

CITY GATEWAY 14-19 PROVISION

**FREE SCHOOL
FUNDING AGREEMENT**

7 SEPTEMBER 2012

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INTRODUCTION	
<p>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 City Gateway 14-19 Provision (the “Academy Trust”).</p> <p>2) The Academy Trust is a Company incorporated in England and Wales, limited by guarantee with registered Company number 08111431.</p> <p>3) The following expressions used in this Agreement have the respective meanings assigned to them by the numbered clauses of this Agreement</p>	

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) "Chief Inspector" means Her Majesty's Chief Inspector of Education, Children's Services and Skills or his successor;
 - e) "GAG" – clause 41;
 - f) "Capital Expenditure" - clause 36;
 - g) "Capital Grant" – clause 36;
 - h) "EAG" - clause 48;
 - 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 1st September to 31st August in any year or such other period as the Secretary of State may from time to time specify by notice in writing to the Academy Trust;

"Academy Funding Year" means the year from 1st September to 31st August in any year;

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

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

"Commissioner" means a local authority and/or school referring

children/pupils to the 16 to 19 Academy for admission pursuant to the 16 to 19 Academy's arrangements for admissions;

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

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

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

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

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

"DfE" means Department for Education and any successor;

"EFA" means Education Funding Agency and any successor;

"Further Governors" means Governors who may be appointed by the Secretary of State under the Articles of Association if an Inadequate Provision Termination Event, as defined in this Agreement, occurs or the Secretary of State is satisfied that a Member or Governor of the Academy Trust is not a suitable person or the Secretary of State considers it necessary to appoint such Governors to enable the Academy Trust to secure a permanent site if the Academy Trust has

been unable or is unwilling to do so;

references to “Inadequate Inspection Event” in the Memorandum and Articles of Association of the Academy Trust at Annex A shall be taken to refer to “Inadequate Provision Termination Event” as defined in this Agreement;

“Insured Risks” means fire lightning explosion earthquake storm tempest flood subsidence landslip heave impact terrorism bursting or overflowing of water tanks and pipes earthquake 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.

"LA" means the Local Authority in the area in which the 16 to 19 Academy is situated;

“the Lease” means the leasehold agreement or its equivalent between the Academy Trust and City Gateway (company registration number 03760619) (“the Landlord”) in respect of the temporary site situated and known as part ground, first, second and third floors of the land and buildings known as Ensign Court, 28 Ensign Street, London E1 8ND;

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

“parents” means parents or guardians;

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

“Principal” means the head teacher of the 16 to 19 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” and “educational institution” shall where the context so admits be references to the 16 to 19 Academy;

references to “Secretary of State” shall where the context so admits be references to the EFA acting on the Secretary of State’s behalf;

“SEN” means Special Educational Needs;

“SENCO” means Special Educational Needs Co-ordinator; and

“Start-Up Period” means up to a maximum of 4 Academy Funding Years after the date of this agreement or the period up to and including the first Academy Funding Year in which the 16 to 19 Academy can offer its planned places (as set down in clause 17), whichever is the shorter.

- 5) The Interpretation Act 1978 shall apply for the interpretation of this Agreement as it applies for the interpretation of an Act of Parliament
- 6) Expressions defined in this Agreement shall have the same meaning where used in any Annex to this Agreement.
- 7) Questions arising on the interpretation of the arrangements in this Agreement shall be resolved by the Secretary of State after consultation with the Academy Trust.
- 8) Section 1 (3) of the Academies Act 2010 states that:
 - (3) An Academy agreement is an agreement between the Secretary of State and the other party under which-
 - (a) the other party gives the undertakings in subsection (5), and
 - (b) the Secretary of State agrees to make payments to the other party in consideration of those undertakings.

LEGAL AGREEMENT

9) In consideration of the Academy Trust undertaking to establish and maintain, and to carry on or provide for the carrying on of an educational institution in England to be known as City Gateway 14-19 Provision (“the 16 to 19 Academy”) and meeting such requirements as are referred to in clause 10, the Secretary of State agrees to make payments to the Academy Trust in accordance with the conditions and requirements set out in this Agreement. For the avoidance of doubt, any obligations imposed upon or powers given to the 16 to 19 Academy by this Agreement are also imposed upon the Academy Trust.

16 to 19 ACADEMY REQUIREMENTS

10) The 16 to 19 Academy requirements are those set down in Section 1B of the Academies Act 2010.

ACADEMY OPENING DATE

11) The 16 to 19 Academy shall open as an educational institution on 1 September 2012.

11A) The Academy Trust agrees that, prior to the 16 to 19 Academy opening date, the 16 to 19 Academy is an institution for the purposes of the Chief Inspector’s duties under sections 118(2) and 125 of the Education and Inspections Act 2006 and, accordingly, the Chief Inspector may inspect the 16 to 19 Academy before that date.

CONDITIONS OF GRANT

General

12) Other conditions and requirements in respect of the 16 to 19 Academy are that:

- a) the 16 to 19 Academy will be at the heart of its community, promoting community cohesion and sharing facilities with other schools, educational institutions and the wider community;

- b) unless there are exceptional reasons to do otherwise:
- i) for pupils aged 14-16 there will be assessments of pupils' performance as they apply to maintained schools and the opportunity to study for qualifications in accordance with clause 29 (d); and
 - ii) for pupils aged 16 and above there will be there will be the opportunity to study for qualifications in accordance with clause 29 (d) and assessment of pupils' performance appropriate to the qualifications studied;
- c) the admissions policy and arrangements for the 16 to 19 Academy will be formulated in accordance with clause 17 of this Agreement;
- d) levels of pay and conditions of service for all staff, including teachers, at the 16 to 19 Academy will be the responsibility of the Academy Trust;
- e) there will be an emphasis on the needs of the individual pupils and students including pupils with special educational needs (SEN), both those with and without statements of SEN, and students with learning difficulties and disabilities; and
- (f) there will be no charge to pupils or students (or their parents or guardians) in respect of admission to, or attendance at, the 16 to 19 Academy and the 16 to 19 Academy will only charge pupils where the law allows maintained schools or institutions within the further education sector to charge and in accordance with clause 33 of this Agreement.
- (g) the Academy Trust shall ensure, so far as reasonably practicable, that learning takes place in safe, healthy and supportive environments, which meet the needs of pupils and students.
- (h) the Academy Trust shall comply with all relevant statutory requirements and national minimum standards, including those in relation to financial health and/or control, which may from time to time be issued by DfE, EFA and the Chief Inspector, including but not limited to, those published on the relevant body's website.

12A) Clause 12 (f) does not prevent the Academy Trust receiving funds/income from Commissioners in respect of the admission and attendance of a pupil or student at the 16 to 19 Academy.

Governance

13)The 16 to 19 Academy will be governed by a governing body (“the Governing Body”) who are the Directors of the company constituted under the Articles of the Academy Trust.

14)The Governing Body shall have regard to (but for the avoidance of doubt shall not be bound by) any guidance as to the governance of alternative provision Academies or 16-19 Academies that the Secretary of State may publish, in so far as it is relevant.

Conduct

15)The 16 to 19 Academy shall be conducted in accordance with:

- a) the Articles, which shall not be amended by the Academy Trust without the written consent of the Secretary of State, such consent not to be unreasonably withheld;
- b) all provisions by or under statute which confer rights or impose obligations on 16 to 19 Academies;
- c) the terms of this Agreement
- d) the independent schools standards prescribed under section 157 of the Education Act 2002 but-
 - (i) only to the extent that they apply to alternative provision Academies; and
 - (ii) not in respect of suitability of staff, supply staff, and proprietors as clauses 16-16B will instead apply; and

- (iii) only to the extent that they do not conflict with any obligations imposed on the Academy Trust by statute.

Criminal Records Bureau and other checks

16) The Academy Trust agrees to comply with any obligations that apply to it by virtue of provisions in the Safeguarding and Vulnerable Groups Act 2006 as may be amended from time to time in respect of, but not limited to, the performance of barred list checks.

16A) The Academy Trust agrees to act in accordance with the Further Education (Providers of Education) (England) Regulations 2006 (SI 2006/3199) as may be amended or replaced from time to time as if the 16 to 19 Academy were a further education institution and subject to the following modifications:

- a) references to “the governing body of a further education institution” or to “the governing body” shall be treated as references to the Academy Trust;
- b) references to “a further education institution” or “the institution” shall be treated as references to the 16 to 19 Academy, except in regulations 9(1)(b) and 19(2)(a)(ii) where they shall have their normal meaning;
- c) the Academy Trust shall not have to comply with any of the requirements in relation to relevant staff qualifications specified in regulation 3(2), namely: regulations 5(3); regulation 17(1) only in so far as it relates to regulation 18(3); regulation 22 only in so far as it relates to paragraph 4 of Part 1 of the Schedule; and regulation 23 only in so far as it relates to paragraph 2(3) of Part 2 of the Schedule. For the avoidance of doubt, the relevant staff qualification requirements do not need to be met by members of staff at the 16 to 19 Academy; and

d) references to “new member of staff” shall include individual Governors and the Chair of the Governing Body and in respect of them:

(i) the obligation to carry out an enhanced criminal record check as provided for at regulation 5(5) will apply whether or not their position will involve a relevant activity;

(ii) the reference in regulation 6 to “considering his suitability for a position that will involve a relevant activity” will be treated as a reference to considering his suitability for a position as a Governor or Chair of the Governing Body as appropriate;

(iii) references to “beginning work at the further education institution” shall be treated as references to beginning work as a Governor or Chair of the Governing Body as appropriate.

16B) The Academy Trust shall, on receipt of a copy of an enhanced criminal record certificate, on request from the Secretary of State or his agents, as soon as possible thereafter submit information contained in the certificate to the Secretary of State in accordance with section 124 of the Police Act 1997.

Secondary education provided to persons of compulsory school age

16C) Where secondary education is provided to persons of compulsory school age by the 16 to 19 Academy the Academy Trust shall secure that, except in such circumstances described in clause 16D, no education is provided to a person who has attained the age of nineteen years in a room in which any persons of compulsory school age are for the time being receiving secondary education.

16D)(a) The circumstances referred to in clause 16C shall be that a teacher is present in the room.

(b) For the purposes of paragraph (a) a teacher shall be considered to be present in the room at a particular time even though no teacher is present if—

(i) it would be impracticable to secure the presence of a teacher in a room at that time, and

(ii) the absence of a teacher at that time has not lasted more than five minutes.

Pupils and students

17) The planned number of places at the 16 to 19 Academy is 486 places in the age range 14-19, including a sixth form of 306 places. The planned number of places for 14-16 year old pupils and the age ranges are not determinative of GAG. GAG for each Academy Funding Year will be determined by the Secretary of State in accordance with clauses 42A and 42B. City Gateway 14-19 Provision will be an educational institution principally concerned with providing full-time or part-time education suitable to the requirements of persons over compulsory school age but under 19. City Gateway 14-19 Provision will also have a minority of pupils whose characteristics are set out in the requirements at 1C of the Academies Act 2010. For all its pupils and students the requirements for:

- a) the admission of pupils and students to the 16 to 19 Academy are set out in written policies formulated in accordance with the terms of this Agreement (the “Admission Arrangements”). The current Admission Arrangements are annexed to this Agreement at Annex B and may be amended from time to time in accordance with the terms of this Agreement. The Admission Arrangements must be fair, objective and transparent and made in accordance with the Academy Trust’s legal powers and duties, and for the avoidance of doubt adherence to the Admission Arrangements forms part of this Agreement; and
- b) the admission to the 16 to 19 Academy of and support for pupils and

students 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.

17(i) Any changes to the Admission Arrangements proposed by the Academy Trust which affect admissions of pupils of compulsory school age should be discussed with Commissioners and must be agreed with the Secretary of State. The Secretary of State agrees that the Academy Trust may otherwise vary its Admissions Arrangements subject to the Academy Trust informing the Secretary of State of any variation to the policies in writing as soon as reasonably practicable.

[17(ii) The Academy Trust agrees to vary the Admissions Arrangements where necessary to comply with legislative changes and/or as the Secretary of State may require.

17(iii) In relation to exclusions, the requirements for pupils and students are that the Academy Trust must comply with the requirements 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)) as if the 16-19 Academy was an alternative provision Academy.

Designated Teacher for Looked After Children

17A) The Academy Trust will in respect of the 16 to 19 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 LA and are registered pupils at the school. For the purpose of this clause, any reference to the governing body of a maintained school in such statutory and regulatory provisions, or in any guidance and code of practice issued pursuant to such provisions, shall be deemed to be references to the Governing Body of the Academy Trust.

Teachers and other staff

18) Subject to clause 19, the Academy Trust shall, 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 and students, delivering lessons to pupils and students, assessing the development, progress and attainment of pupils and students, and reporting on the development, progress and attainment of pupils and students.

18A) The Academy Trust agrees to comply with section 317(3A) of the Education Act 1996 as if it were a maintained school

19) Clause 18 does not apply to anyone who (a) is appointed as the SENCO by the Academy Trust under clause 18A, 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 16 to 19 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 16 to 19 Academy other than teachers (“Non-teaching Staff”) have access to either the Local Government Pension Scheme in accordance with the Local Government Pension Scheme (Administration) Regulations 2008 [SI 2008/239] (“the Regulations”), where the Regulations require this, or such other pension benefits as those Regulations, or any legislation which may in the future replace the Regulations, require for Non-teaching staff.

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

22) The curriculum provided by the 16 to 19 Academy to pupils up to the age

of 16 shall be broad and balanced. The curriculum provided by the 16 to 19 Academy to students over the age of 16 should be suitable to the requirements of the students and may include vocational, social, physical and recreational training.

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 qualifications offered by the 16 to 19 Academy; and
- d) how parents, students and pupils (including prospective parents, students and pupils) and Commissioners can obtain further information in relation to the 16 to 19 Academy's curriculum.

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

23) The Academy Trust shall ensure that the broad and balanced curriculum for its pupils up to the age of 16 includes English and Mathematics.

23A) The Academy Trust shall ensure that when designing Study Programmes for students aged 16 or over (unless it can be clearly demonstrated not to be in the interests of the student, or the student has already achieved such qualifications) that students are encouraged to achieve English and Mathematics grades A*-C (or any such other qualification that the Secretary State may notify the Academy Trust of in writing) or to take English and Mathematics provision that will enable significant progress to be made towards achieving such qualification.

24) The Academy Trust may make provision for the teaching of religious education and for a daily act of collective worship at the 16 to 19 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.

25) Not used.

26) Where the 16 to 19 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 16 to 19 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 and students at the 16 to 19 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 16 to 19 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 16 to 19 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

27) Section 71(1) – (6) and (8) of the School Standards and Framework Act 1998 shall apply as if the 16 to 19 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 16 to 19 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 pupils at the 16 to 19 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 16 to 19 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 16 to 19 Academy;
- b) references to registered pupils shall be treated as references to registered pupils at the 16 to 19 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 16 to 19 Academy.

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.

Assessment

29)The Secretary of State will notify the appropriate body for assessment purposes about the 16 to 19 Academy.

- a) Unless there are exceptional reasons to do otherwise, the Academy Trust shall ensure that the 16 to 19 Academy complies with any guidance issued by the Secretary of State from time to time to ensure that pupils and students take part in assessments and in teacher assessments of pupils' and students' performance as they apply to maintained schools with a sixth form.
- 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 16 to 19 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 16 to 19 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.

International Education Surveys

29A) The Secretary of State may, by notice in writing to the Academy Trust, require the Academy Trust to participate in an international education survey and the Academy Trust shall, upon receipt of such notice, participate in that survey and provide to the Secretary of State or to those carrying out the survey all such assistance and information as may reasonably be required for the purposes of the 16 to 19 Academy's participation in that survey.

30) Not used

School Meals

31) The Academy Trust shall, if requested to do so by or on behalf of any pupils at the 16 to 19 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 of compulsory school age 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 16 to 19 Academy with the following modifications.

- a) references to any maintained school shall be treated as references to the 16 to 19 Academy;
- b) references to registered pupils shall be treated as references to registered pupils at the 16 to 19 Academy;
- c) references to the governing body or the local authority shall, in each case, be treated as references to the Academy Trust;
- d) the charging and remissions policies required to be determined under section 457, and any amendment thereto, shall require the approval of the Secretary of State; and

- e) the Academy Trust may charge persons who are not registered pupils at the 16 to 19 Academy for education provided or for facilities used by them at the 16 to 19 Academy¹.

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, and for the purpose of this paragraph “school” means the 16 to 19 Academy.

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 16 to 19 Academy. For the purposes of this clause and clauses 58 onwards an Academy Financial Year shall be deemed to run from [1st September to 31st August] or such other period as the Secretary of State may from time to time specify by notice in writing to the Academy Trust. For the purposes of clauses 35 to 57 an Academy Funding Year shall be deemed to run from 1st September to 31st August, to align with funding allocations. Except with the Secretary of State’s prior agreement, the Academy Trust shall not budget for its expenditure in any Academy Financial Year in excess of expected income. The Academy Trust shall not enter into commitments which are likely to have substantial implications for future levels of grant, or for the period for which grant may be required. No decision by the Academy Trust shall commit the Secretary of State to paying any particular amount of grant.

35) “Recurrent Expenditure” means any expenditure on the establishment, conduct, administration and maintenance of the 16 to 19 Academy which

¹ 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 16 to 19 Academy.

does not fall within Capital Expenditure. 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.

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 16 to 19 Academy is to open in new premises, or where existing premises are to be substantially refurbished or remodelled to enable the 16 to 19 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 16 to 19 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 16 to 19 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 contribution² to the normal running costs of the 16 to 19 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 ,manual and premises related staff and seconded non-teaching 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;

² The extent of any such contribution to be within the absolute discretion of the Secretary of State.

(ii) of other supplies and services;

- e) examination fees;
- f) repairs, servicing and maintenance of buildings (including redecoration, heating, plumbing, lighting etc); maintenance of grounds (including boundary fences and walls); cleaning materials and contract cleaning; water and sewage; fuel and light (including fuel oil, solid and other fuel, electricity and gas); rents; rates; purchase, maintenance, repairs and replacement of furniture and fittings and any service charge payable under the Lease;
- g) insurance (which for the avoidance of doubt includes sums payable to the Landlord by way of insurance for the land held under the Lease), provided that the Secretary of State shall not be obliged to pay GAG in relation to insurance to the extent that insurance and/or comparable arrangements are made available to the Academy Trust (whether at a cost to the Academy Trust or otherwise and whether made available by and/or on behalf of the Secretary of State or otherwise) save that, to the extent that such insurance and/or comparable arrangements as may be made available constitute a cost for the Academy Trust, the Secretary of State shall provide a contribution through GAG in relation to such cost;
- h) medical equipment and supplies;
- i) staff development (including in-service training);
- j) curriculum development;
- k) the costs of providing school meals for pupils (including the cost of providing free school meals to pupils who are eligible to receive them), and discretionary grants to pupils and students to meet the cost of pupil and student support, including support for pupils and students with special educational needs, learning difficulties or disabilities (taking account of the fact that separate additional money will be available for

pupils or students with statements of Special Educational Needs or learning difficulties);

l) administration;

m) establishment expenses and other institutional costs.

42) Subject to clauses 44-45, GAG for each Academy Funding Year for the 16 to 19 Academy will include:

a) For 14-16 year old pupils, funding determined by the Secretary of State and notified in the Annual Letter of Funding or its equivalent, taking account of the number of places for 14-16 year olds at the 16 to 19 Academy. For 16-19 year old students, funding in accordance with the national funding formula for the education and training of 16-19 year olds, determined by the Secretary of State and notified in the Annual Letter of Funding or its equivalent, taking account of the number of students at the 16 to 19 Academy;

b) Funding for the cost of functions which would be carried out by the local authority if the 16 to 19 Academy were a maintained school with a sixth form, such funding to be determined at the discretion of the Secretary of State;

c) Funding for matters for which it is necessary for the 16 to 19 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 or institutions within the further education sector, where the 16 to 19 Academy meets the requisite conditions and criteria necessary for a maintained school or institutions within the further education sector to receive these grants, such payments to be at the discretion of the Secretary of State;

43) In relation to the provision of education for 16 to 19 year olds at the 16 to 19 Academy:

a) During the “Start-Up Period”:

i) the basis of the student number count for the purposes of determining GAG for an Academy Funding Year for the 16 to 19 Academy will be the Academy Trust's estimate each year for numbers on the roll in the following September for the 16 to 19 Academy, such estimate to be based on an objective assessment of student numbers and agreed with the Secretary of State.

ii) for the second Academy Funding Year, and any subsequent Academy Funding Years during the “Start-Up Period”, GAG will also be determined by reference to the Academy Trust's estimate of the average guided learning hours (GLH) per student across the previous Academy Funding Year, such estimate to be agreed with the Secretary of State.

b) After the “Start-Up Period” the arrangements for calculating the student number count for the purpose of determining GAG for the 16 to 19 Academy shall be those provided for in guidance on the national funding system published by the Secretary of State under section 15ZD of the Education Act 1996 for the relevant Academy Funding Year, in respect of persons who have reached the age of 16 but have not reached the age of 19.

c) For the first Academy Funding Year, an adjustment will be made to the following Academy Funding Year's formula funding element of GAG for the 16 to 19 Academy to recognise any variation from the estimates lower than 10%. The clawed-back grant will be only that amount relevant to the Standard Learner Number (SLN) (as defined in the 16-19 funding guidance published by the EFA) beyond the 10% variation. For any subsequent Academy Funding Year in which GAG for the 16 to 19 Academy has been calculated in accordance with clause 43(a), an adjustment will be made to the following Academy Funding Year's formula funding element of GAG for the 16 to 19 Academy to recognise

any variation from the estimates greater lower than 2.5%. The additional or clawed-back grant will be only that amount relevant to the number of students, or the average SLN, beyond the 2.5% variation.

d) For any Academy Funding Year in which GAG for the 16 to 19 Academy is calculated in accordance with clause 43(b), no adjustment will be made to the equivalence funding element in the following Academy Funding Year's equivalence funding element of GAG. For any other element of GAG the Secretary of State may make adjustments to recognise a variation in student numbers from that used to calculate the element of grant in question; the basis of these will be set out in guidance on the national funding system published by the Secretary of State under section 15ZD of the Education Act 1996 for the relevant Academy Funding Year.

43A) In relation to the provision of education for compulsory school age children at the 16 to 19 Academy:

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

b) 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 16 to 19 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.

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 upon the number of pupils attending the 16 to 19 Academy are unlikely to be

sufficient to meet the 16 to 19 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 16 to 19 Academy in the notice period than would be justified solely on the basis of the methods set out in clauses 42-43D, in order to enable the 16 to 19 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 16 to 19 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 16 to 19 Academy.

47) GAG paid by the Secretary of State shall only be spent by the Academy Trust towards the normal running costs of the 16 to 19 Academy.

Earmarked Annual Grant

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

49) Where the Academy Trust is seeking a specific EAG in relation to any Academy Funding Year, it shall submit a letter outlining its proposals and the reasons for its request to the Secretary of State at an address notified from time to time.

Arrangements for Payment of GAG and EAG

50) The Secretary of State shall notify the Academy Trust at a date preceding

the start of each Academy Funding Year of the GAG and EAG figures in respect of the 16 to 19 Academy which, subject to Parliamentary approval, the Secretary of State plans for that Academy Funding 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 Funding 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 Funding 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 Funding 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 Funding 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 Funding Year will be determined annually by the Secretary of State. The amount of GAG for the 16 to 19 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 Funding 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 LA in respect of the provision detailed in statements of SEN for pupils attending a 16 to 19 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 or any other publication which the DfE notifies in writing to the Academy Trust that it is required to follow in addition to, or instead of, the Academies Financial Handbook, which sets out in detail provisions for the financial management of the 16 to 19 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.

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 16 to 19 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 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 of Association, 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 indicative budgets relating to the 16 to 19 Academy to the Secretary of State by not later than 15 February before the start of each Academy Funding Year. Such budgets shall set out clearly the prospective income and expenditure of the 16 to 19 Academy and shall differentiate, and give adequate details of:

a) a statement of expected income for that Academy Funding Year including cash donations and gifts in kind from sources other than GAG, EAG and grants from the Secretary of State towards Capital and Revenue Expenditure, distinguishing between income from public funds including the national lottery and income from other sources. Income from cash donations and gifts in kind from sources other than GAG, EAG and grants from the Secretary of State towards Capital Expenditure will not be taken into account by the Secretary of State in the calculation of GAG;

b) a statement of proposed Recurrent Expenditure for that Academy Funding Year;

c) a statement of proposed Capital Expenditure for that Academy Funding Year.

65) At the beginning of any Academy Funding Year the Academy Trust may hold unspent GAG from previous Academy Funding Years amounting to such percentage (if any) as the Secretary of State may specify by notice in writing to the Academy Trust prior to the beginning of that Academy Financial Year of the total GAG payable for the Academy in the Academy Funding 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 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 savings of 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 pay 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 Funding 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 Funding Year or Academy Funding 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 Funding 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 Funding Year or Academy Funding Years.

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 16 to 19 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, without the prior written consent of the Secretary of State which shall not be unreasonably withheld or delayed:

- a) give any guarantees, indemnities or letters of comfort, except such as are given in normal contractual relations;
- b) write off any debts or liabilities owed to it above a value from time to time being specified by the Secretary of State, nor offer to make any ex

gratia payments;

c) make any sale or purchase of [or otherwise dispose of] freehold or leasehold property; or

d) grant or take up any leasehold or tenancy agreement.

70) The Academy Trust shall provide 30 days 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; or

d) grant or 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 16 to 19 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 16 to 19 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'), 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) 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 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 a nil consideration or at an under value it shall be treated for the purpose of this Agreement as having incurred expenditure equal to the market value of those assets at the time that they were acquired. This provision shall not apply to assets transferred to the Academy Trust at nil or nominal consideration and which were previously

used for the purposes of a 16 to 19 Academy and/or were transferred from a LA, 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 LA 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 an LA for no or nominal consideration. In this event the Secretary of State may give consent on the basis that all or

part of the proceeds of the disposal should be made over to the LA from which the asset was transferred, taking into account the amount of the proceeds to be reinvested by the Academy Trust. The Secretary of State will have regard to any representations from the Academy Trust and the LA from which the asset was transferred before giving consent under this clause.

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 Funding Years' written notice to terminate this Agreement, such notice to expire on 31 August or any subsequent anniversary of that date, save where the provisions of this Agreement otherwise provide.

83) If the Secretary of State is of the opinion that the 16 to 19 Academy no longer meets the requirements set out in clause 10 of this Agreement or that the conditions and requirements set out in clauses 12-33 of this Agreement are not being met, or that the Academy Trust is otherwise in material breach of the provisions of this Agreement, the Secretary of State may give notice of his intention to terminate this Agreement.

84) Any such notice shall be in writing and shall:

- a) state the grounds on which the Secretary of State considers the 16 to 19 Academy no longer meets the requirements set out in clause 10 of this Agreement or is not meeting the conditions and requirements of

clauses 12-33 of this Agreement or the Academy Trust is otherwise in material breach of the provisions of this Agreement;

- b) specify the measures needed to remedy the situation or breach;
- c) specify a reasonable date by which these measures are to be implemented; and
- d) state the form in which the Academy Trust is to provide its response and a reasonable date by which it must be provided.

85) If no response is received by the date specified in accordance with clause 84(d), the Secretary of State may give the Academy Trust 12 months, or such lesser period as he considers appropriate in the circumstances, written notice to terminate this Agreement.

86) If a response is received by the date specified in accordance with clause 84(d) the Secretary of State shall consider it, and any representations made by the Academy Trust, and shall, within three months of its receipt, indicate that:

- a) he is content with the response and/or that the measures which he specified are being implemented; or
- b) he is content, subject to any further measures he reasonably specifies being implemented by a specified date or any evidence he requires that implementation of such measures have been successfully completed; or
- c) he is not satisfied, that he does not believe that he can be reasonably satisfied, and that he will proceed to terminate this Agreement.

87) In the circumstances of clause 86(c) the Secretary of State shall notify the Academy Trust why he believes that he cannot be reasonably satisfied and, if so requested by the Academy Trust within 30 days from such notification, he shall meet a deputation including representatives from the Governing Body to discuss his concerns. If following such meeting he has good reasons for remaining satisfied that the 16 to 19 Academy does not and will not meet the

requirements set out in clause 10 of this Agreement or does not and will not meet the conditions and requirements set out in clauses 12-33 of this Agreement or the Academy Trust is in material breach of the provisions of this Agreement and such breach will not be remedied to his reasonable satisfaction, he shall give the Academy Trust 12 months written notice to terminate this Agreement.

88) If the Secretary of State would have had cause to serve a notice on the Academy Trust under section 165 of the Education Act 2002 had the 16 to 19 Academy been on the Register of Independent Schools, the period of twelve months notice referred to in clause 87 may be shortened to a period deemed appropriate by the Secretary of State.

89) An “Inadequate Provision Termination Event Occurs” when:

a) (i) the Chief Inspector has made a report under section 124(4)(a) or 125(4)(a) of the Education and Inspections Act 2006 and stated that he does not consider the education or training inspected in the 16 to 19 Academy to be of a quality adequate to meet the reasonable needs of those receiving it; or

(ii) in the Secretary of State’s assessment the Academy Trust has failed to comply with clause 12(h); and

b) Not used.

c) the Secretary of State or the EFA has requested the Academy Trust to deliver within 10 Business Days a written statement (a “Further Action Statement”) of the action the Academy Trust proposes to take in relation to the Chief Inspector’s report or the assessment referred to in clause 89(a)(ii), and the period within which it proposes to take such action, or, if it does not propose to take any action, the reasons for not doing so; and

d) the Secretary of State or the EFA, having considered the Further Action Statement, is not satisfied that any action proposed to be taken by the Academy Trust is sufficient in all the circumstances, or, if no Further

Action Statement shall have been given to the Secretary of State or the EFA within the requested timeframe or otherwise.

90) If an Inadequate Provision Termination Event occurs, the Secretary of State may:

- a) terminate this Agreement forthwith by notice in writing to the Academy Trust; or
- b) appoint such Further Governors to the Academy Trust as he thinks fit in accordance with the Articles and/or may provide up to 12 months' notice in writing to terminate this Agreement.

91) In the event that the Secretary of State appoints Further Governors in accordance with clause 90(b) or 91A(b), the Academy Trust must, upon the request of the Secretary of State, procure the resignation of the Governors appointed in accordance with the Article 50 of the Articles of Association.

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 on the Academy Trust requiring the Academy Trust to procure the resignation or removal of the person(s) within 42 days; and if the Academy Trust fails to procure the said resignation or removal within the time specified, the Secretary of State may by notice terminate this Agreement forthwith or may provide up to 12 months' notice in writing to terminate this Agreement]; **or**
- (b) appoint such Further Governors as he thinks fit and/or provide up to 12 months' notice in writing to terminate this Agreement; **or**
- (c) by notice in writing terminate this Agreement forthwith or on such date as the Secretary of State may determine.

91B) Not used.

91C) If at any time after the signing of this Agreement but prior to the 16 to 19

Academy opening date, the Secretary of State is of the view that:

- I. the 16 to 19 Academy would, on opening, provide an unacceptably low standard of education or training; or
- II. the safety of pupils or staff at the 16 to 19 Academy would, on opening, be threatened; or
- III. the staff employed at the 16 to 19 Academy are unsuitable; or
- IV. the buildings and other structures on the land held under the Lease are unsuitable or the Academy Trust has not obtained Building Regulation approval;

he may in writing either:

- (a) require the Academy Trust (i) not to open the 16 to 19 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 land held under the Lease until such time as the relevant matter or matters listed in 1. to 4. above has or have been resolved to the Secretary of State's satisfaction; or
- (b) terminate this Agreement forthwith or provide such notice as he deems appropriate in the circumstances to terminate this Agreement.

91D) Not used.

91E) If the Academy Trust has not acquired a permanent site for the Academy by 30 June 2013 the Secretary of State may:

- (a) by notice terminate this Agreement forthwith; or
- (b) provide such notice as he deems appropriate in the circumstances in writing to terminate this Agreement; or
- (c) appoint such Further Governors as he thinks fit: and/or
 - i. by notice terminate this Agreement forthwith; or

- ii. provide up to 12 months' notice in writing to terminate this Agreement.

91F) Upon acquisition by the Academy Trust of a permanent site for the Academy, the Academy Trust agrees that it shall enter into negotiations in good faith with the Secretary of State in respect of a deed of variation for this Agreement to insert the relevant clauses in respect of that permanent site. Should the Academy Trust fail to enter into such negotiations in good faith and / or fail to enter into a deed of variation in respect of the relevant clauses in respect of that site following such negotiations, the Secretary of State may by notice terminate this Agreement forthwith or provide up to 12 months' notice in writing to terminate this Agreement.

92) The Secretary of State may at any time by notice in writing terminate this Agreement forthwith on the 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 1993 or any subsequent re-enactment of that Act), administrator or administrative receiver appointed

over all or any part of its undertakings, assets or income; or

e) any 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.

93) 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.

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

95) Following the Members passing a resolution as described in clause 94, the Secretary of State's right to terminate this Agreement under clause 94 shall cease if he removes one or more Additional Governors or Further Governors and fails to replace at least one Additional Governor or Further Governor within the 30 days of their removal resulting in there being no remaining Additional Governor or Further Governor on the governing body of the Academy Trust.

Change of Control of the Academy Trust

95A) (i) The Secretary of State may at any time by notice in writing, subject to sub-clause (iii) below, terminate this Agreement forthwith (or on such other

date as he may in his absolute discretion determine) in the event that there is a change:

- (a) in the Control of the 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.

95A) (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 95A)(i), give written notice to the Secretary of State of such change or proposed change of control.

95A) (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 95A)(i).

Effect of Termination

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

97) In the event of termination of this Agreement however occurring, the educational institution shall cease to be a 16 to 19 Academy within the meaning of Section 1 of the Academies Act 2010.

98) Subject to clause 99, if the Secretary of State terminates this Agreement for reasons other than that an Inadequate Provision Termination Event

occurs, that the 16 to 19 Academy no longer meets the requirements set out in clause 10 of this Agreement, or is no longer meeting the conditions and requirements set out in clauses 12-33 of this Agreement or that the Academy Trust is otherwise in material breach of the provisions of this Agreement, the Secretary of State may indemnify the Academy Trust.

99) The amount of any such indemnity 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 may indemnify 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 purposes 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 16 to 19 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 16 to 19 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 LA.

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, inter alia, the 16 to 19 Academy's:

- 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 educational institutions and the local community;

- f) operation of the referral and reintegration processes for the 16 to 19 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') 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 16 to 19 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 16 to 19 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), 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 affecting the ability of the

Academy Trust to use the Land for the purposes of the 16 to 19 Academy from any competent authority, 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 Land.

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 Land 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 Land 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.

105F) For 16-19 year old students, the Academy of Trust agrees to comply with the "Specification of the Individualised Learner Record for 2012/13" published by the Information Authority as may be amended or replaced from time to time.

Access by the Secretary of State's Officers

106) The Academy Trust shall allow access to the premises of the 16 to 19 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 16 to 19 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 16 to 19 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 16 to 19 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 16 to 19 Academy and, as soon as is reasonably practicable, sent to the Secretary of State upon 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 16 to 19 Academy;
- b) a named pupil at, or candidate for admission to, the 16 to 19 Academy; and
- c) any matter which, by reason of its nature, the Academy Trust is satisfied should remain confidential.

LAND

Debt

108A) Not used.

Restrictions on Land transfer

108B) Not used.

Obligations of the Academy Trust

108C) (i) The Academy Trust shall keep the land held under the Lease clean and tidy and make good any damage it causes to the land held under the Lease and / or any deterioration to the condition of the land held under the Lease that may arise from the date of this Agreement, save that the Academy Trust shall ensure that any actions undertaken in compliance with this clause shall be consistent with the terms of the Lease. In compliance with this clause, the Academy Trust shall not do or cause or permit to be done anything to lessen the value or marketability of the land held under the Lease save with the express written consent of the Secretary of State.

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; and / or
- b) grant any consent or licence in respect of the land held under the Lease or any part of it; and / or
- c) create or permit to arise or continue any encumbrance affecting the land held under the Lease or any part of it; and / or
- d) part with or share possession or occupation of the land held under the Lease or any part of it; and / or

- e) enter into any onerous or restrictive obligations affecting the land held under the Lease or any part of it.

Insurance

108D) The Academy Trust shall, save where the terms of the Lease provide for the Landlord to obtain insurance in respect of the land held under the Lease:-

- a) keep the land held under the Lease insured as in accordance with the terms of the Lease and in any event with a reputable insurance office against loss or damage by the Insured Risks in the sum the Academy Trust is advised represents the reinstatement value of the land held under the Lease from time to time;
- b) pay the premiums for insurance promptly as they become due and maintain in force the policies of insurance on the land held under the Lease;
- c) following the incidence of damage to or destruction of the land held under the Lease and subject to receipt of all necessary consents licences permissions and the like apply the proceeds of the policy of the insurance received for those purposes in rebuilding and reinstating the land held under the Lease (provided that this clause should be satisfied if the Academy Trust provides premises not necessarily identical to the land held under the Lease as the same existing prior to such damage or destruction occurring) as soon as may be reasonably practicable;
- 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 policy of insurance relating to the land held under the Lease may become void or voidable.
- f) insure against liability in respect of property owners' and third party risks including occupiers liability.

Transfer of Land on Termination of Agreement

108E) Not used.

108F) Not used.

Legal Charge

108G) Not used.

Failure to use the Land for the purposes of the Academy

108H) Not used.

Sharing of the Land

108I) Not used.

Exercise of Rights

108J) Not used.

108K) Not used.

108L) Not used.

108M) Not used.

Payment of Debt

108N) Not used.

Notices

109) Any notice or other communication concerning this Agreement shall be sent, in the case of a notice or communication from the Secretary of State to the Academy Trust at its registered office or such other addressee/address as may be notified in writing from time to time by the Academy Trust and, in the case of a notice or communication from the Academy Trust to the Department for Education, Sanctuary Buildings, Great Smith Street, London SW1P 3BT; or such other address as may be notified from time to time by the Secretary of State and where any such notice or communication is sent by post, unless the contrary is proved, it shall be deemed, subject to satisfactory proof of posting, to be effected at the time at which the letter would be received in the ordinary course of post.

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 16 to 19 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.


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 16 to 19 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 16 to 19 Academy throughout the currency of this Agreement.

113) The Secretary of State and the Academy Trust agree that,

notwithstanding the termination of this Agreement, any obligation upon the Academy Trust and/or the Secretary of State expressed as arising upon the termination of this Agreement shall continue to subsist.


This Agreement was executed as a Deed on 7 September 2012

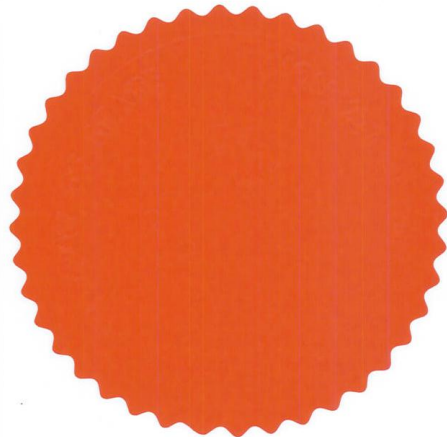
Executed on behalf of City Gateway 14-19 Provision by:


.....
Director


.....
Director

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


.....
Duly Authorised



Annex A

June 2012

THE COMPANIES ACT 2006

I

A COMPANY LIMITED BY GUARANTEE

ARTICLES OF ASSOCIATION

OF

CITY GATEWAY 14-19 PROVISION

COMPANY NUMBER:

THE COMPANIES ACT 2006
COMPANY LIMITED BY GUARANTEE
ARTICLES OF ASSOCIATION
OF
CITY GATEWAY 14-19 PROVISION

INTERPRETATION

1. In these Articles:-

- a. "the 16 to 19 Academy" means the 16 to 19 Academy referred to in Article 4 and established by the Academy Trust;
- b. "Academy Financial Year" means the academic year from 1st of August in any year to 31st of July of the following year;
- c. "the Academy Trust" means the company intended to be regulated by these Articles and referred to in Article 2;
- d. "Additional Governors" means the Governors appointed pursuant to Article 62 and 62A;
- e. "the Articles" means these Articles of Association of the Academy Trust;
- f. "Chief Inspector" means Her Majesty's Chief Inspector of Education, Children's Services and Skills or his successor;
- g. "City Gateway" means the charity known as City Gateway with registered charity number 1078360;
- h. "clear days" in relation to the period of a notice means the period excluding the day when the notice is given or deemed to be given and the day on which it is given or on which it is to take effect;
- i. "financial expert" means an individual, company or firm who is authorised to give investment advice under the Financial Services and Markets Act 2000;

- j. "Funding Agreement" means the agreement made under section 1 of the Academies Act 2010 between the Academy Trust and the Secretary of State to establish the 16 to 19 Academy;
- k. "Further Governors" means the Governors appointed pursuant to Article 63;
- l. "the Governors" means the directors of the Academy Trust (and "Governor" means any one of those directors), subject to the definition of this term at Article 6.10(b) in relation to Articles 6.2-6.10;
- m. "the LA" means the local authority covering the area in which the 16 to 19 Academy is situated;
- n. "Local Authority Associated Persons" means any person associated with any local authority within the meaning given in section 69 of the Local Government and Housing Act 1989;
- o. "Member" means a member of the Academy Trust and someone who as such is bound by the undertaking contained in Article 8 ;
- p. "the Memorandum" means the Memorandum of Association of the Academy Trust;
- q. "Office" means the registered office of the Academy Trust;
- r. "the Parent Governors" means the Governors appointed pursuant to Articles 53 to 58 inclusive;
- s. "Principal" means the head teacher of the 16 to 19 Academy;
- t. "Principal Regulator" means the body or person appointed as the Principal Regulator under the Charities Act 2006;
- u. "the seal" means the common seal of the Academy Trust if it has one;
- v. "Secretary" means the secretary of the Academy Trust or any other person appointed to perform the duties of the secretary of the Academy Trust, including a joint, assistant or deputy secretary;
- w. "Secretary of State" means the Secretary of State for Education or successor;
- x. "Staff Governor" means an employee of the Academy Trust who may be appointed as a Governor pursuant to Article 50A;

- y. “teacher” means a person employed under a contract of employment or a contract for services or otherwise engaged to provide his services as a teacher at the 16 to 19 Academy;
 - z. “the United Kingdom” means Great Britain and Northern Ireland;
 - aa. words importing the masculine gender only shall include the feminine gender. Words importing the singular number shall include the plural number, and vice versa;
 - bb. subject as aforesaid, words or expressions contained in these Articles shall, unless the context requires otherwise, bear the same meaning as in the Companies Act 2006, as appropriate;
 - cc. any reference to a statute or statutory provision shall include any statute or statutory provision which replaces or supersedes such statute or statutory provision including any modification or amendment thereto.
- 2. The company’s name is City Gateway 14-19 Provision (and in this document it is called “**the Academy Trust**”).
 - 3. The Academy Trust’s registered office is to be situated in England and Wales.

OBJECTS

- 4. The Academy Trust’s object (“**the Object**”) is specifically restricted to the following: to advance for the public benefit education in the United Kingdom, in particular but without prejudice to the generality of the foregoing by establishing, maintaining, carrying on, managing and developing a 16 to 19 Academy offering a curriculum appropriate to the needs of its pupils and students and in relation to its pupils who are aged 14 to 16 years of age providing full-time or part-time education for these children who, by reason of illness, exclusion from school or otherwise, may not for any period receive suitable education unless alternative provision is made for them (“the 16 to 19 Academy”).
- 5. In furtherance of the Object but not further or otherwise the Academy Trust may exercise the following powers:-

- (a) to draw, make, accept, endorse, discount, execute and issue promissory notes, bills, cheques and other instruments, and to operate bank accounts in the name of the Academy Trust;
- (b) to raise funds and to invite and receive contributions provided that in raising funds the Academy Trust shall not undertake any substantial permanent trading activities and shall conform to any relevant statutory regulations;
- (c) to acquire, alter, improve and (subject to such consents as may be required by law) to charge or otherwise dispose of property;
- (d) subject to Article 6 below to employ such staff, as are necessary for the proper pursuit of the Object and to make all reasonable and necessary provision for the payments of pensions and superannuation to staff and their dependants;
- (e) to establish or support, whether financially or otherwise, any charitable companies, trusts, associations or institutions formed for all or any of the Object;
- (f) to co-operate with other charities, independent and maintained schools, other Academies, voluntary bodies, institutions within the further education sector and statutory authorities operating in furtherance of the Object and to exchange information and advice with them;
- (g) to pay out of funds of the Academy Trust the costs, charges and expenses of and incidental to the formation and registration of the Academy Trust;
- (h) to establish, maintain, carry on, manage and develop the 16 to 19 Academy at Ensign Court, 28 Ensign Street, London, E1 8ND or such other location as may be determined by the Governors;
- (i) to offer scholarships, exhibitions, prizes and awards to pupils and students and former pupils and students, and otherwise to encourage and assist pupils and students and former pupils and students;
- (j) to provide educational facilities and services to pupils and students of all ages and the wider community for the public benefit;

- (k) to carry out research into the development and application of new techniques in education in particular in relation to its approach to curriculum development and delivery and to publish the results of such research, and to develop means of benefiting from application of the experience of industry, commerce, schools, institutions within the further education sector, other Academies and the voluntary sector to the education of pupils and students in academies;
- (l) subject to such consents as may be required by law and/or by any contract entered into by or on behalf of the Academy Trust to borrow and raise money for the furtherance of the Object in such manner and on such security as the Academy Trust may think fit;
- (m) to deposit or invest any funds of the Academy Trust not immediately required for the furtherance of its Object (but to invest only after obtaining such advice from a financial expert as the Governors consider necessary and having regard to the suitability of investments and the need for diversification);
- (n) to delegate the management of investments to a financial expert, but only on terms that:
- (i) the investment policy is set down in writing for the financial expert by the Governors;
 - (ii) every transaction is reported promptly to the Governors;
 - (iii) the performance of the investments is reviewed regularly with the Governors;
 - (iv) the Governors are entitled to cancel the delegation arrangement at any time;
 - (v) the investment policy and the delegation arrangement are reviewed at least once a year;
 - (vi) all payments due to the financial expert are on a scale or at a level which is agreed in advance and are notified promptly to the Governors on receipt; and
 - (vii) the financial expert must not do anything outside the powers of the Governors.

- (o) to arrange for investments or other property of the Academy Trust to be held in the name of a nominee company acting under the control of the Governors or of a financial expert acting under their instructions, and to pay any reasonable fee required;
- (p) to provide indemnity insurance to cover the liability of Governors which by virtue of any rule of law would otherwise attach to them in respect of any negligence, default, breach of trust or breach of duty of which they may be guilty in relation to the Academy Trust: Provided that any such insurance shall not extend to any claim arising from any act or omission which the Governors knew to be a breach of trust or breach of duty or which was committed by the Governors in reckless disregard of whether it was a breach of trust or breach of duty or not and provided also that any such insurance shall not extend to the costs of any unsuccessful defence to a criminal prosecution brought against the Governors in their capacity as Governors;
- (q) to establish subsidiary companies to carry on any trade or business for the purpose of raising funds for the Academy Trust;
- (r) to do all such other lawful things as are necessary for or are incidental to or conducive to the achievement of the Object.

6.1 The income and property of the Academy Trust shall be applied solely towards the promotion of the Object.

6.2 None of the income or property of the Academy Trust may be paid or transferred directly or indirectly by way of dividend bonus or otherwise by way of profit to any member of the Academy Trust. Nonetheless a member of the Academy Trust who is not also a Governor may:

- a) benefit as a beneficiary of the Academy Trust;
- b) be paid reasonable and proper remuneration for any goods or services supplied to the Academy Trust;
- c) be paid rent for premises let by the member of the Academy Trust if the amount of the rent and other terms of the letting are reasonable and proper; and

- d) be paid interest on money lent to the Academy Trust at a reasonable and proper rate, such rate not to exceed 2 per cent per annum below the base lending rate of a UK clearing bank selected by the Governors, or 0.5%, whichever is the higher.
- 6.3 A Governor may benefit from any indemnity insurance purchased at the Academy Trust's expense to cover the liability of the Governors which by virtue of any rule of law would otherwise attach to them in respect of any negligence, default or breach of trust or breach of duty of which they may be guilty in relation to the Academy Trust: Provided that any such insurance shall not extend to any claim arising from any act or omission which the Governors knew to be a breach of trust or breach of duty or which was committed by the Governors in reckless disregard to whether it was a breach of trust or breach of duty or not and provided also that any such insurance shall not extend to the costs of any unsuccessful defence to a criminal prosecution brought against the Governors in their capacity as directors of the Academy Trust.
- 6.4 A company, which has shares listed on a recognised stock exchange and of which any one Governor holds no more than 1% of the issued capital of that company, may receive fees, remuneration or other benefit in money or money's worth from the Academy Trust.
- 6.5 A Governor may at the discretion of the Governors be reimbursed from the property of the Academy Trust for reasonable expenses properly incurred by him or her when acting on behalf of the Academy Trust, but excluding expenses in connection with foreign travel.
- 6.6 No Governor may:
- (a) buy any goods or services from the Academy Trust;
 - (b) sell goods, services, or any interest in land to the Academy Trust;
 - (c) be employed by or receive any remuneration from the Academy Trust (other than the Principal or a Staff Governor whose employment and/or remuneration is subject to the procedure and conditions in Article 6.8)
 - (d) receive any other financial benefit from the Academy Trust;

unless:

- (i) the payment is permitted by Article 6.7 and the Governors follow the procedure and observe the conditions set out in Article 6.8; or
- (ii) the Governors obtain the prior written approval of the Charity Commission and fully comply with any procedures it prescribes.

6.7 Subject to Article 6.8, a Governor may:

- a) receive a benefit from the Academy Trust in the capacity of a beneficiary of the Academy Trust.
- b) be employed by the Academy Trust or enter into a contract for the supply of goods or services to the Academy Trust, other than for acting as a Governor.
- c) receive interest on money lent to the Academy Trust at a reasonable and proper rate not exceeding 2% per annum below the base rate of a clearing bank to be selected by the Governors, or 0.5%, whichever is the higher.
- (d) receive rent for premises let by the Governor to the Academy Trust if the amount of the rent and the other terms of the lease are reasonable and proper.

6.8 The Academy Trust and its Governors may only rely upon the authority provided by Article 6.7 if each of the following conditions is satisfied:

- (a) the remuneration or other sums paid to the Governor do not exceed an amount that is reasonable in all the circumstances.
- (b) the Governor is absent from the part of any meeting at which there is discussion of:
 - i) his or her employment, remuneration, or any matter concerning the contract, payment or benefit; or
 - ii) his or her performance in the employment, or his or her performance of the contract; or
 - iii) any proposal to enter into any other contract or arrangement with him or her or to confer any benefit upon him or her that would be permitted under Article 6.7; or
 - (iv) any other matter relating to a payment or the conferring of any

benefit permitted by Article 6.7.

- (c) the Governor does not vote on any such matter and is not to be counted when calculating whether a quorum of Governors is present at the meeting.
- (d) save in relation to employing or contracting with the Principal or a Staff Governor (a Governor pursuant to Articles 46, 50A and 52) the other Governors are satisfied that it is in the interests of the Academy Trust to employ or to contract with that Governor rather than with someone who is not a Governor. In reaching that decision the Governors must balance the advantage of employing a Governor against the disadvantages of doing so (especially the loss of the Governor's services as a result of dealing with the Governor's conflict of interest).
- (e) the reason for their decision is recorded by the Governors in the minute book.
- (f) a majority of the Governors then in office have received no such payments or benefit.

6.9 The provision in clause 6.6 (c) that no Governor may be employed by or receive any remuneration from the Academy Trust (other than the Principal or a Staff Governor) does not apply to an existing employee of the Academy Trust who is subsequently elected or appointed as a Governor save that this clause shall only allow such a Governor to receive remuneration or benefit from the Academy Trust in his capacity as an employee of the Academy Trust and provided that the procedure as set out in Articles 6.8(b)(i), (ii) and 6.8 (c) is followed.

6.10 In Articles 6.2-6.10:

(a) "Academy Trust" shall include any company in which the Academy Trust:

holds more than 50% of the shares; or

controls more than 50% of the voting rights attached to the shares; or

has the right to appoint one or more directors to the board of the company.

(b) "Governor" shall include any child, stepchild, parent,

grandchild, grandparent, brother, sister or spouse of the governor or any person living with the governor as his or her partner

- (c) the employment or remuneration of a Governor includes the engagement or remuneration of any firm or company in which the Governor is:
- (i) a partner;
 - (ii) an employee;
 - (iii) a consultant;
 - (iv) a director;
 - (v) a member; or
 - (vi) a shareholder, unless the shares of the company are listed on a recognised stock exchange and the Governor holds less than 1% of the issued capital.

7. The liability of the members of the Academy Trust is limited.
8. Every member of the Academy Trust undertakes to contribute such amount as may be required (not exceeding £10) to the Academy Trust's assets if it should be wound up while he or she is a member or within one year after he or she ceases to be a member, for payment of the Academy Trust's debts and liabilities before he or she ceases to be a member, and of the costs, charges and expenses of winding up, and for the adjustment of the rights of the contributories among themselves.
9. If the Academy Trust is wound up or dissolved and after all its debts and liabilities (including any under section 2 of the Academies Act 2010) have been satisfied there remains any property it shall not be paid to or distributed among the members of the Academy Trust, but shall be given or transferred to some other charity or charities having objects similar to the Object which prohibits the distribution of its or their income and property to an extent at least as great as is imposed on the Academy Trust by Article 6 above, chosen by the members of the Academy Trust at or before the time of dissolution and if that cannot be done then to some other charitable object.
10. No alteration or addition shall be made to or in the provisions of the Articles without the written consent of the Secretary of State.

11. No alteration or addition shall be made to or in the provisions of the Articles which would have the effect (a) that the Academy Trust would cease to be a company to which section 60 of the Companies Act 2006 applies; or (b) that the Academy Trust would cease to be a charity.

MEMBERS

12. The Members of the Academy Trust shall comprise:
 - a. the signatories to the Memorandum;
 - b. any person appointed by City Gateway under Article 12AA, but this shall be subject to the limitation referred to in that Article;
 - c. 1 person appointed by the Secretary of State, in the event that the Secretary of State appoints a person for this purpose;
 - d. the chairman of the Governors; and
 - e. any person appointed under Article 16.

12AA. City Gateway may appoint Members (further to Article 12 b) but this shall be subject to the limitation that the total number of Members appointed under this Article shall not exceed one third of the total number of Members at any time and for these purposes Jacqueline Gooding shall be regarded as having been appointed under Article 12 b.

12AB Subject to the limitation in Article 12AA, City Gateway's appointed Member(s) (further to Article 12 b) shall become Members upon City Gateway delivering, or posting (by registered post), to the Office of the Academy Trust a notice appointing that person or persons as their Members.

12A. The Secretary of State's appointed Member (further to Article 12 c) shall become a Member upon the Secretary of State delivering, or posting (by registered post), to the Office of the Academy Trust a notice appointing that person as his Member.

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

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

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

their right to appoint Members under these Articles shall vest in the remaining Members.

15. Membership will terminate automatically if:

- a) a Member (which is a corporate entity) ceases to exist and is not replaced by a successor institution;
- b) a Member (which is an individual) dies or becomes incapable by reason of mental disorder, illness or injury of managing and administering his own affairs; or
- c) a Member becomes insolvent or makes any arrangement or composition with that Member's creditors generally.

16. The Members may agree unanimously in writing to appoint such additional Members as they think fit and may unanimously (save that the agreement of the Member(s) to be removed shall not be required) in writing agree to remove any such additional Members.

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

18. Any Member may resign provided that after such resignation the number of Members is not less than three. A Member shall cease to be one immediately on the receipt by the Academy Trust of a notice in writing signed by the person or persons entitled to remove him under Articles 13 or 16 provided that no such notice shall take effect when the number of Members is less than three unless it contains or is accompanied by the appointment of a replacement Member.

GENERAL MEETINGS

19. The Academy Trust shall hold an Annual General Meeting each year in addition to any other meetings in that year, and shall specify the meeting as such in the notices calling it; and not more than fifteen months shall elapse between the date of one Annual General Meeting of the Academy Trust and that of the next. Provided that so long as the Academy Trust holds its first Annual General Meeting within eighteen months of its incorporation, it need not hold it in the year of its incorporation or in the following year. The Annual General Meeting shall be held at such time and place as the Governors shall appoint. All meetings other than Annual General Meetings shall be called General Meetings.

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

NOTICE OF GENERAL MEETINGS

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

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

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

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

PROCEEDINGS AT GENERAL MEETINGS.

23. No business shall be transacted at any meeting unless a quorum is present. A Member counts towards the quorum by being present either in person or by proxy. Two persons entitled to vote upon the business to be transacted, each being a Member or a proxy of a Member or a duly authorised representative of a Member organisation shall constitute a quorum.
24. If a quorum is not present within half an hour from the time appointed for the meeting, or if during a meeting a quorum ceases to be present, the meeting shall stand adjourned to the same day in the next week at the same time and place or to such time and place as the Governors may determine.
25. The chairman, if any, of the Governors or in his absence some other Governor nominated by the Governors shall preside as chairman of the meeting, but if neither the chairman nor such other Governor (if any) be present within fifteen minutes after the time appointed for holding the meeting and willing to act, the Governors present shall elect one of their number to be chairman and, if there is only one Governor present and willing to act, he shall be the chairman.
26. If no Governor is willing to act as chairman, or if no Governor is present within fifteen minutes after the time appointed for holding the meeting, the Members present and entitled to vote shall choose one of their number to be chairman.
27. A Governor shall, notwithstanding that he is not a Member, be entitled to attend and speak at any general meeting.
28. The chairman may, with the consent of a majority of the Members at a meeting at which a quorum is present (and shall if so directed by the meeting), adjourn the meeting from time to time and from place to place, but no business shall be transacted at any adjourned meeting other than the business which might properly have been transacted at the meeting had the adjournment not taken place. When a meeting is adjourned for fourteen days or more, at least seven clear days' notice shall be given specifying the time,

date and place of the adjourned meeting and the general nature of the business to be transacted. Otherwise it shall not be necessary to give any such notice.

29. A resolution put to the vote of the meeting shall be decided on a show of hands unless before, or on the declaration of the result of the show of hands a poll is duly demanded. Subject to the provisions of the Companies Act 2006, a poll may be demanded:-
 - (a) by the chairman; or
 - (b) by at least two Members having the right to vote at the meeting; or
 - (c) by a Member or Members representing not less than one-tenth of the total voting rights of all the Members having the right to vote at the meeting.
30. Unless a poll is duly demanded a declaration by the chairman that a resolution has been carried or carried unanimously, or by a particular majority, or lost, or not carried by a particular majority and an entry to that effect in the minutes of the meeting shall be conclusive evidence of the fact without proof of the number or proportion of the votes recorded in favour of or against such resolution.
31. The demand for a poll may be withdrawn, before the poll is taken, but only with the consent of the chairman. The withdrawal of a demand for a poll shall not invalidate the result of a show of hands declared before the demand for the poll was made.
32. A poll shall be taken as the chairman directs and he may appoint scrutineers (who need not be Members) and fix a time, date and place for declaring the results. The result of the poll shall be deemed to be the resolution of the meeting at which the poll was demanded.
33. A poll demanded on the election of the chairman or on a question of adjournment shall be taken immediately. A poll demanded on any other question shall be taken either immediately or at such time, date and place as the chairman directs not being more than thirty days after the poll is demanded. The demand for a poll shall not prevent continuance of a meeting for the transaction of any business other than the question on which the poll is demanded. If a poll is demanded before the declaration of the result of a

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

34. No notice need be given of a poll not taken immediately if the time, date and place at which it is to be taken are announced at the meeting at which it is demanded. In other cases at least seven clear days' notice shall be given specifying the time, date and place at which the poll is to be taken.
35. A resolution in writing agreed by such number of Members as required if it had been proposed at a general meeting shall be as effectual as if it had been passed at a general meeting duly convened and held provided that a copy of the proposed resolution has been sent to every Member. The resolution may consist of several instruments in the like form each agreed by one or more Members.

VOTES OF MEMBERS

36. On the show of hands every Member present in person shall have one vote. On a poll every Member present in person or by proxy shall have one vote.
37. Not used.
38. No Member shall be entitled to vote at any general meeting unless all moneys then payable by him to the Academy Trust have been paid.
39. No objections shall be raised to the qualification of any person to vote at any general meeting except at the meeting or adjourned meeting at which the vote objected to is tendered, and every vote not disallowed at the meeting shall be valid. Any objection made in due time shall be referred to the chairman whose decision shall be final and conclusive.
40. An instrument appointing a proxy shall be in writing, signed by or on behalf of the appointer and shall be in the following form (or in a form as near thereto as circumstances allow or in any other form which is usual or which the Governors may approve) -

"I/We,, of, being a Member/Members of the above named Academy Trust, hereby appoint of, or in his absence, of as my/our proxy to vote in my/our name[s] and on my/our behalf at the annual general meeting/ general meeting of the Academy Trust to be

held on20[], and at any adjournment thereof.

Signed on 20[]”

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

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

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

Resolution No. 1 *for * against

Resolution No. 2 *for * against.

- Strike out whichever is not desired.

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

Signed on 20[]”

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

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

(b) in the case of a poll taken more than 48 hours after it is demanded, be

deposited as aforesaid after the poll has been demanded and not less than 24 hours before the time appointed for the taking of the poll;

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

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

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

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

GOVERNORS

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

46. Subject to Articles 48-49 and 64, the Academy Trust shall have the following Governors:

- a. Up to 6 Governors, appointed under Article 50;
- b. any Staff Governors, if appointed under Article 50A;
- c. a minimum of 2 Parent Governors appointed under Articles 53-58;
- d. the Principal;

- e. any Additional Governors, if appointed under Article 62, 62A or 68A;
and
- f. any Further Governors, if appointed under Article 63 or Article 68A;

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

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

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

APPOINTMENT OF GOVERNORS

50. The Members may appoint up to 6 Governors (and may themselves become Governors).

50A. The Members may appoint Staff Governors through such process as they may determine, provided that the total number of Governors (including the Principal) who are employees of the Academy Trust does not exceed one third of the total number of Governors.

51. Not used.

52. The Principal shall be treated for all purposes as being an ex officio Governor.

53. Subject to Article 57, the Parent Governors shall either be elected by parents of registered pupils and students at the 16 to 19 Academy, pursuant to Articles 54 to 56, or be appointed by the Governing Body, pursuant to Article 58. Subject as provided below at Article 58, a Parent Governor must be a parent of a pupil or student at the 16 to 19 Academy at the time when he is either elected or appointed.

54. In electing a Parent Governor, the Governing Body shall make all necessary arrangements for, and determine all other matters relating to, an election of Parent Governors, including any question of whether a person is a parent of a registered pupil or student at the 16 to 19 Academy. Any election of Parent Governors which is contested shall be held by secret ballot.

55. The arrangements made for the election of a Parent Governor shall provide for every person who is entitled to vote in the election to have an opportunity to do so by post or, if he prefers, by having his ballot paper returned to the Academy Trust by a registered pupil or student at the 16 to 19 Academy.

56. Where a vacancy for a Parent Governor is required to be filled by election, the Governing Body shall take such steps as are reasonably practical to secure that every person who is known to them to be a parent of a registered pupil or student at the 16 to 19 Academy is informed of the vacancy and that it is required to be filled by election, informed that he is entitled to stand as a candidate, and vote at the election, and given an opportunity to do so.

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

58. In appointing Parent Governors, the Governing Body shall appoint one person who, at the time of their appointment, is the parent of a registered pupil aged 14 to 16 years of age being provided alternative provision at the 16 to 19 Academy and one person who, at the time of their appointment, is the parent of a student aged 16 years or over at the 16 to 19 Academy, who is not being provided alternative provision; or where it is not reasonably practical to do so, a person who is the parent of a child between the ages of 14 to 19.

CO-OPTED GOVERNORS

59. The Governors may appoint up to 3 Co-opted Governors. A 'Co-opted Governor' means a person who is appointed to be a Governor by being Co-opted by Governors who have not themselves been so appointed. The Governors may not co-opt an employee of the Academy Trust as a Co-opted Governor if thereby the number of Governors who are employees of the Academy Trust would exceed one third of the total number of Governors (including the Principal).

APPOINTMENT OF ADDITIONAL GOVERNORS

60. The Secretary of State may give a warning notice to the Governors where he is satisfied—

- i) that the standards of performance of pupils or students at the 16 to 19 Academy are unacceptably low, or

- ii) that the quality of provision for pupils and students at the 16 to 19 Academy is unacceptably low, or
- iii) that there has been a serious breakdown in the way the 16 to 19 Academy is managed or governed, or
- iv) that the safety of pupils, students or staff of the 16 to 19 Academy is threatened (whether by a breakdown of discipline or otherwise).

61. For the purposes of Article 60 a 'warning notice' is a notice in writing by the Secretary of State to the Academy Trust delivered to the Office setting out—

- a) the matters referred to in Article 60;
- b) the action which he requires the Governors to take in order to remedy those matters; and
- c) the period within which that action is to be taken by the Governors ('the compliance period').

62. The Secretary of State may appoint such Additional Governors as he thinks fit if the Secretary of State has:

- a) given the Governors a warning notice in accordance with Article 60 ; and
- b) the Governors have failed to comply, or secure compliance, with the notice to the Secretary of State's satisfaction within the compliance period.

62A The Secretary of State may also appoint such Additional Governors where following an Inspection by the Chief Inspector in accordance with the Education and Inspections Act 2006 (an "Inspection") the Academy Trust receives an Ofsted grading (being a grade referred to in Common Inspection Framework or any modification or replacement of that document for the time being in force) which amounts to a drop, either from one Inspection to the next Inspection or between any two Inspections carried out within a 5 year period, of two Ofsted grades. For these purposes, the grade or description received by City Gateway with registered charity number 1078360 on any inspection shall not be regarded as a grade or assessment received by the 16 to 19 Academy on any Inspection.

63. The Secretary of State may also appoint such Further Governors as he thinks

fit if an Inadequate Inspection Event (as defined in the Funding Agreement) occurs in respect of the 16 to 19 Academy or if he is satisfied that any Governor or Member of the Academy Trust is not a suitable person and he exercises his powers further to clause 91A of the Funding Agreement.

63A. An Additional or Further Governor shall become a Governor upon the Secretary of State delivering, or posting (by registered post), to the Office of the Academy Trust a notice appointing that person as an Additional or Further Governor.

64. Within 5 days of the Secretary of State appointing any Additional or Further Governors in accordance with Articles 62, 62A or 63, any Governors appointed under Article 50, and holding office immediately preceding the appointment of such Governors, shall resign immediately and the Members' power to appoint Governors under Article 50 shall remain suspended until the Secretary of State removes one or more of the Additional or Further Governors.

TERM OF OFFICE

65. The term of office for any Governor shall be determined by the Governing Body at the time of their appointment, provided that (a) any such term is not less than 1 year and no more than 4 years; and (b) any such time limit on the term of office shall not apply to the Principal. Subject to remaining eligible to be a particular type of Governor, any Governor may be re-appointed or re-elected.

RESIGNATION AND REMOVAL

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

67. A Governor shall cease to hold office if he is removed by the person or persons who appointed him. This Article does not apply in respect of a Parent Governor who is elected pursuant to Articles 53 to 56.

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

68A. Where an Additional or Further Governor appointed pursuant to Articles 62, 62A or 63 ceases to hold office as a Governor for any reason, other than being

removed by the Secretary of State, the Secretary of State shall be entitled to appoint an Additional or Further Governor in his place.

DISQUALIFICATION OF GOVERNORS

69. No person shall be qualified to be a Governor unless he is aged 18 or over at the date of his election or appointment. No current pupil or student of the 16 to 19 Academy shall be a Governor.

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

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

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

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

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

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

74. A Governor shall cease to hold office if he ceases to be a Governor by virtue of any provision in the Companies Act 2006 or is disqualified from acting as a trustee by virtue of section 72 of the Charities Act 1993 (or any statutory re-enactment or modification of that provision).

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

contributed to or facilitated.

76. A person shall be disqualified from holding or from continuing to hold office as a Governor at any time when he is:

a) included in the list kept by the Secretary of State under section 1 of the Protection of Children Act 1999; or

b) disqualified from working with children in accordance with Section 35 of the Criminal Justice and Court Services Act 2000; or

c) barred from regulated activity relating to children (within the meaning of section 3(2) of the Safeguarding Vulnerable Groups Act 2006)

77. A person shall be disqualified from holding or continuing to hold office as a Governor if he is a person in respect of whom a direction has been made under section 142 of the Education Act 2002 or is subject to any prohibition or restriction which takes effect as if contained in such a direction.

78. A person shall be disqualified from holding or continuing to hold office as a Governor where he has, at any time, been convicted of any criminal offence, excluding any that have been spent under the Rehabilitation of Offenders Act 1974 as amended, and excluding any offence for which the maximum sentence is a fine or a lesser sentence except where a person has been convicted of any offence which falls under section 72 of the Charities Act 1993.

79. After the 16 to 19 Academy has opened, a person shall be disqualified from holding or continuing to hold office as a Governor if he has not provided to the chairman of the Governors a criminal records certificate at an enhanced disclosure level under section 113B of the Police Act 1997. In the event that the certificate discloses any information which would in the opinion of either the chairman or the Principal confirm their unsuitability to work with children that person shall be disqualified. If a dispute arises as to whether a person shall be disqualified, a referral shall be made to the Secretary of State to determine the matter. The determination of the Secretary of State shall be final.

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

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

SECRETARY TO THE GOVERNORS

82. The Secretary shall be appointed by the Governors for such term, at such remuneration and upon such conditions as they may think fit; and any Secretary so appointed may be removed by them. The Secretary shall not be a Governor or a Principal. Notwithstanding this Article, the Governors may, where the Secretary fails to attend a meeting of theirs, appoint any one of their number or any other person to act as Secretary for the purposes of that meeting.

CHAIRMAN AND VICE-CHAIRMAN OF THE GOVERNORS

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

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

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

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

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

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

purposes of the meeting.

88. Where in the circumstances referred to in Article 87 the vice-chairman is also absent from the meeting or there is at the time a vacancy in the office of vice-chairman, the Governors shall elect one of their number to act as a chairman for the purposes of that meeting, provided that the Governor elected shall not be a person who is employed by the Academy Trust.

89. The Secretary shall act as chairman during that part of any meeting at which the chairman is elected.

90. Any election of the chairman or vice-chairman which is contested shall be held by secret ballot.

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

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

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

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

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

POWERS OF GOVERNORS

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

direction had not been given. The powers given by this Article shall not be limited by any special power given to the Governors by the Articles and a meeting of Governors at which a quorum is present may exercise all the powers exercisable by the Governors.

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

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

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

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

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

CONFLICTS OF INTEREST

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

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

THE MINUTES

100. The minutes of the proceedings of a meeting of the Governors shall be drawn up and entered into a book kept for the purpose by the person acting as Secretary for the purposes of the meeting; and shall be signed (subject to the approval of the Governors) at the same or next subsequent meeting by the person acting as chairman thereof. The minutes shall include a record of:

- a) all appointments of officers made by the Governors; and
- b) all proceedings at meetings of the Academy Trust and of the Governors and of committees of Governors including the names of the Governors present at each such meeting.

COMMITTEES

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

DELEGATION

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

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

decision.

PRINCIPAL

104. The Governors shall appoint the Principal. The Governors may delegate such powers and functions as they consider are required by the Principal for the internal organisation, management and control of the 16 to 19 Academy (including the implementation of all policies approved by the Governors and for the direction of the teaching and curriculum at the 16 to 19 Academy).

MEETINGS OF THE GOVERNORS

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

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

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

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

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

- a) notice in writing thereof, signed by the Secretary (or sent by the Secretary, in the event of an electronic communication), and sent to each Governor at the address provided by each Governor from time to time; and
- b) a copy of the agenda for the meeting;
- c) provided that where the chairman or, in his absence or where there is a

vacancy in the office of chairman, the vice-chairman, so determines on the ground that there are matters demanding urgent consideration, it shall be sufficient if the written notice of a meeting, and the copy of the agenda thereof are given within such shorter period as he directs.

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

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

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

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

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

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

114. Subject to Article 116 the quorum for a meeting of the Governors, and any vote on any matter thereat, shall be any three Governors, or, where greater, any one third (rounded up to a whole number) of the total number of Governors holding office at the date of the meeting. If the Secretary of State has appointed Additional or Further Governors then a majority of the quorum must be made up of Additional or Further Governors.

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

116. The quorum for the purposes of—

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

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

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

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

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

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

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

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

- a. the agenda for every meeting of the Governors;

- b. the draft minutes of every such meeting, if they have been approved by the person acting as chairman of that meeting;
 - c. the signed minutes of every such meeting; and
 - d. any report, document or other paper considered at any such meeting,
- are, as soon as is reasonably practicable, made available at the 16 to 19 Academy to persons wishing to inspect them.

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

- a. a named teacher or other person employed, or proposed to be employed, at the 16 to 19 Academy;
- b. a named pupil or student at, or candidate for admission to, the 16 to 19 Academy; and
- c. any matter which, by reason of its nature, the Governors are satisfied should remain confidential.

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

- a. he has given notice of his intention to do so detailing the telephone number on which he can be reached and/or appropriate details of the video conference suite from which he shall be taking part at the time of the meeting at least 48 hours before the meeting; and
- b. the Governors have access to the appropriate equipment if after all reasonable efforts it does not prove possible for the person to participate by telephone or video conference the meeting may still proceed with its business provided it is otherwise quorate.

PATRONS AND HONORARY OFFICERS

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

THE SEAL

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

ACCOUNTS

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

ANNUAL REPORT

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

ANNUAL RETURN

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

NOTICES

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

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

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

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

INDEMNITY

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

RULES

134. The Governors may from time to time make such rules or bye laws as they may deem necessary or expedient or convenient for the proper conduct and management of the Academy Trust and for purposes of prescribing classes of and

conditions of membership, and in particular but without prejudice to the generality of the foregoing, they may by such rules or bye laws regulate:

- a. the admission and classification of Members of the Academy Trust (including the admission of organisations to membership) and the rights and privileges of such Members, and the conditions of membership and the terms on which Members may resign or have their membership terminated and the entrance fees, subscriptions and other fees or payments to be made by Members;
- b. the conduct of Members of the Academy Trust in relation to one another, and to the Academy Trust's servants;
- c. the setting aside of the whole or any part or parts of the Academy Trust's premises at any particular time or times or for any particular purpose or purposes;
- d. the procedure at general meetings and meetings of the Governors and committees of the Governors in so far as such procedure is not regulated by the Articles; and
- e. generally, all such matters as are commonly the subject matter of company rules.

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

AVOIDING INFLUENCED COMPANY STATUS

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

137. No person who is a Local Authority Associated Person may be appointed as a

Governor if, once the appointment had taken effect, the number of Governors who are Local Authority Associated Persons would represent 20% or more of the total number of Governors. Upon any resolution put to the Governors, the maximum aggregate number of votes exercisable by any Governors who are Local Authority Associated Persons shall represent a maximum of 19.9% of the total number of votes cast by the Governors on such a resolution and the votes of the other Governors having a right to vote at the meeting will be increased on a pro-rata basis.

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

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

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

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

Model Memorandum of Association for 16-19 Academies

THE COMPANIES ACT 2006

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

A COMPANY LIMITED BY GUARANTEE

MEMORANDUM OF ASSOCIATION³

OF

CITY GATEWAY 14-19 PROVISION

³ NB this draft is for reference purposes only, and the Memorandum for Academy Trust will be generated automatically as part of the online incorporation process.

THE COMPANIES ACT 2006

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

SCHEDULE 2

A COMPANY LIMITED BY GUARANTEE

Regulation 2(b)

MEMORANDUM OF ASSOCIATION OF

CITY GATEWAY 14-19 PROVISION

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

Name of each subscriber Authentication by each subscriber

Name:	Signature:
JACQUELINE DRIVER	[On Behalf Of:
]	

Name:	OMAR GANIE	Signature:
	[On Behalf Of:]

Name:	JACQUELINE GOODING	Signature:
	[On Behalf Of:]

Dated

CITY GATEWAY 14-19 PROVISION

ADMISSIONS ARRANGEMENTS 2012 / 2013

General

- 1 City Gateway 14-19 Provision (CGP) is a publicly funded, co-educational, independent education provision. It has 60 places for learners aged 14-16 and an agreed admissions number of 200 at Post-16. Each place (full or part time) counts as one place.
- 2 Our provision seeks to help some of the most educationally disengaged learners in east London, offering them a chance to progress in their education and secure a better future for themselves and their families.
- 3 We welcome all learners who have the potential to benefit from our provision, and will work with them to address their circumstances and overcome any barriers to progression. We will not discriminate on the basis of disability (including HIV status), gender reassignment, marriage and civil partnership, pregnancy and maternity, race (which includes colour, nationality and ethnic or national origins), religion or belief, sex, sexual orientation or postcode, whether in relation to the learner or members of their family.
- 4 Responsibility for the admission of learners rests with the CGP Governing Body. All referrals and applications for places at CGP will be considered in accordance with the arrangements set out below.

ADMISSIONS AT KEY STAGE 4 (14-16 years old)

- 5 CGP is not a regular school. It is an alternative form of education for those learners who have disengaged with mainstream schooling and need a different environment and curriculum to help them attain. This means that the provision is not suitable for every learner. As such, the admissions process for CGP for learners aged 14 – 16 is different from that of a mainstream school – parents cannot apply to send their child to CGP. The Local Authority, or local schools, must refer learners to CGP through a process called 'commissioning'.
- 6 Commissioning Process

There are two routes by which learners can come to CGP. These are set out below:

 - 6.1 Local Authority as Commissioner:
 - City Gateway is seeking to join Tower Hamlets Secondary Partnership.
 - Through this process, LBTH will consider the best pathway for the learner following a decision by the LA commissioning

under its duties under section 19 of the Education Act 1996, and place them with a new provider.

- LBTH and CGP will review the best pathway for the learner. This will then be discussed with the parents and learner at an admission meeting before the referral is complete.
- If CGP is deemed appropriate, the learner will come on to the CGP roll, with CGP becoming the learner's full time education provision.
- Financial arrangements will be made between CGP and LBTH.

6.2 School as Commissioner

- Schools can commission CGP to provide alternative provision on a part time or full time basis for those learners they deem need an alternative environment and curriculum to succeed.
- The school and CGP will review the best pathway for the learner. This will then be discussed with the parents and learner at an admission meeting before the referral is complete.
- For any referral over two days, LBTH will be informed, in writing, by CGP.
- The school will work with LBTH to make financial arrangements.
- The learner may remain on the school's roll, may transfer to CGP's roll, or may be designated as 'dual roll'. This will be agreed between the school, LBTH and CGP on a case by case basis and all such decisions will comply with the requirements of section 434 of the Education Act 1996.

- 7 Where an initial discussion has taken place, either through the Secondary Partnership or with a school, and there has been no further contact from the referrer in respect to the Learner taking up the provision place, the parent or referrer has 14 working days from the date of the initial discussion to inform CGP as to their decision. After 14 working days with no contact, the CGP will assume that the provisional place is no longer required for that learner and may offer that place to another learner.

Ensuring learners are registered and information is shared

8. CGP will ensure that learners are appropriately registered. 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 (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 CGP.
9. As far as is reasonably practicable, in agreeing contractual arrangements with Commissioners CGP will request appropriate information on the needs and prior attainment of pupils who will attend the alternative provision. Such information will include prior grades and attainment, additional support required and exclusions information as a minimum.

10. CGP will provide regular feedback to a Commissioner (and in any event when requested by the Commissioner to do so) on progress made by the learner, the learner's needs and attainment. This will be done online through a secure IT system and will be updated on a termly basis.

Over subscription criteria

- 11 There will be a fair, transparent and objective process for considering whether the education provided will be appropriate for prospective learners. There will be meeting with the learner, parent, school and CGP to agree the most appropriate education programme. This will be documented in a standard CGP form to which all parties will have the opportunity to input and review.
- 12 If there are more requests for referrals than there are places at any particular time, and after the admission of learners with a statement of special education needs where City Gateway is named on the statement, places will be allocated as follows:
 - a) Children in public care (children looked after by a local authority under section 22 of the Children Act 1989). As per the standard admissions process prior to oversubscription, the school and CGP will review the best pathway for the learner. This will then be discussed with the parents and learner at an admission meeting before the referral is complete.
 - b) A detailed review of each request will be made by the Senior Leadership Team at CGP looking at a number of factors to determine the best fit. This review will be documented and submitted to the Chair of the Board of Governors with a recommendation.

Waiting list

- 13 Given the nature of our referrers, a waiting list is not appropriate at Key Stage 4.

Appeal procedures

- 14 If a parent, carer, commissioning school or commissioning body is not satisfied with the decision on whether to admit a learner to CGP, they should write to the Chair of Governors setting out the reasons why they are not satisfied within 21 days of the decision being made. The Chair of Governors will review the matter and respond in writing within 21 days from receipt of the letter.

Should the party still not be satisfied, CGP will make provision for an Independent Appeal Panel to be established to hear the appeal.

Should the matter still not be resolved, the parent, carer, commission school or commission body may object to the Education Funding Agency as detailed at section (28) below.

ADMISSIONS AT 16 – 19 YEARS OLD

15. Learners aged 16-19 years old will come to CGP through the following routes:
- A continuing learner from CGP's 14-16 provision, with a place guaranteed following an objective assessment of the learner's progress and future plans.
 - Self-referral, where the learner seeks out CGP and applies for provision.
 - Peer-referral, where a current learner refers one of their friends or family members to CGP.
 - Referral from LBTH bodies, such as social services, youth offending team.
 - Referral for national statutory bodies, such as JobCentrePlus and Metropolitan Police.
 - Referral from secondary schools for post year-11 opportunities
 - Third Sector organisations.

Post 16 admission criteria

- 16 CGP will meet with each learner to discuss and identify the courses and pathways that are most appropriate for their level of skills. The Governing Body will publish specific criteria in relation to minimum entrance requirements, for example in relation to a particular Apprenticeship programme, on the CGP website. These criteria, which might include prior attainment or work history experience, will be the same for internal and external transfers. Existing CGP Learners will be automatically admitted if they meet the entry requirements.
- 17 Admission to the Post-16 Provision will not be refused if a learner has failed to meet entry requirements for a course. In this case the learner will be offered an alternative course for which he has met the requirements subject to availability of places after allocation to other students who have already applied for that course.

Over subscription criteria

- 18 Where the number of external applications exceeds the number of Post-16 places available, the following order of priority will be used to allocate the remaining places:
- a) Children in public care (children looked after by a local authority under section 22 of the Children Act 1989). As per the standard admissions process the school and CGP will review the best pathway for the learner. This will then be discussed with the parents and learner at an admission meeting before the referral is complete.
 - b) A detailed review of each request will be made by the Senior Leadership Team at CGP looking at a number of factors to determine the best fit. This review will be documented and submitted to the Chair of the Board of Governors with a recommendation.

Waiting list

- 19 For Post-16, in addition to the right to appeal, unsuccessful applicants will be offered an opportunity to be placed on the Waiting List. The order of the Waiting List will be determined in accordance with the over-subscription criteria in Paragraph 18 above.

Appeal procedures

- 20 Learners/ Parents of Learners whose applications for Post-16 places are unsuccessful (including internal applicants) will be given an opportunity to appeal against the decision to an Independent Appeal Panel.
- 21 The Independent Appeal Panel will be independent of CGP. The determination of the appeal panel is binding on all parties. CGP shall prepare guidance for parents and Learners about how the appeals process will work and provide parents and Learners with a named contact who can answer any enquiries parents or Learners may have about the process. CGP may, if it chooses, enter into an agreement with the Local Authority or any other organisation for it to recruit, train and appoint Appeal Panel members and to arrange for the process to be independently administered and clerked.

General provisions that apply at both Key Stage 4 and Post-16

Accommodating learners with special / additional educational needs, disabilities and / or English as an additional language

- 22 CGP will, 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 the alternative provision Academy.
- 23 Where learners are admitted to CGP with existing statements of special educational need, we will work closely with other agencies where necessary / specified to fulfil the learner's potential, in line with their statement.
- 24 As stated in our SEN Policy, CGP is committed to provide a suitably tailored and progressive programme for all learners. Particulars of the CGP SEN, Disabilities and Inclusion Policy are available from request from CGP.
- 25 Where there may be mobility or accessibility requirements we ask that referring schools / agencies contact CGP well in advance to discuss solutions to fulfilling those requirements. (The CGP Accessibility Policy is available upon request.)

Offer of places

- 26 Letters informing learners of their place at City Gateway will be issued by the referring body, or CGP in the case of self-referrals at 16-19 as soon as is reasonably practicable after the decision has been made. This letter will specify a Start Date and Induction arrangements.

Objections to this policy

27. Any objections to this Admissions Policy should be submitted to the Education Funding Agency (EFA) or any successor to it.
28. 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.

ANNEX C

Arrangements for pupils with Special Educational Needs ('SEN') and disabilities at the City Gateway 14-19 Provision 16-19 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 time⁴;
 - 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 time⁵.
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 16-19 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 16-19 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 16-19 Academy by disabled pupils (disabled pupils meaning pupils who are disabled for the purposes of the Equality Act 2010⁶).

⁴ 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).

⁵ These Regulations are amended by The Education (Special Educational Needs Co-ordinators) (England) (Amendment) Regulations 2009 (SI 2009 No 1387).

⁶ 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 16-19 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 16-19 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 16-19 Academy should be named in the pupil’s statement. Such notice must set out all the facts and matters the 16-19 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 16-19 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 16-19 Academy that it does not agree with the Academy Trust’s response, and names the 16-19 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 16-19 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 16-19 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 16-19 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 16-19 Academy notwithstanding any provision of Annex B to this agreement.