

**THE JUBILEE ACADEMY**

**ALTERNATIVE PROVISION FREE SCHOOL  
FUNDING AGREEMENT**

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## INTRODUCTION

- 1) This Agreement is made under section 1 of the Academies Act 2010 between the Secretary of State for Education (the “**Secretary of State**”) and The Harrow Alternative Provision Academy Trust (the “**Academy Trust**”).
- 2) The Academy Trust is a Company incorporated in England and Wales, limited by guarantee with registered Company number 7949213.
- 3) The following expressions used in this Agreement have the respective meanings assigned to them by the numbered clauses of this Agreement referred to immediately after the reference to the expressions -
  - a) “**Academies Financial Handbook**” - clauses 59 and 68;
  - b) “**Accounting Officer**” – clause 58;
  - c) “**Annual Letter of Funding**” – clause 53;
  - d) “**GAG**” – clause 41;
  - e) “**Capital Expenditure**” – clause 36;
  - f) “**Capital Grant**” – clause 36;
  - g) “**EAG**” – clause 48;
  - h) “**Governing Body**” – clause 13;
  - i) “**Recurrent Expenditure**” – clause 35.
- 4) In this Agreement the following words and expressions shall have the following meanings:-

“**Academy Financial Year**” means the year from 1 September to 31 August in the following year, or such other period as the Secretary of State may from time to time specify by notice in writing to the Academy Trust;

**“Articles”** means the articles of association of the Academy Trust for the time being in force;

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

**“Chief Inspector”** means Her Majesty’s Chief Inspector of Education, Children’s Services and Skills or his successor;

**“Commissioner”** means local authorities and/or schools referring children/pupils to the alternative provision Academy for admission under the legal powers set out at Annex B;

**“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 the Entity or having an interest conferring voting rights at general meetings of the membership of the Entity or of any other body corporate;

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

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

that the affairs of the Entity are conducted in accordance with the wishes of A, and ‘Control’ shall be construed accordingly;

**“Debt”** means the amount equal to 100% of the Land Value;

**“DfE”** means Department for Education and any successor;

**“Discharge Process”** means the removal of:

- i. the Legal Charge registered with Companies House as against the Academy Trust;
- ii. the Legal Charge from the charges register at the Land Registry against the title to the Land;
- iii. the restriction in the proprietorship register as referred to in 108B(a); and
- iv. the notice in the proprietorship register as referred to in 108F(a);

**“Insured Risks”** means fire, lightning, explosion, earthquake, storm, tempest, flood, subsidence, landslip, heave, impact, terrorism, bursting or overflowing of water tanks and pipes, damage by aircraft and other aerial devices or articles dropped there from, riot and civil commotion, labour disturbance and malicious damage and such other risks as the Academy Trust insures against from time to time subject in all cases to any exclusions or limitations as may from time to time be imposed by the insurers or underwriters;

**“Land”** means the land (including for the avoidance of doubt all buildings, structures landscaping and other erections) at Lowlands House, Lowlands Road, Harrow, Middlesex, HA1 3AW, registered under title number MX130195, MX171305, MX204922, MX73393 and NGL60004, making up the permanent site of the alternative provision Academy, or the part of such land remaining in the ownership of the Academy Trust, following any disposal in accordance with clause 108I(c) ii or clause 108K;

**“Land Value”** means, at any time:

- (a) where there has been a disposal of the Land as a result of the enforcement of the Legal Charge by the Secretary of State, the proceeds of that disposal after payment of any necessary and

reasonable costs incurred by the seller in connection with such disposal; or

(b) in any other case, the Market Value of the Land;

“**Landlord**” means Padwick Travel Ltd or its successor in title;

“**Lease**” means the leasehold agreement or its equivalent between the Academy Trust and the Landlord in respect of the Temporary Site;

“**Legal Charge**” means the legal charge over the Land to be entered into by the Academy Trust in favour of the Secretary of State within two weeks after the opening of the Academy or, if later, on the acquisition of the legal interest in the Land, in a form and substance satisfactory to the Secretary of State;

“**Market Value**” means the market value (as that term is defined or referred to in the RICS Appraisal and Valuation Manual (current edition) published by RICS), as determined by a professionally qualified independent valuer;

“**parents**” means parents or guardians;

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

“**Principal**” means the head teacher of the alternative provision Academy;

“**Principal Regulator**” means the body or person appointed as the Principal Regulator under the Charities Act 2011;

“**Rent**” means a payment made by the Academy Trust to a third party pursuant to the Lease but subject to the terms of clause 56 of this Agreement;

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

“**School Premises**” means the sites on which the alternative provision

Academy is to be situated, comprising the Land and the Temporary Site;

“**SEN**” means Special Educational Needs;

“**Start-up Period**” means up to 2 Academy Financial Years from the date of this Agreement or the period up to and including the first Academy Financial Year in which the alternative provision Academy can offer its planned places (as set down in clause 17), whichever is the shorter;

“**Temporary Site**” means the leasehold land at Technology House, 73-77 Lowlands Road, Harrow, HA1 3AW as edged red on the plan attached to the Lease, on which the alternative provision Academy is to be situated at the date of opening.

- 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, a school in England to be known as The Jubilee Academy (the “**alternative provision Academy**”) and meeting the requirements 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 on or powers given to the alternative provision Academy by this Agreement are also imposed on the Academy Trust.

### **ALTERNATIVE PROVISION ACADEMY REQUIREMENTS**

10) The alternative provision Academy requirements are set down in Section 1C of the Academies Act 2010.

### **ALTERNATIVE PROVISION ACADEMY OPENING DATE**

11) The alternative provision Academy shall open as a school on 2 September 2013.

### **CONDITIONS OF GRANT**

#### **General**

12) Other conditions and requirements in respect of the alternative provision 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) (i) unless there are exceptional reasons to do otherwise, there will be assessments of pupils’ performance as they apply to maintained schools; and

(ii) there will be the opportunity to study for qualifications in accordance with clause 29 (d);

c) the admissions policy and arrangements for the school will be in

accordance with Annex B;

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

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

(f) there will be no charge to pupils (or their parents or guardians) in respect of admission to, or attendance at, the school and the school will only charge pupils where the law allows maintained schools to charge.

12A) Clause 12(f) does not prevent the Academy Trust receiving funds or income from Commissioners in respect of the admission and attendance of a pupil at the alternative provision Academy.

## **Governance**

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

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

## **Conduct**

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

a) the Articles;

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

- c) the terms of this Agreement.

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

16) The Academy Trust shall comply with the requirements of part 4 of Schedule 1 to the Education (Independent School Standards) (England) Regulations 2010 (SI 2010/1997) (or such other regulations as may for the time being be applicable) in relation to requiring disclosure and barring service checks, obtaining disclosure and barring service certificates and making any further checks, as required and appropriate for members of staff, supply staff, individual Governors and the Chair of the Governing Body.

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

### **Pupils**

17) The planned number of places at the alternative provision Academy is 160 places in the age range 11-16. The planned number of places and the age range are not determinative of GAG. GAG for each Academy Financial Year will be determined by the Secretary of State in accordance with clauses 42A and 42B. The alternative provision Academy will provide education for the cohort of pupils whose characteristics are set out in the requirements at section 1C of the Academies Act and whose requirements for:

- a) the admission of pupils to the alternative provision Academy are set out in Annex B to this Agreement;
- b) the admission to the alternative provision 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 or modified from

time to time, and includes any successor provision(s)).

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

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

## **Teachers and other staff**

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

19) Clause 18 does not apply to anyone who:

- (a) is appointed as the Special Educational Needs Co-ordinator by the Academy Trust under section 317(3A) of the Education Act 1996, who must meet the requirements set out in Regulation 3 of the Education (Special Educational Needs Co-ordinators) (England) Regulations 2008 (SI 2008/2945); or
- (b) is appointed as a designated teacher for looked after children further to clause 17A.

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

21A) Where a teacher employed at the alternative provision Academy applies for a teaching post at another Academy, maintained school, school maintained by a local authority or institution within the further education sector, the Academy Trust must at the request of the governing body or Academy Trust of that other education institution:

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

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

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

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

- a) the content of the curriculum;
- b) its approach to the curriculum;

c) the GCSE options (and other Key Stage 4 qualifications) or other future qualifications, as specified by the Secretary of State, offered by the alternative provision Academy;

d) how parents (including prospective parents) and Commissioners can obtain further information in relation to the alternative provision Academy's curriculum.

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

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

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 alternative provision Academy with the following modifications:

a) the alternative provision 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 alternative provision Academy.

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

24A) The Academy Trust shall not make provision in the context of any subject for the teaching, as an evidence-based view or theory, of any view or theory that is contrary to established scientific and/or historical evidence and explanations.

24B) Where relevant to the curriculum, the Academy Trust shall make provision for the teaching of evolution as a comprehensive, coherent and

extensively evidenced theory.

25) Not used;

26) Where the alternative provision Academy does (at its discretion in accordance with clause 24) make provision for the teaching of religious education and/or for a daily act of collective worship at the alternative provision Academy then :

a) subject to clause 27, the Academy Trust shall ensure that any such provision shall be made for religious education to be given to all pupils at the alternative provision 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 alternative provision Academy complies with the requirements of section 70(1) of, and Schedule 20 to, the School Standards and Framework Act 1998 as if it were a community or foundation school which does not have a religious character, except that the provisions of paragraph 4 of that Schedule do not apply. The alternative provision 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) Not used.

26A) Not used.

27) Sections 71(1)-(6) and 71(8) of the School Standards and Framework Act 1998 shall apply as if the alternative provision 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 alternative provision

Academy in accordance with clause 26.

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 alternative provision 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 alternative provision 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 alternative provision Academy;
- b) references to registered pupils shall be treated as references to registered pupils at the alternative provision 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 alternative provision Academy<sup>1</sup>.

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

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<sup>1</sup> Please also see the Charity Commission guidance (CC9): "Speaking out: Guidance on Campaigning and Political Activities by Charities" <http://www.charity-commission.gov.uk/Publications/cc9.aspx>

## **Assessment**

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

a) Unless there are exceptional reasons to do otherwise, the Academy Trust shall ensure that the alternative provision Academy complies with any guidance issued by the Secretary of State from time to time to ensure that pupils take part in assessments and in teacher assessments of pupils' performance as they apply to maintained schools.

b) The Academy Trust shall report to any body on assessments under clause 29 as the Secretary of State shall require and shall provide such information as may be required by that body as applies to maintained schools.

c) In respect of all Key Stages, the Academy Trust will submit the alternative provision Academy to monitoring and moderation of its assessment arrangements as required by the Secretary of State.

d) The Academy Trust may offer:-

(i) any course of education or training at the alternative provision Academy which leads to a qualification that is approved by the Secretary of State for the purposes of section 96 of the Learning and Skills Act 2000; and

(ii) any course of education or training not falling within paragraph (i) if the Secretary of State gives his specific written approval for it.

29A) Subject to clause 29AA the Academy Trust shall ensure that the following information is published on the alternative provision Academy's website:

a) The school's most recent Key Stage 4 results as published by the Secretary of State under the following column headings in the

School Performance Tables published on the Department for Education's website:

- (i) “% achieving 5 + A\*-C GCSEs (or equivalent) including English and maths GCSEs”
  - (ii) “% achieving the English Baccalaureate”; and
  - (iii) “% of pupils making expected progress”.
- c) Information as to where and by what means parents (including prospective parents) and Commissioners may access the most recent report about the school published by the Chief Inspector.
- d) Information as to where and by what means parents (including prospective parents) and Commissioners may access the School Performance Tables published by the Secretary of State on the Department for Education's website.

29AA) There is no requirement to publish information under clause 29 A if to do so would be in breach of the Academy Trust's obligations under the Data Protection Act 1998.

### **International Education Surveys**

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

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

30) Not used

## **School Meals**

31) The Academy Trust shall, if requested to do so by or on behalf of any pupils at the alternative provision 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.

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 by the Academy Trust.

## **Charging**

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

- a) references to any maintained school shall be treated as references to the alternative provision Academy;
- b) references to registered pupils shall be treated as references to registered pupils at the alternative provision Academy;
- c) references to the governing body or the local authority shall, in each case, be treated as references to the Academy Trust;
- d) Not used;
- e) the Academy Trust may charge persons who are not registered pupils at the alternative provision Academy for education provided or for

facilities used by them at the alternative provision Academy<sup>2</sup>.

33A) Not used

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

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

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

### **General**

34) The Secretary of State shall pay grants towards Recurrent Expenditure and may pay grants towards Capital Expenditure for the alternative provision Academy. Except with the Secretary of State's prior agreement, the Academy Trust shall not budget for its expenditure in any Academy Financial Year in excess of expected income (subject to clause 72). The Academy Trust shall not enter into commitments which are likely to have substantial implications for future levels of grant, or for the period for which grant may be required. No decision by the Academy Trust shall commit the Secretary of State to paying any particular amount of grant.

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

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<sup>2</sup> For clarification, such charging is separate and distinct from any arrangement that the Academy Trust may make with Commissioners concerning the referral of pupils to the alternative provision Academy.

## **Capital Grant**

36) "Capital Expenditure" means expenditure on:

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

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

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

37) Where the alternative provision Academy is to open in new premises, or where existing premises are to be substantially refurbished or remodelled to enable the alternative provision 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 alternative provision 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 alternative provision Academy, on which Capital Grant payments are sought from the Secretary of State, will require the specific prior written agreement of the Secretary of State, which agreement shall not be unreasonably withheld or delayed.

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

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

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

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

## **General Annual Grant**

41) GAG will be paid by the Secretary of State to the Academy Trust as a contribution<sup>3</sup> to the normal running costs of the alternative provision 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;

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<sup>3</sup> The extent of any such contribution to be within the absolute discretion of the Secretary of State.

- f) repairs, servicing and maintenance of buildings (including redecoration, heating, plumbing, lighting etc.); maintenance of grounds (including boundary fences and walls); cleaning materials and contract cleaning; water and sewage; fuel and light (including fuel oil, solid and other fuel, electricity and gas); rents; rates; purchase, maintenance, repairs and replacement of furniture and fittings;
- g) insurance;
- h) medical equipment and supplies;
- i) staff development (including in-service training);
- j) curriculum development;
- k) the costs of providing school meals for pupils (including the cost of providing free school meals to pupils who are eligible to receive them), and discretionary grants to pupils to meet the cost of pupil support, including support for pupils with SEN or disabilities (taking account of the fact that separate additional money will be available for pupils with statements of SEN);
- l) administration;
- m) establishment expenses and other institutional costs.

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

- a) Funding determined by the Secretary of State and notified in the Annual Letter of Funding or its equivalent, taking account of the number of pupils and/or places at the alternative provision Academy;
- b) Funding for the cost of functions which would be carried out by the local authority if the alternative provision Academy were a maintained school, such funding to be determined at the discretion of the Secretary of State;

c) Funding for matters for which it is necessary for the alternative provision Academy to incur extra costs, to the extent that those costs are deemed in the discretion of the Secretary of State to be necessary; and

d) Payments equivalent to further, specific grants made available to maintained schools, where the alternative provision Academy meets the requisite conditions and criteria necessary for a maintained school to receive these grants, such payments to be at the discretion of the Secretary of State;

42A) The Secretary of State will determine GAG for the alternative provision Academy for each Academy Financial Year. The determination will be made taking into account relevant factors. Arrangements for this will be set out in the Annual Letter of Funding or its equivalent.

42B) The Secretary of State may make provision, within his absolute discretion, for GAG to be adjusted in-year if the number of pupils attending the alternative provision Academy at specified dates exceeds or falls below thresholds specified by letter. Arrangements for this will be set out in the Annual Letter of Funding or its equivalent.

43) Not used

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

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

enable the alternative provision Academy to operate effectively.

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

47) GAG paid by the Secretary of State shall only be spent by the Academy Trust towards the normal running costs of the alternative provision Academy.

### **Earmarked Annual Grant**

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

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

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

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

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

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

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

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

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

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

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

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

### **Additional Funding**

55) Not used.

56) The Secretary of State shall meet the Academy Trust's costs arising from Rent payable by the Academy Trust under the Lease. Such costs shall include those costs arising from any rent rise payable by the Academy Trust under the terms of the Lease, so long as the relevant rent rise is properly evidenced in writing by the Academy Trust to the Department as soon as is reasonably practicable, but such costs shall not include any amount in respect of service charge payments or insurance premiums. Where the definition of rent in the Lease includes service charge payments or insurance premiums, the Secretary of State shall exclude from the total grant payable in respect of Rent an amount in respect of such service charge payments or insurance premiums.

57) The Academy Trust may also receive funding from a local authority in respect of the provision detailed in statements of SEN for pupils attending an alternative provision Academy in accordance with the provisions of Section 483A of the Education Act 1996 and regulations made under that section. The Academy Trust shall ensure that all provision detailed in statements of SEN is provided for such pupils.

## **FINANCIAL AND ACCOUNTING REQUIREMENTS**

### **General**

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

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

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

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

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

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

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

c) in addition to the obligation to fulfil the statutory requirements referred to in sub-clause (f) below, the Academy Trust shall prepare its financial statements, Directors' report, Annual Accounts and its Annual Return for

each Academy Financial Year in accordance with the Statement of Recommended Practice as issued by the Charity Commission and updated from time to time as if the Academy Trust was a non-exempt Charity and/or in such form or manner as the Secretary of State may reasonably direct and shall file these with the Secretary of State and the Principal Regulator by 31 December each Academy Financial Year;

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

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

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

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

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

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

63) The books of accounts and all relevant records, files and reports of the Academy Trust including those relating to financial controls, shall be open at

all reasonable times to officials or agents of the DfE and the National Audit Office and to contractors retained by the DfE or the National Audit Office for inspection or the carrying out of value for money studies; and the Academy Trust shall secure that those officials and contractors are given reasonable assistance with their enquiries. For the purposes of this clause 'relevant' means in any way relevant to the provision and use of grants provided by the Secretary of State under this Agreement.

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

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

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

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

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

of the Academy Trust to use such grant for such a purpose or purposes or by such date may be taken into account by the Secretary of State either:

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

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

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

Academy Trust in the following Academy Financial Year or Academy Financial Years.

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

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

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

a) except such as are given in normal contractual relations, give any guarantees, indemnities or letters of comfort above a value as for the time being specified in the Academies Financial Handbook or otherwise as the Secretary of State may specify by notice in writing to the Academy Trust from time to time;

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

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

d) take up any leasehold or tenancy agreement.

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

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

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

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

d) take up any leasehold or tenancy agreement.

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

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

a) subject to clause 65, carrying a surplus from one Academy Financial Year to the next; or

b) carrying forward from a previous Academy Financial Year or Academy Financial Years a sufficient surplus or sufficient cumulative surpluses on grants from the Secretary of State to meet an in-year deficit on such grants in a subsequent financial year; or

c) incurring an in-year deficit on funds from sources other than grants from the Secretary of State in any Academy Financial Year, provided it does not affect the Academy Trust's responsibility to ensure that the alternative provision Academy balances its overall budget from Academy Financial Year to Academy Financial Year.

72A) The Academy Trust shall abide by the requirements of and have regard to the Charity Commission's guidance to charities and charity trustees and in particular the Charity Commission's guidance in the Protecting Charities from Harm ('the compliance toolkit') and in CC9: Speaking Out, Campaigning and Political Activities by Charities, as amended from time to time. Any references in such guidance which require charity trustees to report to the Charity Commission should instead be interpreted as references to report to the Principal Regulator.

### **Borrowing Powers**

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

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

### **Disposal of Assets**

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

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

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

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

78) This clause applies in the event, during the lifetime of this Agreement, of

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

79) This clause applies in the event, during the lifetime of this Agreement, that the Secretary of State consents to the disposal of an asset which was transferred to the Academy Trust from a local authority 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 local authority from which the asset was transferred, taking into account the amount of the proceeds to be reinvested by the Academy Trust. The Secretary of State will have regard to any representations from the Academy Trust and the local authority from which the asset was transferred before giving consent under this clause.

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

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

## **TERMINATION**

### **General**

82) Either party may give not less than seven Academy Financial Years' written notice to terminate this Agreement, such notice to expire on 31 August

2020 or any subsequent anniversary of that date.

### **Termination Warning Notice**

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

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

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

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

84) The Secretary of State shall consider any response and representations from the Academy Trust which are received by the date

specified in accordance with clause 83A(c) and shall confirm whether he considers that:

- a) in light of the Academy Trust's representations in response to the Termination Warning Notice, some or all of the Specified Remedial Measures are not required to be implemented (and if so which) and/or the Specified Remedial Measures are being or will be implemented with the specified timeframe; or
- b) subject to any further measures he reasonably requires ("**Further Remedial Measures**") being implemented by a specified date or any evidence he requires being provided, the implementation of such measures has been or will be successfully completed within the specified timeframes; or
- c) he is not satisfied that the Academy Trust will rectify the defaults identified in the Termination Warning Notice within the specified timeframes. (In such circumstances, the Secretary of State may notify the Academy Trust of his intention to terminate the Agreement on a specified date.)

85) The Secretary of State may by notice in writing terminate this Agreement with effect from a specified date if :

- a) the Academy Trust has not, by the date specified in clause 83A(c), responded to the Termination Warning Notice either confirming that it accepts and agrees to undertake the Specified Remedial Measures or providing its representations with regard to the Specified Remedial Measures; or;
- b) the Academy Trust has not carried out the Specified Remedial Measures and/or Further Remedial Measures within the specified timeframes;

provided that, having considered any representations made by the Academy Trust pursuant to clause 83A(c), the Secretary of State remains satisfied that it is appropriate to terminate the Agreement.

## **Notice of Intention to Terminate**

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

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

(b) the alternative provision Academy requires significant improvement.

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

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

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

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

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

## **Termination with Immediate Effect**

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

90) The Secretary of State may at any time by notice in writing terminate this Agreement, such termination to take effect on the date of the notice, on the occurrence, or where in his reasonable opinion there is a serious risk of occurrence, of any of the following events:-

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

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

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

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

91B) For the purposes of clauses 91F and 91G, “prospective pupils” means those pupils who have been referred to the Academy and accepted a place.

91C) If in or after August 2013 or at any time after signing this Agreement and before the Academy opens, the total number of prospective pupils is less than 70, the Secretary of State may by written notice to the Academy Trust:

- (a) require the Academy Trust not to open the Academy until the number of prospective pupils has reached 70; or
- (b) terminate this Agreement, such termination to take effect on the date specified in the notice.

91D) If at any time after signing this Agreement and after the Academy has opened, the Secretary of State is of the opinion that, because of low pupil numbers, the Academy is not financially viable, then the Secretary of State may:-

- (a) give a Warning Notice to the Academy Trust; or
- (b) by written notice terminate this Agreement forthwith; or
- (c) by written notice provide such notice as he deems appropriate in the circumstances to terminate this Agreement.

For the purposes of this clause a “Warning Notice” means a notice in writing by the Secretary of State to the Academy Trust requiring that the Academy Trust admits a sufficient number of pupils by such date as he deems appropriate in the circumstances and setting out the consequences if the Academy Trust has not admitted a sufficient number of pupils by the date specified in such Warning Notice.

- 91E) If at any time after signing this Agreement, the Parties agree that by virtue of low pupil numbers the Academy is not financially viable, then the Parties jointly may terminate this Agreement having agreed first the precise terms of termination.

92) (i) If the Academy Trust has not obtained full planning permission (including where relevant listed building consent) in respect of the Temporary Site by 16 August 2013, the Secretary of State may terminate this Agreement by notice in writing to the Academy Trust, such termination to take effect on the date of the notice.

92) (ii) If the Academy Trust has not obtained full planning permission (including where relevant listed building consent) in respect of the Land by 28 February 2014, the Secretary of State may terminate this Agreement by notice in writing to the Academy Trust, such termination to take effect on the date of the notice.

93) (i) If at any time after the signing of this Agreement but before the alternative provision Academy opening date, the Secretary of State is of the view that:

- I. the alternative provision Academy would, on opening, provide an

unacceptably low standard of education; or

- II. the safety of pupils or staff at the alternative provision Academy would, on opening, be threatened; or
- III. the staff employed at the alternative provision Academy are unsuitable; or
- IV. there is a serious breakdown in the way that the Academy Trust is being managed or governed; or
- V. the buildings and other structures on the Temporary Site are unsuitable or the Academy Trust has not obtained Building Regulations approval,

he may either:

- (a) require the Academy Trust (i) not to open the alternative provision Academy; and/or (ii) not to admit pupils of a particular age range, to be determined by the Secretary of State; and/or (iii) not to use any building or other structure on the Temporary Site until each relevant matter listed in I to V above has been resolved to the Secretary of State's satisfaction; or
- (b) terminate this Agreement forthwith or with such notice as he deems appropriate in the circumstances.

93) (ii) If at any time after the alternative provision Academy opens but before it allows its pupils access to the Land, the Secretary of State is of the view that:

- I. the safety of pupils or staff at the alternative provision Academy would be threatened on their relocation to the Land; or
- II. the buildings and other structures on the Land are unsuitable or the Academy Trust has not obtained Building Regulations approval,

he may either:

(a) require the Academy Trust not to use any building or other structure on the Land until each relevant matter listed in I to II above has been resolved to the Secretary of State's satisfaction; or

(b) terminate this Agreement forthwith or with such notice as he deems appropriate in the circumstances.

94) (i) If the Academy Trust has not entered into the Lease by 16 August 2013, the Secretary of State may terminate this Agreement by notice in writing to the Academy Trust, such termination to take effect on the date of the notice.

94) (ii) If the Academy Trust has not completed its acquisition of the Land by 31 May 2014, the Secretary of State may terminate this Agreement by notice in writing to the Academy Trust, such termination to take effect on the date of the notice.

94 (iii) If it becomes clear by 31 January 2014 that the acquisition of the Land will not be completed, the Secretary of State may direct the Academy Trust to enter into negotiations to secure an alternative permanent site which the Secretary of State considers suitable for the alternative provision Academy.

94 (iv) If, having been directed under clause 94(iii) to enter into negotiations, the Academy Trust has not secured an interest in the alternative permanent site to the satisfaction of the Secretary of State by 28 February 2015, the Secretary of State may terminate this Agreement by notice in writing to the Academy Trust, such termination to take effect on the date of the notice

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

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

(a) in the Control of the Academy Trust;

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

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

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

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

### **Effect of Termination**

96) Not used.

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

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

99) The amount of any such indemnity or compensation shall be determined

by the Secretary of State having regard to any representations made to him by the Academy Trust, and shall be paid at such times and in such manner as the Secretary of State may reasonably think fit.

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

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

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

b) if the Secretary of State confirms that a transfer under clause 101(a) is not required, promptly repay to the Secretary of State a sum equivalent to the percentage of the value of the assets at the date of termination, or, by agreement with the Secretary of State, at the date of subsequent disposal of those assets. Such percentage to be the same as the percentage of the capital contribution made by the Secretary of State to the original value of those assets, whether that contribution was made on the establishment of the alternative provision Academy or later.

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

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

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

## **GENERAL**

### **Information**

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

- a) curriculum and the provision generally (including specifically for SEN pupils);
- b) arrangements for the assessment of pupils and any information about pupil progress, achievement and attainment;
- c) staff including numbers, qualifications, experience, salaries, and teaching loads;
- d) class sizes and pupil organisation;
- e) outreach work with other schools and the local community;
- f) operation of the referral and reintegration processes for the alternative provision Academy including numbers of requested referrals, the number of referrals that have been refused and the reasons for the refusal in each case and the number and characteristics of pupils accepted for

admission and destinations/outcomes of pupils/former pupils;

g) numbers of pupils excluded (including permanent and fixed term exclusions) characteristics of pupils excluded; reasons for exclusions; outcomes of any independent review panels;

h) levels of authorised and unauthorised absence;

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

j) organisation, operation and building management;

k) financial controls;

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

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

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

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

any event within 14 days of the appointment or election of such a person.

105A (ii) In this regard, the Academy Trust shall not appoint any new or replacement Members or Governors of the Academy Trust until it has first:

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

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

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

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

105D (i) The Academy Trust shall, within 14 days of receiving any order, notice, proposal, demand or any other requirement materially affecting the

ability of the Academy Trust to use the School Premises for the purposes of the alternative provision Academy from any competent authority (including the Landlord), give full particulars by written notice to the Secretary of State and deliver to the Secretary of State copies of such documents as he may require. Such notice shall state what steps, if any actions are required, the Academy Trust intends to take in response to the order, notice, proposal, demand or other requirement affecting the School Premises.

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

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

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

106) The Academy Trust shall allow access to the premises of the alternative provision Academy at any reasonable time to DfE officials and/or agents of the Secretary of State. All records, files and reports relating to the running of the alternative provision Academy shall be available to them at any reasonable time. The Academy Trust shall provide the Secretary of State in advance with papers relating to the alternative provision Academy prepared for meetings of the Governing Body and of the Members of the Academy Trust. Two DfE officials shall be entitled to attend and to speak at all such meetings, but shall withdraw from any discussion of the alternative provision Academy's or the Academy Trust's relationship with the Secretary of State or any discussion of bids for funding to the Secretary of State. The Academy

Trust shall take any steps which are required to secure its compliance with the obligations imposed by this clause of this Agreement.

107) The Academy Trust shall ensure that:

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

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

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

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

## **Debt**

108A(a) The Secretary of State has agreed to make payments of Capital Grant to the Academy Trust pursuant to clause 37.

108A(b) The payments referred to at 108A(a) are made available to the Academy Trust on an interest-free basis.

108A(c) In consideration of the Secretary of State making the payments referred to at 108A(a) and financing the acquisition of the Land, the Academy Trust shall pay the Debt on termination of this Agreement or in accordance with clauses 108H(b) or 108K(a) or on any disposition by way of sale of the whole or part of the Land, whether or not such sale has been consented to by the Secretary of State.

108A(d) The Debt shall be secured by the Legal Charge.

### **Restrictions on Land transfer**

108B) In consideration that it has obtained or will be obtaining a legal interest in the Land, such acquisition being financed by the Secretary of State, the Academy Trust:

a) shall, within 28 days from the date of the Legal Charge or, if later, from the opening of the Academy on the Temporary Site, apply to the Land Registry for a restriction to be entered in the proprietorship register of the title to the Land (under section 43(1)(a) of the Land Registration Act 2002 in Form RX1 as prescribed by Rule 91 and Schedule 4 of the Land Registration Rules 2003) ('LRR 2003') in the following terms:

*No disposition of the registered estate by the proprietor of the registered estate or by the proprietor of any registered charge is to be registered without a written consent signed by the proprietor for the time being of the charge dated [date] in favour of The Secretary of State for Education of Sanctuary Buildings, Great Smith Street, London SW1P 3BT referred to in the charges register or, if appropriate, signed on such proprietor's behalf by its conveyancer.*

b) shall take any further steps reasonably required to ensure that the restriction referred to in clause 108B(a) is entered on the proprietorship register;

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

d) if it has not registered the restriction referred to in clause 108B(a), hereby consents to the entering of that restriction in the register by the Secretary of State (under s. 43(1)(b) of the Land Registration Act 2002); and

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

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

108C (i) The Academy Trust shall keep the School Premises clean and tidy and make good any damage it causes to the School Premises and any deterioration to the condition of the School Premises that may arise from the date of this Agreement, save that in respect of the Temporary Site the Academy Trust shall ensure that any actions undertaken in compliance with this clause shall be consistent with the terms of the Lease..

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

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

- a) terminate, vary, surrender or dispose of the Lease; or
- b) grant any consent or licence in respect of the School Premises or any part of them; or
- c) create or permit to arise or continue any encumbrance affecting the School Premises or any part of them; or
- d) part with or share possession or occupation of the School Premises or

any part of them; or

- e) enter into any onerous or restrictive obligations affecting the School Premises or any part of them.

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

### **Insurance**

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

- a) keep the School Premises insured with a reputable insurance office against loss or damage by the Insured Risks in the sum which the Academy Trust is advised represents the reinstatement value of the School Premises from time to time, save that if the Academy Trust is required to insure the Temporary Site, that insurance shall be obtained in accordance with the Lease;
- b) pay the insurance premiums promptly as they become due and maintain in force the insurance policies on the School Premises;
- c) if the School Premises are damaged or destroyed, and subject to receipt of all necessary consents licences permissions and the like apply the proceeds of the insurance received for those purposes in rebuilding and reinstating the School Premises as soon as reasonably practicable (provided that this clause should be satisfied if the Academy Trust provides premises not necessarily identical to the School Premises as they existed before the damage or destruction occurred);
- d) produce to the Secretary of State a copy of the insurance policy

whenever reasonably requested and the receipt for the last premium or other evidence of renewal and up to date details of the amount of cover (but no more often than once in any period of 12 months in both cases);

- e) not knowingly do anything whereby any insurance policy relating to the School Premises may become void or voidable;
- f) insure against liability in respect of property owners' and third-party risks including occupier's liability.

### **Transfer of Land**

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

108F) In consideration that it has obtained or will be obtaining a legal interest in the Land, such acquisition being financed by the Secretary of State, the Academy Trust:

- a) shall, within 14 days from the transfer to it of the Land or the signing of this Agreement, whichever is later, apply to the Land Registry in Form AN1 as prescribed by Rule 81 of the Land Registration Rules

2003 for a notice to be entered in the register (under section 34(3)(a) of the Land Registration Act 2002) to protect the option granted under clause 108E and including a copy of this Agreement as evidence of that option;

- b) shall take any further steps required to ensure that the notice referred to in clause 108F(a) is entered on the proprietorship register;
- c) shall provide the Secretary of State with confirmation of the entry of the notice referred to in clause 108F(a) as soon as practicable after it receives notification from the Land Registry;
- d) in the event that it has not registered the notice referred to in clause 108F(a), hereby consents to the entering of the notice referred to in 108F(a) in the register by the Secretary of State (by application in Form UN1 under s. 34(3)(b) of the Land Registration Act 2002);
- e) shall not, without the consent of the Secretary of State, apply to dis-apply, modify or remove (by cancellation or otherwise) a notice entered in accordance with clause 108F(a) or 108F(d), whether by itself, a holding company, a subsidiary company, or a receiver, administrator or liquidator acting in the name of the Trust; and
- f) in the case of previously unregistered land, for the further protection of the option granted in clause 108E the Academy Trust shall within 14 days of the acquisition of the legal interest in the Land or the signing of this Agreement, whichever is the latter, make application to register a Class C(iv) land charge in the Land Charges Registry and a Caution against First Registration in the Land Registry and shall provide the Secretary of State with copies of the entries secured thereby within 7 days of completing each registration. If the Secretary of State is of the view that the Academy Trust has failed to perform the registration obligations in this sub-clause he shall be at liberty to make his own applications to secure these registrations.

## **Legal Charge**

108G) In consideration that it has obtained or will be obtaining a legal interest in the Land, such acquisition being financed by the Secretary of State, the Academy Trust:

- a. shall enter into the Legal Charge within two weeks of the opening of the Academy or, if later, on completion of the acquisition of the Land;
- b. shall, within 21 days after entering into the Legal Charge, register the Legal Charge with Companies House or if required by the Secretary of State shall use all reasonable endeavours to assist the Secretary of State to register the Legal Charge at Companies House, including signing and executing any documents, deeds and forms as required;
- c. shall, within 28 days from the date of the Legal Charge, apply to the Land Registry for the Legal Charge to be entered on the charges register, using forms AP1 (Rule 13 LRR 2003) and CH1 (Rule 103 LRR 2003) or such form as may be required by the Secretary of State;
- d. shall take any further steps required to ensure that the Legal Charge is entered on the charges register;
- e. shall provide the Secretary of State with confirmation of the registration of the Legal Charge as soon as reasonably practicable after it receives notification from the Land Registry; and
- f. if it has not registered the Legal Charge, hereby consents to the registration of the Legal Charge by the Secretary of State. To enable the Secretary of State to do so, the Academy Trust shall use all reasonable endeavours to assist the Secretary of State to register the Legal Charge, including signing and executing any documents, deeds and forms as required, specifically but not limited to providing the Secretary of State with the executed Legal Charge and completed AP1/CH1 forms, and dealing with any requisitions raised by the Land Registry.

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

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

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

## **Sharing of the Land**

108I) The Academy Trust agrees that if:

- a) the Academy does not reach its planned capacity over a period of 3 Academy Financial Years; or
- b) notice of termination is served by either the Academy Trust or the Secretary of State in accordance with clause 82; or
- c) in the reasonable opinion of the Secretary of State the operation of the Academy at planned capacity does not require the use of the full extent of the Land,
  - i. it will share occupation of the Land with such other Academy as the Secretary of State deems appropriate in the circumstances and enter into such legal arrangements in respect of the same

- as are required by the Secretary of State; or
- ii. it will dispose of part of the Land as required by the Secretary of State and account for any proceeds of such disposal to the Secretary of State or his nominee as part payment of the Debt. On such disposal and part payment of the Debt, the Secretary of State will discharge the Legal Charge in respect of the part of the Land that has been disposed of.

### **Exercise of Rights**

108J) On the termination of this Agreement, the Secretary of State may give notice of his intention to exercise the rights conferred on the Secretary of State pursuant to clauses 101, 102 and 108E and the Legal Charge:

- a) any such notice shall be in writing and shall confirm which clause of this Agreement the Secretary of State intends to exercise without prejudice to the Secretary of State's right to exercise all and any other rights available to him;
- b) if, on termination of this Agreement for whatever reason, the Secretary of State exercises his option granted and the legal interest in the Land is transferred to the Secretary of State or his nominee for nil consideration by the Academy Trust pursuant to clause 108E, the Academy Trust's obligation to pay the Debt shall be deemed to have been satisfied in full, the obligation on the Academy Trust to pay a proportion of the proceeds of sale of the Land to the Secretary of State under clause 101(b) shall be deemed to have been complied with, and the Secretary of State shall take all steps reasonably required to carry out the Discharge Process;
- c) if, on termination of this Agreement for whatever reason, the Secretary of State enforces the Legal Charge, the Academy Trust's obligation to pay the Debt shall be deemed to have been satisfied in full following the realisation of the Debt by any receiver, the obligation on the Academy Trust to pay a proportion of the proceeds of sale of the Land

to the Secretary of State under clause 101(b) shall be deemed to have been complied with, and the Secretary of State shall take all steps reasonably required to carry out the Discharge Process;

d) if, on termination of this Agreement for whatever reason, the Secretary of State exercises his rights under clause 101, the Academy Trust's obligations to pay the Debt shall be deemed to have been satisfied in full and the Secretary of State shall take all steps reasonably required to carry out the Discharge Process; and

e) if, on termination of this Agreement for whatever reason, the Secretary of State agrees that pursuant to clause 102 the Academy Trust may invest the proceeds of the sale of the Land for its charitable objects or directs the Academy Trust to pay all or part of the proceeds of sale of the Land to the local authority, the Academy Trust's obligations to pay the Debt shall be deemed to have been satisfied in full and the Secretary of State shall take all steps reasonably required to carry out the Discharge Process.

108K) On the Academy Trust applying to the Secretary of State for consent to the disposal of all or part of the Land during the lifetime of this Agreement, the Secretary of State shall, should he agree that the Land is no longer required or cannot be used for the purposes of the Academy, subject to clause 76,

a) consent to the disposal subject to any one or a combination of the following conditions:

i. that (notwithstanding the provisions of clause 78) the Academy Trust pays the Debt in full or, in the event of a proposed disposal of part, repays to the Secretary of State the Market Value;

ii. that pursuant to clause 78, the Academy Trust may retain some or all proceeds of the disposal for its charitable purposes, subject to the Academy Trust accounting to the Secretary of State for any remaining proceeds of sale that the Secretary of State does not agree that the Academy Trust may retain for

such charitable purposes; or

- iii. that pursuant to clause 79, the Academy Trust pays all or some of the proceeds of sale to the local authority or may reinvest all or some of the proceeds of sale for its charitable purposes,

and any such notice of consent and conditions shall be in writing; or

- b) exercise the option granted to him pursuant to clause 108E to transfer the relevant part of the Land to him or his nominee for nil consideration.

108L) If the Secretary of State consents to the disposal of the Land during the lifetime of this Agreement, subject to any of the conditions set out in clause 108K(a):

- a) if the Secretary of State enforces the Legal Charge, the Academy Trust's obligation to pay the Debt shall be deemed to have been satisfied in full following the realisation of the Debt by any receiver, the obligations on the Academy Trust to pay a proportion of the proceeds of sale of the Land to the Secretary of State under clause 78 shall be deemed to have been complied with, and the Secretary of State shall take all steps reasonably required to carry out the Discharge Process;
- b) if the Secretary of State agrees that the Academy Trust may retain some or all proceeds of the disposal for its charitable purposes, subject to the Academy Trust accounting to the Secretary of State for any remaining proceeds of sale that the Secretary of State does not agree that the Academy Trust may retain for such charitable purposes, the Academy Trust's obligations to pay the Debt shall be deemed to have been satisfied in full, the obligations on the Academy Trust to pay a proportion of the proceeds of sale of the Land to the Secretary of State under clause 78 shall be deemed to have been complied with and the Secretary of State shall take all steps reasonably required to carry out the Discharge Process, provided that in the event of a disposal of part

of the Land, the Academy Trust's obligation to pay the Debt shall be deemed to have been satisfied to the extent of the Market Value, the Academy Trust's obligation under clause 78 shall be deemed to have been satisfied in relation to the relevant part of the Land, the Legal Charge shall be released and the restriction and the notice shall be removed in relation to such part, and the Legal Charge, the restriction and the notice shall remain in place in relation to the balance of the Land;

- c) if the Secretary of State directs the Academy Trust to pay all or part of the proceeds of sale of the Land to the local authority pursuant to clause 79 or agrees that the Academy Trust may reinvest the proceeds of the sale for its charitable purposes, the Secretary of State shall take all steps reasonably required to carry out the Discharge Process, provided that in the event of a disposal of part of the Land the restriction and notice shall remain in place in relation to the balance of the Land.

108M) If the Secretary of State exercises his option during the lifetime of this Agreement under clause 108K(b) and the legal interest in the Land is transferred to the Secretary of State or his nominee for nil consideration by the Academy Trust pursuant to clause 108E, the Academy Trust's obligation to pay the Debt shall be deemed to have been satisfied in full, the obligations on the Academy Trust to pay a proportion of the proceeds of sale of the Land to the Secretary of State under clause 78 shall be deemed to have been complied with, and the Secretary of State shall take all steps reasonably required to carry out the Discharge Process, provided that if the option is exercised in relation to part of the Land, the Academy Trust's obligation to pay the Debt shall be deemed to have been satisfied to the extent of the Market Value, the Academy Trust's obligation under clause 78 shall be deemed to have been satisfied in relation to the relevant part of the Land and the Legal Charge shall be released and the restriction and notice shall be removed in relation to such part and the Legal Charge, the restriction and the notice shall remain in place in relation to the balance of the Land.

## Payment of Debt

108N) If the Academy Trust pays all the Debt, on termination of this Agreement or at any other time, the Secretary of State shall take all steps reasonably required to carry out the Discharge Process.

108O) If the Academy Trust:

(a) disposes of any or all parts of the Land, in accordance with clause 108K,  
or

(b) makes payment to the Secretary of State to pay the Debt in full,

it shall enter into negotiations with the Secretary of State in respect of a deed of variation for this Agreement.

## Notices

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

(a) shall be in writing and in English;

(b) shall be sent to the party for the attention of the contact and at the address listed in clause 109A;

(c) shall be sent by a method listed in clause 109C; and

(d) is deemed received as set out in clause 109C if prepared and sent in accordance with this clause.

109A) The parties' addresses and contacts are:

<b>Name of Party</b>	<b>Position of Contact</b>	<b>Address</b>
Secretary of State	Head of Free Schools Division	Department for Education, Sanctuary Buildings, Great Smith Street, London SW1P 3BT
Academy Trust	Chair of Governors	c/o Nower Hill High School, George V Avenue, Pinner, HA5 5RP

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

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

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

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

## **General**

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

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

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

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

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

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

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

This Agreement was executed as a Deed on

2013

Executed on behalf of

**The Harrow Alternative Provision Academy Trust**

by:

.....

**Director**

.....

**Director**

The Corporate Seal of

**The Secretary of State for Education**

hereunto affixed is authenticated by:

.....

**Duly Authorised**

## **Annex B**

### **Requirements for the admission of pupils to The Jubilee Academy alternative provision Academy**

#### **General**

1. This Annex may be amended in writing at any time by agreement between the Secretary of State and the Academy Trust.
2. The Academy Trust will act in accordance with equalities law.
3. Except where paragraphs 4 or 5 applies, the Academy Trust may not admit a child of compulsory school age unless it is by way of a referral from a Commissioner through one of the referral routes set out in paragraph 6 below.
4. Notwithstanding any provision in this Annex, the Secretary of State may:
  - (a) direct the Academy Trust to admit a named pupil to The Jubilee Academy alternative provision Academy on application from a local authority. This will include complying with a School Attendance Order<sup>1</sup>. Before doing so the Secretary of State will consult the Academy Trust.
  - (b) direct the Academy Trust to admit a named pupil to The Jubilee Academy alternative provision Academy if the Academy Trust has failed to act in accordance with this Annex or has otherwise failed to comply with applicable equalities legislation.
  - (c) direct the Academy Trust to amend its admission arrangements where the Academy Trust fails to comply with relevant legislation or where the Secretary of State is concerned that because of its admissions arrangements the Academy Trust is no longer meeting the requirements at 1C of the Academies Act 2010.
5. Pupils on roll in any predecessor provider will transfer automatically to the alternative provision Academy on opening. All children already offered a place at any predecessor provider will be admitted.

The Academy Trust will :

- a) Subject to its right of appeal to the Secretary of State in relation to a named pupil, admit all pupils with a statement of special educational needs naming

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<sup>1</sup> Local authorities are able to issue school attendance orders if a child is not attending school. These are legally binding upon parents. Such an order might, for instance, be appropriate where a child has a place at an alternative provision Academy but his/her parents are refusing to send him/her to school. The order will require a parent to ensure his/her child attends a specified school.

the alternative provision Academy; and

b) Adopt admission oversubscription criteria<sup>2</sup> that give highest priority to looked after children.

### **Admission arrangements**

6. The Academy Trust may only admit a child of compulsory school age:

a) referred by a local authority where the local authority has a duty to that child under section 19 of the Education Act 1996.<sup>3</sup>

b) referred by a maintained school or Academy where the maintained school or Academy has a duty under Section 100 of the Education and Inspections Act 2006.<sup>4</sup>

c) referred by a maintained school under powers set out in section 29(A) of the Education Act 2002<sup>5</sup>.

d) referred by an Academy which, under general powers in the Articles of the Academy Trust may send pupils off-site to an alternative provision Academy as part of early intervention measures to address behaviour. However, as with a maintained school there is an expectation in law that a pupil will be educated at the school where he is registered, so placements would generally be relatively short and subject to review<sup>6</sup>.

7. The Academy Trust shall have admission arrangements agreed with the Department which will include oversubscription criteria, a fair, transparent and objective process for considering whether the education provided will be appropriate for prospective pupils and an admission number for each relevant key stage. The Academy Trust will consult on its admission arrangements.

8. Any changes to admission arrangements proposed by the Academy Trust should be discussed with Commissioners and must be agreed with the

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<sup>2</sup> Over subscription criteria means how the Academy Trust will distinguish/prioritise between pupils where it has more referrals than places currently available.

<sup>3</sup> Section 19 of the Education Act 1996, and regulations made under that section, require a local authority to make arrangements (from the sixth day of exclusion where a pupil has been permanently excluded) for the provision of suitable, full time (unless there are medical reasons as to why this would not be appropriate) education at school or otherwise for a child of compulsory school age who, for a range of reasons, would otherwise be without such education.

<sup>4</sup> Section 100 of the Education and Inspections Act 2006 requires maintained schools and Academies to arrange full-time education for pupils on a fixed period exclusion of more than five days from the sixth day of the exclusion.

<sup>5</sup> Section 29A of the Education Act 2002 provides that governing bodies of maintained schools may direct a pupil off-site for the purpose of receiving educational provision which is intended to improve the behaviour of the pupil.

<sup>6</sup> It is possible that some off-site directions may become longer term placements in cases where the referring school and local authority agree that the provision in an alternative provision Academy is meeting the pupil's needs, and that a mainstream school place cannot meet that pupil's needs. These pupils could fall within the terms of section 19 of the Education Act.

Secretary of State.

### **Pupil registration and information sharing**

9. The pupil numbers of an alternative provision Academy will fluctuate throughout the academic year.

10. The Academy Trust must ensure that pupils are appropriately registered<sup>7</sup>. In the case of a fixed period exclusion or an off site direction, the excluded pupil should remain on the register of the excluding school as they are expected to return when the exclusion period is completed and should also be registered with the alternative provision Academy (dual registered). In the case of a permanent exclusion, the excluded pupil should be removed from the excluding school's register and be registered with the alternative provision Academy.

11. As far as reasonably practicable, in agreeing contractual arrangements with Commissioners the Academy Trust shall request appropriate information on the needs and prior attainment of pupils who will attend the alternative provision Academy.

12. The Academy Trust will provide regular feedback to a Commissioner (and in any event when requested by the Commissioner to do so) on progress made by the pupil, the pupil's needs and attainment.

### **Objections and determinations**

13. The Academy Trust must make clear when determining the alternative provision Academy's admission arrangements, that objections should be submitted to the EFA or any successor to it.

14. A determination of an objection, by the EFA or any successor to it on behalf of the Secretary of State, or by the Secretary of State, will be binding upon the alternative provision Academy.

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<sup>7</sup> The requirements of section 434 of the Education Act 1996 (registration of pupils) and regulations made under that section apply to schools (which includes alternative provision Academies)

## ANNEX C

### **Arrangements for pupils with Special Educational Needs ('SEN') and disabilities at The Jubilee Academy alternative provision Academy**

#### **Duties in relation to pupils with SEN**

1. The Governing Body of the Academy Trust must comply with all of the duties imposed upon the governing bodies of maintained schools in:
  - Part 4 of the Education Act 1996 as amended from time to time<sup>1</sup>;
  - The Education (Special Educational Needs) (Information) Regulations 1999 as amended from time to time;
  - The Education (Special Educational Needs Co-ordinators) (England) (Amendment) Regulations 2008 as amended from time to time<sup>2</sup>.
2. Notwithstanding any provision in this Agreement, the Secretary of State may (whether following a complaint made to him or otherwise) direct the Academy Trust to comply with an obligation described in this Annex where the Academy Trust has failed to comply with any such obligation.
3. Where a child who has SEN is being educated in the alternative provision Academy, those concerned with making special educational provision for the child must 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:
  - (a) the child receiving the special educational provision which his learning difficulty calls for,
  - (b) the provision of efficient education for the children with whom he will be educated, and
  - (c) the efficient use of resources.
4. In addition to complying with the duties imposed upon the governing bodies of maintained schools set out in The Education (Special Educational Needs) (Information) Regulations 1999 (as amended from time to time), the Academy Trust must ensure that the alternative provision Academy's website includes details of the arrangements for the admission of disabled pupils; the steps taken to prevent disabled pupils from being treated less favourably than other pupils; and the facilities provided to assist access to the alternative provision Academy by disabled pupils (disabled pupils meaning pupils who are disabled for the purposes of the Equality Act 2010<sup>3</sup>).

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

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

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

## Admissions

5. The Academy Trust must ensure that pupils with SEN are admitted on an equal basis with others in accordance with its admissions arrangements.
6. Where a local authority ("LA") proposes to name the alternative provision Academy in a statement of SEN made in accordance with section 324 of the Education Act 1996, it must give the Academy Trust written notice that it so proposes. Within 15 days of receipt of the LA's notice that it proposes to name the alternative provision Academy in a statement, the Academy Trust must consent to being named, except where admitting the child would be incompatible with the provision of efficient education for other children; and where no reasonable steps may be made to secure compatibility. In deciding whether a child's inclusion would be incompatible with the efficient education of other children, the Academy Trust must have regard to the relevant guidance issued by the Secretary of State to maintained schools.
7. If the Academy Trust determines that admitting the child would be incompatible with the provision of efficient education, it must, within 15 days of receipt of the LA's notice, notify the LA in writing that it does not agree that the alternative provision Academy should be named in the pupil's statement. Such notice must set out all the facts and matters the alternative provision Academy relies upon in support of its contention that: (a) admitting the child would be incompatible with efficiently educating other children; and (b) the Academy Trust cannot take reasonable steps to secure this compatibility.
8. After service by the Academy Trust on the LA of any notice (further to paragraph 7 above) stating that it does not agree with the LA's proposal that the alternative provision Academy be named, the Academy Trust must seek to establish from the LA, as soon as is reasonably practicable, whether or not the LA agrees with the Academy Trust. If the LA notifies the alternative provision Academy that it does not agree with the Academy Trust's response, and names the alternative provision Academy in the child's statement, the Academy Trust must admit the child to the school on the date specified in the statement or on the date specified by the LA.
9. Where the Academy Trust considers that the alternative provision Academy should not have been named in a child's statement, they may ask the Secretary of State to determine that the LA has acted unreasonably in naming the alternative provision Academy and to make an order directing the LA to reconsider.
10. The Secretary of State's determination shall, subject only to any right of appeal which any parent or guardian of the child may have to the First-tier Tribunal (Special Educational Needs and Disability), be final.
11. If a parent or guardian of a child in respect of whom a statement is maintained by the local authority appeals to the First-tier Tribunal (Special Educational Needs and Disability) either against the naming of the alternative provision Academy in the child's SEN statement or asking the Tribunal to name the alternative provision Academy, then the decision of the Tribunal on any such appeal shall be binding and shall, if different from that of the Secretary of State under paragraph 9 above, be substituted for the Secretary of State's decision.

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