

**ACADEMIES SPONSORED BY**  
**ARK ACADEMIES**

**MASTER FUNDING AGREEMENT**

**2006**

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## INTRODUCTION

- 1) This Master Funding Agreement is made under section 482 of the Education Act 1996, as substituted by the Education Act 2002, between **The Secretary of State for Education and Skills** (“the Secretary of State”) and **ARK Academies** (the “Company”).
- 2) The Company is a company incorporated in England and Wales, limited by guarantee with registered company number 5112090, and is registered as a charity (charity number 1111608).
- 3) The Company intends to sponsor a number of Academies.
- 4) This Agreement and the Supplemental Agreements will apply in respect of all Academies, from such time as a Supplemental Agreement relating to that Academy shall have been entered into between the Secretary of State and the Company.
- 5) The following expressions used in this Agreement have the respective meanings assigned to them by the numbered clauses of this Agreement referred to immediately after the reference to the expressions -
  - a) “Accounting Officer” – clause 77;
  - b) "annual letter of funding" - clause 71;
  - c) "GAG" – clauses 59-67;
  - d) “Capital Cash Flow Programme” – clause 42;
  - e) “Capital Costs Spreadsheet” – clause 41;
  - f) "Capital Expenditure" - clause 39;
  - g) “Capital Grant” – clause 39;
  - h) "EAG" - clause 68;
  - i) “Financial Handbook” - clause 78;
  - j) "financial year" - clause 72;
  - k) “Implementation Grant” – clause 54;
  - l) “Local Governing Body” – clause 13;

- m) "Monthly Report" – clause 49(a);
  - n) "Projected Cost Overrun" – clause 49(a)(v);
  - o) "recurrent expenditure" – clause 38;
  - p) "School Development Plan" – clause 16;
  - q) "Start-up Period" – clause 64;
- 6) In this Agreement the following words and expressions shall have the following meanings:-

"1996 Act" means the Education Act 1996;

"Academy" – an Academy in respect of which a Supplemental Agreement shall have been entered into between the Secretary of State and the Company and the expression "Academies" shall refer to all or any of such Academies;

"Accelerated Academy" means an Academy which is due to open in September 2006 and any other Academy which the Company and the Secretary of State agree should be an Accelerated Academy;

"Actual Development Expenditure" means (at any time) the amount of Capital Expenditure incurred at that time;

"admission arrangements" – the arrangements described in an annex to the relevant Supplemental Agreement;

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

"Budgeted Development Expenditure" means (at any time) the amount of Capital Expenditure intended to be incurred at that time in accordance with Annex 3B to the relevant Supplemental Agreement;

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

“Cash Limit” means the amount of the Cash Limit shown in the relevant Supplemental Agreement;

“Company’s Contribution” means the amount of the Company’s Contribution shown in the relevant Supplemental Agreement;

“DfES” means Department for Education and Skills;

“headteacher” means the Principal of an Academy;

“LEA” means local education authority;

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

“parents” means parents or guardians;

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

“project” means the establishment of an Academy;

“Project Board” means the group of persons representing, inter alia, the Company, the relevant LEA and the Secretary of State which prior to the opening of the relevant Academy and/or completion of the buildings for the relevant Academy normally meets monthly under the chairmanship of the Company to consider issues arising in connection with the establishment of the Academy;

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

“SEN” means Special Educational Needs;

“Supplemental Agreements” means agreements substantially in the form set out in Schedule 1 to this Agreement in relation to an Accelerated Academy or in the form set out in Schedule 2 to this Agreement for all other Academies to be entered into between the Secretary of State and the Company supplemental to this Agreement pursuant to which the Company agrees to sponsor and the Secretary of State agrees to fund, upon the terms and subject to the conditions set out in this Agreement and the relevant Supplemental Agreement, an Academy;

- 7) Expressions defined in this Agreement shall have the same meaning where used in any Annex to this Agreement or Supplemental Agreement.
- 8) Questions arising on the interpretation of the arrangements in this Agreement shall be resolved by the Secretary of State after consultation with the Company. In resolving any such questions the Secretary of State must act reasonably.
- 9) Section 482 (1) of the 1996 Act as substituted by the Education Act 2002 states that -

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

- a) that person undertakes to establish and maintain, and to carry on or provide for the carrying on of, an independent school in England with the characteristics mentioned in subsection (2), and such other characteristics as are specified in the agreement, and
- b) the Secretary of State agrees to make payments to that person in consideration of those undertakings."

## **LEGAL AGREEMENT**

- 10) If it is agreed between the Secretary of State and the Company that the Company will sponsor an Academy the parties will enter into a Supplemental Agreement in relation to that Academy.

## **CHARACTERISTICS OF AN ACADEMY**

- 11) The characteristics of an Academy set down in section 482 (2) of the 1996 Act, as substituted by the Education Act 2002, are that the school
  - a) has a broad curriculum with an emphasis on a particular subject area, or particular subject areas, specified in the Agreement, and
  - b) provides education for pupils of different abilities and who are wholly or mainly drawn from the area in which the school is situated.

## **CONDITIONS OF GRANT**

### General

- 12) Section 482(4) of the 1996 Act provides for an agreement to specify other conditions and requirements. Unless specified otherwise in a Supplemental Agreement, these



conditions in respect of an Academy are that:

- a) the school will be at the heart of its community, sharing facilities with other schools and the wider community;
- b) there will be assessment in the core subjects of the national curriculum at Key Stage 3, and the opportunity to study for external qualifications as defined by section 96 of the Learning and Skills Act 2000;
- c) the admissions policy and arrangements for the school will be consistent with admissions law, and the DfES Codes of Practice, for maintained schools;
- d) levels of pay and conditions of service for all employees will be the responsibility of the Company;
- e) there will be an emphasis on the needs of the individual pupils including pupils with SEN both those with and without statements of SEN;
- f) there will be no charge in respect of admission to the school and the school will only charge pupils where the law allows maintained schools to charge.

### **Governance**

13) Each Academy will be governed by the Company delegating functions as appropriate to a local governing body (the "Local Governing Body") who are appointed by the directors of the Company as a committee, in accordance with the Articles. The Company and the Local Governing Body shall exercise their powers and functions with a view to fulfilling a largely strategic role in the running of the Academy and shall consider any advice given by the headteacher. The Company may exercise its powers and fulfil its functions through its servants or agents.

14) Subject to the Memorandum and Articles, this Agreement and each Supplemental Agreement, the Company may regulate its own procedure and that of any of its committees.

### **Conduct**

15) Each Academy shall be conducted in accordance with:

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

### **School Development Plan and target setting**

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

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

17) The Company shall in relation to each Academy set such targets in areas to be specified by the Secretary of State each year. When there are students in an Academy to whom the targets apply, the target areas for the initial year of that Academy shall be:

- a) percentage of pupils achieving five or more GCSEs at grades A\*-C; and
- b) percentage of pupils achieving level 5 or above at Key Stage 3 in English, maths, science and ICT.

18) The Company shall consult the Secretary of State and the LEA in whose area the relevant Academy is situated each year before setting the targets referred to above and shall take into account (but not be bound by) any comments received from the Secretary of State and/or the LEA. The Company shall set its targets for each Academy in accordance with the timetable for target setting which applies to maintained schools.

### **Pupils**

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

- a) the admission of pupils to the Academy will be set out in an annex to the relevant Supplemental Agreement; and
- b) the admission to the Academy of and support for pupils with SEN and with disabilities (for pupils who have and who do not have statements of SEN) (including the appointment of a responsible person) are set out in Annex B to this Agreement;

in each case together with the arrangements for making changes to such arrangements, including the requirement to secure the consent of the Secretary of State, such consent not to be unreasonably withheld or delayed. Arrangements for pupil exclusions are set out in Annex C to this Agreement.

### **Teachers and other staff**

20) The Company shall not engage 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 in a maintained school under the Education (Specified Work and Registration) (England) Regulations 2003 (SI 2003/1663).

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

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

23)

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

- a) staffing structure, and staff remuneration

b) staff discipline and performance management.

23.2) The Company will:

- (1) use its reasonable endeavours to encourage teachers eligible to do so to register with, and to maintain their registration with, the General Teachers Council;
- (2) not after 1 September 2006 offer to employ as teachers persons eligible to be registered into the General Teachers Council without requiring them as a term of their contracts of employment to register with, and to maintain their registration with, the General Teachers Council; and
- (3) pay or reimburse to the teachers in question the cost of such teachers registering with, and maintaining their registration with, the General Teachers Council.”

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

24) The curriculum provided by each Academy to pupils up to the age of 16 shall be broad and balanced. The core subjects of the National Curriculum (being Mathematics, English and Science) must be taught to all pupils in years 7-11 except where, in the opinion of the head teacher, it is inappropriate for an individual pupil or groups of pupils to be taught one or more of those subjects. The specialism for each Academy will be set out in the relevant Supplemental Agreement.

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

26) Subject to clause 28 or unless specified otherwise in a Supplemental Agreement provision shall be made for religious education to be given to all pupils at the Academy in accordance with the requirements for agreed syllabuses in section 375(3) of the Education Act 1996 and paragraph 2(5) of Schedule 19 to the School Standards and Framework Act 1998, and having regard to the requirements of the Qualifications and Curriculum Authority's national framework for religious education in schools.

27) Subject to clause 28, or unless specified otherwise in a Supplemental Agreement, each Academy shall comply with the requirements of section 70(1) of, and Schedule 20 to, the Schools Standards and Framework Act 1998 as if it were a community, foundation or voluntary school which does not have a religious character, except that the provisions of paragraph 4 of that Schedule do not apply. Each Academy may apply to the Secretary of State for consent to be relieved of the requirement imposed by paragraph 3(2) of that

Schedule, the Secretary of State's consent to such an application not to be unreasonably withheld or delayed.

28) Section 71(1) – (4) of the School Standards and Framework Act 1998 shall apply as if each Academy were a community, foundation or voluntary school, and as if references to “Religious Education” and to “Religious Worship” in that section were references to the religious education and religious worship provided by each Academy in accordance with clauses 23 and 24 respectively.

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

### **Assessment**

30) The Company shall register each Academy with the Qualifications and Curriculum Authority for the purposes of arranging for all eligible pupils to take part in the national curriculum assessment system at the end of the Key Stage 3 programmes of studies. This includes arranging for pupils to take the English, Maths and Science tests and for teacher assessments of pupils' performance in those subjects.

31) No Academy may offer courses which lead to external qualifications (as defined in section 96 of the Learning and Skills Act 2000) that are not approved under section 98 of that Act unless the Secretary of State gives specific consent for such courses to be offered.

### **School meals**

32) The Company shall, if requested to do so by or on behalf of any pupils at an Academy, provide school lunches for those pupils unless it would be unreasonable for it to do so. Subject to the provisions of clause 33 charges may be levied for lunches.

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

### **Charging**

- 34) Sections 402 (Obligation to enter pupils for public examinations), 450 - 457 (charges), 459 (regulations about information about charges and school hours) and 460 (voluntary contributions), 461 (recovery of sums as civil debt) - 462 (Interpretation re charges) of the 1996 Act shall be deemed to apply to each Academy with the following modifications:
- a) references to any maintained school shall be treated as references to an Academy;
  - b) references to registered pupils shall be treated as references to registered pupils at an Academy;
  - c) references to the governing body or the local education authority shall, in each case, be treated as references to the Company;
  - d) the charging and remissions policies required to be determined under section 457, and any amendment thereto, shall require the approval of the Secretary of State; and
  - e) the Company may charge persons who are not registered pupils at an Academy for education provided or for facilities used by them at that Academy.

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

- 35) The Company shall publish a prospectus for each Academy annually, shall send it on request (free of charge) to parents of pupils at the Academy and to the Secretary of State; and shall make it available for inspection by other persons at the relevant Academy. The prospectus shall, except in so far as such information is published in a document known as a School Profile (which would accompany or be incorporated in the prospectus), include:
- a) details of admission arrangements;
  - b) details of the curriculum offered, of assessment arrangements and of the results of attainment tests and public examinations at school level, but this shall not include details of individual pupils' attainment and examination results;
  - c) details of any religious affiliation of the school; policy on providing for children with SEN; arrangements for pupils with disabilities (as specified in an annex to the relevant Supplemental Agreement); pupil absence rates; and destination of school leavers; and
  - d) any further information as set out in Schedule 3 of the Education (School Information) (England) Regulations 2002 (SI 2002/2897) as applies to maintained schools.

e) such other information as the Company may determine.

36) The prospectus referred to above shall be published in the school year immediately preceding the school year to which it relates and shall be published at least six weeks before the closing date for applying for a place.

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

### **General**

37) The Secretary of State shall pay grants towards capital and recurrent expenditure of each Academy. Except with the Secretary of State's prior agreement, the Company shall not budget for its expenditure to exceed its expected income. No decision by the Company 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;
- d) the purchase of vehicles and other self-propelled mechanical equipment;
- e) the installation and equipping of premises with furnishings and equipment, other than necessary replacements, repairs and maintenance due to normal wear and tear;
- f) the installation and equipping of premises with computers, networking for computers, operating software and information and communication technology equipment, other than necessary updates or necessary replacements, repairs and maintenance due to normal wear and tear;

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

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

- 40) Before a Supplemental Agreement is entered into between the Secretary of State and the Company in relation to an Academy it will be necessary for the Secretary of State and the Company to agree between them the amount and expected timing of the Capital Expenditure necessary to establish that Academy and in particular to agree the forms of the Annexes to the relevant Supplemental Agreement.
- 41) Annex 2 to the Supplemental Agreement (“the Capital Costs Spreadsheet”) will include Capital Expenditure incurred prior to the execution of the relevant Supplemental Agreement and the Capital Expenditure to be incurred after execution of that Agreement and before the Academy opens. For this purpose an Academy opens on the first day that its pupils attend school at the Academy.
- 42) Annex 3B to the Supplemental Agreement will show the projected cashflow of capital expenditure (“the Capital Cash Flow Programme”) by the Company after execution of the Agreement.
- 43) Both parties recognise that as the project develops it may be necessary to revise costs in the Capital Cost Spreadsheet and to move costs between spreadsheet elements in order to ensure that the project remains within its approved budget. Where the Company wishes to make such adjustments of over £10,000, it must submit the proposed



adjustment with the reasons for it to the Secretary of State for approval.

44) Where the Company foresees a significant change in the timing of capital expenditure shown in the Capital Cash Flow Programme of over £100,000, a revised Capital Cash Flow Programme must be submitted to the Secretary of State for approval. The Company must ensure that no pattern of spending is allowed to develop which cannot be contained within the approved capital expenditure limits. The Secretary of State must be informed immediately if any danger of any of the capital costs set out in Capital Costs spreadsheet being exceeded is foreseen so that steps can be taken to rectify the situation and ensure that the project remains within its capital cash limit.

#### **Capital Expenditure necessary to establish the Academy**

45) The Secretary of State and the Company hereby agree that each Academy will be constructed in accordance with the architect's drawings and specification on materials set out as an annex of the relevant Supplemental Agreement.

46) Before a Supplemental Agreement is entered into between the Secretary of State and the Company in relation to an Academy it will be necessary for the Secretary of State and the Company to agree between them the Cash Limit and the amount of the Company's Contribution. The Cash Limit will include Capital Expenditure incurred for the purposes of or in connection with the establishment of the Academy prior to the date of the relevant Supplemental Agreement as shown in the Capital Costs Spreadsheet.

47) The Secretary of State and the Company agree that the Secretary of State will bear the Capital Expenditure required to establish each Academy up to an amount equal to the sum of the Cash Limit less the Company's Contribution and the Company will fund (and then bear) the Company's Contribution.

If the actual Capital Expenditure required to establish an Academy shall be less than the Cash Limit applicable to that Academy the amount to be borne by the Secretary of State shall be reduced by the amount by which such Capital Expenditure falls below the Cash Limit.

48) The arrangements (including timing) for payments for these costs are set out in clause 53 and an annex to the relevant Supplemental Agreement. Payment by the Secretary of State will be dependent on his approval of the matters set out in Annex D to this Agreement.

49) a) The Company shall, by the fifth Business Day before each meeting of the Project

Board for each Academy, provide to the Secretary of State a copy of a report ("the Monthly Report") setting out in relation to the Academy:

- i) the Actual Development Expenditure as at the end of the calendar month immediately before the date when the Monthly Report is provided to the Secretary of State ("the relevant month");
  - ii) the Budgeted Development Expenditure as at the end of the relevant month;
  - iii) the amount (if any) by which the Actual Development Expenditure exceeds Budgeted Development Expenditure as at the end of the calendar month;
  - iv) a projection, as at the end of the relevant month, of the Capital Expenditure required to establish the Academy;
  - v) if the Capital Expenditure shown in such projection is greater than the Cash Limit (the different being a "Projected Cost Overrun"), the reason why a Projected Cost Overrun may be incurred.
- b) In the event that a Monthly Report shows that a Projected Cost Overrun may be incurred the parties will use their best endeavours to agree ways in which the amount of Capital Expenditure may be reduced, including, if necessary, amendments to the specification for the Academy, so as to keep the Capital Expenditure within the Cash Limit.

50) If the actual Capital Expenditure required to establish an Academy exceeds the Cash Limit applicable to that Academy the additional Capital Expenditure shall be the responsibility of the Company except that the Secretary of State shall (subject to the Company complying with its obligations under clause 49) contribute:

- a) in full any agreed necessary additional Capital Expenditure (such agreement not to be unreasonably withheld or delayed), the need for which could not reasonably have been foreseen by the Company at the time the Cash Limit was set;
- b) such percentage as may be agreed between the parties of any other additional Capital Expenditure which the parties agree should be incurred.

### **Other Capital Expenditure**

51) Any Capital Expenditure incurred in respect of an Academy beyond the Cash Limit applicable to that Academy on which Capital Grant payments are sought from the

Secretary of State will require the specific agreement of the Secretary of State, which agreement shall not be unreasonably withheld or delayed. Unless the Company undertakes to meet such Capital Expenditure entirely itself such agreed Capital Expenditure as is incurred will be shared in a proportion to be agreed between the Secretary of State and the Company in relation to, and having regard to the nature of, each such Capital Expenditure. Any agreed Capital Expenditure required in order to meet the requirements of legislation enacted or made after the date of the relevant Supplemental Agreements shall be funded in full by the Secretary of State.

### **Conditions on Capital Grant**

52) Payment of Capital Grant is subject to the fulfilment of the following conditions:

- a) such grants are used to provide accommodation constructed and equipped to standards agreed by the Secretary of State as described in the relevant annex of the relevant Supplemental Agreement, or to defray other expenditure approved by the Secretary of State;
- b) the Company certifying and providing evidence that all planning and other consents necessary for the development and all related infrastructure of the relevant Academy have been obtained or put in place.

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

53) Capital Grant will be paid monthly by the Secretary of State to the Company. Each month the Company must submit a claim for Capital Grant to the Secretary of State in the notified format with supporting invoices and certificates as requested by the Secretary of State from time to time. Capital Grant will be paid within 21 days from the day on which a claim is received if the claim is in the proper format, supported by the appropriate documentation and the conditions on its payment set out at clause 43 are complied with. If a dispute arises as to whether a claim is or is not acceptable both parties undertake to attempt to resolve it in good faith. In the event of such a dispute, the Secretary of State shall pay to the Company so much of the claim as shall not be in dispute.

### **Implementation Grant**

54) The Secretary of State shall pay grant (known as "Implementation Grant") towards the establishment of each Academy. Implementation Grant covers the recurrent expenditure that the parties agree is necessary to establish and open the relevant Academy.

- 55) The Company shall prepare and submit to the Secretary of State for approval an Implementation budget showing recurrent costs to be incurred before the Academy opens and for which grant is sought. The approved Implementation budget cashflow will be attached as Annex 3C to the relevant Supplemental Agreement and will show the limits of the recurrent expenditure and the projected cashflow which the parties have agreed the Company is permitted to incur in order to establish the Academy.
- 56) Both parties recognise that as a project develops it may be necessary to revise individual costs in the implementation budget and to move costs between budget headings in order to ensure that the project remains within its approved budget. Where the Company wishes to make such an adjustment of over £10,000, the reason for the change and a revised implementation budget must be submitted to the Secretary of State for approval.

#### **Arrangement for Payment of Implementation Grant**

- 57) The Secretary of State will pay Implementation Grant in accordance with the approved implementation budget. Payment will be made by monthly instalments. The Company shall submit to the Secretary of State by the 10<sup>th</sup> of each month a claim in a form specified by the Secretary of State. If the claim accords with the approved budget or is otherwise acceptable to the Secretary of State at his discretion, then the Secretary of State undertakes to pay the amount due by the 25<sup>th</sup> of the month. If a dispute arises as to whether expenditure is within the approved budget or is otherwise acceptable both parties undertake to resolve the dispute in good faith. If the Secretary of State is of the opinion that the claim in question is not within the approved budget and that the claim is unacceptable then he shall notify the Company in writing of the reasons for his opinion. If the dispute has not been resolved by the due date for payment of the claim in question, the Secretary of State shall pay so much of the claim as shall not be in dispute.
- 58) Any amount of approved Implementation Grant in respect of which the expenditure has not been incurred by the Company by the date on which an Academy opens will lapse. Any amount of grant which has been paid but remains unexpended on relevant expenditure by the opening of an Academy will, without prejudice to any other mode of recovery, be taken into account in determining the total amount of grant to be paid to the Company after the Academy has opened. Any amount of Implementation Grant paid which is found to have been used on ineligible expenditure will, without prejudice to any other mode of recovery, be taken into account in determining the total amount of grant to be paid to the Company.

## **General Annual Grant**

59(1) GAG will be paid by the Secretary of State to the Company in order to cover the normal running costs of each Academy. These will include, but are not limited to:

- a) teacher 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, administrative and clerical; 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) bank charges;
- f) examination fees;
- g) repairs, servicing and maintenance, including, redecoration, repair and maintenance of buildings (including 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;
- h) insurance;
- i) medical equipment and supplies;
- j) staff development (including in-service training);
- k) curriculum development;
- l) 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 grants will also be paid for pupils with statements of special educational needs);

m) administration;

n) establishment expenses and other institutional costs.

59(2) Subject to clause 84 GAG paid in respect of each Academy shall only be used for the purposes of the Academy.

60) Subject to clauses 63-66, GAG for each financial year of an Academy will be funded at a level comparable to and as close to equal as possible to the expected level of funding which would be provided through the relevant LEA's funding formula for a comparable LEA maintained school in the area which the Academy is located and which has the Academy's relevant characteristics, including pupil numbers; plus:

a) LEA Holdback: Funding representing a proportion of the LEA Education Budget money which the LEA would be able to retain, from the non-delegated elements of the Schools Block and the relevant items in the LEA Block, if the relevant Academy were a maintained school. The proportion which this funding will represent will be based on the elements of the LEA's Section 52 Budget Return which are relevant to the relevant Academy; plus

b) Specialist Schools Allowance: a further sum representing funding which an LEA maintained school with the relevant Academy's characteristics would receive in respect of their participation in the DfES specialist schools programme; plus

c) VAT: a sum in respect of the estimated Value Added Tax payable by the Company for each financial year in relation to the normal running costs of the relevant Academy which is not recoverable; the estimate shall be made using the method determined by the Secretary of State after consultation with finance directors of academies; plus

d) Insurance: In the academic year beginning 1 September 2006, insurance costs for each Academy will be reimbursed at actual cost. Thereafter, the Secretary of State will pay grant in respect of insurance costs sufficient to enable the Company to arrange insurance for each Academy of the kind which appears reasonable and necessary, having regard to any reasonable requirements of the Secretary of State as to the level and type of cover.

61) The GAG for an Academy will also include the following areas of funding for as long as they are necessary and equivalent funding is provided to maintained schools:

- a) LGPS contributions: Whilst it is necessary for an Academy to incur extra costs in order to be a member of the LGPS due to having a small number of employees partaking in the scheme, the Secretary of State will pay an extra amount of grant in respect of these costs each financial year. Both parties acknowledge that new ways of working are being explored to lessen these costs and if these are successful this element of GAG will reduce or cease accordingly;
- b) School Standards Grant: Whilst this direct grant for maintained schools (Direct Grant to Schools) is paid by DfES, each Academy will receive an equivalent amount as part of its GAG each financial year;
- c) Teachers Threshold Payments: Whilst maintained schools receive a separate grant from DfES in respect of teachers threshold payments, each Academy will receive funding on the same basis as maintained schools for all of its teachers who are entitled to threshold payments;
- d) Relevant New Grants for Maintained Schools: Where the Secretary of State starts to pay new grants (which are not standards fund grants) for specific programmes in maintained schools which are relevant to the Academies, each Academy will receive funding on a similar basis.

62) The basis of the pupil number count for the purposes of determining GAG will be the Company's estimate in November for numbers on roll in the following September. The basis of the GAG calculation, including any annual re-pricing which may be necessary, will be set out in the annual letter of funding except that the level of teachers threshold payments will not be included in the letter and will depend on the information provided by the Company in that financial year regarding how many teachers are entitled to the payments and at what level.

63) The Secretary of State reserves the right to make in year adjustments in the level of GAG payable to the Company in respect of each Academy in the following circumstances:

- a) pupil numbers at the relevant Academy are 10% or more below estimates;
- b) pupil numbers at the relevant Academy are 5% or more above estimates;

- c) additional grants relevant to an Academy are made by the Secretary of State to maintained schools.

The Company will notify the Secretary of State if at any stage in the year pupil numbers vary from the estimates by the percentages set out in clauses 63 (a) or (b). The Secretary of State will base his assessment of the variation of pupil numbers on information provided by the Company and data from the school census; in September and January each year. The adjustments to the level of GAG may be in respect of any element of the GAG.

64) The Secretary of State recognises that:

- a) in relation to Academies which open with intakes representing only a proportion of the final planned size of the Academy, payments based simply upon the number of pupils present are unlikely to be sufficient to meet the Academy's needs in the years before all age groups are present at their planned size (the "Start-up Period") because of a lack of economies of scale. The Secretary of State undertakes to pay an appropriately larger GAG in the Start-up Period than would be justified solely on the basis of the methods set out in clauses 60 and 61, in order to enable the Academy to operate effectively. The Company will make a bid to the Secretary of State for this addition to GAG based upon need and providing appropriate supporting evidence;
- b) in relation to Academies which open with pupils transferred from one or more LEA-maintained schools which have closed, additional GAG resources will be required to take account of transitional costs including any costs associated with supporting the integration of pupils from the closed schools and, where necessary, to offer a dual curriculum.

65) During the Start-up Period or during the period when year groups are present who have transferred from a predecessor school or schools, the Secretary of State will pay a further element of GAG additional to that calculated in accordance with the methods set out in clauses 60 and 61 to allow the relevant Academy to:

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



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

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

- 66) The Secretary of State recognises that if he serves notice of intention to terminate a Supplemental Agreement under that agreement the intake of new pupils during the notice period is likely to decline and that in such circumstances payments based simply upon the number of pupils attending the relevant Academy are unlikely to be sufficient to meet the Academy's needs during the notice period. The Secretary of State undertakes to pay a reasonable and appropriately larger GAG in the notice period than would be justified solely on the basis of the methods set out in clauses 60 and 61, in order to enable the Academy to operate effectively.
- 67) The Secretary of State also recognises that if this Agreement or a Supplemental Agreement is terminated for any reason by either party the number of pupils at the relevant Academy or Academies is likely to decline. In these circumstances both parties undertake to attempt to resolve issues arising from such termination in good faith and with the aim of protecting the interests and the education of the pupils at the Academy.

### **Earmarked Annual Grant**

- 68) Earmarked Annual Grant ("EAG") shall be paid by the Secretary of State in respect of either recurrent or Capital Expenditure for such specific purposes as may from time to time be agreed between the Secretary of State and the Company and as described in the relevant funding letter. The Company is free to determine how best to use each of its EAGs within the scope of the grant set out in the relevant funding letter.
- 69) Where the Company is seeking a specific EAG in relation to any financial year, it shall submit a letter outlining its proposals and the reasons for its request to Academies Division, Sanctuary Buildings, Great Smith Street, London SW1P 3BT by 15 February of the year preceding the financial year in question.

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

- 70) The Secretary of State shall notify the Company in December preceding the start of each financial year of the GAG and EAG figures in respect of each Academy which, subject to Parliamentary approval, the Secretary of State plans for that year and of the assumptions and figures on which these are based.

- 71) The amounts of GAG for an Academy financial year will be determined annually by the Secretary of State. The amount of GAG will be notified to the Company in a funding letter not later than 1 April preceding that year (the "annual letter of funding"). The annual letter of funding will not include the amount which the Company will receive in respect of Teacher Threshold Payments whilst that grant is paid as a separate payment, which will be notified later in the year on a date to be agreed. Amounts of EAG will be notified to the Company according to an agreed programme.
- 72) For the purposes of this Agreement, the Academy's financial year shall be deemed to run from September to August, in order to align it to the school academic year. The Secretary of State undertakes to pay GAG in monthly instalments on or before the twenty fifth day of each month, each such instalment to fund the salaries and other payroll costs for the relevant month of all monthly paid employees and all other costs payable during the next following month. The detailed arrangements for payment will be set out in the annual letter of funding.

#### **Other relevant funding**

- 73) Subject to the Company first obtaining the Secretary of State's consent to make the relevant redundancies, which consent shall not be unreasonably withheld or delayed, the Secretary of State shall meet a proportion of the costs arising from the inclusion of Academies in the Schedules to the Redundancy Payments (Continuity of Employment in Local Government) (Modification) Order 1999. The Secretary of State shall meet the costs of the employee's prior eligible service, being service prior to the opening of the Academy, and the Company will meet the costs of service after the opening of the Academy.
- 74) The Secretary of State may meet costs incurred by the Company in connection with the transfer of employees from a predecessor undertaking under the Transfer of Undertakings (Protection of Employment) Regulations 2006. Payment of grant in respect of such costs is to be agreed between the parties on a case by case basis and the Company shall not budget on the basis that it will receive any grant in respect of such costs unless it is specifically notified that such grant will be paid.
- 75) The Company may also receive funding from LEAs in respect of the provision detailed in statements of SEN for pupils attending an Academy in accordance with the provisions of Section 483A of the Education Act 1996 and regulations made under that section. The Company shall ensure that all provision detailed in statements of SEN is provided for

such pupils.

76) The Company should also receive funding from the LEA in whose area it is located, from the Standards Fund. The scheme under which the Standards Fund money is to be distributed by the Secretary of State to LEAs and schools will permit LEAs to receive grants to Academies in the same way as they can do for maintained schools. The relevant Academy must use any grants received under the Standards Fund in accordance with any conditions specified in relation to that grant. Grants paid to the Company from the Standards Fund are not paid under this Agreement.

### **Financial and Accounting Requirements**

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

78) The Company shall in relation to each Academy abide by the provisions within the Financial Handbook published by the DfES as amended from time to time and as modified to take account of the fact that the Company manages more than one Academy, which sets out in detail provisions for the financial management of each Academy including guidance on financial systems and controls and accounting and reporting requirements.

79) The formal budget plan must be approved each year by the directors of the Company.

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

- a) in its conduct and operation of the relevant Academy it shall apply financial and other controls which conform to the requirements both of propriety and of good financial management;
- b) arrangements have been made to maintain proper accounting records and that statements of income and expenditure and balance sheets may be produced in such form and frequency as the Secretary of State may from time to time reasonably direct;

- c) such financial statements are published at the end of each financial year in such form and manner as the Secretary of State may reasonably direct and a copy sent to him by 31 December each year. These statements should carry an audit report stating that, in the opinion of the auditors, the statements show a true and fair view of each Academy's affairs and that the grants were used for the purposes intended;
- d) the Company prepares and files with the Companies Registry such annual accounts as are required by the Companies Act 1985;
- e) a statement of the accounting policies used is sent to the Secretary of State with the financial statements;
- f) the Company insures or procures insurance by another person of its assets in accordance with normal commercial practice or under the terms of any subsisting leases in respect of the leasehold interest of the site upon which the Academy is situated;
- g) the Company prepares and files with the Charity Commission annual accounts prepared in accordance with the Statement of Recommended Practice;
- h) the Company shall comply with their obligation under the Charities Act 1993 (or any statutory re-enactment or modification of that Act) with regard to the preparation of an annual report and its transmission to the Charity Commissioners;
- i) the Company shall ensure that each Academy's accounts are audited annually by independent auditors whose appointment is approved by the Secretary of State.

81) In addition, and at his expense, the Secretary of State may instruct any suitably qualified person to report to him on the adequacy and effectiveness of the accounting systems and internal controls maintained by the Company in relation to each Academy and to make recommendations for improving the financial management of each Academy.

82) The books of accounts and all relevant records, files and reports of the Company relating to each Academy including those relating to financial controls, shall be open at all reasonable times to officials of the DfES and the National Audit Office and to contractors retained by the DfES or the National Audit Office for inspection or the carrying out of value for money studies and the Company shall secure that those officials and contractors are given reasonable assistance with their enquiries. For the purposes of

this clause 'relevant' means in any way relevant to the provision and use of grants provided by the Secretary of State under this Agreement.

83) The Company shall submit indicative budgets relating to each Academy to the Secretary of State not later than by 15 February before the start of each financial year. Such budgets shall set out clearly the prospective income and expenditure of the relevant Academy and shall differentiate, and give adequate details of:

- a) a statement of expected income for that year including cash donations and gifts in kind from sources other than GAG, EAG and grants from the Secretary of State towards capital expenditure, distinguishing between income from public funds including the national lottery and income from other sources. Income from cash donations and gifts in kind from sources other than GAG, EAG and grants from the Secretary of State towards capital expenditure will not be taken into account by the Secretary of State in the calculation of GAG;
- b) a statement of proposed recurrent expenditure for that financial year;
- c) a statement of proposed capital expenditure for that financial year.

84) At the beginning of any year the Company may hold unspent GAG from previous years amounting to 12% of the total GAG payable in the year just ended or such higher amount as may from time to time be agreed. This carried forward amount may be used as follows:

- a) equivalent to 2% of the total GAG payable in the year just ended may be used by the Company for any of the purposes for which GAG is paid and whether for the purposes of the relevant Academy or for the purposes of any other Academy;
- b) equivalent to a further 12% of the total GAG payable in the year just ended, or such higher figure as may from time to time be agreed, minus any amount used under sub-clause (a) above, may be use on the upkeep and improvement of premises, including the costs of equipment and routine repairs and maintenance of the relevant Academy, and on capital expenditure relating to the relevant Academy.

Notwithstanding the foregoing provisions of this clause 84 any additional grant provided over and above that set out in clauses 60 and 61 and made in accordance with clauses 55 and 56 may be carried forward without limitation or deduction until the start up period or the circumstances set out in clauses 64 and 65 come to an end.

- 85) Any savings of GAG not allowed to be carried forward under clause 84 will be taken into account in the payment of subsequent grant.
- 86) The Company may also accumulate funds from private sources or public sources other than grants from the Secretary of State for application to the benefit of the Academy as it sees fit. Any surplus arising from private sources or public sources other than grants from the Secretary of State shall be separately identified in the Company's balance sheet.
- 87) The Company shall not, without the prior written consent of the Secretary of State which shall not be unreasonably withheld or delayed:
- a) in relation to an Academy and except such as are given in normal contractual relations give any guarantees, indemnities or letters of comfort;
  - b) write off any debts or liabilities owed to it above a value to be set out in the annual letter of funding, nor offer to make any ex gratia payments;
  - c) make any sale or purchase of freehold property; or
  - d) grant or take up any leasehold or tenancy agreement for a term exceeding three years.
- 88) Each discovered loss of an amount exceeding the amount set out in the annual letter of funding, and arising from suspected theft or fraud, shall be reported by the Company to the Secretary of State at the earliest practical opportunity.
- 89) It is the responsibility of the Company to ensure that each Academy balances its budget from year to year.

### **Borrowing Powers**

- 90) The Company shall not run an overdraft beyond such amount (to cover irregularities in cash flow) as may from time to time be both approved by the Company in General Meeting and in writing by the Secretary of State, such approval by the Secretary of State not to be unreasonably delayed or withheld, and subject to any conditions he may reasonably impose. The Company shall not borrow except with the written consent of the Secretary of State against future years' current grant, or by using as collateral assets purchased wholly or partly out of monies provided by the Secretary of State. The Company shall not borrow against land and buildings transferred to it for less than the

market price from an LEA or trustees of a voluntary aided school. Provided always that nothing in this clause shall prevent the Company from borrowing (whether by way of overdraft or otherwise) prior to the opening of the Academy nor from borrowing where such borrowing is made necessary by the failure of the Secretary of State to make in a timely fashion payments (whether of GAG or EAG or otherwise) agreed to be made by him under this Agreement.

### **Disposal of Assets**

- 91) Where the Company acquires assets for a nil consideration or at an under value it shall be treated for the purpose of this Agreement as having incurred expenditure equal to the market value of those assets at the time that they were acquired. This provision shall not apply to assets transferred to the Company at nil or nominal consideration and which were previously used for the purposes of a state funded school or where transferred from an LEA, the value of which assets shall be disregarded.
- 92) The sale or disposal by other means of a capital asset by the Company shall require the consent of the Secretary of State. such consent not to be unreasonably withheld or delayed, where:
- a) the Secretary of State paid capital grant in excess of £20,000 for the asset; or
  - b) the asset was transferred to the Company from a LEA for no or nominal consideration.

Furthermore, reinvestment of a percentage of the proceeds of disposal of a capital asset paid for with a capital grant from the Secretary of State shall require the Secretary of State's consent in the circumstances set out above and reinvestment exceeding £1,000,000 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.

- 93) This clause applies in the event, during the currency of this agreement, of the disposal of a capital asset for which capital grant of any amount was paid by the Secretary of State, where the asset was acquired by the Company at market value. In this event, the Company shall repay to the Secretary of State the same proportion of the proceeds of the disposal as equates with the proportion of the original cost met by the Secretary of State, unless the Secretary of State agrees to some or all of the proceeds being retained by the Company for its charitable purposes.

94) This clause applies in the event, during the currency of this agreement, that the Secretary of State consents to the disposal of an asset which was transferred to the Company from a LEA 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 LEA from which the asset was transferred, taking into account the amount of the proceeds to be reinvested by the Company. The Secretary of State will have regard to any representations from the Company and the LEA from which the asset was transferred before giving consent under this clause.

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

## **TERMINATION**

96) This Agreement shall commence on the date hereof and continue until terminated in accordance with clause 97 or until all Supplemental Agreements entered into between the Secretary of State and the Company shall have terminated.

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

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



- e) any restraint, execution or other process is levied or enforced on any material part of the Company's property and is not paid out, withdrawn or discharged within fifteen Business Days; or
- f) the Company has passed a resolution for its winding up; or
- g) an order is made for the winding up or administration of the Company.

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

### **Effect of Termination**

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

## **GENERAL**

### **Information**

- 99) Without prejudice to any other provision of this Agreement, the Secretary of State acting reasonably may from time to time call for information on, inter alia, any Academy's:
  - a) curriculum;
  - b) arrangements for the assessment of pupils;
  - c) targets, including those set in accordance with the provisions of clause 30;
  - d) teaching staff including numbers, qualifications, experience, salaries, and teaching loads;
  - e) class sizes;
  - f) outreach work with other schools and the local community;

- g) operation of the admission criteria and over subscription arrangements for the Academy including numbers of applications for places and the number and characteristics of pupils accepted for admission;
  - h) numbers of pupils excluded (including permanent and fixed term exclusions);
  - i) levels of authorised and unauthorised attendance;
  - j) charging and remissions policies and the operation of those policies;
  - k) organisation, operation and building management;
  - l) financial controls; and
  - m) membership and proceedings of the Company and the Local Governing Body.
- 100) The Company shall make such information available to the Secretary of State, in such form and manner and at such times as may reasonably be required. The Secretary of State shall provide the Company with such information as it may reasonably require of him for the running of an Academy.
- 101) Any information of a secret or confidential nature obtained by the Secretary of State or by any officials or advisers or contractors to such person, shall be kept confidential by such persons, as the Secretary of State shall procure, and shall not (except as required by law) be disclosed to any third party (including without limitation any LEA) without the prior written approval of the Company, such approval not to be unreasonably withheld or delayed.

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

- 102) The Company shall allow access to the premises of any Academy at any reasonable time to DfES officials. All records, files and reports relating to the running of each Academy shall be available to them at any reasonable time. The Company shall provide the DfES in advance with papers relating to each Academy prepared for meetings of the Local Governing Body, of the Company's directors and of the members of the Company. The Company need not provide to the DfES any part of these papers which relate to any issues of contention with the Secretary of State or any discussion of bids for funding to the Secretary of State. Two DfES officials shall be entitled to attend and to speak at all such meetings, but shall withdraw from any discussion of an Academy's or the Company's relationship with the Secretary of State or any discussion of bids for funding

to the Secretary of State.

103) The Company shall ensure that to the extent only that such documents relate to an Academy:

- i) the agenda for every meeting of the relevant Local Governing Body;
- ii) the draft minutes of every such meeting, if they have been approved by the person acting as chairman of that meeting;
- iii) the signed minutes of every such meeting; and
- iv) any report, document or other paper considered at any such meeting,

which are to be made available for inspection at the relevant Academy by virtue of article 100 of the Articles of Association are, as soon as is reasonably practicable, sent to the DfES.

104) There may be excluded from any item required to be sent to the DfES by virtue of clause 103, any material relating to:

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

### **Notices**

105) Any notice or other communication concerning this Agreement or a Supplemental Agreement shall be sent, in the case of a notice or communication from the Secretary of State to the Company at its registered office or such other addressee/address as may be notified in writing from time to time by the Company and, in the case of a notice or communication from the Company to the Secretary of State to Head of Academies Division, Department for Education and Skills, Sanctuary Buildings, Great Smith Street, London SW1P 3BT; or such other address as may be notified from time to time by the Secretary of State and where any such notice or communication is sent by post, unless the contrary is proved, it shall be deemed, subject to satisfactory proof of posting, to be effected two Business Days after the same shall have been posted.

- 106) This Agreement may be amended in writing at any time by agreement between the Secretary of State and the Company.
- 107) The service by the Secretary of State of a notice of termination of a Supplemental Agreement shall not prejudice the ability of the Company (if it wishes to do so) during the notice period to admit pupils to the relevant Academy in accordance with the provisions of this Agreement and the relevant Supplemental Agreement and to receive GAG and EAG in respect of them.

#### **Appointment of Additional Governors by the Secretary of State**

- 108) If the Secretary of State becomes entitled in accordance with the Articles to appoint Additional Governors (as defined in the Articles) by reference to the particular circumstances of an Academy rather than circumstances pertaining to all or substantially all Academies or the affairs of the Company generally, the Company will:
- a) replace such members of the Local Governing Body of the relevant Academy as shall have been appointed by the Governors in accordance with article 78(f) of the Articles and/or appoint additional members of the Local Governing Body as, in either case, the Secretary of State may by notice in writing specifying the persons so to be appointed to the Company require, provided that at least one of the members of the Local Governing Body is also a Governor (as defined in the Articles); and
  - b) upon the replacement or appointment, as the case may be, of the members of the Relevant Local Governing Body, delegate to the relevant Local Governing Body all such powers as may be necessary to ensure that the Relevant Local Governing Body is capable of properly conducting the affairs of the Academy on the Company's behalf.
- 109) Notwithstanding the delegation referred to in clause 108 the relevant Local Governing Body will report to the Governors of the Company upon all decisions taken by the Local Governing Body at such intervals as the Company may reasonably require, following reasonable notice from the Company of its reporting requirements.
- 110) The Company may at any time revoke the delegation of powers referred to in clause 108 by notice in writing to the members of the relevant Local Governing Body. A copy of any such notice will also be sent to the Secretary of State.
- 111) The Secretary of State undertakes to the Company not to exercise the powers under the Articles to appoint Additional Governors unless:-

- a) the Company fails to comply with its obligations under clause 108; or
- b) if, such powers having been delegated to the Local Governing Body in accordance with clause 108, such delegation is subsequently revoked or, without the prior written consent of the Secretary of State, varied in any material respect; or
- c) in the Secretary of State's opinion the circumstances pertain to all or substantially all the Academies or the affairs of the Company generally.

**General**

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

This Agreement was signed on 2006

SIGNED on behalf of ARK Academies by : .....

**Director**

SIGNED on behalf of the Secretary of State by : .....

**Duly Authorised**

**SCHEDULE 1**

**MODEL SUPPLEMENTAL AGREEMENT FOR ACCELERATED ACADEMIES**

**THIS AGREEMENT** made 200[●]

**BETWEEN**

(1) **THE SECRETARY OF STATE FOR EDUCATION AND SKILLS**; and

(2) **ARK ACADEMIES**

**IS SUPPLEMENTAL TO THE MASTER FUNDING AGREEMENT** made between the same parties and dated ● 2006 (the “**Master Agreement**”).

**1 DEFINITIONS AND INTERPRETATION**

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

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

“the Academy” the [●] Academy [to be] established at [●].

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

**2 THE ACADEMY**

2.1 The Company will sponsor the Academy.

2.2 The specialism of the Academy will be [●].

2.3 The arrangements for admission of pupils to the Academy are set out at Annex 1.

2.4 The Academy [is intended to open] [opened] on 1 September ●.

**3 CAPITAL EXPENDITURE**

3.1 Clauses 40 to 51 (inclusive) of the Master Agreement shall not apply to the Academy and the terms of this Clause 3 shall apply in their place.

- 3.2 The Company and the Secretary of State have agreed that the amount of expenditure necessary to provide for the refurbishment and the costs of establishing the Academy is ● million (“the Cash Limit”).
- 3.3 The Secretary of State will bear £[●] million of the Cash Limit and the Company will bear £[●] million of the Cash Limit (the “Company’s Contribution”).
- 3.4 The Academy opens on the first day that its pupils attend school at the Academy. In addition, the Company and the Secretary of State have agreed that it is necessary to incur capital expenditure for the undertaking of minor capital works to facilitate the opening of the Academy (Pre-Opening Works). The parties agree that:
- 3.4.1. the cost of the Pre-Opening Works will not exceed ● (“Pre-Opening Works Costs”);
  - 3.4.2. the Secretary of State will bear the Pre-Opening Works Costs;
  - 3.4.3. no Pre-Opening Works Costs will be incurred after the opening of the Academy;
  - 3.4.4. no Pre-Opening Works Costs will be incurred without the consent of the Secretary of State;
  - 3.4.5. any unauthorised expenditure in contravention of clauses 3.4.1 to 3.4.5 above, will be borne entirely by the Company;
  - 3.4.6. the Company must submit a claim for payments for Pre-Opening Works to the Secretary of State in the notified format with supporting invoices and certificates as requested by the Secretary of State from time to time. Payments for Pre-Opening Works Costs will be paid within 21 days from the day on which a claim for payment is received if the claim is in the proper format, supported by the appropriate documentation and the conditions of this clause 3.4.6 have been met. If a dispute arises as to whether a payment is acceptable or not both parties undertake to attempt to resolve it in good faith;
  - 3.4.7. the Cash Limit does not include any Pre-Opening Works Costs;
  - 3.4.8. the expenditure for Pre-Opening Works Costs is not subject to the provisions of clause 3.5-3.9 below.

- 3.5 The Academy is planned to open in September 200● and it has not been practicable for the Company and the Secretary of State to agree, prior to the making of this Agreement, the various detailed matters in respect of which expenditure is to be incurred up to the amount of the Cash Limit, including:
- 3.5.1. the detailed Capital Cost Spreadsheet (a pro-forma of which is set out in Annex 2), showing the limit of the capital costs that may be incurred in order to provide for the refurbishment and capital development of the Academy;
  - 3.5.2. the Capital Cash Flow Programme (a pro-forma of which is set out in Annex 3B) showing the projected cash flow of capital expenditure by the Company after the execution of this Agreement;
  - 3.5.3. the arrangements for payments (including the timing) of the capital expenditure (a pro-forma of which is set out in Annex 3C);
  - 3.5.4. the architect's drawings and material specifications for the construction/refurbishment of the Academy.

Accordingly, the parties agree to negotiate with a view to reaching agreement on such matters as soon as practicable and in any event not later than [*cut off date*]. The documents referred to in clauses 3.5.1 to 3.5.3 above will be in the form of the pro-forma documents set out in Annexes 2, 3B and 3C or as near thereto as circumstances permit and the parties agreement of such documents shall be recorded in writing.

- 3.6 Both parties recognise that as the project develops it may be necessary to review costs in the Capital Cost Spreadsheet, once agreed in accordance with Clause 3.5, and to move costs between spreadsheet elements in order to ensure that the project remains within its approved budget. Where the Company wishes to make such adjustments of over £10,000, it must submit the requested adjustment with the reasons for it to the Secretary of State for approval.
- 3.7 Where the Company foresees a significant change in the timing of Capital Expenditure, that is a change to the figures of over £100,000 in the Capital Cash Flow Programme, once agreed in accordance with Clause 3.5, a revised Capital Cash Flow Programme must be submitted to the Secretary of State for approval.
- 3.8 The Secretary of State and the Company hereby agree that:



- 3.8.1. The Company must ensure that no pattern of spending is allowed to develop which cannot be contained within the approved capital expenditure limits. The Secretary of State must be informed immediately if any danger of any of the capital costs, once agreed in accordance with Clause 3.5, being exceeded is foreseen so that steps can be taken to rectify the situation and ensure that the project remains within its capital cash limit.
  - 3.8.2. If the costs finally incurred for the purposes set out in Clause 3.5 above are less than the Cash Limit, the costs borne by the Secretary of State shall be reduced accordingly and the Company shall pay the same amount as indicated in Clause 3.2.
  - 3.8.3. If at any stage it appears that the costs incurred for the purposes set out in Clause 3.5 are likely to exceed the Cash Limit, the parties to the Agreement shall urgently consider how to reduce those costs, if necessary by amending the specification of the Academy.
  - 3.8.4. If the costs incurred for the purposes set out in Clause 3.5 exceed the Cash Limit the Secretary of State shall bear the cost of any necessary additional costs the need for which could not reasonably have been foreseen at the time the Cash Limit was set.
  - 3.8.5. If the parties agree that additional capital expenditure to establish the Academy, other than that specified in Clause 3.5 may be incurred then the parties shall divide such additional costs between them in such proportions as may be agreed between them. No such additional expenditure is to be incurred without prior agreement in writing between the parties.
- 3.9 Any capital expenditure during the life of this Agreement beyond the Cash Limit on which grant payments are sought from the Secretary of State will require the specific agreement of the Secretary of State. Such consent shall not be unreasonably withheld or delayed. Unless the Company undertakes to meet such capital costs entirely itself such approved costs as are incurred will be shared in a proportion to be agreed between the Secretary of State and the Company in relation to, and having regard to the nature of, each such capital project.

#### 4 **IMPLEMENTATION GRANT**

The Secretary of State agrees to pay Implementation Grant to the Company in accordance with Annex 3C to this Agreement (when agreed in accordance with clause 3.5).

5 **GAG AND EAG**

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

6 **TERMINATION**

6.1 Either party may give not less than seven years' written notice to terminate this Agreement, such notice to expire on 31 August ● or any subsequent anniversary of that date.

6.2 The Secretary of State may at any time after [cut off date] terminate this Agreement immediately by notice in writing to the Company if the Company and the Secretary of State do not on or before [cut off date] reach agreement on funding the establishment of the Academy as provided for in Clause 3.5.

6.3 If the Secretary of State is of the opinion that the Academy no longer has the characteristics set out in clause 11 of the Master Agreement or that the conditions and requirements set out in clauses 11 and 12 of the Master Agreement are not being met, or that the Company is otherwise in material breach of the provisions of this Agreement or the Master Agreement, the Secretary of State may give notice of his provisional intention to terminate this Agreement.

6.4 Any such notice shall be in writing and shall:

6.4.1. state the grounds on which the Secretary of State considers the Academy no longer has the characteristics set out in clause 11 of the Master Agreement or is not meeting the conditions and requirements of clauses 11 and 12 of the Master Agreement or the Company is otherwise in material breach of the provisions of this Agreement or the Master Agreement;

6.4.2. specify the measures needed to remedy the situation or breach;

6.4.3. specify a reasonable date by which these measures are to be implemented;  
and

6.4.4. state the form in which the Company is to provide its response and a reasonable date by which it must be provided.

6.5 If no response is received by the date specified in accordance with clause 6.4, the Secretary of State may give the Company 12 months, or such lesser period as he

considers appropriate in the circumstances, written notice to terminate this Agreement.

6.6 If a response is received by the date specified in accordance with clause 6.4, the Secretary of State shall consider it, and any representations made by the Company, and shall, within three months of its receipt, indicate that:

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

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

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

6.7 In the circumstances of clause 6.6 the Secretary of State shall notify the Company why he believes that he cannot be reasonably satisfied and, if so requested by the Company within thirty days from such notification, he shall meet a deputation including representatives from directors of the Company and the Local Governing Body of the Academy to discuss his concerns. If following such meeting he has good reasons for remaining satisfied that the Academy does not and will not have the characteristics set out in clause 11 of the Master Agreement or does not and will not meet the conditions and requirements set out in clauses 11 and 12 of the Master Agreement or the Company is in material breach of the provisions of this Agreement or the Master Agreement and such breach will not be remedied to his reasonable satisfaction, he shall give the Company twelve months written notice to terminate this Agreement.

6.8 If the Secretary of State has cause to serve a notice on the Company under section 165 of the Education Act 2002 and a determination (from which all rights of appeal have been exhausted) has been made that the Academy shall be struck off the Register of Independent Schools, the period of twelve months notice referred to in clause 6.6 may be shortened to a period deemed appropriate by the Secretary of State.

6.9 The Secretary of State will, by not later than the end of December each year provide to the Company an indication of the level of funding to be provided by the Secretary

of State to the Company by way of GAG and EAG in the next following financial year (the “**Indicative Funding**”). If the Company is of the opinion that, after receipt of the Indicative Funding for the next following financial year (the “**Critical Year**”) and of the taking into account all other resources available and likely to be available to the Academy, including such funds as are set out in clause 86 of the Master Agreement and such other funds as are and likely to be available to the Academy from other academies operated by the Company (“**All Other Resources**”), it is likely that the cost of running the Academy during the Critical Year would cause the Company, on the basis of the Indicative Funding, to become insolvent (and for this reason only) then the Company may give notice of its intention to terminate this Agreement at the end of the then current financial year.

6.10 Any notice given by the Company under clause 6.9 shall be in writing and shall be served on the Secretary of State not later than 28 February preceding the Critical Year or, if the Secretary of State shall not have given notice of the Indicative Funding to the Company on or before the date specified in clause 6.8 above, within six weeks after the Secretary of State shall have done so. The notice must specify:

6.10.1.the grounds upon which the Company’s opinion is based and include the evidence of those grounds and any professional accounting advice the Company has received and including a detailed statement of steps which the Company proposes to take with a view to ensuring that as soon as reasonably practicable the costs of running the Academy are reduced sufficiently to ensure that such costs are less than the Indicative Funding and All Other Resources and the period of time within which such steps will be taken; and

6.10.2.the shortfall in the Critical Year between the Indicative Funding and All Other Resources expected to be available to the Company to run the Academy and the projected expenditure on the Academy; and

6.10.3.a detailed budget of income and expenditure for the Academy during the Critical Year (the “**Projected Budget**”).

6.11 Both parties undertake to use their best endeavours to agree whether or not the cost of running the Academy during the Critical Year would cause the Company, on the basis of the Indicative Funding and All Other Resources, 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 undertake to use their best endeavours to agree a practical solution to the problem.

- 6.12 If no agreement is reached by 30 April (or such other date as may be agreed between the parties) as to whether the cost of running the Academy during the Critical Year on the basis of the Indicative Funding and All Other Resources would cause the Company to become insolvent, then that question shall be referred to an independent expert (the “**Expert**”) for resolution. The Expert’s determination shall be final and binding on both parties. The Expert shall be requested to specify in his determination the amount of the shortfall in funding (the “**Shortfall**”). 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. The Expert’s fees shall be borne equally between the parties.
- 6.13 The Expert shall 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 large 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. The educational specialist’s fees shall be borne equally between the parties.
- 6.14 If the Expert determines that the cost of running the Academy during the Critical Year would cause the Company, on the basis of the Indicative Funding and All Other Resources, to become insolvent, and the Secretary of State shall not have agreed to provide sufficient additional funding to cover the Shortfall, then the Company shall be entitled to terminate this Agreement, by notice expiring on 31 August prior to the Critical Year. Any such notice shall be given within 21 days after (a) the Expert’s determination shall have been given to the parties or (b), if later, the Secretary of State shall have given written notice of his refusal to provide sufficient additional funding for the Academy to cover the Shortfall.
- 6.15 If the Company shall have given notice to terminate the Agreement under clause 6.14, the Secretary of State may by notice in writing to the Company require the Company to appoint up to two persons nominated by the Secretary of State as directors of the Company. The right to nominate additional directors shall be without

prejudice to the right of the Secretary of State to appoint additional directors under Article 40 of the Articles if the conditions in Article 38 of the Articles are, or become, satisfied and the Company hereby agrees to procure the necessary amendments to its Articles to give effect to this right within six months of the date of this Agreement.

- 6.16 The Secretary of State may at any time by notice in writing terminate this Agreement forthwith if the Academy has ceased (except where such cessation occurs temporarily by reason of an event beyond the reasonable control of the Company) to operate as an Academy within the meaning of Section 482 of the Education Act 1996.

## **7 EFFECT OF TERMINATION**

- 7.1 In the event of termination of this Agreement however occurring the school shall cease to be an Academy within the meaning of Section 482 of the Education Act 1996.
- 7.2 If the Secretary of State terminates this Agreement for reasons other than that the Academy no longer has the characteristics set out in clause 11 of the Master Agreement, or is no longer meeting the conditions and requirements set out in clauses 11 and 12 of the Master Agreement that the Company is otherwise in material breach of the provisions of this Agreement or the Master Agreement, the Secretary of State shall indemnify the Company.
- 7.3 The amount of any such indemnity shall be determined by the Secretary of State having regard to any representations made to him by the Company, and shall be paid at such times and in such manner as the Secretary of State may reasonably think fit.
- 7.4 The amounts and categories of expenditure incurred by the Company in consequence of the termination of the Agreement in respect of which the Secretary of State shall indemnify the Company include (but not by way of limitation), staff compensation and redundancy payments, compensation payments in respect of broken contracts, expenses of disposing of assets or adapting them for other purposes, legal and other professional fees, and dissolution expenses.
- 7.5 On the termination of this Agreement however occurring the Company shall repay to the Secretary of State a sum in respect of the Capital Grant made under clause 3.
- 7.6 The amount to be repaid to the Secretary of State in accordance with clause 7.5 shall be determined in accordance with subclauses 7.6.1 or 7.6.2 as appropriate.

- 7.6.1. Where the Company retains the site and buildings of the Academy the amount to be repaid to the Secretary of State shall be a percentage of the value of the assets belonging to the Company at the date of termination which were purchased wholly or in part with capital grants paid under this agreement. Such percentage to be the same as the percentage of the capital contribution made by the Secretary of State to the original cost of those assets, whether that contribution was made on the establishment of the Academy or later;
- 7.6.2. Where the Company disposes of the site and buildings of the Academy the amount to be repaid to the Secretary of State shall be a percentage of the net proceeds of the realisation of the assets belonging to the Company at the date of termination, which were purchased wholly or in part with capital grants paid under this agreement. 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 than contribution was made on the establishment of the Academy or later.
- 7.7 The Secretary of State may waive in whole or in part the repayment due under clause 7.6 if:
- 7.7.1. The Company obtains his permission to invest the proceeds of sale for its charitable objects; or
- 7.7.2. The Secretary of State directs all or part of the repayment to be paid to the LEA.
- 7.8 If any land or premises of the Academy were acquired by the Company from an LEA by a scheme under Schedule 35A of the 1996 Act or otherwise at less than the market value of the land at the date of acquisition, and the Secretary of State does not make a scheme as provided for in Schedule 35A (Paragraph 8) of the 1996 Act , the Company may dispose of its interest in that land or premises but only with the consent of the Secretary of State, who shall have regard to any representations from the Company and the LEA from which the land was transferred before giving or withholding that consent.

## 8 **ANNEXES**

The Annexes to this Agreement form part of and are incorporated into this Agreement.

9 **THE MASTER AGREEMENT**

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

10 **ENGLISH LAW**

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



**ANNEXES TO THIS SUPPLEMENTAL AGREEMENT**

Arrangements for Admission for pupils at the Academy	Annex 1
Pro-forma Capital Costs Spreadsheet	Annex 2
Capital expenditure incurred for the purposes of or in connection with the establishment of the Academy prior to the date of this agreement	Annex 3A
Pro-forma Capital Cashflow Programme (for monthly Capital expenditure during the Academy's Implementation phase)	Annex 3B
Pro-forma Implementation phase cashflow programme	Annex 3C

## **SCHEDULE 2**

### **MODEL SUPPLEMENTAL AGREEMENT FOR ALL OTHER ACADEMIES**

**THIS AGREEMENT** made 200[●]

#### **BETWEEN**

(3) **THE SECRETARY OF STATE FOR EDUCATION AND SKILLS**; and

(4) **ARK ACADEMIES**

IS SUPPLEMENTAL TO THE MASTER FUNDING AGREEMENT made between the same parties and dated ● 2006 (the “Master Agreement”).

#### **1 DEFINITIONS AND INTERPRETATION**

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

#### **2 THE ACADEMY**

- 2.1 The Company will sponsor the Academy.
- 2.2 The specialism of the Academy will be [●].
- 2.3 The arrangements for admission of pupils to the Academy are set out at Annex 1.
- 2.4 The Academy [is intended to open] [opened] on 1 September ●.

#### **3 CAPITAL EXPENDITURE**

- 3.1 The Cash Limit will be £●.
- 3.2 The Company’s Contribution will be £●.

- 3.3 The Capital Costs Spreadsheet is annexed to this Agreement as Annex 2.
- 3.4 The Capital Cashflow Programme is attached to this Agreement as Annex 3B.
- 3.5 Payment of Capital Grant is conditional upon the approval by the Secretary of State of the matters set out in Capital Cashflow Programme.
- 3.6 The Secretary of State agrees to pay Capital Grant to the Company in accordance with the Master Agreement and this Agreement.

#### 4 **IMPLEMENTATION GRANT**

The Secretary of State agrees to pay Implementation Grant to the Company in accordance with Annex 3C to this Agreement.

#### 5 **GAG AND EAG**

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

#### 6 **TERMINATION**

- 6.1 Either party may give not less than seven years' written notice to terminate this Agreement, such notice to expire on 31 August ● or any subsequent anniversary of that date.
- 6.2 If the Secretary of State is of the opinion that the Academy no longer has the characteristics set out in clause 11 of the Master Agreement or that the conditions and requirements set out in clauses 11 and 12 of the Master Agreement are not being met, or that the Company is otherwise in material breach of the provisions of this Agreement or the Master Agreement, the Secretary of State may give notice of his provisional intention to terminate this Agreement.
- 6.3 Any such notice shall be in writing and shall:
  - 6.3.1. state the grounds on which the Secretary of State considers the Academy no longer has the characteristics set out in clause 11 of the Master Agreement or is not meeting the conditions and requirements of clauses 11 and 12 of the Master Agreement or the Company is otherwise in material breach of the provisions of this Agreement or the Master Agreement;
  - 6.3.2. specify the measures needed to remedy the situation or breach;

- 6.3.3. specify a reasonable date by which these measures are to be implemented;  
and
- 6.3.4. state the form in which the Company is to provide its response and a reasonable date by which it must be provided.
- 6.4 If no response is received by the date specified in accordance with clause 6.3, the Secretary of State may give the Company 12 months, or such lesser period as he considers appropriate in the circumstances, written notice to terminate this Agreement.
- 6.5 If a response is received by the date specified in accordance with clause 6.3, the Secretary of State shall consider it, and any representations made by the Company, and shall, within three months of its receipt, indicate that:
  - 6.5.1. he is content with the response and/or that the measures which he specified are being implemented; or
  - 6.5.2. he is content, subject to any further measures he reasonably specifies being implemented by a specified date or any evidence he requires that implementation of such measures have been successfully completed; or
  - 6.5.3. he is not satisfied, that he does not believe that he can be reasonably satisfied, and that he will proceed to terminate the Agreement.
- 6.6 In the circumstances of clause 6.5 the Secretary of State shall notify the Company why he believes that he cannot be reasonably satisfied and, if so requested by the Company within thirty days from such notification, he shall meet a deputation including representatives from directors of the Company and the Local Governing Body of the Academy to discuss his concerns. If following such meeting he has good reasons for remaining satisfied that the Academy does not and will not have the characteristics set out in clause 11 of the Master Agreement or does not and will not meet the conditions and requirements set out in clauses 11 and 12 of the Master Agreement or the Company is in material breach of the provisions of this Agreement or the Master Agreement and such breach will not be remedied to his reasonable satisfaction, he shall give the Company twelve months written notice to terminate this Agreement.
- 6.7 If the Secretary of State has cause to serve a notice on the Company under section 165 of the Education Act 2002 and a determination (from which all rights of appeal

have been exhausted) has been made that the Academy shall be struck off the Register of Independent Schools, the period of twelve months notice referred to in clause 6.6 may be shortened to a period deemed appropriate by the Secretary of State.

- 6.8 The Secretary of State will, by not later than the end of December each year provide to the Company an indication of the level of funding to be provided by the Secretary of State to the Company by way of GAG and EAG in the next following financial year (the “**Indicative Funding**”). If the Company is of the opinion that, after receipt of the Indicative Funding for the next following financial year (the “**Critical Year**”) and of the taking into account all other resources available and likely to be available to the Academy, including such funds as are set out in clause 86 of the Master Agreement and such other funds as are and likely to be available to the Academy from other academies operated by the Company (“**All Other Resources**”), it is likely that the cost of running the Academy during the Critical Year would cause the Company, on the basis of the Indicative Funding, to become insolvent (and for this reason only) then the Company may give notice of its intention to terminate this Agreement at the end of the then current financial year.
- 6.9 Any notice given by the Company under clause 6.8 shall be in writing and shall be served on the Secretary of State not later than 28 February preceding the Critical Year or, if the Secretary of State shall not have given notice of the Indicative Funding to the Company on or before the date specified in clause 6.8 above, within six weeks after the Secretary of State shall have done so. The notice must specify:
- 6.9.1. the grounds upon which the Company’s opinion is based and include the evidence of those grounds and any professional accounting advice the Company has received and including a detailed statement of steps which the Company proposes to take with a view to ensuring that as soon as reasonably practicable the costs of running the Academy are reduced sufficiently to ensure that such costs are less than the Indicative Funding and All Other Resources and the period of time within which such steps will be taken; and
- 6.9.2. the shortfall in the Critical Year between the Indicative Funding and All Other Resources expected to be available to the Company to run the Academy and the projected expenditure on the Academy; and

- 6.9.3. a detailed budget of income and expenditure for the Academy during the Critical Year (the “**Projected Budget**”).
- 6.10 Both parties undertake to use their best endeavours to agree whether or not the cost of running the Academy during the Critical Year would cause the Company, on the basis of the Indicative Funding and All Other Resources, 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 undertake to use their best endeavours to agree a practical solution to the problem.
- 6.11 If no agreement is reached by 30 April (or such other date as may be agreed between the parties) as to whether the cost of running the Academy during the Critical Year on the basis of the Indicative Funding and All Other Resources would cause the Company to become insolvent, then that question shall be referred to an independent expert (the “**Expert**”) for resolution. The Expert’s determination shall be final and binding on both parties. The Expert shall be requested to specify in his determination the amount of the shortfall in funding (the “**Shortfall**”). 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. The Expert’s fees shall be borne equally between the parties.
- 6.12 The Expert shall 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 large 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. The educational specialist’s fees shall be borne equally between the parties.
- 6.13 If the Expert determines that the cost of running the Academy during the Critical Year would cause the Company, on the basis of the Indicative Funding and All Other Resources, to become insolvent, and the Secretary of State shall not have agreed to provide sufficient additional funding to cover the Shortfall, then the Company shall be entitled to terminate this Agreement, by notice expiring on 31 August prior to the Critical Year. Any such notice shall be given within 21 days after (a) the Expert’s determination shall have been given to the parties or (b), if later, the Secretary of

State shall have given written notice of his refusal to provide sufficient additional funding for the Academy to cover the Shortfall.

- 6.14 If the Company shall have given notice to terminate the Agreement under 6.13, the Secretary of State may by notice in writing to the Company require the Company to appoint up to two persons as directors of the Company. The right to appoint Additional Directors shall be without prejudice to the general right of the Secretary of State to appoint Additional Directors of the provisions of Article 38 of the Articles are, or become, satisfied and the Company hereby agrees to procure the necessary amendments to its Articles to give effect to this right within six months of the date of this Agreement.
- 6.15 The Secretary of State may at any time by notice in writing terminate this Agreement forthwith if the Academy has ceased (except where such cessation occurs temporarily by reason of an event beyond the reasonable control of the Company) to operate as an Academy within the meaning of Section 482 of the Education Act 1996.

## **7 EFFECT OF TERMINATION**

- 7.1 In the event of termination of this Agreement however occurring the school shall cease to be an Academy within the meaning of Section 482 of the Education Act 1996.
- 7.2 If the Secretary of State terminates this Agreement for reasons other than that the Academy no longer has the characteristics set out in clause 11 of the Master Agreement, or is no longer meeting the conditions and requirements set out in clauses 11 and 12 of the Master Agreement that the Company is otherwise in material breach of the provisions of this Agreement or the Master Agreement, the Secretary of State shall indemnify the Company.
- 7.3 The amount of any such indemnity shall be determined by the Secretary of State having regard to any representations made to him by the Company, and shall be paid at such times and in such manner as the Secretary of State may reasonably think fit.
- 7.4 The amounts and categories of expenditure incurred by the Company in consequence of the termination of the Agreement in respect of which the Secretary of State shall indemnify the Company include (but not by way of limitation), staff compensation and redundancy payments, compensation payments in respect of

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

7.5 On the termination of this Agreement however occurring the Company shall repay to the Secretary of State a sum in respect of the Capital Grant made under clause 3.

7.6 The amount to be repaid to the Secretary of State in accordance with clause 7.5 shall be determined in accordance with subclauses 7.6.1 or 7.6.2 as appropriate.

7.6.1. Where the Company retains the site and buildings of the Academy the amount to be repaid to the Secretary of State shall be a percentage of the value of the assets belonging to the Company at the date of termination which were purchased wholly or in part with capital grants paid under this agreement. Such percentage to be the same as the percentage of the capital contribution made by the Secretary of State to the original cost of those assets, whether that contribution was made on the establishment of the Academy or later;

7.6.2. Where the Company disposes of the site and buildings of the Academy the amount to be repaid to the Secretary of State shall be a percentage of the net proceeds of the realisation of the assets belonging to the Company at the date of termination, which were purchased wholly or in part with capital grants paid under this agreement. 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 than contribution was made on the establishment of the Academy or later.

7.7 The Secretary of State may waive in whole or in part the repayment due under clause 7.6 if:

7.7.1. The Company obtains his permission to invest the proceeds of sale for its charitable objects; or

7.7.2. The Secretary of State directs all or part of the repayment to be paid to the LEA.

7.8 If any land or premises of the Academy were acquired by the Company from an LEA by a scheme under Schedule 35A of the 1996 Act or otherwise at less than the market value of the land at the date of acquisition, and the Secretary of State does not make a scheme as provided for in Schedule 35A (Paragraph 8) of the 1996 Act ,



the Company may dispose of its interest in that land or premises but only with the consent of the Secretary of State, who shall have regard to any representations from the Company and the LEA from which the land was transferred before giving or withholding that consent.

8 **ANNEXES**

The Annexes to this Agreement form part of and are incorporated into this Agreement.

9 **THE MASTER AGREEMENT**

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

10 **ENGLISH LAW**

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

**ANNEXES TO THIS SUPPLEMENTAL AGREEMENT**

Arrangements for Admission for pupils at the Academy	Annex 1
Capital Costs Spreadsheet	Annex 2
Capital expenditure incurred for the purposes of or in connection with the establishment of the Academy prior to the date of this agreement	Annex 3A
Capital Cashflow Programme (for monthly capital expenditure during the Academy's Implementation phase)	Annex 3B
Implementation phase cashflow programme	Annex 3C
Architects drawings/specification of the new build as proposed up to RIBA Stage D	Annex 4

**MEMORANDUM AND ARTICLES OF ARK EDUCATION**

THE COMPANIES ACTS 1985 AND 1989

A COMPANY LIMITED BY GUARANTEE AND NOT HAVING A SHARE CAPITAL

MEMORANDUM OF ASSOCIATION OF ARK ACADEMIES

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

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

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

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

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

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

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

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

(a) of reasonable and proper remuneration or other material benefit to any Director or to any firm or company of which a Director is a partner, member, employee, director or officer, for the supply of goods or services, including legal, accountancy or other professional services: Provided that the goods or services are actually required by the Trust, the nature and level of remuneration or other material benefit is no more than is reasonable in relation to the goods or services, that at

no time shall a majority of the Directors benefit under this provision and/or clause 5(f) and that a Director shall withdraw from any meeting at which his or her appointment or remuneration, or that of his or her firm or company, is under discussion;

- (b) of reasonable and proper remuneration for any services rendered to the Trust by any member, officer or servant of the Trust who is not a Director;
- (c) of interest on money lent by any member of the Trust or Director at a reasonable and proper rate per annum not exceeding 2 per cent less than the published base lending rate of a clearing bank to be selected by the Directors;
- (d) of reasonable and proper rent (as determined by an independent valuer appointed by the Trust) for premises demised or let by any member of the Trust or a Director;
- (e) to any Director of reasonable out-of-pocket expenses;
- (f) of reasonable and proper remuneration to any Director who is employed by the Trust: Provided that at no time shall a majority of the Directors benefit under this provision and/or clause 5(a) and that a Director shall withdraw from any meeting at which his or her appointment, remuneration or terms or conditions specific to him or her are under discussion;
- (g) of any premium in respect of any indemnity insurance and/or any loan made to a Director to cover the liability of the Directors which by virtue of any rule of law would otherwise attach to them in respect of any negligence, default or breach of trust or breach of duty of which they may be guilty in relation to the Trust: Provided that any such insurance shall not extend to any claim arising from any act or omission which Directors knew to be a breach of trust or breach of duty or which was committed by the Directors in reckless disregard to whether it was a breach of trust or breach of duty or not and provided also that any such insurance shall not extend to the costs of any unsuccessful defence to a criminal prosecution brought against Directors in their capacity as directors of the Trust.

6. The liability of the members of the Trust is limited.

7. Every member of the Trust undertakes to contribute such amount as may be required (not exceeding £10) to the Trust's assets if it should be wound up while he or she is a member or within one year after he or she ceases to be a member, for payment of

the Trust's debts and liabilities before he or she ceases to be a member, and of the costs, charges and expenses of winding up, and for the adjustment of the rights of the contributories among themselves.

8. If the Trust is wound up or dissolved and after all its debts and liabilities (including any under section 483 of the Education Act 1996) have been satisfied there remains any property it shall not be paid to or distributed among the members of the Trust, but shall be given or transferred to the Principal Sponsor or to some other charity or charities having objects similar to the Objects which prohibits the distribution of its or their income and property to an extent at least as great as is imposed on the Trust by clause 4 above, chosen by the members of the Trust at or before the time of dissolution and if that cannot be done then to some other charitable object.
9. No alteration or addition shall be made to or in the provisions of the Memorandum or Articles of Association which would have the effect (a) that the Trust would cease to be a company to which section 30 of the Companies Act 1985 applies; or (b) that the Trust would cease to be a charity.

THE COMPANIES ACTS 1985 AND 1989

A COMPANY LIMITED BY GUARANTEE  
AND NOT HAVING A SHARE CAPITAL

ARTICLES OF ASSOCIATION

OF

ARK ACADEMIES

INTERPRETATION

1. In these Articles:-

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



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

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

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

## OBJECTS

1. The Trust is established for the objects expressed in the Memorandum (“Objects”).

## MEMBERS

2. The Members of the Trust shall comprise:
  - a) The Principal Sponsor; and
  - b) One person appointed by the Secretary of State.

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

#### GENERAL MEETINGS

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

#### NOTICE OF GENERAL MEETINGS

8. An Annual General Meeting and an Extraordinary General Meeting called for the passing of a special resolution appointing a person as a Director shall be called by at least twenty-one clear days' notice. All other Extraordinary General Meetings shall be called by at least fourteen clear days' notice but a general meeting may be called by shorter notice if it is so agreed
  - a) in the case of an Annual General Meeting, by all the members entitled to attend and vote; and
  - b) in the case of any other meeting by a majority in number of members having a right to attend and vote, being a majority together holding not less than 95 per cent of the total voting rights at the meetings of all the Members.

The notice shall specify the time and place of the meeting and the general nature of the business to be transacted and, in the case of an Annual General Meeting, shall specify the meeting as such.

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

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

#### PROCEEDINGS AT GENERAL MEETINGS.

10. No business shall be transacted at any meeting unless a quorum is present. A Member counts towards the quorum by being present either in person or by proxy. Two persons entitled to vote upon the business to be transacted, each being a Member or a duly authorised representative of a Member organisation, or one tenth of the total number of such persons for the time being, whichever is the greater, shall constitute a quorum.
11. If a quorum is not present within half an hour from the time appointed for the meeting, or if during a meeting a quorum ceases to be present, the meeting shall stand adjourned to the same day in the next week at the same time and place or to such time and place as the Directors may determine.
12. The chairman, if any, of the Directors or in his absence some other Director nominated by the Directors shall preside as chairman of the meeting, but if neither the chairman nor such other Director (if any) be present within fifteen minutes after the time appointed for the holding the meeting and willing to act, the Directors present shall elect one of their number to be chairman and, if there is only one Director present and willing to act, he shall be the chairman.
13. If no Director is willing to act as chairman, or if no Director is present within fifteen minutes after the time appointed for holding the meeting, the Members present and entitled to vote shall choose one of their number to be chairman.
14. A Director shall, notwithstanding that he is not a Member, be entitled to attend and speak at any general meeting.
15. The chairman may, with the consent of a meeting at which a quorum is present (and shall if so directed by the meeting), adjourn the meeting from time to time and from place to place, but no business shall be transacted at any adjourned meeting other than the business which might properly have been transacted at the meeting had the adjournment not taken place. When a meeting is adjourned for fourteen days or more, at least seven clear days notice shall be given specifying the time and place of the adjourned meeting and the general nature of the business to be transacted. Otherwise it shall not be necessary to give any such notice.
16. A resolution put to the vote of the meeting shall be decided on a show of hands unless before, or on the declaration of the result of the show of hands a poll is duly demanded. Subject to the provisions of the Act, a poll may be demanded:-
  - a) by the chairman; or
  - b) by at least two Members having the right to vote at the meeting; or
  - c) by a Member or Members representing not less than one-tenth of the total voting rights of all the Members having the right to vote at the meeting.
17. Unless a poll is duly demanded a declaration by the chairman that a resolution has been carried or carried unanimously, or by a particular majority, or lost, or not carried by a particular majority and an entry to that effect in the minutes of the meeting shall be conclusive evidence of the fact without proof of the number or proportion of the

votes recorded in favour of or against such resolution.

18. The demand for a poll may be withdrawn, before the poll is taken, but only with the consent of the chairman. The withdrawal of a demand for a poll shall not invalidate the result of a show of hands declared before the demand for the poll was made.
19. A poll shall be taken as the chairman directs and he may appoint scrutineers (who need not be Members) and fix a time and place for declaring the results. The result of the poll shall be deemed to be the resolution of the meeting at which the poll was demanded.
20. A poll demanded on the election of the chairman or on a question of adjournment shall be taken immediately. A poll demanded on any other question shall be taken either immediately or at such time and place as the chairman directs not being more than thirty days after the poll is demanded. The demand for a poll shall not prevent continuance of a meeting for the transaction of any business other than the question on which the poll is demanded. If a poll is demanded before the declaration of the result of a show of hands and the demand is duly withdrawn, the meeting shall continue as if the demand had not been made.
21. No notice need be given of a poll not taken immediately if the time and place at which it is to be taken are announced at the meeting at which it is demanded. In other cases at least seven clear days' notice shall be given specifying the time and place at which the poll is to be taken.
22. A resolution in writing executed by or on behalf of each Member who would have been entitled to vote upon it if it had been proposed at a general meeting at which he was present shall be as effectual as if it had been passed at a general meeting duly convened and held and may consist of several instruments in the like form each executed by or on behalf of one or more Members.

#### VOTES OF MEMBERS

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

The Principal Sponsor: 3 votes

The person appointed by the Secretary of State: 1 vote

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

referred to the chairman whose decision shall be final and conclusive.

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

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

Signed on ..... 200[ ]"

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

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

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

Resolution No. 1 \*for \* against

Resolution No. 2 \*for \* against.

\* Strike out whichever is not desired.

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

Signed on .... 200[ ]"

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

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

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

29. A vote given or poll demanded by proxy or by the duly authorised representative of a corporation shall be valid notwithstanding the previous determination of the authority of the person voting or demanding a poll unless notice of the determination was received by the Trust at the office or at such other place at which the instrument of proxy was duly deposited before the commencement of the meeting or adjourned meeting at which the vote given or the poll demanded or (or in the case of a poll taken otherwise than on the same day as the meeting or adjourned meeting) the time appointed for taking the poll.
30. Any organisation which is a Member may by resolution of its board of Directors or other governing body authorise such person as it thinks fit to act as its representative at any meeting of the Trust, and the person so authorised shall be entitled to exercise the same powers on behalf of the corporation which he represents as that corporation could exercise if it were an individual Member.

#### DIRECTORS

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

#### APPOINTMENT AND ELECTION OF DIRECTORS

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

#### LGB DIRECTOR

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

#### APPOINTMENT OF ADDITIONAL DIRECTORS

38. The Secretary of State may give a warning notice to the Directors where—
  - a) he is satisfied—

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

#### TERM OF OFFICE

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

#### RESIGNATION AND REMOVAL

42. A Director shall cease to hold office if he resigns his office by notice to the Trust (but only if at least three Directors will remain in office when the notice of resignation is to

take effect).

43. A Director shall cease to hold office if he is removed by the person or persons who appointed him. This article does not apply in respect of the LGB Director.
44. Where a Director resigns his office or is removed from office, the Director or, where he is removed from office, those removing him, shall give written notice thereof to the secretary.

#### DISQUALIFICATION OF DIRECTORS

45. No person shall be qualified to be a Director unless he is aged 18 or over at the date of his election or appointment. No pupil of any Academy shall be a Director.
46. A Director shall cease to hold office if he becomes incapable by reason of mental disorder, illness or injury of managing or administering his own affairs.
47. A Director shall cease to hold office if he is absent without the permission of the governing body from all their meetings held within a period of six months and the Directors resolve that his office be vacated.
48. A person shall be disqualified from holding or continuing to hold office as a Director if—
  - a) he has been adjudged bankrupt or sequestration of his estate has been awarded and (in either case) he has not been discharged and the bankruptcy order has not been annulled or rescinded; or
  - b) he has made a composition or arrangement with, or granted a trust deed for, his creditors and has not been discharged in respect of it.
49. A person shall be disqualified from holding or continuing to hold office as a Director at any time when he is subject to a disqualification order under the Company Directors Disqualification Act 1986 or to an order made under section 429(2)(b) of the Insolvency Act 1986 (failure to pay under county court administration order).
50. A Director shall cease to hold office if he ceases to be a Director by virtue of any provision in the Act or is disqualified from acting as a trustee by virtue of section 72 of the Charities Act 1993 (or any statutory re-enactment or modification of that provision).
51. A person shall be disqualified from holding or continuing to hold office as a Director if he has been removed from the office of charity trustee or trustee for a charity by an order made by the Charity Commissioners or the High Court on the grounds of any misconduct or mismanagement in the administration of the charity for which he was responsible or to which he was privy, or which he by his conduct contributed to or facilitated.
52. A person shall be disqualified from holding or continuing to hold office as a Director at any time when he is:
  - a) included in the list of teachers and workers with children or young persons whose employment is prohibited or restricted under section 1 of the Protection of Children Act 1999;



- b) subject to a direction of the secretary of State under section 218 of the Education Reform Act 1988;
  - c) disqualified from working with children under sections 28 and 29 of the Criminal Justice and Court Services Act 2000;
  - d) by virtue of an Order made under section 142 of the Education Act 2002 disqualified from being the proprietor of any independent school or from being a teacher or other employee in any school.
53. A person shall be disqualified from holding or continuing to hold office as a Director where he has, at any time, refused a request by the secretary to make an application under section 113 of the Police Act 1997 for a criminal records certificate.
54. Where, by virtue of these articles a person becomes disqualified from holding, or continuing to hold office as a Director; and he is, or is proposed, to become such a Director, he shall upon becoming so disqualified give written notice of that fact to the secretary.
55. Articles 45 to 54 also apply to any member of any committee of the Directors who is not a Director.

#### ALTERNATE DIRECTORS

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

addition to his own vote (if any) as a Director, but shall count as only one for the purposes of determining whether a quorum be present.

#### SECRETARY TO THE GOVERNING BODY

61. Subject to the provisions of the Act, the secretary shall be appointed by the Directors for such term, at such remuneration and upon such conditions as they may think fit; and any secretary so appointed may be removed by them. The secretary shall not be a Director or a head teacher. Notwithstanding this article, the Directors may, where the secretary fails to attend a meeting of theirs, appoint any one of their number to act as secretary for the purposes of that meeting.

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

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

passed at a meeting of the Governing Body shall not have effect unless:

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

## POWERS OF DIRECTORS

70. Subject to provisions of the Act, the memorandum and the articles and to any directions given by special resolution, the business of the Trust shall be managed by the Directors who may exercise all the powers of the Trust. No alteration of the memorandum or the articles and no such direction shall invalidate any prior act of the Directors which would have been valid if that alteration had not been made or that direction had not been given. The powers given by this article shall not be limited by any special power given to the Directors by the articles and a meeting of Directors at which a quorum is present may exercise all the powers exercisable by the Directors.
71. In addition to all powers hereby expressly conferred upon them and without detracting from the generality of their powers under the articles the Directors shall have the following powers, namely:
- a) to expend the funds of the Trust in such manner as they shall consider most beneficial for the achievement of the Objects and to invest in the name of the Trust such part of the funds as they may see fit and to direct the sale or transposition of any such investments and to expend the proceeds of any such sale in furtherance of the Objects;
  - b) to enter into contracts on behalf of the Trust.
72. The Directors shall appoint a chief executive officer to whom the head teachers shall report.
73. The Directors shall exercise their powers and functions with a view to fulfilling a largely strategic role in the running of the Academies and shall consider any advice given by the head teachers either directly or via the chief executive officer and by the chief executive officer.
74. Any bank account in which any part of the assets of the Trust is deposited shall be operated by the Directors and shall indicate the name of the Trust. All cheques and orders for the payment of money from such account shall be signed by at least two signatories authorised by the Directors in respect of their activities as Directors.

## DIRECTORS' EXPENSES

75. The Directors may at the discretion of the Governing Body be paid all reasonable and

proper out of pocket travelling, hotel and other expenses, excluding foreign travel (unless specifically authorised by the Directors for the proper conduct of the operation of the Trust), properly incurred by them in connection with their attendance at meetings of Directors or committees of Directors or general meetings or otherwise in connection with the discharge of their duties, but shall otherwise be paid no remuneration.

76. Except to the extent permitted by clause 5 of the memorandum and subject to articles 102 to 104, no Director shall take or hold any interest in property belonging to the Trust or receive remuneration or be interested otherwise than as a Director in any contract to which the Trust is a party.

#### THE MINUTES

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

#### LOCAL GOVERNING BODIES

78. The Directors shall appoint separate committees to be known as the Local Governing Bodies for each of the Academies which shall comprise in the case of each Academy a maximum of 15 individuals to include:
- a) the head teacher of the Academy;
  - b) one parent of a pupil registered at the Academy ("Parent member");
  - c) one person employed to work at the Academy as a non-teaching staff member ("non-teaching staff member");
  - d) one person employed to work at the Academy as a teacher ("teacher member");
  - e) one person appointed by the appropriate LEA; and
  - f) such other members as the Directors decide.
79. Each Local Governing Body shall have a chairman and a vice chairman. The first chairman and vice chairman of each Local Governing Body shall be appointed by the Directors and shall serve in such capacities until the third anniversary of the date on which the Academy to be served by that Local Governing Body shall have opened. Thereafter the chairman and vice chairman shall be elected in consultation with the Directors annually by the relevant Local Governing Body from amongst its members for a term of one year. The head teacher, the teacher member and the non-teaching staff member shall not be eligible to serve as chairman or vice chairman of a Local Governing Body. The parent member, non-teaching staff member and teacher

member for each Local Governing Body shall be appointed by election in accordance with the process determined by the Directors.

## DELEGATION

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

## HEAD TEACHER

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

## MEETINGS OF THE DIRECTORS

84. Subject to these articles, the Directors may regulate their proceedings as they think fit.
85. The Directors shall hold at least one meeting in every school term. Meetings of the Governing Body shall be convened by the secretary. In exercising his functions under this article the secretary shall comply with any direction:
  - a) given by the Directors; or
  - b) given by the chairman of the Directors or, in his absence or where there is a vacancy in the office of chairman, the vice-chairman of the Directors, so far as such direction is not inconsistent with any direction given as mentioned in article 85 a).

86. Any three Directors may, by notice in writing given to the secretary, requisition a meeting of the Directors; and it shall be the duty of the secretary to convene such a meeting as soon as is reasonably practicable.
87. Each Director shall be given at least fourteen clear days before the date of a meeting:
- a) notice in writing thereof, signed by the secretary, and sent to each Director at the address provided by each Director from time to time; and
  - b) a copy of the agenda for the meeting:
- provided that where the chairman or, in his absence or where there is a vacancy in the office of chairman, the vice-chairman, so determines on the ground that there are matters demanding urgent consideration, it shall be sufficient if the written notice of a meeting, and the copy of the agenda therefore are given within such shorter period as he directs.
88. The convening of a meeting and the proceedings conducted thereat shall not be invalidated by reason of any individual not having received written notice of the meeting or a copy of the agenda therefor.
89. A resolution to rescind or vary a resolution carried at a previous meeting of the Directors shall not be proposed at a meeting of the Governing Body unless the consideration of the rescission or variation of the previous resolution is a specific item of business on the agenda for that meeting.
90. A meeting of the Governing Body shall be terminated forthwith if:
- a) the Directors so resolve; or
  - b) the number of Directors present ceases to constitute a quorum for a meeting of the Directors in accordance with article 93, subject to article 94.
91. Where in accordance with article 90 a meeting is not held or is terminated before all the matters specified as items of business on the agenda for the meeting have been disposed of, a further meeting shall be convened by the secretary as soon as is reasonably practicable, but in any event within seven days of the date on which the meeting was originally to be held or was so terminated.
92. Where the Directors resolve in accordance with article 90 to adjourn a meeting before all the items of business on the agenda have been disposed of, the Directors shall before doing so determine the time and date at which a further meeting is to be held for the purposes of completing the consideration of those items, and they shall direct the secretary to convene a meeting accordingly.
93. Subject to Article 95 the quorum for a meeting of the Directors shall be any three Directors, or, where greater, any one third (rounded up to a whole number) of the total number of Directors holding office at the date of the meeting.
94. The Directors may act notwithstanding any vacancies in their number, but, if the numbers of Directors is less than the number fixed as the quorum, the continuing Directors may act only for the purpose of filling vacancies or of calling a General Meeting.

95. The quorum for the purposes of any vote on the removal of the chairman of the Directors in accordance with Article 69 shall be any two-thirds (rounded up to a whole number) of the persons who are at the time Directors entitled to vote on that matter.
96. Subject to these articles, every question to be decided at a meeting of the Directors shall be determined by a majority of the votes of the Directors present and voting on the question. Every Director shall have one vote.
97. Subject to articles 93 to 95, where there is an equal division of votes the chairman or, as the case may be, the person who is acting as chairman for the purposes of the meeting, shall have a second or casting vote.
98. The proceedings of the Directors shall not be invalidated by:
  - a) any vacancy among their number, or
  - b) any defect in the election, appointment or nomination of any Director.
99. A resolution in writing, signed by all the Directors entitled to receive notice of a meeting of Directors or of a committee of Directors, shall be valid and effective as if it had been passed at a meeting of Directors (or as the case may be) a committee of Directors duly convened and held. Such a resolution may consist of several documents in the same form, each signed by one or more of the Directors.
100. Subject to article 101, the Directors shall ensure that a copy of:
  - a) the agenda for every meeting of the Directors;
  - b) the draft minutes of every such meeting, if they have been approved by the person acting as chairman of that meeting;
  - c) the signed minutes of every such meeting; and
  - d) any report, document or other paper considered at any such meeting,are, as soon as is reasonably practicable, made available at every Academy to persons wishing to inspect them.
101. There may be excluded from any item required to be made available in pursuance of Article 100, any material relating to:
  - a) a named teacher or other person employed, or proposed to be employed, at any Academy;
  - b) a named pupil at, or candidate for admission to, any Academy; and
  - c) any matter which, by reason of its nature, the Directors are satisfied should remain confidential.
102. The Trust shall not enter into any contract or arrangement where a Director has a duty or pecuniary interest (direct or indirect), which conflicts or may conflict with it. Any Director who has any such duty or pecuniary interest shall disclose that fact to the Governing Body as soon as he becomes aware of it.
103. Without limitation to the generality of article 102, a Director shall be treated as having a pecuniary interest in a contract or proposed contract or other arrangement with the

Trust if:

- a) he is a director or a member holding more than 1/100<sup>th</sup> of the issued share capital of a company with which the contract or arrangement was made or is proposed to be made or which has a direct pecuniary interest in the matter under consideration; or
- b) he is a partner in a partnership or member of an unincorporated association or any other body with whom the contract or arrangement was made or is proposed to be made or which has a direct pecuniary interest in the matter under consideration; or
- c) he, or a partner of his, is in the employment of a person with whom the contract was made or is proposed to be made or who has a direct pecuniary interest in the matter under consideration.

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

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

#### PATRONS AND HONORARY OFFICERS

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

#### THE SEAL

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

#### ACCOUNTS

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



## ANNUAL REPORT

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

## ANNUAL RETURN

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

## NOTICES

110. Any notice to be given to or by any person pursuant to the articles shall be in writing except that a notice calling a meeting of the Directors need not be in writing.
111. A notice may be given by the Trust to a Member either personally or by sending it by post in a prepaid envelope addressed to the Member at his registered address or by leaving it at that address. A Member whose registered address is not within the United Kingdom and who gives to the Trust an address, within the United Kingdom at which notices may be given to him shall be entitled to have notices given to him at that address, but otherwise no such Member shall be entitled to receive any notice from the Trust.
112. A Member present in person at any meeting shall be deemed to have received notice of the meeting and, where necessary, of the purposes for which it was called.
113. Proof that an envelope containing a notice was properly addressed, prepaid and posted shall be conclusive evidence that the notice was given. A notice shall be deemed to be given at the expiration of 48 hours after the envelope containing it was posted.

## INDEMNITY

114. Subject to the provisions of the Act but without prejudice to any indemnity to which a Director may otherwise be entitled, every Director or other officer of the Trust may be indemnified out of the assets of the Trust against any liability incurred by him in defending any proceedings, whether civil or criminal, in which relief is granted to him by the court from liability for negligence, default, breach of duty or breach of trust in relation to the affairs of the Trust.
115. Subject to the provisions of the Act but without prejudice to any other indemnity to which a Director may be entitled, every Director or other officer of the Trust may be indemnified out of the Trust's assets against any liability incurred by him:
- a) in defending civil proceedings, brought by a person other than the Trust or an Associated Company, connected with any liability of the Director for negligence, default, breach of duty or breach of trust in relation to the affairs of the Trust; or
  - b) in defending civil proceedings, brought by the Trust or an Associated Company (unless judgment is given against him and the judgment is final), connected with any liability of the Director for negligence, default, breach of duty or breach of trust in relation to the affairs of the Trust; or

- c) in defending criminal proceedings (unless he is convicted and the conviction is final) connected with any liability of the Director for negligence, default, breach of duty or breach of trust in relation to the affairs of the Trust; or
  - d) in connection with any application for relief from liability under the provisions for relief in the Act (unless the court refuses to grant him relief, and the refusal is final).
116. Subject to the full extent permitted by law, the Trust may provide a Director with funds to meet any liability incurred or to be incurred by him or do any other thing to enable a Director to avoid incurring such liability:
- a) in defending civil proceedings brought by a person other than the Trust or an Associated Company connected with any liability of the Director for negligence, default, breach of duty or breach of trust in relation to the affairs of the Trust; or
  - b) in defending civil proceedings brought by the Trust or an Associated Company (unless judgment is given against him and the judgment is final) connected with any liability of the Director for negligence, default, breach of duty or breach of trust in relation to the affairs of the Trust; or
  - c) in defending criminal proceedings connected with any liability of the Director for negligence, default, breach of duty or breach of trust in relation to the affairs of the Trust; or
  - d) in connection with any application for relief from liability under the provisions for relief in the Act
- provided that the Director shall repay any such funds or discharge any other liability to the Trust if:
- e) he is convicted (and the conviction is final) in any criminal proceedings; or
  - f) judgment is given against him (and the judgment is final) in any civil proceedings; or
  - e) the court refuses to grant him relief (and the refusal is final) in connection with any application for relief from liability under the provisions for relief in the Act.

117. For the purposes of Articles 115 and 116, a judgment, conviction or refusal becomes final if:
- a) the period for bringing an appeal (or any further appeal) has ended; and
  - b) any appeal brought is determined, abandoned or otherwise ceases to have effect.

## RULES

118. The Directors may from time to time make such rules or bye laws as they may deem necessary or expedient or convenient for the proper conduct and management of the Trust and for purposes of prescribing classes of and conditions of membership, and in particular but without prejudice to the generality of the foregoing, they may by such rules or bye laws regulate:
- a) the admission and classification of Members (including the admission of organisations to membership) and the rights and privileges of such Members, and the conditions of membership and the terms on which Members may

- resign or have their membership terminated and the entrance fees, subscriptions and other fees or payments to be made by Members;
- b) the conduct of Members in relation to one another, and to the Trust's servants;
  - c) the setting aside of the whole or any part or parts of the Trust's premises at any particular time or times or for any particular purpose or purposes;
  - d) the procedure at general meetings and meetings of the Directors and committees of the Directors and meetings of the governing body in so far as such procedure is not regulated by the articles;
  - e) generally, all such matters as are commonly the subject matter of company rules.

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

**ANNEX B**

**1 ARRANGEMENTS FOR PUPILS WITH SEN AND DISABILITIES**

Duty to have regard to the Code of Practice and other guidance

1. ARK Academies shall have regard to the Special Educational Needs Code of Practice (2001) and any guidance issued by the Secretary of State relating to sections 316 and 316A of the Education Act 1996. Any changes to be made to the provisions set out in this document must be approved in advance by the Secretary of State.

Duties in relation to pupils with SEN

2. For each ARK Academy, ARK Academies shall designate a person, who may be the head teacher, the chair of the local governing body or another Local Governing Body member as appropriate, who shall be the responsible person for the purposes of the following duties in relation to pupils with SEN.

3. ARK Academies shall:

use its best endeavours, in exercising its functions in relation to the school, to secure that, if any registered pupil has special educational needs, the special educational provision which the pupil's learning difficulty calls for is made;

secure that, where the responsible person has been informed by the local education authority that a registered pupil has special educational needs, those needs are made known to all who are likely to teach the pupil;

secure that the teachers in the school are aware of the importance of identifying and providing for those registered pupils who have special educational needs; and

secure that the local education authority and the governing bodies of other schools in the area are consulted, to the extent that this is necessary for co-ordinating provision for pupils with SEN.

4. Where a child who has special educational needs is being educated in an ARK Academy, those concerned with making special educational provision for the child shall secure that the child engages in the activities of the school together with children who do not have SEN, so far as is reasonably practicable and is compatible with:

- the child receiving the special educational provision which his learning difficulty calls for,
- the provision of efficient education for the children with whom he will be educated, and

- o the efficient use of resources.

5. Each Academy prospectus shall include details of the ARK Academies policy for pupils with SEN and in particular shall include the information specified in Schedule 1 to the Education (Special Educational Needs) (Information) Regulations 1999 as amended or re-enacted from time to time. It shall also include 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; and the facilities provided to assist access to the Academy by disabled pupils (disabled pupils meaning pupils who are disabled for the purposes of the Disability Discrimination Act 1995).

#### Admissions

6. ARK Academies shall ensure that pupils with SEN are admitted on an equal basis with others in accordance with its admissions policy.

7. Where a local education authority proposes to name an ARK Academy in a statement of SEN made in accordance with section 324 of the Education Act 1996, ARK Academies shall consent to the Academy 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, ARK Academies shall have regard to the relevant guidance issued by the Secretary of State to maintained schools.

8. In the event of any disagreement between ARK Academies and the local education authority over the proposed naming of the Academy in a statement, the Academy may ask the Secretary of State to determine whether the Academy should be named. The Secretary of State's determination shall, subject only to any right of appeal which any parent or guardian of the child may have to the Special Educational Needs and Disability Tribunal (SENDIST), be final.

9. If a parent or guardian of a child in respect of whom a statement is maintained by the local education authority appeals to SENDIST either against the naming of the Academy in the child's SEN statement or asking the Tribunal to name the Academy, then the decision of the Tribunal on any such appeal shall be binding and shall, if different from that of the Secretary of State under paragraph 7 above, be substituted for the Secretary of State's decision.

10. Where ARK Academies has consented to the Academy being named in a child's statement of SEN, or the Secretary of State or SENDIST has determined that it should be named, the Academy shall admit the child notwithstanding any provision of Annex 1 of any Supplemental Agreement.

## **ANNEX C**

### **SERIOUS INCIDENTS OF MISBEHAVIOUR LEADING TO FIXED PERIOD OR PERMANENT EXCLUSION**

In discharging their duties the principal and Local Governing Body of each Academy will have regard to the Secretary of State's guidance on exclusions<sup>1</sup> as if the Academy were a maintained school, except that:

- references to the maintaining LEA in paragraph 26(c) of the guidance should be construed as a references to the LEA in which an excluded child is resident;
- the Academy, and not the LEA, is responsible for making arrangements for independent appeal panels to hear appeals against permanent exclusions where the Local Governing Body does not direct reinstatement (see paragraph 35 and part 5 of the guidance, and below);
- the Local Governing Body is not expected to seek the advice of an LEA officer when considering an exclusion (paragraph 73 of the guidance), although an LEA officer may attend any meeting to consider an exclusion at the request of a parent; and
- part 8 of the guidance (arrangements for money to follow pupils who have been permanently excluded from school) does not apply.

#### Constitution and conduct of independent appeal panels

ARK Academies will be responsible for carrying out the functions assigned to the LEA in part 5 of the guidance with regard to the management of the appeal procedure. Appeals panels must be impartial and constituted in accordance with the detailed provisions of paragraphs 95-97 of the guidance. ARK Academies will arrange suitable training for appeal panel members and clerks.

The appeal panel's decision is final and binding on ARK Academies. A parent may seek a judicial review of a panel's decision. A parent may not, however, appeal to the Commissioner for Local Administration (the Local Government Ombudsman) about maladministration because the Commissioner's remit is limited to considering the conduct of appeal panels constituted by LEAs.

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<sup>1</sup> References in this annex to the Secretary of State's guidance are to "Improving Behaviour and Attendance: Guidance on Exclusion from Schools and Pupil Referral Units", which is published on the DfES website at: <http://www.teachernet.gov.uk/wholeschool/behaviour/exclusion/guidance/>. The guidance may be subject to amendment, and the Academy is required to have regard to the guidance as it stands at any given time.

**Annex D**

**SCHEDULE OF APPROVALS BY SECRETARY OF STATE REQUIRED IN RELATION TO CAPITAL PROGRAMME TO ESTABLISH EACH ACADEMY**

1. DfES's specific approval and authorisation is required on the overall programme for the design, construction, refurbishment, adaptation, repair and equipment works for the establishment of each Academy. This will apply through all key stages and elements within the development and realisation of the project. In particular DfES approval is required at the points outlined at (a) to (k) below.
  - (a) Potential sites will be subject to analysis and feasibility appraisal to establish the degree of suitability whereby a city academy project may be economically provided within specific programme requirements. Agreement will be sought with sponsors and their design team from the outset on this basis.
  - (b) Approval to the Project Brief and budgetary estimated costs, in meeting the aims and objectives of the Academy.
  - (c) Arrangements for the selection and appointment of the design team (including the project manager, architect, quantity surveyor and other professional assistance engaged in the capital works).
  - (d) The Project Manager's Project Execution Plan.
  - (e) The choice of contractual method (including arrangement to secure compliance with OJEU and other European and domestic legislation).
  - (f) Approval at early outline proposal stage (RIBA Stage 'D') demonstrating broad analysis of educational requirements, and DfES standards within the overall design concept and interpretation and development of the brief, supported by a professionally generated cost estimate/cost plan, programme, and report.
  - (g) Approval to proposals for outline planning submission.
  - (h) The plans, areas (including a schedule of accommodation), specifications and costs of building works: (at RIBA Stage D), demonstrating value for money, design co-ordination and compliance with all briefing (development) requirements and programme. Pre-tender approval on detail designs and likely tender costs.
  - (i) Arrangements for the selection and appointment of all contractors engaged in the capital works.
  - (j) The acceptance of tenders, placing of orders for the works, and copies of the contractor programme for the completion of the works.

- (k) The Contract Sum, once approved will not be exceeded without prior approval of the DfES. The Department is committed to ensuring that the implications of any significant proposed changes to the scope and content of the cost plan and programme are fully understood and assessed for approval before implementation.
  - (l) Arrangements for supervision the progress of capital works on a day to day basis, including the appointment of a named individual.
2. The Company will advise the DfES of any upturn in estimated costs and effect to programme through all stages of the project.
  3. Payments shall be made to the Company in respect of building works in accordance with agreed staged payments for professional services, project development through all key stages, and certified payments, by the design team/contractor administrator and project manager.
  4. Officers of the DfES shall have access at all reasonable times to the site (by prior agreement with the contractor) and to the individual at 1(l) above.
  5. Notification of the official handover of the building once practical completion has been achieved.
  6. Notification of the likely date for the issue of Certificate of Making Good Defects.
  7. Approval and breakdown of the Final Account.