

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

The Parties to this Deed are:

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

(2) **TAPTON SCHOOL ACADEMY TRUST**, a charitable company incorporated in England and Wales with registered company number 07697171 whose registered address is at Tapton School, Darwin Lane, Sheffield, S10 5RG ( "**TSAT**"); and

(3) **BRADFIELD SCHOOL**, a charitable company incorporated in England and Wales with registered company number 08265058 whose registered address is at Bradfield School, Kirk Edge Road, Worrall, Sheffield, S35 0AE (the "**Company**"),

together referred to as the "Parties".

## **INTRODUCTION**

- A. Bradfield School is an academy within the meaning of the Academies Act 2010 (the "academy") and is currently operated by the Company (a single academy trust).
- B. The Secretary of State and the Company entered into a Supplemental Funding Agreement on 3 December 2012 (the "**Agreement**") for the maintenance and funding of the academy which was subsequently varied by a Deed of Variation dated 14 June 2013 and a Deed of Variation dated 27 July 2016 (together attached as Schedule 1).
- C. It is proposed that, with effect from 00.01 am on 1 February 2020 ("Transfer Date"), TSAT will assume responsibility for the management and operation of the academy in succession to the Company.
- D. The Parties wish to novate the Agreement to TSAT and the Secretary of State and TSAT wish to vary the terms of the Agreement subject to the provisions of this Deed.

## **LEGAL AGREEMENT**

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

## **NOVATION**

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

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

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

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

## **OBLIGATIONS AND LIABILITIES**

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

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

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

## **INDEMNITY**

9. Not used.

10. Not used.

## **VARIATION**

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

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

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

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

## **COUNTERPARTS**

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

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

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

.....

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

Date.....

EXECUTED as a deed by  
**TAPTON SCHOOL ACADEMY**  
**TRUST** acting by one director in  
the presence of a witness:

Director ..... *C Bagley* .....  
Print name..... *CAROLINE BAGLEY* .....  
Date .....

Witness ..... *J. Dennis* .....  
Print name..... *D. DENNIS* .....  
Address..... *Tapton School Academy Trust, Daning Lane* .....  
Occupation..... *CEO* ..... *Sheffield S10 5RG*

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

Director .....  
Print name.....  
Date .....

Witness .....  
Print name.....  
Address.....  
Occupation.....

**Schedule 1**  
**Supplemental Funding Agreement**

## DEED OF VARIATION TO THE FUNDING AGREEMENT

THIS DEED is made the 27 day of July 2016

### BETWEEN

- 1) The Secretary of State for Education (the "Secretary of State"); and
- 2) Bradfield School, (the "Company") [a charitable company incorporated in England and Wales, with registered number 8265058 together, the "Parties".

### INTRODUCTION

- A. The Parties entered into a funding agreement dated on or about 1/12/2012 (the "Funding Agreement") (subsequently amended on or about 14/6/2013 by a deed of variation) relating to the establishment, maintenance and funding of an Academy in accordance with the Funding Agreement.
- B. The Parties now wish to vary and amend certain terms and conditions of the Funding Agreement in accordance with the terms of this Deed.
- C. This Deed is supplemental to the Funding Agreement.

#### 1. Interpretation

- 1.1 Words, expressions and interpretations used in this Deed shall, unless the context expressly requires otherwise, have the meaning given to them in, and shall be interpreted in accordance with, the Funding Agreement.

#### 2. Variation of the Funding Agreement

- 2.1 The Parties agree that with effect from the date of this Deed the following amendments will be made to the agreement:
  - 2.1.1 Clauses 14A to 14E will be inserted as follows:
    - 14A) The Academy Trust must provide to the Secretary of State the names of all new or replacement members of the Academy Trust, stating the date of their appointment and, where applicable, the name of the member they replaced as soon as is practicable and in any event within 14 days of their appointment.
    - 14B) The Academy Trust must not appoint any new or replacement members until it has first informed them, and they have agreed, that their names will be shared with the Secretary of State to enable him to assess their suitability.
    - 14C) The Academy Trust must not amend or remove the provisions in its Articles relating to the appointment or election or the resignation or removal of Charity Trustees or members ("the Governance Articles") without the Secretary of State's consent.
    - 14D) Before any change to the Governance Articles is proposed the Academy Trust must give notice to the Secretary of State of:
      - a) the proposed amendment or removal; and
      - b) the reason for it.
    - 14E) If the Secretary of State consents to the proposed changes, the Academy Trust shall approve any changes to the Articles as soon as reasonably practicable and provide the Secretary of State with a copy of the amended Articles and the resolution(s) approving them.

- 2.1.2 The opening paragraph of clause 17 will be revised to read (amendments in bold):
- The planned capacity of the Academy is **1250** in the age range 11-18, including a sixth form of **200** places. The Academy will be an all ability inclusive school whose requirements for:.....
- 2.1.3 Clauses 23B to 23F and 25A will be inserted as follows:
- 23B) The Academy Trust must not allow any view or theory to be taught as evidence-based if it is contrary to established scientific or historical evidence and explanations. This clause applies to all subjects taught at the Academy.
- 23C) The Academy Trust must provide for the teaching of evolution as a comprehensive, coherent and extensively evidenced theory.
- 23D) The Academy Trust must prevent political indoctrination, and secure the balanced treatment of political issues, in line with the requirements for maintained schools set out in the Education Act 1996, and have regard to any Guidance.
- 23E) The Academy Trust must ensure the Academy actively promotes the fundamental British values of democracy, the rule of law, individual liberty, and mutual respect and tolerance of those with different faiths and beliefs.
- 23F) The Academy Trust must ensure the Academy promotes principles that support equality of opportunity for all.
- 25A) The Academy Trust must comply with section 71(1)-(6) and (8) of the School Standards and Framework Act 1998 as if the Academy were a community, foundation or voluntary school, and as if references to "religious education" and "religious worship" in that section were references to the religious education and religious worship provided by the Academy in accordance with clause 26.
- 2.1.4 Clauses 31 and 32 will be replaced with clauses 31,32 and 32A as follows:
- 31) The Academy Trust must provide school lunches and free school lunches in accordance with the provisions of sections 512(3) and 512ZB(1) of the Education Act 1996 as if references in sections 512 and 512ZB to a local authority were to the Academy Trust and as if references to a school maintained by the local authority were to the Academy.
- 32) The Academy Trust must comply with school food standards legislation as if it were a maintained school.
- 32A) Where the Academy Trust provides milk to pupils, it must be provided free of charge to pupils who would be eligible for free milk if they were pupils at a maintained school.
- 2.1.5 Clause 33C will be re-numbered as clause 33D.
- 2.1.6 Clause 33C will be inserted as follows:
- 33C For each Academy Financial Year the Academy Trust must, where applicable, publish, on the Academy's website, information about:
- the amount of year 7 literacy and numeracy catch-up premium grant that it will receive during the Academy Financial Year;
  - what it intends to spend its year 7 literacy and numeracy catch-up premium grant on;
  - what it spent its year 7 literacy and numeracy catch-up premium grant on in the previous Academy Financial Year; and
  - the impact of the previous year's year 7 literacy and numeracy catch-up premium grant on educational attainment, and how that effect was



assessed.

2.1.7 Clause 46(b) will be revised to read (amendments in bold):

...the total number of pupils as measured in the Schools Census which is used to fund maintained schools for the financial year overlapping with the Academy Financial Year in question is less than 90% of the planned final size of the Academy, which is **1250**, and has not at any previous time been greater than 90% of that number.14A)

2.1.8 The wording of Clauses 90 and 91 will be replaced with the following:

90) The Secretary of State may serve a Termination Warning Notice where he considers that:

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

91) A Termination Warning Notice served under clause 90 will specify:

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

2.1.9 Clauses 100A to 100C will be inserted as follows:

100A) If

- a) Any Charity Trustee or member of the Academy Trust refuses to consent to any checks required under this Agreement, or as otherwise requested by the Secretary of State; or
- b) The Secretary of State determines that any Charity Trustee or member of the Academy Trust is unsuitable,

the Secretary of State may:

- i. direct the Academy Trust to ensure that the Charity Trustee or member resigns or is removed within 42 days, failing which the Secretary of State may serve a Termination Notice; or
- ii. serve a Termination Notice.

100B) For the purposes of clause 100A a Charity Trustee or member of the Academy Trust will be "unsuitable" if that Charity Trustee or member:

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

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

100C) For the purposes of clause 100B:

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

2.1.10 Clauses 115B to 115D will be inserted as follows:

115B) If the Academy Trust receives a Property Notice, it must:

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

115C) If the Academy Trust is, or if it is reasonably foreseeable that it will be, in material breach of the Lease, the Academy Trust must immediately give written notice to the Secretary of State stating what the breach is and what action the Academy Trust has taken or proposes to take to remedy it, including timescales where appropriate.

115D) After notifying the Secretary of State under clause 5.8, the Academy Trust must:

- a) promptly give the Secretary of State all the information he asks for about the breach;
- b) allow the Secretary of State to take all necessary action, with or instead of the Academy Trust, to remedy or prevent the breach, and
- c) use its best endeavours to help the Secretary of State to remedy or prevent the breach.

2.1.11 Clauses 115E to 115G will be inserted as follows:

115E) Where:

- a) the Secretary of State identifies basic or parental need for additional places in the area in which the Academy is situated; and
- b) the Secretary of State then considers that not all the Land is needed for the operation of the Academy at planned capacity, the Secretary of State must consult with the Academy Trust to determine whether part of the Land could be demised or sublet to another Academy Trust, as the Secretary of State considers appropriate, for the purpose of that Academy Trust establishing and maintaining an educational institution on the Land.

115F) To the extent the Academy Trust and the Secretary of State agree to part of the Land being demised or sublet in accordance with clause 115E, the Academy Trust must use its best endeavours to procure either the approval of the Landlord or any necessary amendments to the Lease in order to enable it to share occupation of the Land with the incoming Academy trust and to provide the incoming Academy Trust with security of tenure over the Land occupied by it, and shall enter into any legal arrangements which the Secretary of State requires for this purpose. The Secretary of State shall meet the necessary and reasonable costs incurred by the Academy Trust in connection with this clause.

115G) For the purposes of clause 115E:

- a) a basic need will arise when the forecast demand for pupil places in the area where the Academy is situated is greater than the existing capacity to provide them;
- b) a parental need will arise when the DfE is actually aware of an additional demand for pupil places in the area where the Academy is situated, following representations from parents in that area; and
- c) planned capacity has the meaning given in clause 17.

2.2 Except as varied by this Deed, the Funding Agreement shall remain in full force and effect.

### 3. Governing law and jurisdiction

3.1 This Deed, and any disputes or claims arising out of or in connection with it, its subject matter or formation (including non-contractual disputes or claims), shall be governed by and construed in accordance with English law.

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

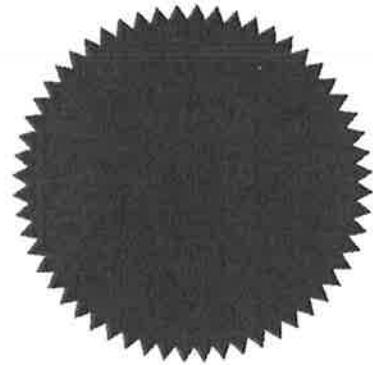
### 4. Counterparts

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


**IN WITNESS** whereof this Deed has been executed by the parties hereto and is intended to be and is hereby delivered on the date first above written.

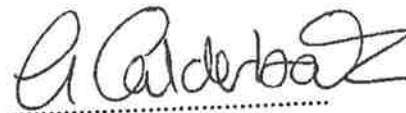
**EXECUTED** as a deed by affixing the corporate seal of the **Secretary of State for Education** authenticated by:- )  
)

  
.....  
Duly authorised by the Secretary of State for Education



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

  
.....  
**Director**

  
.....  
**Director/Secretary**

**BRADFIELD SCHOOL**

**FUNDING AGREEMENT**

25 May 2012 V5

**SINGLE ACADEMY MODEL  
Mainstream**

**BRADFIELD SCHOOL  
FUNDING AGREEMENT**

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## INTRODUCTION

- 1) This Agreement is made under section 1 of the Academies Act 2010 between the Secretary of State for Education ("the Secretary of State") and Bradfield School (the "Academy Trust").
- 2) The Academy Trust is a Company incorporated in England and Wales, limited by guarantee with registered Company number 8265058.
- 2A) As part of the Academy Trust's conversion to academy status, it is the parties' intention for the Academy Trust to enter into the Development and School Agreement , the Principal Agreement and the Lease.
- 3) The following expressions used in this Agreement have the respective meanings assigned to them by the numbered clauses of this Agreement referred to immediately after the reference to the expressions -
  - (a) "Academies Financial Handbook" - clause 66;
  - (b) "Academy Trust Insolvency Notice" – clause 60A.2;
  - (c) "Accounting Officer" – clause 65;
  - (d) "Annual Letter of Funding" - clause 59;
  - (e) "Capital Expenditure" - clause 36;
  - (f) "Capital Grant" – clause 36;
  - (g) "Chief Inspector" means Her Majesty's Chief Inspector of Education, Children's Services and Skills or his successor;
  - (h) "Critical Years" – clause 60A.1;
  - (i) "Current Funding" - clause 60A.1
  - (j) "EAG" - clause 35;
  - (k) "GAG" – clause 35;
  - (l) "PFI EAG Refusal" – clause 60A.1
  - (m) "Recurrent Expenditure" – clause 35;
  - (n) "Shortfall" – clause 60A.5;



(o) "Start-up Period" – clause 49;

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

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

"Additional Governors" means Governors who may be appointed by the Secretary of State under the Articles of Association.

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

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

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

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

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

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

"DfE" means Department for Education;

"Development and School Agreement" means the agreement entered into on or around the date hereof between the LA and the Academy Trust relating to the provision of facilities and services to the Academy Trust; ;

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

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

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

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

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

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

"parents" means parents or guardians;

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

"PFI Contractor" means Vinci Education (Bradfield) Limited, the counterparty of the LA to the Project Agreement;

"Principal" means the head teacher of the Academy;

"Principal Agreement" means the agreement entered into on or around the date hereof by the Secretary of State, the Academy Trust and the LA;

"Principal Regulator" means the entity appointed as the Principal Regulator further to the Charities Act 2006;

"Project Agreement" means the agreement between the LA and PFI Contractor for the design, build, finance and operation of Bradfield School (including the Academy Trust's facilities) dated 23 March 2011;

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

"SEN" means Special Educational Needs;

- 5) The Interpretation Act 1978 shall apply for the interpretation of this Agreement as it applies for the interpretation of an Act of Parliament.
- 6) Expressions defined in this Agreement shall have the same meaning where used in any Annex to this Agreement.
- 7) Questions arising on the interpretation of the arrangements in this Agreement shall be resolved by the Secretary of State after consultation with the Academy Trust.
- 8) Section 1 (3) of the Academies Act 2010 states that:

(3) An Academy agreement is an agreement between the Secretary of State and the other party under which-

(a) the other party gives the undertakings in subsection (5), and

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

#### **LEGAL AGREEMENT**

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

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

- 10) The characteristics of the Academy set down in Section 1A(1) of the Academies Act 2010, are that:

(p) It is an independent school;

(q) it has a curriculum satisfying the requirements of section 78 of the Education Act 2002 (balanced and broadly based curriculum)

(r) it provides education for pupils of different abilities

(s) it provides education for pupils who are wholly or mainly drawn from the area in which the school is situated, and

- (t) it is not an alternative provision Academy.

### **ACADEMY OPENING DATE**

- 11) The Academy shall open as a school on 1 December 2012 replacing Bradfield School which shall cease to be maintained by the Local Authority on that date, which date shall be the conversion date within the meaning of the Academies Act 2010.

### **CONDITIONS OF GRANT**

#### **General**

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

- (a) the school will be at the heart of its community, promoting community cohesion and sharing facilities with other schools and the wider community;
- (b) there will be assessments of pupils performance as they apply to maintained schools and the opportunity to study for relevant qualifications in accordance with clause 29 (d);
- (c) the admissions policy and arrangements for the school will be in accordance with admissions law, and the DfE Codes of Practice, as they apply to maintained schools;
- (d) teachers' levels of pay and conditions of service for all employees will be the responsibility of the Academy Trust;
- (e) there will be an emphasis on the needs of the individual pupils including pupils with special education needs (SEN), both those with and without statements of SEN;
- (f) there will be no charge in respect of admission to the school and the school will only charge pupils where the law allows maintained schools to charge;
- (g) the Academy Trust shall as soon as reasonably practicable establish an appropriate mechanism for the receipt and management of donations and shall use reasonable endeavours to procure donations through that mechanism for the purpose of the objects specified in the Articles.

#### **Governance**

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

Directors of the company constituted under the Articles of the Academy Trust.

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

### **Conduct**

15) The Academy shall be conducted in accordance with:

- (a) the Articles, which shall not be amended by the Academy Trust 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;
- (d) the Principal Agreement;
- (e) the Development and School Agreement; and
- (f) the Lease.

### **Criminal Records Bureau Checks**

- 16) The Academy shall comply with the requirements of the Education (Independent School Standards) (England) Regulations 2010 (or such other regulations as may for the time being be applicable) in relation to carrying out enhanced criminal records checks, obtaining enhanced criminal records certificates and making any further checks, as required and appropriate for members of staff, supply staff, individual Governors and the Chair of the Governing Body.

### **Pupils**

- 17) The planned capacity of the Academy is 900 in the age range 11-16. The Academy will be an all ability inclusive school whose requirements for:
- (a) the admission of pupils to the Academy are set out in Annex B to this Agreement;
  - (b) the admission to the Academy of and support for pupils with SEN and with

disabilities (for pupils who have and who do not have statements of SEN) are set out in Annex C to this Agreement;

- (c) pupil exclusions are set out in regulations made by virtue of section 51A of the Education Act 2002 (as may be amended from time to time, and includes any successor provisions).

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

17A) The Academy Trust will in respect of the Academy act in accordance with, and be bound by, all relevant statutory and regulatory provisions and have regard to any guidance and codes of practice issued pursuant to such provisions, as they apply at any time to a maintained school, relating to the designation of a person to manage the teaching and learning programme for children who are looked after by an LA and are registered pupils at the school. For the purpose of this clause, any reference to the governing body of a maintained school in such statutory and regulatory provisions, or in any guidance and code of practice issued pursuant to such provisions, shall be deemed to be references to the Governing Body of the Academy Trust.

### **Teachers and other staff**

18) Subject to clause 19, the Academy Trust shall not employ anyone under a contract of employment or for services to carry out planning and preparing lessons and courses for pupils, delivering lessons to pupils, assessing the development, progress and attainment of pupils, and reporting on the development, progress and attainment of pupils ("specified work") who is not either:-

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

19) Clause 18 does not apply to anyone who:

- (a) was transferred to the employment of the Academy Trust by virtue of the Transfer of Undertakings (Protection of Employment) Regulations 2006;
- (b) immediately prior to the transfer, was employed to do specified work; and
- (c) immediately prior to the transfer, was not:

- (i) a qualified teacher within the meaning of regulations made under section 132 of the Education Act 2002 and registered with full registration with the appropriate body, or
- (ii) eligible to do specified work under the Education (Specified Work and Registration) (England) Regulations 2003 (SI 2003/1663)

("transferred staff member"). The Academy Trust shall use its best endeavours to ensure that any transferred staff member who undertakes specified work and does not meet the requirements of clause 18(a) or clause 18(b) meets such requirements as soon as possible.

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

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

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

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

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

- (a) the content of the curriculum;
- (b) its approach to the curriculum;
- (c) the GCSE options (and other Key Stage 4 qualifications) offered by the Academy;
- (d) the names of any phonics or reading schemes in operation for Key Stage 1; and
- (e) how parents (including prospective parents) can obtain further information in relation to the Academy's curriculum.

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

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

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

- (a) the Academy shall be treated as falling within the meaning of "a school" under section 42A (2);
- (b) the Academy Trust shall be deemed to be the "responsible authorities" for the purposes of subsection 42A(3); and
- (c) references to registered pupils shall be treated as references to registered pupils at the Academy

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

25) Where the Academy is designated with a religious character in accordance with section 124B of the School Standards and Framework Act 1998 or further to section 6(8) of the Academies Act 2010:

- (a) subject to clause 27, and paragraph 4 of Schedule 19 to the School Standards and Framework Act 1998 which shall apply as if the Academy were a voluntary aided school with a religious character, the Academy Trust shall ensure that provision is made for Religious Education to be given to all pupils at the Academy in accordance with the tenets of the specified religion or religious denomination of the Academy;
- (b) subject to clause 27, the Academy Trust shall comply with the requirements of section 70(1) of, and Schedule 20 to, the School Standards and Framework Act 1998 as if the Academy were a foundation school with a religious character or a voluntary school, and as if references to 'the required collective worship' were references to collective worship in accordance with the tenets and practices of the specified religion or religious denomination of the Academy;
- (c) the Academy Trust shall ensure that the quality of Religious Education given to pupils at the Academy and the contents of the Academy's collective worship given in accordance with the tenets and practice of the specific religion or religious denomination are inspected. Such inspection shall be conducted by a person chosen by the Academy Trust and the Academy shall secure that such inspection shall comply with the requirements set out in any statutory provision and regulations as if the Academy were a foundation or voluntary school which has been designated under section 69(3) of the School Standards and Framework Act 1998 as having a religious character.



26) Where the Academy has not been designated with a religious character in accordance with section 124B of the School Standards and Framework Act 1998 or further to Section 6(8) of the Academies Act 2010:

- (a) subject to clause 27, the Academy Trust shall ensure that provision shall be made for religious education to be given to all pupils at the Academy in accordance with the requirements for agreed syllabuses in section 375(3) of the Education Act 1996 and paragraph 2(5) of Schedule 19 to the School Standards and Framework Act 1998;
- (b) subject to clause 27, the Academy Trust shall ensure that the Academy complies with the requirements of section 70(1) of, and Schedule 20 to, the School Standards and Framework Act 1998 as if it were a community, foundation or voluntary school which does not have a religious character, except that the provisions of paragraph 4 of that Schedule do not apply. The Academy may apply to the Secretary of State for consent to be relieved of the requirement imposed by paragraph 3(2) of that Schedule, the Secretary of State's consent to such an application not to be unreasonably withheld or delayed;
- (c) the Academy Trust:
  - (i) agrees that before making an application pursuant to the Religious Character of Schools (Designation Procedure) (Independent Schools) (England) Regulations 2003 for the Academy to be designated as a school with religious character it shall seek the prior written consent of the Secretary of State;
  - (ii) hereby acknowledges that the Secretary of State may in his absolute discretion refuse or consent to the Academy Trust making such an application.

(a)

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

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

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

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

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

### **Assessment**

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

- (a) The Academy Trust shall ensure that the Academy complies with any guidance issued by the Secretary of State from time to time to ensure that pupils take part in assessments and in teacher assessments of pupil's performance as they apply to maintained schools.
- (b) The Academy Trust shall report to any body on assessments under clause 29 as the Secretary of State shall prescribe and shall provide such information as may be required by that body as applies to maintained schools.
- (c) In respect of all Key Stages, the Academy Trust will submit the Academy to monitoring and moderation of its assessment arrangements as prescribed by the Secretary of State.
- (d) The Academy Trust may not offer courses at the Academy which lead to relevant qualifications, as defined in section 96 of the Learning and Skills Act 2000, unless the Secretary of State gives specific approval for such courses.

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

(a) The school's most recent key stage 2 results as published by the Secretary of State under the following column headings in the School Performance Tables published on the Department for Education's website:

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

(b) The school's most recent key stage 4 results as published by the Secretary of State under the following column headings in the School Performance Tables published on the Department for Education's website:

- (i) "% achieving 5 + A\* - C GCSEs (or equivalent) including English or Maths GCSEs";
- (ii) "% achieving the English Baccalaureate"; and
- (iii) "% of pupils making expected progress".

(c) Information as to where and by what means parents (including prospective parents) may access the most recent report about the school published by her Majesty's Chief Inspector of Education, Children's Services and Skills.

(d) Information as to where and by what means parents (including prospective parents) may access the School Performance Tables published by the Secretary of State on the Department for Education's website.

### **Exclusions Agreement**

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

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

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

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

### **School Meals**

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

### **Charging**

- 33) Sections 402 (Obligation to enter pupils for public examinations), 450 - 457 (prohibition of charges), 459 (regulations about information about charges and school hours) and 460 (voluntary contributions), 461 (recovery of sums as civil debt) - 462 (Interpretation re charges) of the Education Act 1996 (including, for the avoidance of doubt, any secondary legislation made further to those provisions) shall be deemed to apply to the Academy with the following modifications:
- (a) references to any maintained school shall be treated as references to the Academy;
  - (b) references to registered pupils shall be treated as references to registered pupils at the Academy;
  - (c) references to the governing body or the local education authority shall, in each case, be treated as references to the Academy Trust;
  - (d) the charging and remissions policies required to be determined under section

457, and any amendment thereto, shall require the approval of the Secretary of State; and

- (e) the Academy Trust may charge persons who are not registered pupils at the Academy for education provided or for facilities used by them at the Academy.

### **International Education Surveys**

33A) The Secretary of State may, by notice in writing to the Academy Trust, require the Academy Trust to participate in an international education survey and the Academy Trust shall, upon receipt of such notice, participate in that survey and provide to the Secretary of State or to those carrying out the survey all such assistance and information as may reasonably be required for the purposes of the Academy's participation in that survey.

### **Pupil Premium**

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

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

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

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

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

#### **General**

34) The Secretary of State shall pay grants towards Capital and Recurrent Expenditure for the Academy. Except with the Secretary of State's prior agreement, the Academy Trust shall not budget for its expenditure in any Academy Financial Year in excess of expected income. The Academy Trust shall not enter into commitments which are likely to have substantial implications for future levels of grant, or for the period for which

grant may be required. No decision by the Academy Trust shall commit the Secretary of State to paying any particular amount of grant.

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

### **Capital Grant**

36) "Capital Expenditure" means expenditure on:

- (a) the acquisition of land and buildings;
- (b) the erection, enlargement, improvement or demolition of any building including fixed plant, installation, wall, fence or other structure, or any playground or hard standing;
- (c) the installation of electrical, mechanical or other services other than necessary replacements, repairs and maintenance due to normal wear and tear;
- (d) the purchase of vehicles and other self-propelled mechanical equipment;
- (e) the installation and equipping of premises with furnishings and equipment, other than necessary replacements, repairs and maintenance due to normal wear and tear;
- (f) the installation and equipping of premises with computers, networking for computers, operating software and information and communication technology equipment, other than necessary updates or necessary replacements, repairs and maintenance due to normal wear and tear;
- (g) the provision and equipping of premises, including playing fields and other facilities for social activities and physical recreation other than necessary replacements, repairs and maintenance due to normal wear and tear;
- (h) works of a permanent character other than the purchase or replacement of minor day-to day items;
- (i) any major repairs or replacements which are specified as constituting capital expenditure in any grant letter relating to them;

- (j) such other items (whether of a like or dissimilar nature to any of the foregoing) of a substantial or enduring nature as the Secretary of State may agree shall constitute capital expenditure for the purposes of this Agreement;
- (k) all professional fees properly and reasonably incurred in connection with the provision of any of the above;
- (l) VAT and other taxes payable on any of the above.
- (m) "Capital Grant" means grant paid to the Academy Trust in respect of Capital Expenditure.

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

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

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

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

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

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

to the Academy Trust so much of the claim as shall not be in dispute.

### **General Annual Grant**

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

- (a) teachers' salaries and related costs (including full and part time teaching staff and seconded teachers);
- (b) non-teaching staff salaries and related costs (including pension contributions, educational support staff, administrative and clerical staff and manual and premises related staff);
- (c) employees' expenses;
- (d) the purchase, maintenance, repair and replacement:
  - (i) of teaching and learning materials and other educational equipment, including books, stationery and ICT equipment and software, sports equipment and laboratory equipment and materials;
  - (ii) of other supplies and services;
- (e) examination fees;
- (f) repairs, servicing and maintenance of buildings (including redecoration, heating, plumbing, lighting etc); maintenance of grounds (including boundary fences and walls); cleaning materials and contract cleaning; water and sewage; fuel and light (including fuel oil, solid and other fuel, electricity and gas); rents; rates; purchase, maintenance, repairs and replacement of furniture and fittings;
- (g) insurance, provided that the Secretary of State shall not be obliged to pay GAG in relation to insurance to the extent that insurance and/or comparable arrangements are made available to the Academy Trust (whether at a cost to the Academy Trust or otherwise and whether made available by and/or on behalf of the Secretary of State or otherwise) save that, to the extent that such insurance and/or comparable arrangements as may be made available constitute a cost for the Academy Trust, the Secretary of State shall provide a contribution through GAG in relation to such cost;
- (h) medical equipment and supplies;



- (i) staff development (including in-service training);
- (j) curriculum development;
- (k) the costs of providing school meals for pupils (including the cost of providing free school meals to pupils who are eligible to receive them), and discretionary grants to pupils to meet the cost of pupil support, including support for pupils with special educational needs or disabilities (taking account of the fact that separate additional money will be available for pupils with statements of special educational needs);
- (l) administration;
- (m) establishment expenses and other institutional costs;

The Academy Trust shall use the GAG funding it receives:

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

42) Subject to clauses to 50-59B, GAG for each Academy Financial Year for the Academy will include:

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

43) Subject to Clause 59B the GAG for each Academy Financial Year for the Academy will also include, payable on a basis equivalent to that applied to maintained schools:

- (a) funding for matters for which it is necessary for the Academy to incur extra costs, for as long as those costs are deemed necessary by the Secretary of State; and
- (b) payments in respect of further, specific grants made available to maintained schools, where the Academy meets the requisite conditions and criteria necessary for a maintained school to receive these grants.

- 44) Subject to clause 46, the basis of the pupil number count for the purposes of determining GAG for the Academy Financial Year in which the Academy opens shall be the same basis as that used by the LA for determining the budget share of the predecessor maintained school as adjusted by numbers counted in any subsequent Schools Census, as determined by the Secretary of State. In subsequent years the basis of the pupil count will be as determined by the Secretary of State.
- 45) Subject to clause 46, the basis of the pupil number count for the purpose of determining GAG for the Academy for Academy Financial Years after the Academy Financial Year in which the Academy opens will be:
- (a) for the pupil number count for pupils in Year 11 and below, the Schools Census which is used to fund maintained schools for the financial year overlapping with the Academy Financial Year in question; and
  - (b) for the pupil number count for pupils in Year 12 and above, the formula which for the time being is in use for maintained schools for the calculation of pupil numbers for pupils in Year 12 and above for the purpose of calculating their level of funding.
- 46) Where either of the following conditions applies in respect of an Academy Financial Year, the basis of the pupil count shall be determined by the Secretary of State, taking account of any diseconomies of scale that the Academy will be under as a result of such condition(s) applying. The conditions are:
- (a) not all planned Year-groups will be present at the Academy (that is, not all the pupil cohorts relevant to the age-range of the Academy will have some pupils present); or
  - (b) the total number of pupils as measured in the Schools Census which is used to fund maintained schools for the financial year overlapping with the Academy Financial Year in question is less than 90% of the planned final size of the Academy, which is [INSERT], and has not at any previous time been greater than 90% of that number.
- 47) For any Academy Financial Year in which GAG for the Academy has been calculated in accordance with clause 44, no adjustment shall be made to the following Academy Financial Year's formula funding element of GAG to recognise variation from the pupil count basis used.
- 48) For any Academy Financial Year in which GAG for the Academy is calculated in accordance with clause 45, no adjustment will be made to the formula funding element

in the following Academy Financial Year's formula funding element of GAG unless the Academy Trust demonstrates to the satisfaction of the Secretary of State that there has been a significant impact on costs, such as an extra class. For any other element of GAG the Secretary of State may make adjustments to recognise a variation in pupil numbers from that used to calculate the element of grant in question; the basis of these will be set out in the Annual Letter of Funding.

49) The Secretary of State recognises that:

- (a) Where the Academy opens with an intake representing only a proportion of the final planned size of the Academy, payments based simply upon the number of pupils present are unlikely to be sufficient to meet the Academy's needs in the Academy Financial Years before all age groups are present at their planned size (the "Start-up Period") because of a lack of economies of scale. The Secretary of State may 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 42-48, in order to enable the Academy to operate effectively;
- (b) Where the Academy opens with pupils transferred from one or more maintained schools which have closed, additional GAG resources may 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. If the Secretary of State has indicated that such additional GAG will be payable, the Academy Trust will make a bid for this addition to GAG based upon need and providing appropriate supporting evidence.

50) 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 42-48 to allow the Academy to:

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

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

51) The Secretary of State recognises that if he serves notice of intention to terminate this Agreement, the intake of new pupils during the notice period is likely to decline and that

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in such circumstances payments based simply upon the number of pupils attending the Academy are unlikely to be sufficient to meet the Academy's needs during the notice period. The Secretary of State undertakes to pay a reasonable and appropriately larger GAG with respect to the Academy in the notice period than would be justified solely on the basis of the methods set out in clauses 42-48, in order to enable the Academy to operate effectively.

- 52) The Secretary of State also recognises that if this Agreement is terminated for any reason by either party the number of pupils at the Academy is likely to decline. In these circumstances both parties undertake to attempt to resolve issues arising from such termination in good faith and with the aim of protecting the interests and the education of the pupils at the Academy.
- 53) GAG paid by the Secretary of State shall only be spent by the Academy Trust towards the normal running costs of the Academy and any payments falling due pursuant to the Development and School Agreement and/or the Principal Agreement.

#### **Earmarked Annual Grant**

- 54) "EAG" shall be paid by the Secretary of State to the Academy Trust in respect of either Recurrent or Capital Expenditure for such specific purposes as may from time to time be agreed between the Secretary of State and the Academy Trust and as described in the relevant funding letter. The Academy Trust shall only spend EAG in accordance with the scope, terms and conditions of the grant set out in the relevant funding letter.
- 55) Where the Academy Trust is seeking a specific EAG in relation to any Academy Financial Year, it shall submit a letter outlining its proposals and the reasons for its request to Academies Division, Sanctuary Buildings, Great Smith Street, London SW1P 3BT.

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

- 56) The Secretary of State shall notify the Academy Trust at a date preceding the start of each Academy Financial Year of the GAG and EAG figures in respect of the Academy which, subject to Parliamentary approval, the Secretary of State plans for that Academy Financial Year and of the assumptions and figures on which these are based.
- 57) If GAG or EAG is calculated incorrectly due to a mistake of the Secretary of State then:
- (a) if this leads to an underpayment of GAG, the Secretary of State will correct the underpayment in subsequent Academy Financial Years;

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

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

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

59) The amounts of GAG for an Academy Financial Year will be determined annually by the Secretary of State. The amount of GAG for the Academy for the initial Academy Financial Year will be notified to the Academy Trust in a funding letter at a date preceding that year. For subsequent years the amount of GAG (including any deductions made in accordance with clause 59B) will be notified to the Academy Trust in a funding letter preceding that Academy Financial Year (the "Annual Letter of Funding"). The Annual Letter of Funding will not include the amount that the Academy Trust will receive in respect of grants for which information to enable timely calculation is not available or is incomplete, such grants will be notified as soon as practicable later in the year. Amounts of EAG will be notified to the Academy Trust wherever possible in the Annual Letter of Funding or as soon as practicable thereafter.

59A) In the event that the Secretary of State pays the LA any sums in connection with a Normal Payment Matter pursuant to the Principal Agreement the Secretary of State may, subject to clause 59B, set off or abate an amount equal to such sums from any GAG payable to the Academy Trust pursuant to this Agreement in the following Academy Financial Year.

59B) Before exercising its right of set off or abatement pursuant to clause 59A above, the Secretary of State shall:

- (a) notify the Academy Trust that such sums have been paid by the Secretary of State to the LA;
- (b) take into account (acting reasonably) any representations made by the Academy

Trust providing reasons why the relevant Normal Payment Matters liabilities were not settled;

- (c) take into account (acting reasonably) any representations made by the Academy Trust as to the nature of the Normal Payment Matters under consideration and whether they properly fall within the definition of Normal Payment Matters having regard to the costs that other academies may normally be expected to bear from GAG funding.

60) 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.

60A.1) For the purpose of clauses 60A.1 to 60A.12:

**"Critical Years"** means the then current Academy Financial Year and, if an Annual Letter of Funding has been received for the following Academy Financial Year, that following Academy Financial Year;

**"Current Funding"** means the funding specified in the Annual Letters of Funding for the Critical Years and all other resources available and likely to be available to the Academy Trust, including such funds as are set out in clauses 42 and 43 of this Agreement;

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

- (a) the Academy Trust has made a request for EAG funding to cover any costs that the Academy Trust has incurred or reasonably considers it is likely to incur as a result of meeting its obligations and/or discharging its liabilities under the Development and School Agreement or the Principal Agreement; and
- (b) the Secretary of State has not agreed, in accordance with clauses 54 and 55, to provide such EAG funding to the Academy Trust.

60A.2) Within 30 days of being notified by the Secretary of State of a PFI EAG Refusal, the Academy Trust may provide written notice that it considers that, after taking into account its Current Funding, it is likely that the running costs during the Critical

Years would cause the Academy Trust to go into Insolvency ("**Academy Trust Insolvency Notice**").

60A.3) Any Academy Trust Insolvency Notice must specify:

- (a) the grounds and evidence, including any professional accounting advice, upon which the Academy Trust's opinion is based;
- (b) a detailed statement of steps which the Academy Trust proposes to take with a view to ensuring that as soon as reasonably practicable the running costs are reduced sufficiently in the Critical Years to ensure that such costs are less than its Current Funding and the period of time within which such steps will be taken;
- (c) the shortfall in the Critical Years between the Current Funding expected to be available to the Academy Trust to cover the running costs and the projected expenditure of the Academy Trust; and
- (d) a detailed budget of income and expenditure for the Academy during the Critical Years.

60A.4) Within 15 days of the provision of the Academy Trust Insolvency Notice, both parties shall discuss and if possible (using reasonable endeavours) agree whether or not on the basis of the Current Funding, it is likely that the running costs during the Critical Years would cause the Academy Trust to go into Insolvency and such Insolvency could not be avoided through prudent financial management (including, but not limited to, using GAG funding prudently in order to cover the normal reasonable running costs of the Academy).

60A.5) If the parties are unable to reach an agreement in accordance with clause 60A.4 within 15 days of the Academy Trust Insolvency Notice being served, then the following questions shall be referred to an independent expert (the "**Expert**") for determination:

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

- (c) whether the Academy Trust using the funds provided under this Funding Agreement in accordance with the requirements of this Funding Agreement.

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

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

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

60A.6) The parties shall procure that the Expert (together with any educational specialist appointed pursuant to this clause) will act promptly in determining the matters referred to him. The Expert shall be required in performing his role to take account of advice from an educational specialist who is professionally familiar with the issues arising from the budget management of schools. If the parties fail to agree upon the appointment of the educational specialist then the educational specialist shall be appointed by the Chairman for the time being of the Specialist Schools and Academies Trust.

60A.7) The Expert's and the educational specialist's fees shall be borne equally between the parties.

60A.8) For the purpose of clause 60A.9 and 60A.12, "Insolvency Decision" means either:

- (a) in accordance with clause 60A.4, the Secretary of State agrees with the Academy Trust that on the basis of the Current Funding it is likely that the running costs during the Critical Years would cause the Academy Trust to go into Insolvency which could not be avoided through prudent financial management (including, but not limited to, using GAG funding prudently in order to cover the normal reasonable funding costs of the Academy); or
- (b) an Expert determines in accordance with clauses 60A.5 that on the basis of the Current Funding it is likely that the running costs during the Critical Years