

SHOOTERS HILL CAMPUS

FUNDING AGREEMENT

~~Insert 2012~~

29<sup>th</sup> October 2012

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## INTRODUCTION

- 1) This Agreement is made under section 1 of the Academies Act 2010 between the Secretary of State for Education ("the Secretary of State") and Shooters Hill Campus (the "Academy Trust").
- 2) The Academy Trust is a Company incorporated in England and Wales, limited by guarantee with registered Company number 8270802.
- 3) The following expressions used in this Agreement have the respective meanings assigned to them by the numbered clauses of this Agreement referred to immediately after the reference to the expressions -
  - a) "Academies Financial Handbook" - clauses 59 and 68;
  - b) "Accounting Officer" – clause 58;
  - c) "Annual Letter of Funding" - clause 53;
  - d) "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 1<sup>st</sup> September to 31<sup>st</sup> 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 1<sup>st</sup> August to 31<sup>st</sup> July 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;

“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;

“awarding organisations” means organisations referred to as such by Ofqual;

“EFA” means Education Funding Agency and any successor;

“DfE” means Department for Education 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;

“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 Land" means the publicly funded land (including for the avoidance of doubt all buildings, structures landscaping and other erections) situated at and known as Shooters Hill Campus, Red Lion Lane, London SE18 4LD and registered under Title Numbers 266610, Title Number LN64395 and part of Title Number 447490 (together shown for the purposes of identification only hatched green and hatched pink on the attached plan) which make up the permanent site of the 16 to 19 Academy or the part of such land remaining in the ownership of the Academy Trust;

"the Lease" means the leasehold agreement or its equivalent between the Academy Trust and any third party ("the Landlord") in respect of the Land;

"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 "educational institution" shall where the context so admits be references to the 16 to 19 Academy; and

references to "Secretary of State" shall where the context so admits be

references to the EFA acting on the Secretary of State's behalf.

- 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 the Shooters Hill Campus ("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 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.

## **16 TO 19 ACADEMY OPENING DATE**

- 11) The Academy shall open as an Educational Institution named Shooters Hill Campus on 1<sup>st</sup> November 2012. It will replace Shooters Hill Post 16 Campus, which shall

cease to be maintained by the Local Authority on that date, which date shall be the conversion date within the meaning of the Academies Act 2010.

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 and the wider community;
- b) there will be the opportunity to study for qualifications in accordance with clause 29(d) and there will be assessment of students' performance appropriate to the qualifications studied;
- c) the admissions policy and arrangements for the 16 to 19 Academy will be fair, objective and transparent, in accordance with legal powers and duties in relation to 16 to 19 provision and with the requirements in clause 17;
- 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 students including students with learning difficulties and disabilities;
- (f) there will be no charge to students (or their parents) in respect of admission to the 16 to 19 Academy and the 16 to 19 Academy is only permitted to charge where: (i) the law allows institutions within the further education sector to charge; and (ii) in accordance with clause 33 of this Agreement.; and
- (g) the Academy Trust shall ensure that learning takes place in safe, healthy and



supportive environments, which meet the needs of students;

(h) the Academy Trust shall comply with all relevant statutory requirements and the most recent policies 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, awarding organisations and the Chief Inspector, including but not limited to, those published on the relevant body's website.

### **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 Academies that the Secretary of State may publish.

### **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.

### **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.
  - iv) where the Academy Trust is required to carry out an enhanced criminal record check in respect of the Chair of the Governing Body it must be counter signed by the Secretary State.

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.

### **Students**

17) The planned capacity of the 16 to 19 Academy is 1500 places in the age range 16 to 19. The 16 to 19 Academy 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 whose requirements for:

- a) the admission of students to the 16 to 19 Academy;
- b) the admission to the 16 to 19 Academy of and support for students with learning difficulties and with disabilities; and
- c) student exclusions;

are set out in written policies to be agreed with the Secretary of State prior to the signing of this Agreement, such policies will be fair, objective and transparent, in accordance with legal powers and duties in relation to 16 to 19 provision and for the avoidance of doubt adherence to those policies forms part of this Agreement.

17B) The Secretary of State agrees that the Academy Trust may vary such policies subject to the Academy Trust informing the Secretary of State of any variation to the policies in writing as soon as reasonably practicable and the Academy Trust agreeing that the Secretary of State may, if he wishes, substitute any changes to such policies that the Academy Trust makes with changes to such policies of his own.

17C) The Academy Trust agrees to vary such policies as may become necessary to comply with changes to future legislation and/or as the Secretary of State may require.

#### **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 students, delivering lessons to students, assessing the development, progress and attainment of students, and reporting on the development, progress and attainment of students.

19) Not used.

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 collective worship**

22) The curriculum provided by the 16 to 19 Academy should be suitable to the requirements of the students and can 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 students and parents (including prospective students and parents) 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 when designing Study Programmes (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 should be encouraged to achieve English and Mathematics grades A\*-C at GCSE (or any such qualification that the Secretary State may notify the Academy Trust of in writing) or to take English and Mathematics provision that will lead to significant progress towards achieving this.

24) The Academy Trust shall make provision for: (i) the teaching of religious education at the 16 to 19 Academy for any student attending the 16 to 19 Academy wishing to receive it; and (ii) ensure that at an appropriate time on at least one day in each week during which the 16 to 19 Academy is open an act of collective worship is held at the 16 to 19 Academy which students receiving education at the 16 to 19 Academy may attend.

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) Not used.

27) Not used

28) Not used.

28A) Not used.

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) The Academy Trust shall ensure that students at the 16 to 19 Academy take part in assessments of students' performance appropriate to the qualifications offered by the 16 to 19 Academy.

b) Not used.

c) Not used.

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**

29B) 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.

31) Not used.

32) Not used.

### **Charging**

33) The 16 to 19 Academy shall only be permitted to make charges in the circumstances that institutions within the further education sector are permitted as to set out at paragraph 12 of the YPLA's "Funding Guidance 2011/12 Funding Regulations" as may be amended or replaced by the YPLA's successors from time to time.

### **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 1<sup>st</sup> September to 31<sup>st</sup> August or such other period as the Secretary of State may from time to time specify by notice in writing to the Academy Trust. For the purposes of clauses 35 to 57 an Academy Funding Year shall be deemed to run from 1<sup>st</sup> August to 31<sup>st</sup> July, 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.

34A) Grants paid by the Secretary of State shall only be used by the Academy Trust for

purposes listed in Article 4(a) of the Articles. Such funds shall not be used by the Academy Trust for purposes listed in Article 4(b) of the Articles without the prior written consent of the Secretary of State except where the use of such funds for a charitable purpose set out in Article 4(b) is merely incidental to their use for the purposes set out in Article 4(a) of the Articles.

35) "Recurrent Expenditure" means any expenditure on the establishment, conduct, administration and maintenance of the 16 to 19 Academy which 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) Not Used.

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

and/or comparable arrangements as may be made available constitute a cost for the Academy Trust, the Secretary of State shall provide a contribution through GAG in relation to such cost;

- h) medical equipment and supplies;
- i) staff development (including in-service training);
- j) curriculum development;
- k) discretionary grants to students to meet the cost of student support, including support for students with learning difficulties or disabilities (taking account of the fact that separate additional money will be available for students with learning difficulties or disabilities);
- 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) 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 institutions within the further education sector, where the 16 to 19 Academy meets the requisite conditions and criteria necessary for an institution within the further education sector to receive these grants, such payments to be at the discretion of the Secretary of State.

43) Not Used

43A) 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, or are aged 19-24 and have a learning difficulty and/or disability and are the subject of a learning difficulty assessment.

43B) Not used.

43C) Not used

43D) For any Academy Funding Year in which GAG for the 16 to 19 Academy is calculated in accordance with clause 43A, 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.

44) Not Used

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 students attending the 16 to 19 Academy are unlikely to be sufficient to meet the 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 students 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 fund the salaries and other payroll costs for the relevant month of all monthly paid employees and all other costs payable during the next following month. The detailed arrangements for payment will be set out in the Annual Letter of Funding or its equivalent.

### **Additional Funding**

55) Not used.

56) Not used

57) Not used.

57A) The Secretary of State may meet costs incurred by the Academy Trust in connection with the transfer of employees from any predecessor school under the Transfer of Undertakings (Protection of Employment) Regulations 2006. Payment of grant in respect of such costs is to be agreed between the parties on a case by case basis and the Academy Trust shall not budget on the basis that it will receive any grant in respect of such costs unless it is specifically notified that such grant will be paid.

## **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 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;