

JOHN CABOT, BRISTOL BRUNEL AND BRISTOL METROPOLITAN
ACADEMIES

MASTER FUNDING AGREEMENT

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SCHEDULE 1

Model Supplemental Agreement

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INTRODUCTION

- 1) This Agreement is made under section 482 of the Education Act 1996, as substituted by the Education Act 2002, between the Secretary of State for Children, Schools and Families ("the Secretary of State") and the Cabot Learning Federation, (the "Company") and (for the purpose of benefiting from the release set out in clause 10B only) the John Cabot City Technology College Bristol Trust.
- 2) The Company is a company incorporated in England and Wales, limited by guarantee with registered company number 6207590, and is registered as a charity (charity number 1119322).
- 3) The Company intends to establish and maintain, and to carry on or provide for the carrying on of a number of Academies in accordance with this Agreement and the Supplemental Agreements.
- 4) This Agreement and the Supplemental Agreements will apply in respect of an Academy from such time as a Supplemental Agreement relating to that Academy shall have been entered into between the Secretary of State and the Company.
- 5) The following expressions used in this Agreement have the respective meanings assigned to them by the numbered clauses of this Agreement referred to immediately after the reference to the expressions -
 - a) "Academies Financial Handbook" - clause 94;
 - b) "Academy Financial Year" - clause 88;
 - c) "Accounting Officer" - clause 93;
 - d) "annual letter of funding" - clause 87;
 - e) "GAG"-clause 61;
 - f) "Capital Expenditure" - clause 62;
 - g) "Capital Grant" - clause 62;
 - h) "EAG"-clause 61;
 - i) "Local Governing Body" - clause 15;

- j) "Original Funding Agreements" - clause 10A
 - k) "recurrent expenditure" - clause 61;
 - l) "School Development Plan" - clause 19;
 - m) "Start-up Period" - clause 77;
- 6) In this Agreement the following words and expressions shall have the following meanings:-

"Additional Directors" means Directors who may be appointed by the Secretary of State following a warning notice in accordance with the Articles;

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

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

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

"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;

"DCSF" means Department for Children, Schools and Families;

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

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

"Lease" means a lease of any PFI Academy entered into pursuant to a School Agreement;

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

"parents" means parents or guardians;

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

"PFI Academy" means an Academy which forms part of a scheme procured pursuant to the Governments Private Finance Initiative;

"Principal" means the head teacher of an Academy;

"Principal Agreement" means an agreement designated as such relating to a PFI Academy and entered into between the LA (1), the Secretary of State (2) and the Company (3);

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

"School Agreement" means an agreement designated as such relating to a PFI Academy and entered into between the LA (1), the Company (2) and the Secretary of State (3);

"SEN" means Special Educational Needs;

"Supplemental Agreement" means an agreement supplemental to this Agreement, substantially in the form set out in Schedule 1 to this Agreement to be entered into by the Secretary of State and the Company pursuant to which the Company agrees to establish and maintained, and to carry on or provide for the carrying on, and the Secretary of State agrees to fund, an Academy in accordance with the terms and conditions of that Supplemental Agreement and this Agreement;

- 7) The Interpretation Act 1978 shall apply for the interpretation of this Agreement and any Supplemental Agreement as it applies for the interpretation of an Act of Parliament.
- 8) Expressions defined in this Agreement shall have the same meaning where used in any Annex to this Agreement or Supplemental Agreement.
- 9) Questions arising on the interpretation of the arrangements in this Agreement shall be resolved by the Secretary of State after consultation with the Company.

10) Section 482 (1) of the Education Act 1996 as substituted by the Education Act 2002 states that -

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

a) that person undertakes to establish and maintain, and to carry on or provide for the carrying on of, an independent school in England with the characteristics mentioned in subsection (2), and such other characteristics as are specified in the agreement, and

b) the Secretary of State agrees to make payments to that person in consideration of those undertakings."

10A) The Secretary of State acknowledges and agrees that John Cabot Academy and Bristol Brunei Academy have already been established and that this Agreement supersedes and replaces the following funding agreements ("the Original Funding Agreements") which from the date of signature of this Agreement and the Supplemental Agreements entered into pursuant to it shall have no further effect:

a) the agreement dated 30 April 1991 entered into between the Secretary of State for Education and Science (1) and the Kingswood City Technology College Bristol Trust (2) as varied, first, by a Supplemental Agreement dated 19 April 2007 and, secondly, by a Deed of Variation dated 30 May 2007 made between the Secretary of State for Education and Skills (1) and the John Cabot City Technology College Bristol Trust (2), in respect of the John Cabot Academy; and

b) the agreement dated 29 August 2007 entered into between the Secretary of State for Education and Skills (1) and the Company (2), in respect of the Bristol Brunei Academy.

10B) The Secretary of State acknowledges that the assets of the John Cabot City Technology College Bristol Trust required to maintain the John Cabot Academy have been transferred to the Company and hereby releases the John Cabot City Technology College Bristol Trust and the Company from all of their respective obligations under the Original Funding Agreements, such release to be effective from the date of signature of this Agreement and the Supplemental Agreements entered into pursuant to it.

LEGAL AGREEMENT

11) In consideration of the Company undertaking to establish and maintain, and to carry on or provide for the carrying on, of a number of independent schools having such

characteristics as are referred to in clause 12, the Secretary of State agrees to make payments to the Company in accordance with the conditions and requirements set out in this Agreement and Supplemental Agreements. If it is agreed between the Secretary of State and the Company that the Company will establish and maintain, and to carry on or provide for the carrying on of an Academy, the parties will enter into a Supplemental Agreement in relation to that Academy. For the avoidance of doubt, any obligations imposed upon or powers given to an Academy by this Agreement or any Supplemental Agreement are also imposed upon the Company.

11 A) The Secretary of State acknowledges that the Company is obliged to make certain payments and meet certain liabilities under the School Agreements in respect of the Bristol Brunei and the Bristol Metropolitan Academies. Accordingly, the Secretary of State shall use reasonable endeavours to make such payments as are due under this Agreement in such a manner and at such times as shall enable the Company to meet its payment obligations and discharge its liabilities under the School Agreements.

CHARACTERISTICS OF AN ACADEMY

12) The characteristics of an Academy set down in section 482 (2) of the Education Act 1996, as substituted by the Education Act 2002, are that the school:

- a) has a broad curriculum with an emphasis on a particular subject area, or particular subject areas, specified in the Agreement; and
- b) provides education for pupils of different abilities and who are wholly or mainly drawn from the area in which the school is situated.

CONDITIONS OF GRANT

General

13) Section 482(4) of the Education Act 1996 provides for the agreement entered into pursuant to section 482(1) of the Act to specify other conditions and requirements. Unless specified otherwise in a Supplemental Agreement, these conditions in respect of an Academy are that:

- a) the school will be at the heart of its community, sharing facilities with other schools and the wider community;

- b) there will be assessment in the core subjects of the national curriculum at Key Stage 3, and the opportunity to study for external qualifications as defined by section 96 of the Learning and Skills Act 2000;
- c) the admissions policy and arrangements for the school will be in accordance with admissions law, and the DCSF Codes of Practice, as they apply to maintained schools;
- d) teachers will be required to have qualified teacher status; levels of pay and conditions of service for all employees will be the responsibility of the Company;
- e) there will be an emphasis on the needs of the individual pupils including pupils with special education needs (SEN), both those with and without statements of SEN;
- f) there will be no charge in respect of admission to the school and the school will only charge pupils where the law allows maintained schools to charge.
- g) The Company shall as soon as reasonably practicable establish an appropriate mechanism for the receipt and management of donations and shall use reasonable endeavours to procure donations through that mechanism for the purpose of the objects specified in the Memorandum.

Governance

- 14) Each Academy will be governed by the Company. The Company 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.
- 15) The Company shall establish, for each Academy, an Advisory Body, whose role shall be to provide advice to the Company in relation to the functioning of that Academy. The role of the Advisory Body and the membership of it shall be for the Company to decide, but the Company will, as a minimum, ensure that:
 - a) a parent of a pupil at the Academy (to be elected by the parents of registered pupils of the Academy) shall be a member of the Advisory Body;
 - b) a teacher at the Academy (to be elected by teachers of the Academy) shall be a member of the Advisory Body;
 - c) a representative of the local authority for the area in which the Academy is situated shall be a member of the Advisory Body;

d) any advice of the Advisory Body is brought to the attention of the Directors of the Company;

e) to the extent that the Company may, in accordance with the Articles, choose to establish a Local Governing Body, then the Company may additionally constitute the Advisory Body as the Academy's Local Governing Body.

Conduct

16) Each Academy shall be conducted in accordance with:

a) the Memorandum and Articles, which shall not be amended by the Company without the explicit consent of the Secretary of State, such consent not to be unreasonably withheld;

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

c) the terms of this Agreement and the relevant Supplemental Agreement.

Pupil well-being; Community Cohesion; and the Children & Young People Plan

17) In conducting an Academy and in providing community facilities the Company shall, so far as is reasonably practicable -

a) promote the well-being of pupils at the Academy;

b) promote community cohesion; and

c) have regard to any plan published by the LA under section 17 of the Children Act 2004 or (where the LA is not required to publish such a plan) any plan published by the LA setting out their strategy in relation to children and relevant young people.

Designated Teacher for Children in Care

18) The Company will in respect of each Academy act in accordance with, and be bound by, all relevant statutory and regulatory provisions and have regard to any guidance and codes of practice issued pursuant to such provisions, as they apply at any time to a maintained school, relating to the designation of a person to manage the teaching and

learning programme for children who are looked after by an LA and are registered pupils at the school. For the purpose of this clause, any reference to the governing body of a maintained school in such statutory and regulatory provisions, or in any guidance and code of practice issued pursuant to such provisions, shall be deemed to be references to the Directors of the Company.

School Development Plan and target setting

19) The Company shall provide to the Secretary of State a School Development Plan for each Academy each Academy Financial Year in accordance with a format and timetable to be advised by the Secretary of State. The School Development Plan shall, in particular:

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

20) The Company shall in relation to each Academy set targets each Academy Financial Year in areas which are prescribed for maintained schools in regulations made by the Secretary of State under section 19 of the Education Act 1997 (or any statutory amendment or re-enactment of that section) or such variation of those targets as may be agreed between the Company and the Secretary of State. For the avoidance of doubt such targets shall solely be minimum areas required to enable the Secretary of State to monitor performance, and it shall remain open to the Company to set targets for an Academy in areas that are additional to those that are so prescribed.

21) The Company shall consult the Secretary of State before setting these targets in respect of each Academy and shall take into account (but not be bound by) any comments received from the Secretary of State. The Company shall set its targets for each Academy in accordance with the timetable for target setting which applies to maintained schools.

Pupils

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

- a) the admission of pupils to an Academy together with the arrangements for making changes to such arrangements, including the requirement to secure the consent of the Secretary of State, such consent not to be unreasonably withheld or delayed, will be set out in the relevant annex to the Supplemental Agreement; and
- b) the admission to an Academy of and support for pupils with SEN and with disabilities (for pupils who have and who do not have statements of SEN) (including the appointment of a responsible person) together with the arrangements for making changes to such arrangements, including the requirement to secure the consent of the Secretary of State, such consent not to be unreasonably withheld or delayed, are set out in Annex B to this Agreement.
- c) for pupil exclusions are set out in Annex C to this Agreement.

Teachers and other staff

23) Subject to clause 24, the Company shall not employ anyone under a contract of employment or for services to carry out planning and preparing lessons and courses for pupils, delivering lessons to pupils, assessing the development, progress and attainment of pupils, and reporting on the development, progress and attainment of pupils ("specified work") who is not:-

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

24) Clause 23 and the requirement in clause 13(d) for teachers to have qualified teacher status do not apply to anyone who:

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

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

("transferred staff member"). The Company shall use reasonable endeavors to ensure that any transferred staff member who undertakes specified work and does not meet the requirements of either clause 23(a) or clause 23(b) meets such requirements as soon as possible.

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

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

27) Reasonable notice shall be given to the Secretary of State of any meeting of the Directors or the Local Governing Body of any Academy or any committee or sub-committee thereof (including any interview or appointments panel), at which the appointment of a Principal of any Academy or the Executive Principal is being considered and a representative of the Secretary of State shall be entitled to attend and speak at any such meeting whether or not they are also entitled to attend such meeting by virtue of clause 118 of this Agreement. Advice given by any such representative shall be taken into account by (but, for the avoidance of doubt, is not binding on) those persons considering the appointment of the Principal or Executive Principal before a decision is made.

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

- a) staffing structure, and staff remuneration
- b) staff discipline and performance management.

14-19 entitlement

29) The Company shall make arrangements to ensure that, so far as reasonably practicable, a pupil at any Academy in the fourth key stage has the same curriculum entitlements as are conferred on such a pupil at a maintained school by section 85(1) of the Education Act 2002.

30) The Company shall make arrangements to ensure that, so far as reasonably practicable, a course of study in the core subjects and a course of study in one of the entitlement areas is made available (whether at the relevant Academy or otherwise) to any pupil at any Academy who is above compulsory school age.

31) Nothing in clauses 29 and 30-

(a) requires the Company to incur disproportionate expenditure in making these arrangements;

(b) confers any greater entitlements on a pupil than are conferred by section 85A(1) of the Education Act 2002 and section 3A of the Learning and Skills Act 2000.

32) In making arrangements under clauses 29-30 the Company shall have regard to any guidance issued from time to time by the Secretary of State or the Qualifications and Curriculum Authority.

33) For the purpose of clauses 29-30, "course of study", "core subjects" and "entitlement areas" have the same meaning as in sections 3A, 3B and 3C respectively of the Learning and Skills Act 2000.

Curriculum, curriculum development and delivery and RE and collective worship

34) The curriculum provided by each Academy to pupils up to the age of 16 shall be broad and balanced. The specialism for each Academy will be set out in the relevant Supplemental Agreement.

35) The Company shall ensure that the National Curriculum programmes of study for English, Mathematics and Science for the time being prescribed by the Secretary of State under section 87 of the Education Act 2002 are taught so far as appropriate to any pupils admitted to an Academy in Years 1-11. In any event, the Company must ensure

that such programmes of study have been covered in full at each Academy by the end of the final year of the Key Stage relevant for each Year group.

- 36) The Company shall ensure that for any Academy that admits pupils in Years 1-6, the curriculum for these Years is sufficiently broad and has such depth as to enable such pupils to be adequately prepared for study at Key Stage 3 whether at the Academy or any other mainstream educational institution, including those institutions not sharing the Academy's specialism.
- 37) Despite clauses 35-36, the Company is not required to teach an individual pupil or group of pupils in one or more subjects where, in the opinion of the Principal, it is inappropriate to do so by reason of the pupil's or group's ability or attainment.
- 38) The Company shall make provision for the teaching of religious education and for a daily act of collective worship at each Academy.
- 39) Where an Academy is designated with a religious character in accordance with section 124B of the School Standards and Framework Act 1998:
 - a) subject to clause 41, the Company shall ensure that provision is made for Religious Education to be given to all pupils at the Academy in accordance with the tenets of the specified religion or religious denomination of the Academy;
 - b) subject to clause 41, the Company shall comply with the requirements of section 70(1) of, and Schedule 20 to, the School Standards and Framework Act 1998 as if the Academy were a foundation school with a religious character or a voluntary school, and as if references to 'the required collective worship' were references to collective worship in accordance with the tenets and practices of the specified religion or religious denomination of the Academy;
 - c) the Company shall ensure that the quality of Religious Education given to pupils at the Academy and the contents of the Academy's collective worship given in accordance with the tenets and practice of the specific religion or religious denomination are inspected. Such inspection shall be conducted by a person chosen by the Company and the Academy shall secure that such inspection shall comply with the requirements set out in any statutory provision and regulations as if the Academy were a foundation of voluntary school which has been designated under section 69(3) of the School Standards and Framework Act 1998 as having a religious character.

40) Where an Academy has not been designated with a religious character in accordance with section 124B of the School Standards and Framework Act 1998:

- a) subject to clause 41, the Company shall ensure that provision shall be made for religious education to be given to all pupils at the Academy in accordance with the requirements for agreed syllabuses in section 375(3) of the Education Act 1996 and paragraph 2(5) of Schedule 19 to the School Standards and Framework Act 1998, and having regard to the requirements of the Qualifications and Curriculum Authority's national framework for religious education in schools;
- b) subject to clause 41, the Company shall ensure that the Academy complies with the requirements of section 70(1) of, and Schedule 20 to, the School Standards and Framework Act 1998 as if it were a community, foundation or voluntary school which does not have a religious character, except that the provisions of paragraph 4 of that Schedule do not apply. The Academy may apply to the Secretary of State for consent to be relieved of the requirement imposed by paragraph 3(2) of that Schedule, the Secretary of State's consent to such an application not to be unreasonably withheld or delayed.

41) Section 71(1) - (4) of the School Standards and Framework Act 1998 shall apply as if each Academy were a community, foundation or voluntary school, and as if references to "Religious Education" and to "Religious Worship" in that section were references to the religious education and religious worship provided by each Academy in accordance with clauses 39 or 40 as appropriate.

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

Assessment

43) The Secretary of State will notify the Qualifications and Curriculum Authority (QCA) about each Academy.

44) The Company shall ensure that the pupils at each Academy take part at the end of Key Stage 3 in teacher assessments of pupil's performance in English, Maths and Science.

- 45) The Company shall report to the QCA and its agencies on the assessments required under clause 44 and shall provide the QCA with such information as the QCA may require in order for the requirements of clause 44 to be met.
- 46) In respect of all Key Stages, the Company will submit each Academy to monitoring and moderation of its assessment arrangements. The Company shall choose for each Academy to be monitored either: -
- a) by the LA, with the consent of that LA; or
 - b) by an Agency accredited by the QCA.
- 47) The Company shall notify the Secretary of State about the basis upon which it has chosen to have each of its Academies monitored, or any change to that choice. The QCA will conduct an annual audit of the monitoring arrangements.
- 48) The Company shall ensure that each Academy complies with the relevant provisions of the 'Assessment and Reporting Arrangements' as published from time to time by the Qualifications and Curriculum Authority, as they apply to maintained schools.
- 49) The results of any test or assessment conducted in accordance with clause 44 shall also be reported to the Secretary of State as required and as set out in the 'Assessment and Reporting Arrangements', in a format approved by the Secretary of State.
- 50) The Company may not offer courses at any Academy which lead to external qualifications, as defined in section 96 of the Learning and Skills Act 2000, unless the Secretary of State gives approval for such courses under section 98 of that Act.

Crisis Management Plan

- 51) Before any Academy opens to pupils it shall have in place a Crisis Management Plan setting out steps to be taken in the event of an emergency situation at that Academy.

Exclusions Agreement

- 52) The Company shall, if invited to do so by an LA, enter into an agreement in respect of an Academy with that LA, which has the effect that where:
- a) the Company admits a pupil to the Academy who has been permanently excluded from a maintained school, the Academy itself or another Academy with whom the LA has a similar agreement; or

b) the Company permanently excludes a pupil from the Academy

payment will flow between the Company and the LA in the same direction and for the same amount that it would, were the Academy a maintained school, under Regulations made under section 47 of the School Standards and Framework Act 1998 relating to the addition or deduction of a maintained school's budget following a permanent exclusion or the admission of a permanently excluded pupil. At the date of this Agreement, the applicable Regulation is Regulation 23 of the School Finance (England) Regulations 2008.

School Meals

53) The Company shall, if requested to do so by or on behalf of any pupils at any Academy, provide school lunches for those pupils unless it would be unreasonable for it to do so. Subject to the provisions of clauses 54 and 55 charges may be levied for lunches, but the Company shall otherwise fund the cost of such school lunches from its GAG.

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

55) All food and drink provided by or on behalf of each Academy shall comply with legislation governing the provision of food and drink in maintained schools as this applies from time to time. In particular, the Company shall ensure that school meals (breakfasts, lunches, or other meals) and food and drink available on each Academy's premises through other outlets such as tuck shops and vending machines comply, as a minimum, with the relevant standards set out in regulations. Provided that while any School Agreement remains in force relating to any PFI Academy the terms of clause 63A of this Agreement shall apply to this requirement.

Charging

56) 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 shall be deemed to apply to each Academy with the following modifications:

- a) references to any maintained school shall be treated as references to an Academy;
- b) references to registered pupils shall be treated as references to registered pupils at an Academy;
- c) references to the governing body or the local education authority shall, in each case, be treated as references to the Company;
- d) the charging and remissions policies required to be determined under section 457, and any amendment thereto, shall require the approval of the Secretary of State; and
- e) the Company may charge persons who are not registered pupils at an Academy for education provided or for facilities used by them at that Academy.

Provision of Information to parents and others

57) The Company shall publish a prospectus for each Academy annually. The Company shall send the prospectus free of charge to parents of pupils at each Academy and the Secretary of State, upon request. The Company shall also make the prospectus available for inspection by other persons at the relevant Academy.

58) The prospectus for each Academy shall include details of admissions arrangements and, except insofar as such information is published in a document known as a School Profile which must accompany the prospectus, include the following information:

- a) details of the curriculum offered, of assessment arrangements and of the results of attainment tests and public examinations at school level, but this shall not include details of individual pupils' attainment and examination results;
- b) the details of any religious affiliation of the school;
- c) the policy on providing for children with SEN;
- d) the arrangements for pupils with disabilities (as specified in an annex to the relevant Supplemental Agreement);
- e) the destination of school leavers;
- f) any further information as set out in Schedule 3 of the Education (School Information) (England) Regulations 2008 as applies to maintained schools; and
- g) such other information as the Company may determine.

59) The prospectus referred to in clauses 57-58 shall be published in the Academy Financial Year immediately preceding the Academy Financial Year to which it relates and shall be published at least six weeks before the closing date for applying for a place at the relevant Academy, provided always that, in the case of the first Academy Financial Year of each Academy, it is recognised that it might not be possible to publish the prospectus within this timeframe, in which case the prospectus shall be published before the opening of the Academy.

59A In respect of each Academy, the Secretary of State may provide to the relevant LA the information which the Company has provided to the Secretary of State:

a) under Schedules 2-5 to the Education (School Performance Information) (England) Regulations 2007 ; and

b) under paragraphs 1-3 of Part 3 to Schedule 1 to the Education (Information about Individual Pupils) (England) Regulations 2006.

59B The Company shall ensure that all pupils at each Academy and their parents are informed via Fair Processing Notices that the pupils' personal data may be transferred in accordance with clause 59A.

GRANTS TO BE PAID BY THE SECRETARY OF STATE

General

60) The Secretary of State shall pay grants towards capital and recurrent expenditure for each Academy. Except with the Secretary of State's prior agreement, the Company shall not budget for its expenditure in any Academy Financial Year in excess of expected income. The Company shall not enter into commitments (other than School Agreements and Principal Agreements which the Secretary of State and the Company may enter into in relation to any PFI Academies) 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 Company shall commit the Secretary of State to paying any particular amount of grant.

61) "Recurrent expenditure" means any expenditure on the establishment, conduct, administration and maintenance of the Academy which does not fall within the categories of capital expenditure set out at clause 62. The Secretary of State shall pay two separate and distinct grants in respect of recurrent expenditure: General Annual Grant

("GAG") and Earmarked Annual Grant ("EAG"). He will also pay a grant, known as Implementation Grant, as defined in clauses 67 and 68A to D of this Agreement.

Capital Grant

62)"Capital Expenditure" means expenditure on:

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

63) Where an Academy is to open in new premises, or where existing premises are to be substantially refurbished or remodelled to enable the Academy to open in such premises, the Secretary of State will be responsible for meeting the incurred Capital Expenditure for that Academy. To that end, he will provide funding to the LA in accordance with either:

- a) arrangements made under the Building Schools for the Future programme; or
- b) arrangements made under the BSF National Construction Contractors' Framework for Academies and Educational Facilities; or
- c) any equivalent or similar arrangements

as the Secretary of State considers appropriate or as are set out in any School Agreement and/or Principal Agreement.

63A) It is acknowledged and agreed that buildings, premises, facilities and services will be procured by the Company from and provided to the Company by the LA for the PFI Academies and accordingly that:

- a) the Company shall have fully complied with any obligation on its part hereunder to procure such buildings, premises, facilities and services by virtue of entering into the School Agreements and thereby contracted with the LA and its contractors any obligation on its part to perform services or duties hereunder corresponding to the duties or services failing to be performed or provided under the Building Schools for the Future documentation; and
- b) the Company is dependent upon the Secretary of State for funding under this Agreement whether by way of Implementation Grant, General Annual Grant or Earmarked Annual Grant.

64. Any Capital Expenditure incurred in respect of each 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.

65. Any payment of Capital Grant to the Company 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 Company 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.

Arrangements for Payment of Capital Grant

66) Capital Grant will be paid by the Secretary of State to the Company 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. Capital Grant will be paid within 21 days from the day on which a claim for grant is received if the claim is in the proper format, supported by the appropriate documentation and the conditions on its payment set out at clause 65 are complied with. If a dispute arises as to whether a claim is or is not acceptable both parties undertake to attempt to resolve it in good faith. In the event of such a dispute, the Secretary of State shall pay to the Company so much of the claim as shall not be in dispute.

Implementation Grant

67) "Implementation Grant" means payments towards recurrent expenditure incurred for the establishment of an Academy prior to it opening.

68) The Secretary of State may enter into an agreement with a third party ("Project Management Company") for the provision of project management services to assist in the establishment of an Academy. Where such an agreement has been entered into, the Secretary of State shall pay Implementation Grant to the Project Management Company in accordance with that agreement.

68A) For each Academy, the Company shall prepare and submit to the Secretary of State a budget showing expected recurrent expenditure to be incurred by the Company before the Academy opens and for which grant is sought. This budget must either be agreed to or modified by the Secretary of State as he considers appropriate whereupon it will become the "Approved Implementation Budget".

68B) Both parties recognise that as the project develops it may be necessary to revise individual costs in an Approved Implementation Budget and to move costs between budget headings in order to ensure that the project remains within its approved budget. Where the Company wishes to make such an adjustment of over £10,000, the reason for the change and a revised budget must be submitted to the Secretary of State for approval.

68C) The Secretary of State will pay Implementation Grant to the Company on the basis of claims for grant submitted to the Secretary of State in accordance with the Approved Implementation Budget and in the notified format with supporting invoices, receipts and documents as required by the Secretary of State. If the grant claim is acceptable, the Secretary of State undertakes to pay the amount due within 21 days from the day on which it was received. If a dispute arises over whether a grant claim or part of it is acceptable, the Secretary of State will pay any undisputed part and both parties undertake to attempt to resolve the dispute in good faith.

68D) Any amount in the Approved Implementation Budget in respect of which the expenditure has not been incurred by the Company by the date on which the applicable Academy opens will lapse and no Implementation Grant will be payable in respect of that part of the Approved Implementation Budget. Any amount of Implementation Grant which has been paid but remains unexpended on relevant expenditure by the date on which the applicable Academy opens will, without prejudice to any other mode of recovery, be taken into account in determining the total amount of grant to be paid to the Company in respect of the applicable Academy after that Academy has opened. Any amount of Implementation Grant which is found to have been used on ineligible expenditure will, without prejudice to any other mode of recovery, be taken into account in determining the total amount of grant to be paid to the Company.

General Annual Grant

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

- a) 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;
- h) medical equipment and supplies;
- i) staff development (including in-service training);
- j) curriculum development;
- k) the costs of providing school meals for pupils (including the cost of providing free school meals to pupils who are eligible to receive them), and discretionary grants to pupils to meet the cost of pupil support, including support for pupils with special educational needs or disabilities (taking account of the fact that separate additional money will be available for pupils with statements of special educational needs);
- l) administration;
- m) establishment expenses and other institutional costs;
- n) relevant payments due to the LA under the School Agreements representing the Company's contribution to the LA's obligations to pay the unitary charge to the contractor under the Building Schools for the Future documentation relating to the PFI Academies;

- o) any VAT payable under a Lease, School Agreement or Principal Agreement in respect of any PFI Academy and (for the avoidance of doubt) otherwise part of all such costs aforesaid.

70) Subject to clauses to 78-79, GAG for each Academy Financial Year for each Academy will be the total of the following areas of funding;

- a) Formula Funding: Funding equivalent to the level of funding which would be provided through the funding formula of the LA to a maintained school which had all of that Academy's relevant characteristics, including its number of pupils;
- b) Local Authority Central Spend Equivalent: Funding representing a proportion of the LA Education Budget money which the LA would be able to retain, from the non-delegated elements of the Schools Budget and the relevant items in the LA Block, if that Academy were a maintained school. The proportion which this funding will represent will be based on the elements of the LA's Section 52 Budget Return which are relevant to that Academy.
- c) Specialist Schools Allowance: Funding equivalent to that which a maintained school with that Academy's characteristics would receive in respect of their participation in the specialist schools programme;

71) The GAG for each Academy Financial Year for each Academy will also include, payable on a basis equivalent to that applied to maintained schools:

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

72) Subject to clause 73, the basis of the pupil number count for the purposes of determining GAG for an Academy Financial Year for an Academy will be the Company's estimate each November for numbers on roll in the following September for that Academy.

73) Once the conditions specified in clause 74 have been satisfied with respect to an Academy for the Academy Financial Year for which funding is being calculated, the

basis of the pupil number count for the purpose of determining GAG for that Academy will be:

- a) for the pupil number count for pupils in Year 11 and below, the Schools Census for the January preceding the Academy Financial Year in question; and
- b) for the pupil number count for pupils in Year 12 and above, the formula which for the time being is in use for maintained schools for the calculation of pupil numbers for pupils in Year 12 and above for the purpose of calculating their level of funding.

74) For the purpose of clause 73, the conditions are:

- a) all planned Year-groups will be present at the Academy (that is, all the pupil cohorts relevant to the age-range of the Academy will have some pupils present); and
- b) the total number of pupils as measured in the Schools Census for the preceding January is 90% or more of the planned final size of the Academy, as specified in the Academy's Supplemental Agreement.

75) For any Academy Financial Year in which GAG for an Academy has been calculated in accordance with clause 72, an adjustment will be made to the following Academy Financial Year's formula funding element of GAG for that Academy to recognise any variation from that estimate greater than or lower than 2.5%. The additional or clawed-back grant will be only that amount relevant to the number of pupils beyond the 2.5% variation.

76) For any Academy Financial Year in which GAG for an Academy is calculated in accordance with clause 73, no adjustment will be made to the formula funding element in the following Academy Financial Year's formula funding element of GAG unless the Company demonstrates to the satisfaction of the Secretary of State that there has been a significant impact on costs, such as an extra class. For any other element of GAG the Secretary of State may make adjustments to recognise a variation in pupil numbers from that used to calculate the element of grant in question; the basis of these will be set out in the annual letter of funding.

77) The Secretary of State recognises that:

- a) in relation to Academies which open with intakes representing only a proportion of the final planned size of the Academy, payments based simply upon the number of pupils present are unlikely to be sufficient to meet the Academy's needs in the Academy Financial Years before all age groups are present at their planned size (the "Start-up Period") because of a lack of economies of scale. The Secretary of State undertakes to pay an appropriately larger GAG in the Start-up Period than would be justified solely on the basis of the methods set out in clauses 70-76, in order to enable the Academy to operate effectively. The Company will make a bid to the Secretary of State for this addition to GAG based upon need and providing appropriate supporting evidence;
- b) in relation to Academies which open with pupils transferred from one or more maintained schools which have closed, additional GAG resources will be required to take account of transitional costs including any costs associated with supporting the integration of pupils from the closed schools and, where necessary, to offer a dual curriculum.

78) During the Start-up Period or during the period when year groups are present who have transferred from a predecessor school or schools, the Secretary of State will pay a further element of GAG additional to that calculated in accordance with the methods set out in clauses 70-76 to allow the relevant Academy to:

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

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

79) The Secretary of State recognises that if he serves notice of intention to terminate a Supplemental Agreement under that agreement the intake of new pupils during the notice period is likely to decline and that in such circumstances payments based simply upon the number of pupils attending the relevant Academy are unlikely to be sufficient to meet the Academy's needs during the notice period. The Secretary of State undertakes to pay a reasonable and appropriately larger GAG with respect to that Academy in the notice period than would be justified solely on the basis of the methods set out in clauses 70-76, in order to enable the Academy to operate effectively.

80) The Secretary of State also recognises that if this Agreement or a Supplemental Agreement is terminated for any reason by either party the number of pupils at the relevant Academy or Academies is likely to decline. In these circumstances both parties undertake to attempt to resolve issues arising from such termination in good faith and with the aim of protecting the interests and the education of the pupils at the Academy.

81) Subject to clause 100, GAG paid by the Secretary of State in respect of an Academy shall only be spent by the Company towards the normal running costs of that Academy.

Earmarked Annual Grant

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

82A) The Secretary of State agrees that he shall consider, after giving due regard to any representations made by the Company, meeting all reasonable and proper costs incurred by the Company arising from any change to or substitution of the Academies Financial Handbook after the date on which this Agreement is entered into between the Parties, all such costs to be paid as Earmarked Annual Grant in accordance with the terms of this Agreement. The Company is free to determine how best to use each of its EAGs within the scope, terms and conditions of the grant set out in the relevant funding letter.

82B) The Secretary of State agrees that he shall further consider (acting reasonably), after giving due regard to any representations made by Company in connection with any supplemental EAG (which may be made at any time by the Academy Trust in accordance with clause 83), meeting any additional costs and/or liabilities incurred or to be incurred by the Company which: (i) were not within the reasonable contemplation of the Parties in connection with any GAG and/or any other (including EAG) funding agreed to be payable from time to time under the terms of this Agreement; and (ii) arise from the Company's entry into and performance of its obligations and/or discharge of its liabilities under any School Agreement, the Lease and/or (as the case may be) the Principal Agreement. Any additional grant payment agreed to be payable by the Secretary of State under this clause shall be treated as supplemental EAG for the relevant PFI Academy.

Where the Secretary of State agrees that he shall meet such additional costs and/or liabilities, he shall use reasonable endeavours to make all such payments in such manner and at such times as shall enable the Company to meet its related payment obligations under the School Agreement, the Lease and/or (as the case may be) the Principal Agreement. Where the Secretary of State refuses such a request in respect of a PFI Academy, the provisions of clauses 6.1 to 6.9 of the relevant Supplemental Agreement shall apply.

83) Where the Company is seeking a specific EAG in relation to any Academy Financial Year, it shall submit a letter outlining its proposals and the reasons for its request to Academies Division, Sanctuary Buildings, Great Smith Street, London SW1P 3BT.

Arrangements for Payment of GAG and EAG

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

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

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

86) If GAG or EAG is calculated incorrectly because the Company provides incorrect information to the Secretary of State then;

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

- 87) The amounts of GAG for an Academy Financial Year will be determined annually by the Secretary of State. The amount of GAG for each Academy will be notified to the Company in a funding letter not later than 1 April preceding that Academy Financial Year (the "annual letter of funding"). The annual letter of funding will not include the amount that the Company 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 Company wherever possible in the annual letter of funding or as soon as practicable thereafter.
- 88) For the purposes of this Agreement, an Academy Financial Year shall be deemed to run from September to August, in order to align it to the school academic year. The Secretary of State undertakes to pay GAG in monthly instalments on or before the twenty fifth day of each month, each such instalment to fund the salaries and other payroll costs for the relevant month of all monthly paid employees and all other costs payable during the next following month. The detailed arrangements for payment will be set out in the annual letter of funding.

Other relevant funding

- 89) In the light of the inclusion of Academies in the Schedules to the Redundancy Payments (Continuity of Employment in Local Government) (Modification) Order 1999, the Secretary of State shall meet such costs and expenses as are incurred by the Company in connection with the redundancy of any relevant employee and which relate to any period of eligible service, being service prior to the opening of an Academy, and the Company will meet the costs of service after the opening of an Academy. The Company shall seek the Secretary of State's consent for these redundancies, such consent not to be unreasonably withheld, before committing to the redundancies.
- 90) The Secretary of State may meet costs and expenses incurred by the Company 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 Company shall not budget on the basis that it will receive any grant in respect of such costs unless it is specifically notified that such grant will be paid.
- 91) The Company may also receive funding from an LA in respect of the provision detailed in statements of SEN for pupils attending an Academies in accordance with the provisions of Section 483A of the Education Act 1996 and regulations made under that section.

The Company shall ensure that all provision detailed in statements of SEN is provided for such pupils.

92)The Company may also receive funding for each Academy from the relevant LA's Standards Fund. This is a scheme under which the Standards Fund money is to be distributed by the Secretary of State to LAs and schools and permits LAs to receive grants on behalf of Academies in the same way as they can do for maintained schools, although payment may also be made direct by the Secretary of State. The Company must ensure that the relevant Academy uses any grants received under the Standards Fund in accordance with any conditions specified in relation to that grant. Grants paid to the Company from the Standards Fund are not paid under this Agreement.

FINANCIAL AND ACCOUNTING REQUIREMENTS

General

93)The Company shall appoint an Accounting Officer and shall notify the Secretary of State of that appointment.

93A Without prejudice to clause 93, the Company shall appoint a finance director to each PFI Academy ("**Academy Finance Director**"). Each Academy Finance Director shall be responsible for the day-to-day financial affairs of the relevant PFI Academy for which he is responsible. Each Academy Finance Director **will** report to the Company's Accounting Officer.

94) Subject to clause 82A, in relation to the use of grant paid to the Company by the Secretary of State, the Company shall abide by the requirements of and have regard to the guidance in the Academies Financial Handbook published by the DCSF and amended from time to time and as modified to take account of the fact that the Company manages more than one Academy, which sets out in detail provisions for the financial management of each Academy including guidance on financial systems and controls and accounting and reporting requirements, 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 its being a charity.

95)The formal budget plan should take into account items in the School Development Plan requiring expenditure and must be approved each Academy Financial Year by the directors of the Company.

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

- 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 such as would be reasonably expected of an Academy operating on similar terms to those contained in this Agreement;
- 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-clauses d) and g) below, financial statements are published at the end of each Academy Financial Year in such form and manner as the Secretary of State may reasonably direct and a copy sent to him by 31 December each Academy Financial Year. These should carry an audit report stating that, in the opinion of the auditors, the statements show a true and fair view of the Company's affairs and that the grants were used for the purposes intended;
- d) the Company prepares and files with the Companies Registry such annual accounts as are required by the Companies Act 2006;
- e) a statement of the accounting policies used is sent to the Secretary of State with the financial statements;
- f) the Company insures or procures insurance by another person of its assets in accordance with normal commercial practice or under the terms of any subsisting leases in respect of the leasehold interest of the site upon which each Academy is situated;
- g) the Company files the Directors' report and accounts together with a copy of the scrutiny report and its Annual Return with the Charity Commission as required by charity law and in accordance with the relevant Statement of Recommended Practice;
- h) the Company shall comply with their obligation under the Charities Act 1993 and the Charities Act 2006 (or any statutory re-enactment or modification of those Acts) with

regard to the preparation of an annual report and its transmission to the Charity Commission;

- i) the Company shall ensure that its accounts are audited annually by independent auditors appointed under arrangements approved by the Secretary of State.

97) 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 Company to standards determined by the Secretary of State and to make recommendations for improving the financial management of the Company.

98) The books of accounts and all relevant records, files and reports of the Company including those relating to financial controls, shall be open at all reasonable times to officials of the DCSF and the National Audit Office and to contractors retained by the DCSF or the National Audit Office for inspection or the carrying out of value for money studies; and the Company shall secure that those officials and contractors are given reasonable assistance with their enquiries. For the purposes of this clause 'relevant' means in any way relevant to the provision and use of grants provided by the Secretary of State under this Agreement.

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

- a) a statement of expected income for that Academy Financial 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 Financial Year;
- c) a statement of proposed capital expenditure for that Academy Financial Year.

100) At the beginning of any Academy Financial Year the Company may hold unspent GAG for any Academy from previous Academy Financial Years amounting to 12% of the total GAG payable for the Academy in the Academy Financial Year just ended or such

higher amount as may from time to time be agreed. This carried forward amount may be used as follows:

- a) equivalent to 2% of the total GAG payable in the Academy Financial Year just ended may be used by the Company for any of the purposes for which GAG is paid, whether for the purposes of the relevant Academy or for the purposes of any other Academy;
 - b) equivalent to 12% of the total GAG payable in the Academy Financial Year just ended, or such higher figure as may from time to time be agreed, minus any amount used under sub-clause (a) above, may be used on the upkeep and improvement of premises, including the costs of equipment and routine repairs and maintenance of the relevant Academy, and on capital expenditure relating to the relevant Academy.
- 101) Notwithstanding clause 100, any additional grant provided over and above that set out in clauses 70-76 and made in accordance with clauses 77-79 may be carried forward without limitation or deduction until the Start-up Period or the circumstances set out in clause 79 come to an end.
- 102) Any savings of GAG not allowed to be carried forward under clauses 100-101 will be taken into account in the payment of subsequent grant.
- 103) The Company may also accumulate funds from private sources or public sources other than grants from the Secretary of State for application to the benefit of an Academy as it sees fit. Any surplus arising from private sources or public sources other than grants from the Secretary of State shall be separately identified in the Company's balance sheet.
- 104) The Company 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) except such as are given in normal contractual relations or as are set out in any School Agreement or Principal Agreement entered into by the parties, give any guarantees, indemnities or letters of comfort;
 - b) write off any debts or liabilities owed to it above a value to be set out in the annual letter of funding, nor offer to make any ex gratia payments;
 - c) make any sale or purchase of freehold property; or

- d) grant or take up any leasehold or tenancy agreement for a term exceeding three years.
- 104A) The Company shall provide 30 days notice to the Secretary of State, whether or not the circumstances require the Secretary of State's consent, 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 freehold property; or
 - d) grant or take up any leasehold or tenancy agreement for a term exceeding three years.
- 105) Each discovered loss of an amount exceeding the amount set out in the annual letter of funding, and arising from suspected theft or fraud, shall be reported by the Company to the Secretary of State at the earliest opportunity.
- 106) It is the responsibility of the Company to ensure that each Academy balances its budget from Academy Financial Year to Academy Financial Year. For the avoidance of doubt, this does not prevent the Company from
- a) 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 Company's responsibility to ensure that the Company balances its overall budget from Academy Financial Year to Academy Financial Year.
- 106A In complying with clauses 93 - 106 (inclusive), the Company shall (where relevant) be obliged to provide information which relates to each PFI Academy in addition to information which relates to the Company and any combined information which relates to all of the Academies that the Company operates and which are funded by the Secretary of state under this Agreement.

Insurance Reporting Obligations

106B In relation to PFI Academies:

- a) In at least three meetings of the Company in each financial year, the Company shall specify whether it has complied with and is likely to continue to comply with clause 16.2 of the School Agreements) (Insurance) and the relevant provisions of the Academies Financial Handbook in that financial year ("Insurance Report"). The Insurance Report shall be recorded in the minute of the Company meeting.
- b) In the event that the Insurance Report specifies that the Company has not complied with or is not likely to continue to comply with clause 16.2 of the School Agreement(s) and the relevant provisions of the Academies Financial Handbook in that financial year, the Company shall also specify in the Insurance Report the Company's reasons for and the methods which it proposes to rectify such non-compliance.

Borrowing Powers

107) The Company 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, which approval shall not be unreasonably withheld or delayed. The Company shall not operate an overdraft except to cover irregularities in cash flow. Such an overdraft, and the maximum amount to be borrowed, shall require approval by the Company in 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.

107A) The Company 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 107 above.

Disposal of Assets

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

109) The sale or disposal by other means, or reinvestment whether of the whole or a

major percentage (being a percentage in excess of 75%) of proceeds from the disposal, of a capital asset by the Company shall require the consent of the Secretary of State, such consent not to be unreasonably withheld or delayed, where:

- a) the Secretary of State paid capital grant in excess of £20,000 for the asset; or
- b) the asset was transferred to the Company from an LA for no or nominal consideration.

Furthermore, reinvestment exceeding £1,000,000 or with other special features will be subject to Parliamentary approval. The percentage of the proceeds for which consent is needed is the percentage of the initial price of the asset which was paid by capital grant from the Secretary of State.

110) 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 Company. In this event, the Company shall repay to the Secretary of State the same proportion of the proceeds of the disposal as equates with the proportion of the original cost met by the Secretary of State, unless the Secretary of State agrees to some or all of the proceeds being retained by the Company for its charitable purposes.

111) 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 Company 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 Company. The Secretary of State will have regard to any representations from the Company and the LA from which the asset was transferred before giving consent under this clause.

112) Except with the consent of the Secretary of State, and such consents as the Charity Commission may require, the Company 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.

112A) The Company 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 112 above.

TERMINATION

113) This Agreement shall commence on the date hereof and continue until terminated in accordance with clause 114 or until all Supplemental Agreements have terminated.

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

- a) the Company calls a meeting of its creditors (whether formal or informal) or enters into any composition or arrangement (whether formal or informal) with its creditors; or
- b) the Company proposes a voluntary arrangement within Section 1 of the Insolvency Act 1986; or
- c) the Company is unable to pay its debts within the meaning of Section 123 of the Insolvency Act 1986 provided that, for the purposes of this Clause, Section 123 (1)(a) of the Insolvency Act 1986 shall have effect as if the amount of £10,000 was substituted for £750. The Company shall not be deemed unable to pay its debts for the purposes of this clause if any such demand as is mentioned in the said Section is being contested in good faith by the Company; or
- d) the Company has 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 Company's property and is not paid out, withdrawn or discharged within fifteen Business Days; or
- f) the Company has passed a resolution for its winding up; or
- g) an order is made for the winding up or administration of the Company.

The Company shall notify the Secretary of State as soon as possible after receiving any petition which may result in an order for the winding up or administration of the Company

and shall provide an explanation to the Secretary of State of the circumstances giving rise to the service of such a petition.

114A) Prior to the termination of this Agreement (howsoever or by whatever means such termination might arise or take effect) or of any Supplemental Agreement in accordance with either clause 5.17a) or 6.5b) thereof, the Secretary of State may procure the taking effect of the resignation of any Director of the Company who shall not have been appointed by the Secretary of State save that if a notice is issued pursuant to clause 5.17a) or clause 6.5b) of a Supplemental Agreement, the Secretary of State shall procure the resignation of such Director provided that in either event (i) the Secretary of State's rights shall be subject to clause 123 of this Agreement, and (ii) he shall act expeditiously in the exercise of his powers under the Articles of Association of the Academy Trust with the intent that any Director who shall have resigned shall cease to hold office before or contemporaneously with the termination of this Agreement or Supplemental Agreement as appropriate.

Effect of Termination

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

GENERAL

Information

116) Without prejudice to any other provision of this Agreement, the Secretary of State acting reasonably may from time to time call for information on, inter alia, any Academy's:

- a) curriculum;
- b) arrangements for the assessment of pupils;
- c) targets, including those set in accordance with the provisions of clause 20;
- d) teaching staff including numbers, qualifications, experience, salaries, and teaching loads;
- e) class sizes;

- f) outreach work with other schools and the local community;
- g) operation of the admission criteria and over subscription arrangements for the Academy including numbers of applications for places and the number and characteristics of pupils accepted for admission;
- h) numbers of pupils excluded (including permanent and fixed term exclusions);
- i) levels of authorised and unauthorised attendance;
- j) charging and remissions policies and the operation of those policies;
- k) organisation, operation and building management;
- l) financial controls; and
- m) membership and proceedings of the Company and the Local Governing Body.

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

Access by the Secretary of State's Officers

118) The Company shall allow access to the premises of any Academy at any reasonable time to DCSF officials. All records, files and reports relating to the running of each Academy shall be available to them at any reasonable time. The Company shall provide the Secretary of State in advance with papers relating to each Academy prepared for meetings of the Local Governing Body, of the Company's directors and of the members of the Company. Two DCSF officials shall be entitled to attend and to speak at all such meetings, but shall withdraw from any discussion of an Academy's or the Company's relationship with the Secretary of State or any discussion of bids for funding to the Secretary of State. The Company shall take any steps which are required to secure its compliance with the obligations imposed by this clause of this Agreement.

119) The Company shall ensure that:

- i) the agenda for every meeting of the relevant Local Governing Body and the Company's directors;

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

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

120) 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 119, any material relating to:

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

Notices

121) Any notice or other communication concerning this Agreement or a Supplemental Agreement shall be sent, in the case of a notice or communication from the Secretary of State to the Company at its registered office or such other addressee/address as may be notified in writing from time to time by the Company and, in the case of a notice or communication from the Company to the Secretary of State to Head of Academies Division, Department for Children, Schools and Families, 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.

122) The service by the Secretary of State of a notice of termination of a Supplemental Agreement shall not prejudice the ability of the Company (if it wishes to do so) during the notice period to admit pupils to the relevant Academy in accordance with the provisions

of this Agreement and the relevant Supplemental Agreement and to receive GAG and EAG in respect of them.

Appointment of Additional or Further Directors by the Secretary of State

123) The Secretary of State undertakes to the Company not to exercise the powers under clause 114A of this Agreement or the powers under the Articles to appoint Additional Directors or Further Directors in the following circumstances:-

- a) if the matters giving rise to the powers, in the reasonable opinion of the Secretary of State, to the affairs of only one Academy; and
- b) if the Company has delegated, and continues to delegate, to a Local Governing Body of such Academy all decisions and powers that the Secretary of State reasonably considers are necessary to enable such Local Governing Body to address the matters that gave rise to the powers and to ensure that the relevant Local Governing Body is capable of properly conducting the affairs of the relevant Academy on the Company's behalf; and
- c) if the Company replaces such members of the Local Governing Body and/or appoints additional members of that Local Governing Body as, in either case, the Secretary of State may by notice in writing to the Company specify; and
- d) provided that such delegation is not subsequently revoked or, without the prior written consent of the Secretary of State, varied in any material respect.

124) Not used.

125) Not used.

126) Not used.

127) Not used.

General

128) The Secretary of State and the Company recognise the difficulties in catering in this Agreement and the Supplemental Agreements for all the circumstances which may arise in relation to the Academies and undertake in good faith to conduct such consultations

as may from time to time be desirable in order to promote the interests of the Academies throughout the currency of this Agreement.

129) This Agreement shall be governed by and construed in accordance with English law and shall be subject to the exclusive jurisdiction of the courts of England.

This Agreement was executed as a Deed on 27 August 2009

EXECUTED on behalf of Cabot Learning Federation by :

C Heath-till
.....

Director

[either]

A Diffin
.....
Director/Secretary

[Or]

Witness

Name.....

Address.....

Occupation.....

The Corporate Seal of the Secretary of State for Children, Schools and Families, hereunto affixed is authenticated by:

B. Welch

BRETT WELCH



.....

Duly Authorised

SCHEDULE 1
MODEL SUPPLEMENTAL AGREEMENT

THIS AGREEMENT made 200[«]

BETWEEN

(1) **THE SECRETARY OF STATE FOR CHILDREN, SCHOOLS AND FAMILIES; and**

(2) 1 1

IS SUPPLEMENTAL TO THE MASTER FUNDING AGREEMENT made between the same parties and dated • 200 (the "**Master Agreement**").

1 **DEFINITIONS AND INTERPRETATION**

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

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

"the Academy" means the [•] Academy [to be] established at [•].

"Chief Inspector" means Her Majesty's Chief Inspector of Education, Children's Services and Skills or his successor;

"Minimum Period" means a period determined according to the following table:

If at the time the Special Measures Notice is given the Academy shall have been opened for:	The Minimum Period will be
---------------------------------------------------------------------------------------------	----------------------------

Less than 12 months	36 months
---------------------	-----------

Less than 24 months but 12 months or more	24 months
-------------------------------------------	-----------

24 months or more	12 months
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1.3 Reference in this Agreement to clauses and Annexes shall, unless otherwise stated, be to clauses and annexes of this Agreement.

2 **THE ACADEMY**

2.1 The Company will establish and maintain, and carry on or provide for the carrying on of the Academy in accordance with the Master Agreement and this Agreement.

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

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

2.4 The Academy is intended to open on 1 September •.

2.5 The planned final pupil number of the Academy is •

3 **CAPITAL GRANT**

3.1 Pursuant to clause 63 of the Master Funding Agreement, the Secretary of State will provide funding to the LA in accordance with [~~delete as applicable~~] [arrangements made under the Building Schools for the Future Programme / arrangements made under the BSF National Construction Contractors' Framework for Academies and Educational Facilities].

4 **GAG AND EAG**

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

4.2 [In the event that the Secretary of State pays the LA any sums in connection with an Excluded Matter pursuant to the Principal Agreement the Secretary of State may, subject to clause 4.3, set off or abate an amount equal to such sums from any GAG payable to the Company in respect of the PFI Academy pursuant to this Agreement in the following financial year.

4.3 Before exercising its right of set off or abatement pursuant to clause 4.2 above, the Secretary of State shall:

- a) notify the Company that such sums have been paid by the Secretary of State to the LA;

- b) take into account (acting reasonably) any representations made by the Company providing reasons why the relevant Excluded Matters liabilities were not settled;
- c) take into account (acting reasonably) any representations made by the Company as to the nature of the Excluded Matters under consideration and whether they properly fall within the definition of Excluded Matters having regard to the costs that other academies may normally be expected to bear from GAG funding.]¹

5 **TERMINATION**

- 5.1 Either party may give not less than seven Academy Financial Years' written notice to terminate this Agreement, such notice to expire on 31 August • or any subsequent anniversary of that date.
- 5.2 If the Secretary of State is of the opinion that the Academy no longer has the characteristics set out in clause 12 of the Master Agreement or that the conditions and requirements set out in clauses 13-59B of the Master Agreement are not being met, or that the Company is otherwise in material breach of the provisions of this Agreement or the Master Agreement, the Secretary of State may give notice of his provisional intention to terminate this Agreement.
- 5.3 Any such notice shall be in writing and shall:
 - a) state the grounds on which the Secretary of State considers the Academy no longer has the characteristics set out in clause 12 of the Master Agreement or is not meeting the conditions and requirements of clauses 13-59B of the Master Agreement or the Company is otherwise in material breach of the provisions of this Agreement or the Master 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 Company is to provide its response and a reasonable date by which it must be provided.

¹ PFI Academies only

- 5.4 If no response is received by the date specified in accordance with clause 5.3.(c), the Secretary of State may give the Company 12 months, or such lesser period as he considers appropriate in the circumstances, written notice to terminate this Agreement.
- 5.5 If a response is received by the date specified in accordance with clause 5.3.(c), the Secretary of State shall consider it, and any representations made by the Company, 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 the Agreement.
- 5.6 In the circumstances of clause 5.5.(c) the Secretary of State shall notify the Company why he believes that he cannot be reasonably satisfied and, if so requested by the Company within thirty days from such notification, he shall meet a deputation including representatives from directors of the Company and the Local Governing Body of the Academy to discuss his concerns. If following such meeting he has good reasons for remaining satisfied that the Academy does not and will not have the characteristics set out in clause 12 of the Master Agreement or does not and will not meet the conditions and requirements set out in clauses 13-59B of the Master Agreement or the Company is in material breach of the provisions of this Agreement or the Master Agreement and such breach will not be remedied to his reasonable satisfaction, he shall give the Company twelve months written notice to terminate this Agreement.
- 5.7 If the Secretary of State has cause to serve a notice on the Company under section 165 of the Education Act 2002 and a determination (from which all rights of appeal have been exhausted) has been made that the Academy shall be struck off the Register of Independent Schools, the period of twelve months notice referred to in clause 5.6 may be shortened to a period deemed appropriate by the Secretary of State.

- 5.8 The Secretary of State will, by not later than the end of December each year provide to the Company an indication of the level of funding to be provided by the Secretary of State to the Company by way of GAG and EAG in the next following Academy Financial Year (the "**Indicative Funding**"). If the Company is of the opinion that, after receipt of the Indicative Funding for the next following Academy Financial Year (the "**Critical Year**") and of the taking into account all other resources available and likely to be available to the Academy, including such funds as are set out in clause 100 of the Master Agreement and such other funds as are and likely to be available to the Academy from other academies operated by the Company ("**All Other Resources**"), it is likely that the cost of running the Academy during the Critical Year would cause the Company, on the basis of the Indicative Funding, to become insolvent (and for this reason only) then the Company may give notice of its intention to terminate this Agreement at the end of the then current Academy Financial Year.
- 5.9 Any notice given by the Company under clause 5.8 shall be in writing and shall be served on the Secretary of State not later than 28 February preceding the Critical Year or, if the Secretary of State shall not have given notice of the Indicative Funding to the Company on or before the date specified in clause 5.8 above, within six weeks after the Secretary of State shall have done so. The notice must specify:
- a) the grounds upon which the Company's opinion is based and include the evidence of those grounds and any professional accounting advice the Company has received and including a detailed statement of steps which the Company proposes to take with a view to ensuring that as soon as reasonably practicable the costs of running the Academy are reduced sufficiently to ensure that such costs are less than the Indicative Funding and All Other Resources and the period of time within which such steps will be taken; and
 - b) the shortfall in the Critical Year between the Indicative Funding and All Other Resources expected to be available to the Company to run the Academy and the projected expenditure on the Academy; and
 - c) a detailed budget of income and expenditure for the Academy during the Critical Year (the "**Projected Budget**").
- 5.10 Both parties undertake to use their best endeavours to agree whether or not the cost of running the Academy during the Critical Year would cause the Company, on the basis of the Indicative Funding and All Other Resources, to become insolvent. Both

parties recognise that they will need to engage in a constructive dialogue at the time about how best to provide education for the pupils at the Academy and undertake to use their best endeavours to agree a practical solution to the problem.

- 5.11 If no agreement is reached by 30 April (or such other date as may be agreed between the parties) as to whether the cost of running the Academy during the Critical Year on the basis of the Indicative Funding and All Other Resources would cause the Company to become insolvent, then that question shall be referred to an independent expert (the "**Expert**") for resolution. The Expert's determination shall be final and binding on both parties. The Expert shall be requested to specify in his determination the amount of the shortfall in funding (the "**Shortfall**"). The Expert shall be an insolvency practitioner with significant professional experience of educational institutions or academies. If the parties fail to agree upon the appointment of the Expert then the Expert shall be appointed by the President for the time being of the Institute of Chartered Accountants in England and Wales. The Expert's fees shall be borne equally between the parties.
- 5.12 The Expert shall be required in reaching his determination to take account of advice from an educational specialist who is professionally familiar with the issues arising from the budget management of large schools. If the parties fail to agree upon the appointment of the educational specialist then the educational specialist shall be appointed by the Chairman for the time being of the Specialist Schools and Academies Trust. The educational specialist's fees shall be borne equally between the parties.
- 5.13 If the Expert determines that the cost of running the Academy during the Critical Year would cause the Company, on the basis of the Indicative Funding and All Other Resources, to become insolvent, and the Secretary of State shall not have agreed to provide sufficient additional funding to cover the Shortfall, then the Company shall be entitled to terminate this Agreement, by notice expiring on 31 August prior to the Critical Year. Any such notice shall be given within 21 days after (a) the Expert's determination shall have been given to the parties or (b), if later, the Secretary of State shall have given written notice of his refusal to provide sufficient additional funding for the Academy to cover the Shortfall.
- 5.14 If the Company shall have given notice to terminate the Agreement under 5.13, the Secretary of State may by notice in writing to the Company require the Company to

appoint up to two persons as directors of the Company in accordance with the Articles.

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

5.16 A "Special Measures Termination Event Occurs" when:

- a) the Chief Inspector gives a notice to the Company in accordance with section 13(3) of the Education Act 2005 (the "Special Measures Notice") stating that in his opinion special measures are required to be taken in relation to the Academy; and
- b) not less than the Minimum Period after the Special Measures Notice, the Chief Inspector carries out a subsequent inspection of the Academy in accordance with the Education Act 2005 and makes a report in accordance with the Education Act 2005 stating that the Academy has made inadequate progress since the date of the Special Measures Notice; and
- c) the Secretary of State shall have requested the Company to deliver within 10 Business Days a written statement (a "Further Action Statement") of the action the Company proposes to take, 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, having considered the Further Action Statement, is not satisfied that any action proposed to be taken by the Company is sufficient in all the circumstances, or, if no Further Action Statement shall have been given to the Secretary of State within the requested timeframe or otherwise.

5.17 If a Special Measures Termination Event occurs, the Secretary of State may:

- a) by notice in writing to the Company terminate this Agreement forthwith; or
- b) subject to clause 123 of the Master Agreement, appoint such Further Directors to the Company as he thinks fit in accordance with the Articles and/or may provide up to 12 months' notice in writing to terminate this Agreement.

5.18 In the event that the Secretary of State appoints Further Directors in accordance with clause 5.17.a), the Company must, upon the request of the Secretary of State, procure the resignation of the Sponsor Directors (as defined in the Articles) in accordance with the Articles.

6 **PRINCIPAL AGREEMENT**

6.1 Clauses 6.1-6.9 apply if the Company has made a request for EAG funding to cover any costs that it has incurred or reasonably considers are likely to be incurred as a result of meeting its obligations and/or discharging its liabilities under any School Agreement and the Secretary of State has not agreed pursuant to clause 82B of the Master Agreement to provide such EAG funding to the Company ("PFI EAG Refusal").

6.2 If upon being notified by the Secretary of State of a PFI EAG Refusal, the Company is of the opinion that, after taking into account the PFI EAG Refusal, it is likely that the ongoing costs of operating the Academy would cause the Company to be unable to pay its debts within the meaning of Section 123 of the Insolvency Act 1986 (and for this reason only) then (provided it has complied with clause 60 of this Agreement) the Company may give notice of its intention to terminate this Agreement at the end of the then following school term ("Academy Trust Termination Notice").

6.3 Any Academy Trust Termination Notice shall be in writing and shall be served on the Secretary of State not later than 30 days after the Company has been notified of a PFI EAG Refusal. The notice must specify:

a) the grounds upon which the Company's opinion is based and include the evidence of those grounds and any professional accounting advice the Company has received and including a detailed statement of steps which the Company proposes to take with a view to ensuring that as soon as reasonably practicable the costs of operating the Academy are reduced sufficiently to enable it to meet its debts and the period of time within which such steps will be taken; and

b) the amount of any budgetary shortfall in the current Academy Financial Year; and

c) a revised detailed budget for the current Academy Financial Year.

6.4 After the provision of the Academy Trust Termination Notice, both Parties undertake to use their best endeavours to agree whether or not, on the basis of the items set out in paragraphs 6.3 a) to c) the Company would in the current Academy Financial

Year be unable to pay its debts within the meaning of Section 123 of the Insolvency Act 1986. Both Parties recognise that they will need to engage promptly and in a constructive dialogue at the time about how best to provide education for the pupils at the Academy and undertake to use their best endeavours to agree a practical solution to the problem promptly.

6.5 If the Secretary of State (acting reasonably) agrees with the Company that on the basis of the Academy Trust Termination Notice the costs of operating the Academy during the current Academy Financial Year would cause the Company to be unable to pay its debts within the meaning of Section 123 of the Insolvency Act 1986, then the Secretary of State may either:

- a) withdraw the PFI EAG Refusal and promptly pay to the Company the amount of requested EAG funding or such other sum as shall be appropriate in which case he may (but is not obliged to) appoint Additional Directors in accordance with the Articles of Association (subject to clauses 123 to 127 of the Master Agreement); or
- b) confirm by written notice his refusal to provide the further requested EAG in which case he may appoint Additional Directors in accordance with the Articles of Association (subject to clause 123 of the Master Agreement) and (if he elects so to do) give the Company 12 months notice of his intention to terminate this Agreement.

6.6 If the Secretary of State has not confirmed his intention to appoint Additional Directors in accordance with clause 6.5b) within 15 days of the Academy Trust Termination Notice being served (or such other date as may be agreed between the Parties), or withdrawn the PFI EAG Refusal in accordance with clause 6.5a), then the question as to whether the costs of operating the Academy during the current Academy Financial Year would cause the Company to be unable to pay its debts within the meaning of Section 123 of the Insolvency Act 1986 (and this question only) shall be referred to an independent expert (the "Expert") for resolution. The Expert's determination shall be final and binding on both Parties. The Expert shall be requested to specify in his determination the amount of the budgetary shortfall during the current Academy Financial Year. The Expert shall be an insolvency practitioner with significant professional experience of educational institutions or academies. If the Parties fail to agree upon the appointment of the Expert then the Expert shall be

appointed by the President for the time being of the Institute of Chartered Accountants in England and Wales.

- 6.7 The Parties shall procure that the Expert (together with any educational specialist appointed pursuant to this clause) will act promptly in coming to his/its determination on the matters referred to him. The Expert shall be required in reaching his determination to take account of advice from an educational specialist who is professionally familiar with the issues arising from the budget management of large schools. If the Parties fail to agree upon the appointment of the educational specialist then the educational specialist shall be appointed by the Chairman for the time being of the Specialist Schools and Academies Trust.
- 6.8 The Secretary of State shall bear the Expert's and the educational specialist's fees. The Company shall fully reimburse the Secretary of State for half of the Expert's and educational specialist's fees in the event that the Expert determines that the costs of operating the Academy during the current Academy Financial Year as a result of the PFI EAG Refusal would not cause the Company to be unable to pay its debts within the meaning of Section 123 of the Insolvency Act 1986.
- 6.9 If the Expert determines that the costs of operating the Academy during the current Academy Financial Year would cause the Company to be unable to pay its debts within the meaning of Section 123 of the Insolvency Act 1986, as a result of the PFI EAG Refusal, and the Secretary of State shall not have agreed to provide sufficient additional funding to cover the budgetary shortfall, then the Company shall be entitled by written notice given within 21 days (a) after the Expert's determination shall have been given to the Parties or (b), if later, after the Secretary of State shall have given written notice of his refusal to provide sufficient additional funding under clause 6.5b), to request the Secretary of State to exercise his power to appoint Additional Directors in accordance with the Articles of Association (subject to clause 123 of the Master Agreement). The Secretary of State, on receiving this notice, may give the Company 12 months notice of his intention to terminate this Agreement.
- 6.10 If the Secretary of State fails to appoint Additional Directors in accordance with clause 6.9 the Academy Trust Termination Notice shall take effect at the end of the next following school term.]²

² PFI Academies only

7 **EFFECT OF TERMINATION**

7.1 In the event of termination of this Agreement however occurring, the school shall cease to be an Academy within the meaning of Section 482 of the Education Act 1996.

7.2 Subject to clause 7.3, if the Secretary of State terminates this Agreement for reasons other than that:

a) a Special Measure Termination Event occurs, or

b) the Academy no longer has the characteristics set out in clause 12 of the Master Agreement, or is no longer meeting the conditions and requirements set out in clauses 13-59B of the Master Agreement, or

c) the Company is otherwise in material breach of the provisions of this Agreement, the Master Agreement, the Schools Agreement or the Principal Agreement,

the Secretary of State shall indemnify the Company.

7.3 The amount of any such indemnity shall be determined by the Secretary of State having regard to any representations made to him by the Company, and shall be paid at such times and in such manner as the Secretary of State may reasonably think fit.

7.4 The categories of expenditure incurred by the Company in consequence of the termination of the Agreement in respect of which the Secretary of State shall indemnify the Company include (but not by way of limitation), staff compensation and redundancy payments, compensation payments in respect of broken contracts, expenses of disposing of assets or adapting them for other purposes, legal and other professional fees, and dissolution expenses.

7.5 Subject to clause 7.6, on the termination of this Agreement however occurring, the Company 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 educational 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 Academy or later; or

(b) if the Secretary of State confirms that a transfer under clause 7.5(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 Academy or later.

7.6 The Secretary of State may waive in whole or in part the repayment due under clause 7.5(b) if:

a) The Company 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 L A.

7.7 If any land or premises of the Academy were acquired by the Company from an LA by a scheme under Schedule 35A of the Education Act 1996 or otherwise at less than the market value of the land at the date of acquisition, and the Secretary of State does not make a scheme as provided for in Schedule 35A (Paragraph 8) of the Education Act 1996 , the Company may dispose of its interest in that land or premises but only with the consent of the Secretary of State, who shall have regard to any representations from the Company and the LA from which the land was transferred before giving or withholding that consent.

8 **ANNEX**

8.1 The Annex to this Agreement forms part of and is incorporated into this Agreement.

9 **THE MASTER AGREEMENT**

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

10 **ENGLISH LAW**

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

ANNEX TO THIS SUPPLEMENTAL AGREEMENT

Arrangements for Admission for pupils at the
Academy

Annex 1

Annex A

Memorandum and Articles of the Company

THE COMPANIES ACTS 1985 AND 2006

A COMPANY LIMITED BY GUARANTEE
AND NOT HAVING A SHARE CAPITAL

MEMORANDUM OF ASSOCIATION
OF
CABOT LEARNING FEDERATION

THE COMPANIES ACTS 1985 AND 2006

A COMPANY LIMITED BY GUARANTEE AND NOT HAVING A SHARE CAPITAL

MEMORANDUM OF ASSOCIATION OF CABOT LEARNING FEDERATION

1. The Company's name is Cabot Learning Federation (and in this document it is called "the Trust").
2. The Trust's registered office is to be situated in England and Wales.
3. The Trust's objects ("the Objects") are to advance for the public benefit education in the United Kingdom, in particular but without prejudice to the generality of the foregoing by establishing, maintaining, carrying on, managing and developing a school offering a broad curriculum with a strong emphasis on, but in no way limited to English and Information and Communications Technology ("the Academy").
4. In furtherance of the Objects but not further or otherwise the Trust may exercise the following powers:-
 - (a) to draw, make, accept, endorse, discount, execute and issue promissory notes, bills, cheques and other instruments, and to operate bank accounts in the name of the Trust;
 - (b) to raise funds and to invite and receive contributions provided that in raising funds the Trust shall not undertake any substantial permanent trading activities and shall conform to any relevant statutory regulations;
 - (c) to acquire, alter, improve and (subject to such consents as may be required by law) to charge or otherwise dispose of property;
 - (d) subject to clause 5 below to employ such staff, as are necessary for the proper pursuit of the Objects and to make all reasonable and necessary provision for the payments of pensions and superannuation to staff and their dependants: Provided that such staff shall not be Directors, save for the Executive Principal;
 - (e) to establish or support, whether financially or otherwise, any charitable trusts, associations or institutions formed for all or any of the Objects;
 - (f) to co-operate with other charities, other independent and maintained schools, voluntary bodies and statutory authorities operating in furtherance of the Objects and to exchange information and advice with them;

- (g) to pay out of funds of the Trust the costs, charges and expenses of and incidental to the formation and registration of the Trust;
- (h) to establish, maintain, carry on, manage and develop the Academies in accordance with the Relevant Funding Agreements;
- (i) to offer scholarships, exhibitions, prizes and awards to students and former students, and otherwise to encourage and assist students and former students;
- (j) to provide educational facilities and services to students of all ages and the wider community for the public benefit;
- (k) to carry out research into the development and application of new techniques in education in particular in relation to the areas of curricular specialisation of each of the Academies and 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, other schools and the voluntary sector to the education of students in academies;
- (l) subject to such consents as may be required by law to borrow and raise money for the furtherance of the Objects in such manner and on such security as the Trust may think fit;
- (m) to invest the moneys of the Trust not immediately required for the furtherance of its Objects in or upon such investments, securities or property as may be thought fit, to hold the same as investments and to sell, exchange, carry and dispose of the same, subject nevertheless to such conditions (if any) and such consents (if any) as may for the time being be imposed or required by law;
- (n) 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 Directors;
 - (ii) every transaction is reported promptly to the Directors;
 - (ii) the performance of the investments is reviewed regularly with the Directors;
 - (iv) the Directors 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 Directors on receipt; and

(vii) the financial expert must not do anything outside the powers of the Directors;

(o) to arrange for investments or other property of the Trust to be held in the name of a nominee company acting under the control of the Directors 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 Directors which by virtue of any rule of law would otherwise attach to them in respect of any negligence, default, breach of trust or breach of duty of which they may be guilty in relation to the Trust: Provided that any such insurance shall not extend to any claim arising from any act or omission which the Directors knew to be a breach of trust or breach of duty or which was committed by the Directors in reckless disregard of whether it was a breach of trust or breach of duty or not and provided also that any such insurance shall not extend to the costs of any unsuccessful defence to a criminal prosecution brought against the Directors in their capacity as Directors;

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

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

5. (1) The income and property of the Trust shall be applied solely towards the promotion of the Objects, and none of the income or property of the 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 Trust. This does not prevent a member who is not also a Director receiving reasonable and proper remuneration for any goods or services supplied to the Trust.

(2) (a) A Director may at the discretion of the Directors be reimbursed from the property of the Trust for reasonable expenses properly incurred by him or her when acting on behalf of the Trust, but excluding expenses in connection with foreign travel.

(b) A Director may benefit from any indemnity insurance purchased at the Trust's expense to cover the liability of the Directors which by virtue of any rule of law would otherwise attach to them in respect of any negligence, default or breach of trust or breach of duty of which they may be guilty in relation to the Trust: Provided that any

such insurance shall not extend to any claim arising from any act or omission which the Directors knew to be a breach of trust or breach of duty or which was committed by the Directors in reckless disregard to whether it was a breach of trust or breach of duty or not and provided also that any such insurance shall not extend to the costs of any unsuccessful defence to a criminal prosecution brought against Directors in their capacity as directors of the Trust.

(3) No Director may:

- (a) buy any goods or services from the Trust;
- (b) sell goods, services, or any interest in land to the Trust;
- (c) be employed by, or receive any remuneration from the Trust;
- (d) receive any other financial benefit from the Trust;

unless:

- (i) the payment is permitted by sub-clause (4) of this clause and the Directors follow the procedure and observe the conditions set out in sub-clause (5) of this clause; or
- (ii) the Directors obtain the prior written approval of the Commission and fully comply with any procedures it prescribes.

(4) (a) A Director may receive a benefit from the Trust in the capacity of a beneficiary of the Trust.

(b) A Director may be employed by the Trust or enter into a contract for the supply of goods or services to the Trust, other than for acting as a Director

(c) A Director may receive interest on money lent to the 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 Directors.

(d) A company of which a Director is a member may receive fees remuneration or other benefit in money or money's worth provided that the shares of the company are listed on a recognised stock exchange and the Director holds no more than 1% of the issued capital of that company.

(e) A Director may receive rent for premises let by the Director to the Trust if the amount of the rent and the other terms of the lease are reasonable and proper.

(a) The Trust and its Directors may only rely upon the authority provided by sub-clause 5(4) if each of the following conditions is satisfied:

(i) The remuneration or other sums paid to the Director do not exceed an amount that is reasonable in all the circumstances.

(ii) The Director is absent from the part of any meeting at which there is discussion of:

- his or her employment or remuneration, or any matter concerning the contract; or

- his or her performance in the employment, or his or her performance of the contract; or

- 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 sub-clause 5(4); or

- any other matter relating to a payment or the conferring of any benefit permitted by sub-clause 5(4).

(iii) The Director does not vote on any such matter and is not to be counted when calculating whether a quorum of Directors is present at the meeting.

(iv) The other Directors are satisfied that it is in the interests of the Trust to employ or to contract with that Director rather than with someone who is not a Director. In reaching that decision the Directors must balance the advantage of employing a Director against that disadvantages of doing so (especially the loss of the Director's services as a result of dealing with the Director's conflict of interest).

(v) The reason for their decision is recorded by the Directors in the minute book.

(vi) A majority of the Directors then in office have received no such

payments.

(b) The employment or remuneration of a Director includes the engagement or remuneration of any firm or company in which the Director is:

- (i) a partner;
- (ii) an employee;
- (iii) a consultant;
- (iv) a director; or
- (v) a shareholder, unless the shares of the company are listed on a recognised stock exchange and the Director holds less than 1% of the issued capital.

(6) In sub-clauses (2)-(5) of this clause 5:

(a) "company" shall include any company in which the 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) "Director" shall include any child, stepchild, parent, grandchild, grandparent, brother, sister or spouse of the Director or any person living with the Director as his or her partner

6. The liability of the members of the Trust is limited.
7. Every member of the Trust undertakes to contribute such amount as may be required (not exceeding £10) to the Trust's assets if it should be wound up while he or she is a member or within one year after he or she ceases to be a member, for payment of the Trust's debts and liabilities before he or she ceases to be a member, and of the costs, charges and expenses of winding up, and for the adjustment of the rights of the contributories among themselves.
8. If the Trust is wound up or dissolved and after all its debts and liabilities (including any under section 483 of the Education Act 1996) have been satisfied there remains any property it shall not be paid to or distributed among the members of the Trust, but shall be given or

transferred to some other charity or charities having objects similar to the Objects which prohibits the distribution of its or their income and property to an extent at least as great as is imposed on the Trust by clause 4 above, chosen by the members of the Trust at or before the time of dissolution and if that cannot be done then to some other charitable object.

9. No alteration or addition shall be made to or in the provisions of the Memorandum or Articles of Association which would have the effect (a) that the Trust would cease to be a company to which section 60 to 62 of the Companies Act 2006 applies; or (b) that the Trust would cease to be a charity.

WE, the persons whose names and addresses are written below wish to be formed into a company under this Memorandum of Association.

Signature of Subscriber

Name in full:

Address:

Occupation:

Date:

Witness (signature):

Name in full:

Address:

Signature of Subscriber

Name in full:

Address:

Occupation:

Date:

Witness (signature):

Name in full:

Address:

Signature of Subscriber

Name in full:

Address:

Occupation:

Date:

Witness (signature):

Name in full:

Address:

THE COMPANIES ACTS 1985 AND 2006

A COMPANY LIMITED BY GUARANTEE
AND NOT HAVING A SHARE CAPITAL

ARTICLES OF ASSOCIATION
OF
CABOT LEARNING FEDERATION

THE COMPANIES ACTS 1985 AND 2006

A COMPANY LIMITED BY GUARANTEE AND NOT HAVING A SHARE CAPITAL

ARTICLES OF ASSOCIATION OF CABOT LEARNING FEDERATION

INTERPRETATION

1. In these Articles:-

- "the Act" means the Companies Act 2006 including any statutory modification or re-enactment thereof for the time being in force;
- "the Academy" means The Bristol Brunei Academy as referred to in clause 3 of the memorandum and established by the Trust and any other school established and run by the Trust (and "an Academy" and "the Academies" mean, respectively, any one of and all of the schools established and run by the Trust);
- "Academy Directors" means the Directors appointed pursuant to articles 41 or 42 and Academy Director shall mean any one of those Directors;
- "Additional Directors" means the Directors appointed pursuant to article 51 or 55;
- "the Trust" means the company intended to be regulated by these articles;
- "the articles" means these articles of association of the Trust;
- "Executive Principal" means such person as may be appointed by the Directors as the Executive Principal of the Trust in accordance with the Relevant Funding Agreements;
- "clear days" in relation to the period of a notice means the period excluding the day when the notice is given or deemed to be given and the day of which it is given or on which it is to take effect;
- "clerk" means the secretary of the Trust or any other person appointed to perform the duties of the secretary of the Trust, including a joint, assistant or deputy secretary; the secretary shall be known as the 'clerk' under article 75;
- "the Councillors" means the members of the Local Councils (and "Councillor" means any one of those Councillors);
- "delegation" shall mean the delegation of powers and duties, and not a delegation or shedding of responsibilities.
- "executed" includes any mode of execution;
- "Excluded Matters" has the meaning given in the School Agreement;

"Further Directors"	means the Directors appointed pursuant to Article 52;
"the Directors"	means the directors of the Trust (and "Director" has a corresponding meaning);
"the Board of Directors" or "the Board"	means the Directors;
"the memorandum"	means the memorandum of association of the Trust;
"the Master Funding Agreement"	means the master funding agreement entered into by the Secretary of State and the Trust;
"PFI Academy"	means an Academy which forms part of a scheme procured pursuant to the Government's Private Finance Initiative;
"Principals"	means the principals, principal designates or head teachers of the Academies (and "Principal" means any one of these headteachers);
"Principal Agreement"	means the principal agreement relating to any PFI Academy carried on by the Trust and entered into by the Secretary of State, the Trust and the LA;
"Principal Agreement Warning Notice"	means any warning notice given to the Trust and each of the Directors by the Secretary of State dealing with any of the matters listed in article 54 or given to the Trust and the members of the Local Council by the Secretary of State dealing with any of the matters listed in article 56;
"Principal Sponsors"	means Rolls Royce Pic and the University of the West of England
"Relevant Funding Agreements"	means the agreement or agreements entered into by the Trust and the Secretary of State under section 482 of the Education Act 1996 for the establishment of each Academy, including any variation or supplemental agreement thereof;
"the LAs"	means all the local authorities covering the areas in which the Academies are situated (and "the LA" shall mean anyone of these local authorities);
"Local Councils"	means the committees appointed pursuant to Articles 90(a) (and "Local Council" means any one of these committees);
"member"	means a member of the Trust and someone who as such is bound by the undertaking contained in clause 7 of the memorandum;
"the seal"	means the common seal of the Trust if it has one;
"Secretary of State"	means the Secretary of State for Children, Schools and Families any successor, replacement, assignee and transferee);
"School Agreement"	means any agreement between the LA, the Secretary of State and the Trust in relation to the Building Schools for the Future Programme relating to a PFI Academy.
"Sponsor Directors"	means the Directors appointed in accordance with article 40 (and "Sponsor Director" shall mean any one of these Directors);

- teacher" means a teacher employed under a contract of employment or a contract for services or otherwise engaged to provide his services as a teacher;
- "the United Kingdom" means Great Britain and Northern Ireland.

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

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

OBJECTS

2. The Trust is established for the objects expressed in the memorandum.

MEMBERS

3. The members of the Trust shall comprise:
- (a) 1 person appointed by Rolls Royce Pic;
 - (b) 1 person appointed by the University of the West of England;
 - (c) 1 person appointed by the Secretary of State;
 - (d) the chair of the Board of Directors;
 - (e) any person appointed under article 6; and
 - (f) any person appointed under article 7.
4. Each of the persons entitled to appoint members in article 3 shall have the right from time to time by written notice delivered to the Trust's registered 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.
5. If any of the persons entitled to appoint members in article 3 are extinguished (by being wound up, dissolved, struck off or otherwise) their right to appoint members under these articles shall vest in the remaining members.
6. 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.
7. The Secretary of State may appoint additional members if his obligation to procure the taking effect of the resignation of any Director has arisen pursuant to the Relevant Funding Agreements
8. Every person nominated to be a member of the Trust shall either sign a written consent to become a member or sign the register of members on becoming a member.

9. 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 Trust of a notice in writing signed by the person or persons entitled to remove him under articles 4 or 6 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

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

NOTICE OF GENERAL MEETINGS

12. 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, being a majority together holding not less than 90 per cent of the total voting rights at the meetings of all the members.

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

The notice shall be given to all the members, to the Directors and auditors.
13. 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.

14. No business shall be transacted at any meeting unless a quorum is present. A member counts towards the quorum by being present either in person or by proxy. Two persons entitled to vote upon the business to be transacted, each being a member or a duly authorised representative of a member organisation, or one tenth of the total number of such persons for the time being, whichever is the greater, shall constitute a quorum.
15. If a quorum is not present within half an hour from the time appointed for the meeting, or if during a meeting a quorum ceases to be present, the meeting shall stand adjourned to the

same day in the next week at the same time and place or to such time and place as the Directors may determine.

16. The chairman, if any, of the Directors or in his absence some other Director nominated by the Directors shall preside as chairman of the meeting, but if neither the chairman nor such other Director (if any) be present within fifteen minutes after the time appointed for the holding the meeting and willing to act the Directors present shall elect one of their number to be chairman and, if there is only one Director present and willing to act, he shall be the chairman.
17. If no Director is willing to act as chairman, or if no Director is present within fifteen minutes after the time appointed for holding the meeting, the members present and entitled to vote shall choose one of their number to be chairman.
18. A Director shall, notwithstanding that he is not a member, be entitled to attend and speak at any general meeting.
19. The chairman may, with the consent of a meeting at which a quorum is present (and shall if so directed by the meeting), adjourn the meeting from time to time and from place to place, but no business shall be transacted at any adjourned meeting other than the business which might properly have been transacted at the meeting had the adjournment not taken place. When a meeting is adjourned for fourteen days or more, at least seven clear days' notice shall be given specifying the time and place of the adjourned meeting and the general nature of the business to be transacted. Otherwise it shall not be necessary to give any such notice.
20. A resolution put to the vote of the meeting shall be decided on a show of hands unless before, or on the declaration of the result of the show of hands a poll is duly demanded. Subject to the provisions of the Act, a poll may be demanded:-
 - (a) by the chairman; or
 - (b) by at least two members having the right to vote at the meeting ; or
 - (c) by a member or members representing not less than one-tenth of the total voting rights of all the members having the right to vote at the meeting.
21. 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.
22. 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.
23. A poll shall be taken as the chairman directs and he may appoint scrutineers (who need not be members) and fix a time and place for declaring the results. The result of the poll shall be deemed to be the resolution of the meeting at which the poll was demanded.
24. In the case of an equality of votes, whether on a show of hands or on a poll, the chairman of the meeting shall be entitled to a casting vote in addition to any other vote he may have.
25. A poll demanded on the election of the chairman or on a question of adjournment shall be taken immediately. A poll demanded on any other question shall be taken either immediately or at such time and place as the chairman directs not being more than thirty

days after the poll is demanded. The demand for a poll shall not prevent continuance of a meeting for the transaction of any business other than the question on which the poll is demanded. If a poll is demanded before the declaration of the result of a show of hands and the demand is duly withdrawn, the meeting shall continue as if the demand had not been made.

26. No notice need be given of a poll not taken immediately if the time and place at which it is to be taken are announced at the meeting at which it is demanded. In other cases at least seven clear days' notice shall be given specifying the time and place at which the poll is to be taken.
27. A resolution in writing executed by or on behalf of 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 and may consist of several instruments in the like form each executed by or on behalf of one or more members.

VOTES OF MEMBERS

28. Subject to article 24, 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.
29. A member in respect of whom an order has been made by any court having jurisdiction (whether in the United Kingdom or elsewhere) in matters concerning mental disorder may vote, whether on a show of hands or on a poll, by his receiver, curator bonis or other person authorised in that behalf appointed by that court, and any such receiver, curator bonis or other person may, on a poll, vote by proxy. Evidence to the satisfaction of the Directors of the authority of the person claiming to exercise the right to vote shall be deposited at the office, or at such other place as is specified in accordance with the articles for the deposit of instruments of proxy, not less than 48 hours before the time appointed for holding the meeting or adjourned meeting at which the right to vote is to be exercised and in default the right to vote shall not be exercisable.
30. No member shall be entitled to vote at any general meeting unless all moneys then payable by him to the Trust have been paid.
31. No objections shall be raised to the qualification of any voter except at the meeting or adjourned meeting at which the vote objected to is tendered, and every vote not disallowed at the meeting shall be valid. Any objection made in due time shall be referred to the chairman whose decision shall be final and conclusive.
32. An instrument appointing a proxy shall be in writing, executed by or on behalf of the appointer and shall be in the following form (or in a form as near thereto as circumstances allow or in any other form which is usual or which the Directors may approve) -
"I/We_____of.....being a member/members of the above named trust, hereby appoint
of.....or failing him.....of.....as my/our proxy to vote in my/our name[s] and on
my/our behalf at the annual/extraordinary general meeting of the Trust to be held on. . . .20[
], and at any adjournment thereof.

Signed on. . . . 20[]"
33. Where it is desired to afford members an opportunity of instructing the proxy how he shall act the instrument appointing a proxy shall be in the following form (or in a form as near thereto as circumstances allow or in any other form which is usual or which the Directors may approve)-

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

34. The instrument appointing a proxy and any authority under which it is executed or a copy of such authority certified by a notary or in some other way approved by the Directors may -
- (a) be deposited at the office or at such other place within the United Kingdom as is specified in the notice convening the meeting or in any instrument of proxy sent out by the Trust in relation to the meeting not less than 48 hours before the time for holding the meeting or adjourned meeting at which the person named in the instrument proposes to vote, or
 - (b) in the case of a poll taken more than 48 hours after it is demanded, be deposited as aforesaid after the poll has been demanded and not less than 24 hours before the time appointed for the taking of the poll;
 - (c) where the poll is not taken forthwith but is taken not more than 48 hours after it was demanded, be delivered at the meeting at which the poll was demanded to the chairman or to the clerk or to any Director;
- and an instrument of proxy which is not deposited or delivered in a manner so permitted shall be invalid.
35. A vote given or poll demanded by proxy or by the duly authorised representative of a corporation shall be valid notwithstanding the previous determination of the authority of the person voting or demanding a poll unless notice of the determination was received by the Trust at the office or at such other place at which the instrument of proxy was duly deposited before the commencement of the meeting or adjourned meeting at which the vote given or the poll demanded or (or in the case of a poll taken otherwise than on the same day as the meeting or adjourned meeting) the time appointed for taking the poll.
36. Any organisation which is a member of the 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 Trust, and the person so authorised shall be entitled to exercise the same powers on behalf of the corporation which he represents as that corporation could exercise if it were an individual member of the Trust.

DIRECTORS

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

38. Subject to article 39 and 53 the Trust shall have the following Directors:
- (a) up to 6 Sponsor Directors appointed under article 40;
 - (b) 3 Academy Directors appointed under article 41 or 42;
 - (c) the Executive Principal;
 - (d) At least 1 Parent Director appointed under article 44;
 - (e) any Additional Directors, if appointed under articles 51 or 55;
 - (f) any Further Directors, if appointed under article 52;
 - (g) up to 2 Directors, if appointed by the Secretary of State in accordance with the terms of the Relevant Funding Agreements following the provision of a notice by the Trust to terminate that Relevant Funding Agreement.
39. Future Directors shall be appointed or elected, as the case may be, under these articles. Where it is not possible for such a Director to be appointed or elected due to the fact that a Local Council for an Academy is not yet established, or the Executive Principal has not been appointed, then the relevant article or part thereof shall not apply.

SPONSOR DIRECTORS

40. The following organisations shall each have the right to appoint the number of Sponsor Directors indicated:
- (a) Three by Rolls Royce pic; and
 - (b) Three by the University of the West of England.

ACADEMY DIRECTORS

41. Subject to article 42, the chairman of each Local Council shall be an Academy Director for as long as he remains in office as such.
42. If the number of Academies for which Local Councils have been established exceeds 3, the chairmen of the Local Councils shall elect 3 persons from amongst their numbers to be Academy Directors. Any person elected in accordance with this article shall only remain an Academy Director for as long as he remains chairman of a Local Council. The Directors shall make all necessary arrangements for, and determine all other matters relating to, the election of the Academy Directors in accordance with this article. Any election of the Academy Directors which is contested shall be held by secret ballot.

PARENT DIRECTORS

43. There shall be 1 Parent Director for every 10 or fewer Academies.
44. Parent Director(s) shall be elected by the Parent members of the Local Councils (who shall themselves have been elected or appointed in accordance with the terms of reference

determined by the Directors from time to time) from amongst their number. The elected Parent Director(s) must be a parent of a registered student at one of the Academies at the time when he is elected.

45. The number of Parent Directors required shall be made up by Parent Directors appointed by the Directors if the number of parents standing for election is less than the number of vacancies.
46. The Directors shall make all necessary arrangements for, and determine all other matters relating to, an election of the Parent Directors, including any question of whether a person is a parent of a registered student at one of the Academies. Any election of the Parent Directors which is contested shall be held by secret ballot.
47. In appointing a Parent Director the Directors shall appoint a person who is the parent of a registered student at an Academy; or where it is not reasonably practical to do so, a person who is the parent of a child of compulsory school age.

EXECUTIVE PRINCIPAL

48. The Executive Principal shall be a Director for as long as he remains in office as such.

APPOINTMENT OF ADDITIONAL DIRECTORS

49. The Secretary of State may give a warning notice to the Board of Directors where—
 - (a) he is satisfied—
 - (i) that the standards of performance of students at any of the Academies are unacceptably low and are likely to remain so unless the Secretary of State exercises his powers under article 51, or
 - (ii) that there has been a serious breakdown in the way any of the Academies are managed or governed which is prejudicing, or likely to prejudice, such standards of performance, or
 - (iii) that the safety of students or staff of any of the Academies is threatened (whether by a breakdown of discipline or otherwise); and
 - (b) the Secretary of State has previously informed the Board of Directors of the matters on which that conclusion is based; and
 - (c) those matters have not been remedied to the Secretary of State's satisfaction within a reasonable period.
50. For the purposes of article 49 a 'warning notice' is a notice in writing by the Secretary of State setting out—
 - (a) the matters referred to in Article 49(a);
 - (b) the action which he requires the Board of Directors to take in order to remedy those matters; and
 - (c) the period within which that action is to be taken by the Board ('the compliance period').

51. The Secretary of State may appoint such Additional Directors as he thinks fit if the Secretary of State has:
 - (a) given the Board of Directors a warning notice in accordance with article 49; and
 - (b) the Board has failed to comply, or secure compliance, with the notice to the Secretary of State's satisfaction within the compliance period; and
 - (c) the Secretary of State has given reasonable notice in writing to the Board that he proposes to exercise his powers under this article.
52. The Secretary of State may also appoint such Further Directors as he thinks fit if a Special Measures Termination Event (as defined in the Relevant Funding Agreements occurs in respect of any Academy) but shall only exercise this right:
 - (a) in accordance with sections 123 of the Master Funding Agreement; and
 - (b) if such action is in the interests of the Trust.
53. Within five days of the Secretary of State appointing any Further Directors in accordance with article 52, any Sponsor Directors holding office immediately preceding the appointment of such Directors shall resign immediately, and the powers of the Principal Sponsors to appoint Directors under article 40 shall cease.
54. Without prejudice to its rights under article 56, the Secretary of State may give a Principal Agreement Warning Notice to the Trust and each of the Directors where the circumstances in article 56 apply,
55. Without prejudice to its rights under article 57, the Secretary of State may appoint Additional Directors as he thinks fit where any of the circumstances in article 57 apply, but shall only exercise this right
 - (a) in accordance with section 123 of the Master Funding Agreement; and
 - (b) if such action is in the interests of the Trust.

DCSF WARNING NOTICE AND FLOODING RIGHTS FOR LOCAL COUNCIL

56. The Secretary of State may give a Principal Agreement Warning Notice to the Trust and the members of the Local Council where -
 - (a) the LA has made a claim against the Secretary of State for liabilities related to any Excluded Matters pursuant to the Principal Agreement; or
 - (b) the Secretary of State reasonably considers that in the immediately preceding 12 month period, the aggregate of payments made by the Trust in respect of a PFI Academy to the LA pursuant to the School Agreement in respect of Excluded Matters has reached a level which the Secretary of State considers to be excessive and which may (assessed objectively) cause the PFI Academy material financial difficulties; or
 - (c) the Secretary of State considers (acting reasonably and in good faith) that the Trust's and/or PFI Academy's compliance with its obligations under the School Agreement and/or the Principal Agreement (including its approach to contract management and cooperation) is such that claims and/or disputes under such contracts are of a

number and/or nature likely to materially and adversely impact on the provision of educational services at the PFI Academy; or

- (d) The Secretary of State, acting reasonably and in good faith, considers that there is general mismanagement and lack of co-operation by the Trust under the Schools Agreement that is leading to claims and/or disputes to be at an unacceptable level which is likely to, in the reasonable opinion of the Secretary of State, adversely impact on the provision of education at the PFI Academy.

57. The Secretary of State may also appoint additional Councillors as he thinks fit if:

- (a) the LA has recovered any losses from the Secretary of State pursuant to the Principal Agreement; or
- (b) the Trust has received a Principal Agreement Warning Notice pursuant to article 56(a) and the Trust has not, within 10 working days of such notice provided adequate written reasons (including a remediation plan if appropriate) why the Trust has not paid the LA for such Excluded Matters; or
- (c) the Trust has received a Principal Agreement Warning Notice pursuant to article 56(b) and the Trust has not within 20 working days of such notice provided a remediation plan to reduce anticipated payments for Excluded Matters to the LA in the forthcoming 12 month period, such plan to be acceptable to the Secretary of State (acting reasonably); or
- (d) the Trust has received a Principal Agreement Warning Notice pursuant to article 56(c) and the Trust has not, within 20 working days of such notice provided a remediation plan setting out the Trust's proposals to improve compliance with the School Agreement and/or the Principal Agreement in relation to the relevant PFI Academy and also dealing with such other matters as may be the subject of the relevant Principal Agreement Warning Notice, such plan to be acceptable to the Secretary of State (acting reasonably); or
- (e) the Secretary of State's right or obligation to procure the taking effect of the resignation of any Director has arisen pursuant to the Relevant Funding Agreements; or
- (f) the LA notifies the Secretary of State of any reasonable grounds it has to recover any losses pursuant to the Principal Agreement; or
- (g) the Secretary of State, acting reasonably and in good faith, considers that there is general mismanagement and lack of co-operation by the Trust under the Schools Agreement that is leading to claims and/or disputes to be at an unacceptable level which is likely to, in the reasonable opinion of the Secretary of State, adversely impact on the provision of education at the PFI Academy; or
- (h) any of the events of default listed in clause 114 of the Master Funding Agreement occur, or the Secretary of State considers that such events of default may (assessed reasonably) be likely to occur.

TERM OF OFFICE

58. The term of office for any Director shall be 4 years, save that this time limit shall not apply to either the Executive Principal or the Sponsor Directors. Subject to remaining eligible to be a particular type of Director any Director may be re-appointed or re-elected.

RESIGNATION AND REMOVAL

59. A Director shall cease to hold office if he resigns his office by notice to the Trust (but only if at least three Directors will remain in office when the notice of resignation is to take effect).
60. A Director shall cease to hold office if he is removed by the person or persons who appointed him. This article does not apply in respect of any Parent Director or an Academy Director.
61. Where a Director resigns his office or is removed from office, the Director or, where he is removed from office, those removing him, shall give written notice thereof to the clerk.

DISQUALIFICATION OF DIRECTORS

62. No person shall be qualified to be a Director unless he is aged 18 or over at the date of his election or appointment. No student of any of the Academies shall be a Director.
63. A Director shall cease to hold office if he becomes incapable by reason of mental disorder, illness or injury of managing or administering his own affairs.
64. A Director shall cease to hold office if he is absent without the permission of the Board of Directors from all their meetings held within a period of six months and the Directors resolve that his office be vacated.
65. A person shall be disqualified from holding or continuing to hold office as a Director 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.
66. A person shall be disqualified from holding or continuing to hold office as a Director at any time when he is subject to a disqualification order 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).
67. A Director shall cease to hold office if he ceases to be a Director by virtue of any provision in the Act or is disqualified from acting as a trustee by virtue of section 72 of the Charities Act 1993 (or any statutory re-enactment or modification of that provision).
68. A person shall be disqualified from holding or continuing to hold office as a Director if he has been removed from the office of charity trustee or trustee for a charity by an order made by the Charity 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.
69. A person is disqualified from holding or from continuing to hold office as a Director at any time when he is:
 - (a) included in the list of teachers and workers with children or young persons whose employment is prohibited or restricted under section 1 of the Protection of Children Act 1999; or

(b) disqualified from working with children under sections 28 and 29 of the Criminal Justice and Court Services Act 2000.

70. A person shall be disqualified from holding or continuing to hold office as a Director if he is a person in respect of whom a direction has been made under section 142 of the Education Act 2002.
71. A person shall be disqualified from holding or continuing to hold office as a Director 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.
72. A person shall be disqualified from holding or continuing to hold office as a Director at any time when he refuses a request by the Clerk to the Board of Directors, following a referral from either the Chair of Directors or the Executive Principal, to make an application under section 113 of the Police Act 1997, as amended for a criminal records certificate. That application will be at an enhanced disclosure level. A referral by the Chair of Directors or the Executive Principal shall be made where the person is in their opinion giving cause for concern or where his duties involve regularly caring for, training, supervising, or being in sole charge of persons under 18. In the event that the certificate discloses any information which would in the opinion of either the Chair of Directors or the Executive 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.
73. Where, by virtue of these articles a person becomes disqualified from holding, or continuing to hold office as a Director; and he is, or is proposed, to become such a Director, he shall upon becoming so disqualified give written notice of that fact to the clerk.
74. Articles 62 to 73 also apply to any member of any committee of the Directors, including a Councillor, who is not a Director.

CLERK TO THE BOARD OF DIRECTORS

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

CHAIRMAN AND VICE-CHAIRMAN OF THE BOARD OF DIRECTORS

76. The Directors shall each school year, at their first meeting in that year, elect a chairman and a vice-chairman from among their number. A Director who is employed by the Trust shall not be eligible for election as chairman or vice-chairman.
77. Subject to article 78, the chairman or vice-chairman shall hold office as such until his successor has been elected in accordance with article 79.

78. The chairman or vice-chairman may at any time resign his office by giving notice in writing to the clerk. The chairman or vice-chairman shall cease to hold office if—
- (a) he ceases to be a Director;
 - (b) he is employed by the 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.
79. Where by reason of any of the matters referred to in article 78, a vacancy arises in the office of chairman or vice-chairman, the Directors shall at their next meeting elect one of their number to fill that vacancy.
80. Where the chairman is absent from any meeting or there is at the time a vacancy in the office of the chairman, the vice-chairman shall act as the chairman for the purposes of the meeting.
81. Where in the circumstances referred to in article 80 the vice-chairman is also absent from the meeting or there is at the time a vacancy in the office of vice-chairman, the Directors shall elect one of their number to act as a chairman for the purposes of that meeting, provided that the Director elected shall not be a person who is employed to work at any of the Academies.
82. The clerk shall act as chairman during that part of any meeting at which the chairman is elected, but for these purposes article 24 shall not apply.
83. Any election of the chairman or vice-chairman which is contested shall be held by secret ballot.
84. The Directors may remove the chairman or vice-chairman from office in accordance with this article:
- (a) a resolution to remove the chairman or vice-chairman from office which is passed at a meeting of the Board of Directors shall not have effect unless—
 - it is confirmed by a resolution passed at a second meeting of the Board of Directors held not less than fourteen days after the first meeting; and
 - the matter of the chairman's or vice-chairman's removal from office is specified as an item of business on the agenda for each of those meetings.
 - (b) Before the Board of Directors resolves at the relevant meeting on whether to confirm the resolution to remove the chairman or vice-chairman from office, the Directors or Directors proposing his removal shall at that meeting state their reasons for doing so and the chairman or vice-chairman shall be given an opportunity to make a statement in response.

POWERS OF DIRECTORS

85. Subject to provisions of the Act, the memorandum and the articles and to any directions given by special resolution, the business of the Trust shall be managed by the Directors who may exercise all the powers of the Trust. No alteration of the memorandum or the articles

and no such direction shall invalidate any prior act of the Directors which would have been valid if that alteration had not been made or that direction had not been given. The powers given by this article shall not be limited by any special power given to the Directors by the articles and a meeting of Directors at which a quorum is present may exercise all the powers exercisable by the Directors.

86. In addition to all powers hereby expressly conferred upon them and without detracting from the generality of their powers under the articles the Directors shall have the following powers, namely:
- (a) to expend the funds of the Trust in such manner as they shall consider most beneficial for the achievement of the Objects and to invest in the name of the Trust such part of the funds as they may see fit and to direct the sale or transposition of any such investments and to expend the proceeds of any such sale in furtherance of the Objects; and
 - (b) to enter into contracts on behalf of the Trust.
87. The Directors shall exercise their powers and functions with a view to fulfilling a largely strategic role in the running of the schools and may consider any advice given by the Executive Principal and any other executive officer.

DIRECTORS' EXPENSES

88. Except to the extent permitted by clause 5 of the memorandum and subject to articles 114 to 116, no Director shall take or hold any interest in property belonging to the Trust or receive remuneration or be interested otherwise than as a Director in any contract to which the Trust is a party.

THE MINUTES

89. The minutes of the proceedings of a meeting of the Board of Directors shall be drawn up and entered into a book kept for the purpose by the person acting as clerk for the purposes of the meeting; and shall be signed (subject to the approval of the Board of Directors) 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 Directors; and
 - (b) all proceedings at meetings of the Trust and of the Directors and of committees of Trustees including the names of the Directors present at each such meeting.

COMMITTEES

90. Subject to these articles, the Directors:
- (a) may appoint separate committees to be known as Local Councils for each Academy; and
 - (b) may establish any other committee.
91. The constitution, membership and proceedings of any committee of the Directors shall be determined by the Directors. The establishment, terms of reference, constitution and

membership of any committee of the Directors shall be reviewed at least once in every twelve months. The membership of any committee of the Directors may include persons who are not Directors, provided that (with the exception of the Local Councils) a majority of members of any such committee shall be Directors. Except in the case of a Local Council, no vote on any matter shall be taken at a meeting of a committee of the Directors unless the majority of members of the committee present are Directors.

DELEGATION

92. Subject to these articles the Directors may delegate to any committee (including any Local Council), any Director, the Executive 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 Directors may impose, and either collaterally with or to the exclusion of their own powers and may be revoked or altered.
93. Where any function of the Directors has been delegated under article 92 or is otherwise exercised by any committee (including any Local Council), any Director, the Executive Principal, any other holder of an executive office or any member, the person or committee to whom the function has been delegated, or who has otherwise exercised the function, shall report to the Directors in respect of any action taken or decision made with respect to the exercise of that function at the meeting of the Directors immediately following the taking of the action or the making of the decision.

EXECUTIVE PRINCIPAL AND PRINCIPALS

94. The Directors shall appoint the Executive Principal and the Principals of the Academies. The Directors may delegate such powers and functions as they consider are required by the Executive Principal and the Principals for the internal organisation, management and control of the Academies (including the implementation of all policies approved by the Directors and for the direction of the teaching and curriculum at all of the Academies).

MEETINGS OF THE BOARD OF DIRECTORS

95. Subject to these articles, the Directors may regulate their proceedings as they think fit.
96. The Board of Directors shall hold at least three meetings in every school year. Meetings of the Board of Directors shall be convened by the clerk. In exercising his functions under this article the clerk shall comply with any direction—
- (a) given by the Board of Directors; or
 - (b) given by the chairman of the Board of Directors or, in his absence or where there is a vacancy in the office of chairman, the vice-chairman of the Board of Directors, so far as such direction is not inconsistent with any direction given as mentioned in (a).
97. Any three Directors may, by notice in writing given to the clerk, requisition a meeting of the Board of Directors; and it shall be the duty of the clerk to convene such a meeting as soon as is reasonably practicable.
98. Each Director shall be given at least fourteen clear days before the date of a meeting -
- (a) notice in writing thereof, signed by the clerk, and sent to each Director at the address

provided by each Director from time to time; and

- (b) a copy of the agenda for the meeting;

provided that where the chairman or, in his absence or where there is a vacancy in the office of chairman, the vice-chairman, so determines on behalf of the Directors that in the circumstances a shorter period is reasonable, it shall be sufficient if the written notice of a meeting, and the copy of the agenda therefore are given within such shorter period as he directs.

- 99. 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 therefore.
- 100. A resolution to rescind or vary a resolution carried at a previous meeting of the Board of Directors shall not be proposed at a meeting of the Board unless the consideration of the rescission or variation of the previous resolution is a specific item of business on the agenda for that meeting.
- 101. A meeting of the Board of Directors shall be terminated forthwith if—
 - (a) the Board so resolves; or
 - (b) the number of Directors present ceases to constitute a quorum for a meeting of the Board in accordance with article 104, subject to article 105.
- 102. Where in accordance with article 101 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 clerk 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.
- 103. Where the Board of Directors resolves in accordance with article 101 to adjourn a meeting before all the items of business on the agenda have been disposed of, the Board 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 clerk to convene a meeting accordingly.
- 104. Subject to article 105 the quorum for a meeting of the Board of Directors, and any vote on any matter thereat, shall be any three Directors, or, where greater, any one third (rounded up to a whole number) of the total number of Directors holding office at the date of the meeting. If the Secretary of State has appointed Additional or Further Directors then a majority of the quorum must be made up of Additional or Further Directors.
- 105. The Directors may act notwithstanding any vacancies in their number, but, if the numbers of Directors is less than the number fixed as the quorum, the continuing Directors may act only for the purpose of filling vacancies or of calling a general meeting.
- 106. The quorum for the purposes of—
 - (a) appointing a Parent Governor pursuant to Article 45;
 - (b) any vote on the removal of a member of the Board of Directors in accordance with article 60;
 - (c) any vote on the removal of the chairman of the Board of Directors in accordance with articles 60 and 78

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

107. Subject to these articles, every question to be decided at a meeting of the Board of Directors shall be determined by a majority of the votes of the members present and voting on the question.
108. Subject to articles 104 to 106, where there is an equal division of votes the chairman or, as the case may be, the person who is acting as chairman for the purposes of the meeting, shall have a second or casting vote.
109. The proceedings of the Board of Directors shall not be invalidated by—
 - (a) any vacancy among their number, or
 - (b) any defect in the election, appointment or nomination of any Director.
110. A resolution in writing, signed by all the Directors entitled to receive notice of a meeting of Directors or of a committee of Directors, shall be valid and effective as if it had been passed at a meeting of Directors (or as the case may be) a committee of Directors duly convened and held. Such a resolution may consist of several documents in the same form, each signed by one or more of the Directors.
111. Subject to this article, the Board of Directors shall ensure that a copy of—
 - (a) the agenda for every meeting of the Board;
 - (b) the draft minutes of every such meeting, if they have been approved by the person acting as chairman of that meeting;
 - (c) the signed minutes of every such meeting; and
 - (d) any report, document or other paper considered at any such meeting,are, as soon as is reasonably practicable, made available at every Academy to persons wishing to inspect them.
112. There may be excluded from any item required to be made available in pursuance of article 111, any material relating to—
 - (a) a named teacher or other person employed, or proposed to be employed, at any Academy;
 - (b) a named student at, or candidate for admission to, any Academy; and
 - (c) any matter which, by reason of its nature, the Board of Directors are satisfied should remain confidential.
113. Any Director shall be able to participate in meetings of the Board of Directors by telephone provided that he has given notice of his intention to do so detailing the telephone number on which he can be reached at the time of the meeting at least 48 hours before the meeting.
114. Any Director who has any duty or pecuniary interest (direct or indirect) which conflicts or may conflict with his duties as a Director shall disclose that fact to the Board of Directors as soon as he becomes aware of it, and shall absent himself from any discussion of that interest by the Board.

115. Without limitation to the generality of article 114, a Director shall be treated as having a pecuniary interest in a contract or proposed contract or other arrangement with the Academy if:
- (a) he is a director or a member holding more than 1/100th of the issued share capital of a company with which the contract or arrangement was made or is proposed to be made or which has a direct pecuniary interest in the matter under consideration; or
 - (b) he is a partner in a partnership or member of an unincorporated association or any other body with whom the contract or arrangement was made or is proposed to be made or which has a direct pecuniary interest in the matter under consideration or
 - (c) he, or a partner of his, is in the employment of a person with whom the contract was made or is proposed to be made or who has a direct pecuniary interest in the matter under consideration.
116. For the purposes of articles 114 and 115, an interest of a person who is, within the meaning of section 252 of the Act, connected with a Director shall be treated as an interest of the Director. This shall include:
- (a) that Director's spouse, child or stepchild; or
 - (b) a body corporate with which the Director is associated (i.e. if that Director and persons connected with him together are interested in shares comprising at least one fifth of the share capital of the company or are entitled to exercise more than one fifth of the voting power at any general meeting of that company); or
 - (c) a person acting in his capacity as trustee of any trust the beneficiaries of which include:
 - the Director, his spouse or any children or stepchildren of his; or
 - a body corporate with which he is associated; or
 - (d) a person acting in his capacity as a partner of that Director or of any person who, by virtue of paragraphs (a), (b) or (c) above, is connected with that Director.

PATRONS AND HONORARY OFFICERS

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

THE SEAL

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

ACCOUNTS

119. Accounts shall be prepared in accordance to the provisions of Part 15 of the Act.

ANNUAL REPORT

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

ANNUAL RETURN

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

NOTICES

122. Any notice to be given to or by any person pursuant to the articles (other than a notice calling a meeting of the Directors) 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 any number of address used for the purpose of such communications.

123. A notice may be given by the Trust to a member either personally or by sending it by post in a prepaid envelope addressed to the member at his registered address or by leaving it at that address. A member whose registered address is not within the United Kingdom and who gives to the Trust an address, within the United Kingdom at which notices may be given to him shall be entitled to have notices given to him at that address, but otherwise no such member shall be entitled to receive any notice from the Trust.

124. A member present in person at any meeting shall be deemed to have received notice of the meeting and, where necessary, of the purposes for which it was called.

125. Proof that an envelope containing a notice was properly addressed, prepaid and posted shall be conclusive evidence that the notice was given. A notice shall be deemed to be given at the expiration of 48 hours after the envelope containing it was posted.

INDEMNITY

126. Subject to the provisions of the Act every Director or other officer or Director or auditor of the Trust shall be indemnified out of the assets of the 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 Trust.

RULES

127. The Directors may from time to time make such rules or bye laws as they may deem necessary or expedient or convenient for the proper conduct and management of the Trust and for purposes of prescribing classes of and conditions of membership, and in particular but without prejudice to the generality of the foregoing, they may by such rules or bye laws regulate:
- (a) the admission and classification of members of the 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 Trust in relation to one another, and to the Trust's servants;
 - (c) the setting aside of the whole or any part or parts of the Trust's premises at any particular time or times or for any particular purpose or purposes;
 - (d) the procedure at general meetings and meetings of the Directors and committees of the Directors and meetings of the Local Councils in so far as such procedure is not regulated by the articles;
 - (e) generally, all such matters as are commonly the subject matter of company rules.
128. The Trust in general meeting shall have power to alter, add or to repeal the rules or bye laws and the Directors shall adopt such means as they think sufficient to bring to the notice of members of the Trust all such rules or bye laws, which shall be binding on all members of the Trust. Provided that no rule or bye law shall be inconsistent with, or shall affect or repeal anything contained in, the memorandum or the articles.

Names and Addresses of Subscribers

Signature of Subscriber:

Name in full:

Address:

Occupation:

Date:

Witness (signature):

Name in full:

Address:

Signature of Subscriber

Name in full:

Address:

Occupation:

Date:

Witness (signature):

Name in full:

Address:

Signature of Subscriber

Name in full:

Address:

Occupation:

Date:

Witness (signature):

Name in full:

Address:

Annex B

Arrangements for pupils with SEN and disabilities at each Academy

Annex B

Arrangements for pupils with SEN and disabilities at the Academies

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

1. The Company shall have regard to the Special Educational Needs Code of Practice (2001) and any guidance issued by the Secretary of State relating to sections 316 and 316A of the Education Act 1996.

Duties in relation to pupils with SEN

2. The Company shall in respect of each Academy designate the Principal, a Director or a member of the Academy's Local Governing Body, as the responsible person for the purposes of the following duties in relation to pupils with SEN.

3. The Board of Directors shall in respect of each Academy:

- use their best endeavours, in exercising their functions in relation to the Academy, to secure that, if any registered pupil has special educational needs, the special educational provision which the pupil's learning difficulty calls for is made;
- secure that, where the responsible person has been informed by a local authority that a registered pupil has special educational needs, those needs are made known to all who are likely to teach the pupil;
- secure that the teachers in the Academy are aware of the importance of identifying, and providing for, those registered pupils who have special educational needs; and
- consult the LA and the governing bodies of other schools in the area, to the extent that this is necessary for co-ordinating provision for pupils with SEN.

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

- (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.

5. The prospectus for each Academy shall include details of the Company's policy for pupils with SEN and in particular shall include the information specified in Schedule 1 to the Education (Special Educational Needs) (Information) Regulations 1999 as amended or re-enacted from time to time. It shall also include details of the arrangements for the admission of disabled pupils; the steps taken to prevent disabled pupils from being treated less favourably than other pupils; and the facilities provided to assist access to the Academy by disabled pupils (disabled pupils meaning pupils who are disabled for the purposes of the Disability Discrimination Act 1995).

Admissions

6. The Company shall ensure that for each Academy pupils with SEN are admitted on an equal basis with others in accordance with the Academy's admissions policy.

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

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

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

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

Annex C

Serious incidents of misbehaviour leading to fixed period or permanent exclusion.

ANNEXC

Serious incidents of misbehaviour leading to fixed period or permanent exclusion

General Duties

1. Subject to the exceptions in paragraph 4, the Company shall act and shall ensure that the Principal of each Academy shall act in accordance with the law on exclusions as if each Academy were a maintained school. For this purpose, reference in the law on exclusions to the Head Teacher and Governing Body shall respectively be deemed to be the Principal and Local Governing Body of the relevant Academy.
2. Without limiting the generality of paragraph 1, the Company shall ensure that the relevant Local Authority is informed of an exclusion decision in the same circumstances as required by a maintained school under the law on exclusions.
3. Subject to the exceptions in paragraph 4, the Company shall ensure that in carrying out their functions each Principal, each Local Governing Body and the Independent Appeal Panel (established in accordance with paragraph 5) have regard to the Secretary of State's guidance on exclusions¹ as if each Academy were a maintained school.
4. The exceptions to the duties imposed under paragraphs 1 and 3 are:
 - the Company, and not the Local Authority, is responsible for making arrangements for Independent Appeal Panels to hear appeals against permanent exclusions where the governors do not direct reinstatement;
 - the Local Governing Body is not expected to seek the advice of a Local Authority officer when considering an exclusion, although a Local Authority officer may attend any meeting to consider an exclusion at the request of a parent; and
 - subject to the Company's obligations under clause 52 of this Agreement relating to an agreement with the LA on the flow of funds following an exclusion, the arrangements for money to follow pupils who have been permanently excluded from school does not apply.

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

Independent Appeal Panels

5. The Company shall, in relation to each Academy, carry out the functions assigned to the Local Authority to establish and manage the appeal procedure for exclusions under the law on exclusions, as if the Academy were a maintained school.

6. Independent Appeals Panels must be impartial and constituted in accordance with the detailed provisions of paragraphs 95-97 of the Secretary of State's guidance on exclusions. The Company shall arrange suitable training for appeal panel members and clerks.

7. The Independent Appeal Panel's decision is final and binding on the Company. A parent may seek a judicial review of an Independent Appeal Panel's decision. A parent may not, however, appeal to the Commissioner for Local Administration (the Local Government Ombudsman) about maladministration because the Commissioner's remit is limited to considering the conduct of appeal panels constituted by local authorities.