolvency Decision, this Agreement shall continue and the Secretary of State shall not be obliged to pay to the Academy Trust the requested EAG funding.

Effect of termination

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

5.MM Subject to clauses 5.CC and 5.DD, if the Secretary of State terminates this Agreement under clause 5.A, he will indemnify the Academy Trust. If the Secretary of State terminates this Agreement otherwise than under clause 5.A, he may at his discretion indemnify or compensate the Academy Trust.

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

5.OO The categories of expenditure incurred by the Academy Trust in consequence of termination, for which the Secretary of State may indemnify the Academy Trust under clauses 5.BB, may include:

- a) staff compensation and redundancy payments;
- b) compensation payments in respect of broken contracts;

- c) expenses of disposing of assets or adapting them for other purposes;
- d) legal and other professional fees; and
- e) dissolution expenses.

5.PP If this Agreement is terminated, and the Academy Trust owns capital assets which have been partly or wholly funded by HM Government, the Academy Trust must, as soon as possible after the termination date:

- a) transfer a proportion of those capital assets, equal to the proportion of the original financial contribution made by HM Government, to a nominee of the Secretary of State to use for educational purposes; or
- b) if the Secretary of State directs that a transfer under clause 5.EE(a) is not required, pay to the Secretary of State at the termination date (or, by agreement with the Secretary of State, at the date of their subsequent disposal) a sum equivalent to the proportion of the original financial contribution made by HM Government.

5.QQ The Secretary of State may:

- a) Waive all or part of the repayment due under sub-clause 5.EE(b) if the Academy Trust obtains his permission to invest the sale proceeds for its charitable purposes; or
- b) direct the Academy Trust to pay all or part of the sale proceeds to the relevant LA.

6. OTHER CONTRACTUAL ARRANGEMENTS

Annexes

6.A Any annexes to this Agreement form part of and are incorporated into this Agreement.

The Master Agreement

6.B Except as expressly provided in this Agreement, all provisions of the Master

Agreement have full force and effect.

General

- 6.C The Academy Trust cannot assign this Agreement.
- 6.D Failure to exercise, or a delay in exercising, any right or remedy of the Secretary of State under this Agreement (including the right to terminate this Agreement), or a single or partial exercise of such a right or remedy, is not a waiver of, and does not prevent or restrict any initial or further exercise of, that or any other right or remedy.
- 6.E Termination of this Agreement will not affect the accrued rights, remedies, obligations or liabilities of the parties existing at termination.
- 6.F This Agreement may be executed in any number of counterparts, each of which when executed and delivered shall constitute a duplicate original, but all of which will together constitute the same agreement.
- 6.G 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, and submitted to the exclusive jurisdiction of the courts of England and Wales.

This Agreement was executed as a Deed on 24 May 2019

EXECUTED AS A DEED by:-

HUMBER EDUCATION TRUST

Acting by a director in the presence of a witness:

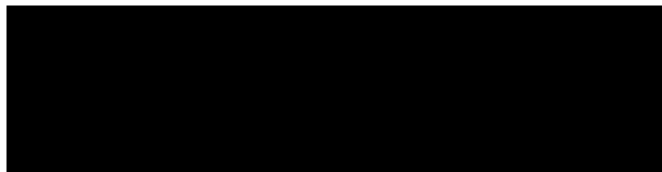
Director: Piller

Print Name: RACHEL WILKES

Witness: Sturston

Print Name: SARAH THURSTON

Address:



Occupation: HEAD OF SCHOOL, CLIFTON PS

The Corporate Seal of

THE SECRETARY OF STATE FOR EDUCATION

affixed to this deed is authenticated by:

.....
Duly Authorised



Department
for Education

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