

MALTBY  
ACADEMY

**FUNDING AGREEMENT**

**December 2009**

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## INTRODUCTION

- 1) substituted by the Education Act 2002, between the Secretary of State for Children, Schools and Families ("**the Secretary of State**") and Maltby Academy (the "**Academy Trust**").
- 2) The Academy Trust is a Company incorporated in England and Wales, limited by guarantee with registered company number 7033915). The Academy Trust shall be registered as a charity by no later than 3 months after the date of this Agreement.
- 3) The following expressions used in this Agreement have the respective meanings assigned to them by the numbered clauses of this Agreement referred to immediately after the reference to the expressions -
  - a) "**Academies Financial Handbook**" - clause 94;
  - b) "**Academy Financial Year**" - clause 88;
  - c) "**Accounting Officer**" - clause 93;
  - d) "**annual letter of funding**" - clause 87;
  - e) "**Chief Inspector**" means Her Majesty's Chief Inspector of Education, Children's Services and Skills or his successor;
  - f) "GAG"-clause 61;
  - g) "**Capital Expenditure**" - clause 62;
  - h) "**Capital Grant**" - clause 62;
  - i) "**EAG**"-clause 61;
  - j) "**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

k) **"recurrent expenditure"** - clause 61;

l) **"School Development Plan"** - clause 19;

m) **"Start-up Period"** - clause 77;

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

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

**"Principal"** means the head teacher of the Academy;

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

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

**"parents"** means parents or guardians;

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

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

**"SEN"** means Special Educational Needs;

7) The Interpretation Act 1978 shall apply for the interpretation of this 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.

9) Questions arising on the interpretation of the arrangements in this Agreement shall be resolved by the Secretary of State after consultation with the Academy Trust

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."

#### **LEGAL AGREEMENT**

11) In consideration of the Academy Trust undertaking to establish and maintain, and to carry on or provide for the carrying on of, an independent school to be known as the Maltby Academy ("**the Academy**") and having such characteristics as are referred to in clause 12, the Secretary of State agrees to make payments to the Academy Trust in accordance with the conditions and requirements set out in this Agreement. For the avoidance of doubt, any obligations imposed upon or powers given to the Academy by this Agreement are also imposed upon the Academy Trust.

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

12) The characteristics of the 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 to specify other conditions and requirements. These conditions in respect of the 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 Academy Trust;
- e) there will be an emphasis on the needs of the individual pupils including pupils with special education needs (SEN), both those with and without statements of SEN;
- f) there will be no charge in respect of admission to the school and the school will only charge pupils where the law allows maintained schools to charge.

### **Governance**

14) The Academy will be governed by a governing body ("**the Governing Body**") who are the Directors of the company constituted under the Memorandum and Articles of the Academy Trust.

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

### **Conduct**

16) The Academy shall be conducted in accordance with:

- a) the Memorandum and Articles, which shall not be amended by the Academy Trust 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.

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

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

**School Development Plan and target setting**

19) The Academy Trust shall provide to the Secretary of State a School Development Plan



for the 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 Academy Trust's proposals for the Academy to work with other schools and with the wider community.

20) The Academy Trust shall in relation to the 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 Academy Trust 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 Academy Trust to set targets for the Academy in areas that are additional to those that are so prescribed.

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

### **Pupils**

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

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

- c) pupil exclusions are set out in Annex D to this Agreement.

### **Teachers and other staff**

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

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

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 Academy Trust by virtue of the Transfer of Undertakings (Protection of Employment) Regulations 2006;
- b) immediately prior to the transfer, was employed to do specified work; and
- c) immediately prior to the transfer, was not:
  - i) a qualified teacher within the meaning of regulations made under section 132 of the Education Act 2002 and registered with full registration with the 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 Academy Trust shall use its best 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 Academy Trust shall ensure that all teachers employed at the Academy have access to the Teachers Pension Scheme and, in so doing, will comply with the statutory provisions underlying the scheme.

26) The Academy Trust shall ensure that all employees at the 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 Governing Body or any committee or sub-committee thereof (including any interview or appointments panel), at which the appointment of a 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 135 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 before a decision is made.

28) It shall be the responsibility of the Academy Trust 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 Academy Trust shall approve policies for:

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

#### **14-19 entitlement**

29) The Academy Trust shall make arrangements to ensure that, so far as reasonably practicable, a pupil at the 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 Academy Trust 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 Academy or otherwise) to any pupil at the Academy who is above compulsory school age.

31) Nothing in clauses 29 and 30-

- (a) requires the Academy Trust to incur disproportionate expenditure in making these arrangements;
- (b) confers any greater entitlements on a pupil than are conferred by section 85(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 Academy Trust 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 the Academy to pupils up to the age of 16 shall be broad and balanced with an emphasis on business and enterprise.

35) The Academy Trust 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 the Academy in Years 1-11. In any event, the Academy Trust must ensure that such programmes of study have been covered in full at the Academy by the end of the final year of the Key Stage relevant for each Year group.

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

39) Where the 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 Academy Trust shall ensure that provision is made for Religious Education to be given to all pupils at the Academy in accordance with the tenets of the specified religion or religious denomination of the Academy;
- b) subject to clause 41, the Academy Trust shall comply with the requirements of section 70(1) of, and Schedule 20 to, the School Standards and Framework Act 1998 as if the Academy were a foundation school with a religious character or a voluntary school, and as if references to 'the required collective worship' were references to collective worship in accordance with the tenets and practices of the specified religion or religious denomination of the Academy;
- c) the Academy Trust shall ensure that the quality of Religious Education given to pupils at the Academy and the contents of the Academy's collective worship given in accordance with the tenets and practice of the specific religion or religious denomination are inspected. Such inspection shall be conducted by a person chosen by the Academy Trust and the Academy shall secure that such inspection shall comply with the requirements set out in any statutory provision and regulations as if the Academy were a foundation 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 the 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 Academy Trust shall ensure that provision shall be made for religious education to be given to all pupils at the Academy in accordance with the requirements for agreed syllabuses in section 375(3) of the Education Act 1996 and paragraph 2(5) of Schedule 19 to the School Standards and Framework Act 1998, 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 Academy Trust shall ensure that the Academy complies with the requirements of section 70(1) of, and Schedule 20 to, the School Standards

and Framework Act 1998 as if it were a community, foundation or voluntary school which does not have a religious character, except that the provisions of paragraph 4 of that Schedule do not apply. The Academy may apply to the Secretary of State for consent to be relieved of the requirement imposed by paragraph 3(2) of that Schedule, the Secretary of State's consent to such an application not to be unreasonably withheld or delayed.

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

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

#### **Careers Education: information and advice**

42A) The Academy Trust shall ensure that in the provision of Careers Education to its pupils, the Academy provides impartial advice in accordance with the requirements of sections 43, 45 and 45A of the Education Act 1997 as amended by section 81 of the Education and Skills Act 2008.

#### **Assessment**

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

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

45) The Academy Trust 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 Academy Trust will submit the Academy to monitoring and moderation of its assessment arrangements. The Academy Trust shall choose for the 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 Academy Trust shall notify the Secretary of State about the basis upon which it has chosen to have the Academy monitored, or any change to that choice. The QCA will conduct an annual audit of the monitoring arrangements.

48) The Academy Trust shall ensure that the 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 and/ or the LA as required and as set out in the Assessment and Reporting Arrangements', in a format approved by the Secretary of State.

50) The Academy Trust may not offer courses at the 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 the 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 the Academy.

### **Exclusions Agreement**

52) From 1 April 2009, the Academy Trust shall, if invited to do so by an LA, enter into an agreement in respect of the Academy with that LA, which has the effect that where:

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

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

### **School Meals**

53) The Academy Trust shall, if requested to do so by or on behalf of any pupils at the Academy, provide school lunches for those pupils unless it would be unreasonable for it to do so. Subject to the provisions of clauses 54 and 55 charges may be levied for lunches, but the Academy Trust 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 Academy Trust shall ensure that a school lunch is provided for such a pupil free of charge to be funded out of the Academy Trust's GAG.

55) All food and drink provided by or on behalf of the 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 Academy Trust shall ensure that school meals (breakfasts, lunches, or other meals) and food and drink available on the 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.

### **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 the Academy with the following modifications:

- a) references to any maintained school shall be treated as references to the Academy;
- b) references to registered pupils shall be treated as references to registered pupils at the Academy;



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

#### **Provision of Information to parents and others**

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

58) The prospectus for the 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 Annex C to this Agreement);
- e) the pupil absence rates;
- f) the destination of school leavers;
- g) any further information as set out in Schedule 3 of the Education (School Information) (England) Regulations 2008 as applies to maintained schools; and
- h) such other information as the Academy Trust 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 Academy, provided always that, in the case of the first Academy Financial Year of the 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 The Secretary of State may provide to the LA the information which the Academy Trust 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 Academy Trust shall ensure that all pupils at the 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 the Academy. Except with the Secretary of State's prior agreement, the Academy Trust shall not budget for its expenditure in any Academy Financial Year in excess of expected income. The Academy Trust shall not enter into commitments which are likely to have substantial implications for future levels of grant, or for the period for which grant may be required. No decision by the Academy Trust shall commit the Secretary of State to paying any particular amount of grant.
- 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**").

### **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 Academy Trust in respect of Capital Expenditure.

63) Where the Academy is to open in new premises, or where existing premises are to be substantially refurbished or remodelled to enable the Academy to open in such premises, the Secretary of State will be responsible for meeting the incurred Capital Expenditure

for that Academy. To that end, he will provide funding to the I\_A in accordance with either arrangements made under the Building Schools for the Future programme / arrangements made under the BSF National Construction Contractors' Framework for Academies and Educational Facilities as the Secretary of State considers appropriate.

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

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

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

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

66) Capital Grant will be paid by the Secretary of State to the Academy Trust on the basis of claims for grant submitted to the Secretary of State in the notified format with supporting invoices and certificates as required by the Secretary of State. 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 Academy Trust 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 the Academy prior to its 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 the 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)The Academy Trust shall prepare and submit to the Secretary of State a budget showing expected recurrent expenditure to be incurred by the Academy Trust 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 ("**Approved Implementation Budget**").

68B)Both parties recognise that as the project develops it may be necessary to revise individual costs in the Approved Implementation Budget and to move costs between budget headings in order to ensure that the project remains within its approved budget. Where the Academy Trust 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 Academy Trust 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, 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 Academy Trust by the date on which the 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 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 Academy Trust after the 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 Academy Trust.

## **General Annual Grant**

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

- a) teachers' salaries and related costs (including full and part time teaching staff and seconded teachers);
- b) non-teaching staff salaries and related costs (including pension contributions, educational support staff, administrative and clerical staff and manual and premises related staff);
- c) employees' expenses;
- d) the purchase, maintenance, repair and replacement:
  - (i) of teaching and learning materials and other educational equipment, including books, stationery and ICT equipment and software, sports equipment and laboratory equipment and materials;
  - (ii) of other supplies and services;
- e) examination fees;
- f) repairs, servicing and maintenance of buildings (including redecoration, heating, plumbing, lighting etc); maintenance of grounds (including boundary fences and walls); cleaning materials and contract cleaning; water and sewage; fuel and light (including fuel oil, solid and other fuel, electricity and gas); rents; rates; purchase, maintenance, repairs and replacement of furniture and fittings;
- g) insurance;
- 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.

70) Subject to clauses to 78-79, GAG for each Academy Financial Year for the 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 the 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 the Academy's characteristics would receive in respect of their participation in the specialist schools programme;

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

a) funding for matters for which it is necessary for the Academy to incur extra costs, for as long as those costs are deemed necessary by the Secretary of State; and

b) payments in respect of further, specific grants made available to maintained schools, where the Academy meets the requisite conditions and criteria necessary for a maintained school to receive these grants.

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

73) Once the conditions specified in clause 74 have been satisfied with respect to the 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 the 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, which is 1200.

75) For any Academy Financial Year in which GAG for the 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 the 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 the 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 Academy Trust demonstrates to the satisfaction of the Secretary of State that there has been a significant impact on costs, such as an extra class. For any other element of GAG the Secretary of State may make adjustments to recognise a variation in pupil numbers from that used to calculate the element of grant in question; the basis of these will be set out in the annual letter of funding.

77) The Secretary of State recognises that:



- a) Where the Academy opens with an intake representing only a proportion of the final planned size of the Academy, payments based simply upon the number of pupils present are unlikely to be sufficient to meet the Academy's needs in the Academy Financial Years before all age groups are present at their planned size (the "**Start-up Period**") because of a lack of economies of scale. The Secretary of State 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 Academy Trust will make a bid to the Secretary of State for this addition to GAG based upon need and providing appropriate supporting evidence;
- b) Where the Academy opens 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 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 this Agreement, the intake of new pupils during the notice period is likely to decline and that in such circumstances payments based simply upon the number of pupils attending the Academy are unlikely to be sufficient to meet the Academy's needs during the notice period. The Secretary of State undertakes to pay a reasonable and appropriately larger GAG with respect to the Academy in the notice period than would be justified solely on the basis of the methods set out in clauses 70-76, in order to enable the Academy to operate effectively.

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

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

### **Earmarked Annual Grant**

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

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

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

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

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 Academy Trust.

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

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

87) The amounts of GAG for an Academy Financial Year will be determined annually by the Secretary of State. The amount of GAG for the Academy will be notified to the Academy Trust 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 Academy Trust will receive in respect of grants for which information to enable timely calculation is not available or is incomplete, such grants **will** be notified as soon as practicable later in the year. Amounts of EAG will be notified to the Academy Trust wherever possible in the annual letter of funding or as soon as practicable thereafter.

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) The Secretary of State shall meet a proportion of the Academy Trust's costs arising from 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 the costs of the employees' prior eligible service, being service prior to the opening of the Academy, and the Academy Trust will meet the costs of service after the opening of the Academy. The Academy Trust 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 incurred by the Academy Trust in connection with the transfer of employees from any predecessor school under the Transfer of Undertakings (Protection of Employment) Regulations 2006. Payment of grant in respect of such costs is to be agreed between the parties on a case by case basis and the Academy Trust shall not budget on the basis that it will receive any grant in respect of such costs unless it is specifically notified that such grant will be paid.
- 91) The Academy Trust may also receive funding from an LA in respect of the provision detailed in statements of SEN for pupils attending an Academy in accordance with the provisions of Section 483A of the Education Act 1996 and regulations made under that section. The Academy Trust shall ensure that all provision detailed in statements of SEN is provided for such pupils.
- 92) The Academy Trust may also receive funding for the Academy from the 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. The Academy Trust must ensure that the Academy uses any grants received under the Standards Fund in accordance with any conditions specified in relation to that grant. Grants paid to the Academy Trust from the Standards Fund are not paid under this Agreement.

### **Financial and Accounting Requirements**

- 93) The Academy Trust shall appoint an Accounting Officer and shall notify the Secretary of State of that appointment.
- 94) In relation to the use of grant paid to the Academy Trust by the Secretary of State, the Academy Trust shall abide by the requirements of and have regard to the guidance in the Academies Financial Handbook published by the DCSF and amended from time to time, which sets out in detail provisions for the financial management of the Academy including guidance on financial systems and controls and accounting and reporting requirements, in so far as these are not inconsistent with any accounting and reporting requirements and guidance that it may be subject to by virtue of 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 Governing Body.
- 96) Any payment of grant by the Secretary of State in respect of the Academy is subject to

his being satisfied as to the fulfilment by the Academy Trust of the following conditions:

- a) in its conduct and operation it shall apply financial and other controls which conform to the requirements both of propriety and of good financial management;
- b) arrangements have been made to maintain proper accounting records and that statements of income and expenditure and balance sheets may be produced in such form and frequency as the Secretary of State may from time to time reasonably direct;
- c) in addition to the obligation to fulfil the statutory requirements referred to in sub-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 Academy Trust's affairs and that the grants were used for the purposes intended;
- d) the Academy Trust 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 Academy Trust 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 the Academy is situated;
- g) the Academy Trust 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 Academy Trust 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 Academy Trust 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 Academy Trust to standards determined by the Secretary of State and to make recommendations for improving the financial management of the Academy Trust.
- 98) The books of accounts and all relevant records, files and reports of the Academy Trust including those relating to financial controls, shall be open at all reasonable times to officials 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 Academy Trust shall secure that those officials and contractors are given reasonable assistance with their enquiries. For the purposes of this clause 'relevant' means in any way relevant to the provision and use of grants provided by the Secretary of State under this Agreement.
- 99) The Academy Trust shall submit indicative budgets relating to the 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 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 Academy Trust may hold unspent GAG 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 Academy Trust for any of the purposes for which GAG is paid;
  - 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 Academy, and on capital expenditure relating to the 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 Academy Trust may also accumulate funds from private sources or public sources other than grants from the Secretary of State for application to the benefit of the 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 Academy Trust's balance sheet.
- 104) The Academy Trust shall not, in relation to assets or property funded (whether in whole or in part) by the Secretary of State, without the prior written consent of the Secretary of State which shall not be unreasonably withheld or delayed:
- a) except such as are given in normal contractual relations, 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 Academy Trust shall provide 30 days notice to the Secretary of State, whether or not the circumstances require the Secretary of State's approval, of its intention to:
- a) give any guarantees, indemnities or letters of comfort;
  - b) write off any debts owed to it or offer to make any ex gratia payments;
  - c) make any sale or purchase of 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 Academy Trust to the Secretary of State at the earliest opportunity.
- 106) It is the responsibility of the Academy Trust to ensure that the Academy balances its budget from Academy Financial Year to Academy Financial Year. For the avoidance of doubt, this does not prevent the Academy Trust from:
- a) carrying a surplus from one Academy Financial Year to the next; or
  - b) carrying forward from a previous Academy Financial Year or Academy Financial Years a sufficient surplus or sufficient cumulative surpluses on grants from the Secretary of State to meet an in-year deficit on such grants in a subsequent financial year; or
  - c) incurring an in-year deficit on funds from sources other than grants from the Secretary of State in any Academy Financial Year, provided it does not affect the Academy Trust's responsibility to ensure that the Academy balances its overall budget from Academy Financial Year to Academy Financial Year.

### **Borrowing Powers**

- 107) The Academy Trust shall not borrow against or so as to put at risk property or assets funded (whether in whole or in part) by the Secretary of State without specific approval of the Secretary of State, such approval may only be granted in limited circumstances. The Academy Trust shall not operate an overdraft except to cover irregularities in cash flow. Such an overdraft, and the maximum amount to be borrowed, shall require approval by the Academy Trust 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 Academy Trust shall provide 30 days notice to the Secretary of State of its intention to borrow, whether or not such borrowing requires the Secretary of State's approval under clause 107 above.

### **Disposal of Assets**

108) Where the Academy Trust acquires assets for a nil consideration or at an under value it shall be treated for the purpose of this Agreement as having incurred expenditure equal to the market value of those assets at the time that they were acquired. This provision shall not apply to assets transferred to the Academy Trust at nil or nominal consideration and which were previously used for the purposes of 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 of proceeds from the disposal, of a capital asset by the Academy Trust shall require the consent of the Secretary of State, such consent not to be unreasonably withheld or delayed, where:

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

Furthermore, reinvestment of a percentage of the proceeds of disposal of a capital asset paid for with a capital grant from the Secretary of State shall require the Secretary of State's consent in the circumstances set out above and reinvestment exceeding £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 Academy Trust. In this event, the Academy Trust shall repay to the Secretary of State the same proportion of the proceeds of the disposal as equates with the proportion of the original cost met by the Secretary of State, unless the Secretary of State agrees to some or all of the proceeds being retained by the Academy Trust for its charitable purposes.

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 Academy Trust from an LA for no or nominal consideration. In this event the Secretary

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

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

112A) The Academy Trust shall provide 30 days notice to the Secretary of State of its intention to dispose of assets for a consideration less than the best price that can reasonably be obtained, whether or not such borrowing requires the Secretary of State's consent under clause 112 above.

## **TERMINATION**

113) Either party may give not less than seven Academy Financial Years' written notice to terminate this Agreement, such notice to expire on 31 August [2016] or any subsequent anniversary of that date.

114) If the Secretary of State is of the opinion that the Academy no longer has the characteristics set out in clause 12 of this Agreement or that the conditions and requirements set out in clauses 13-59B of this Agreement are not being met, or that the Academy Trust is otherwise in material breach of the provisions of this Agreement, the Secretary of State may give notice of his provisional intention to terminate this Agreement.

115) 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 this Agreement or is not meeting the conditions and requirements of clauses 13-59B of this Agreement or the Academy Trust is otherwise in material breach of the provisions of this Agreement;
- b) specify the measures needed to remedy the situation or breach;

- c) specify a reasonable date by which these measures are to be implemented; and
  - d) state the form in which the Academy Trust is to provide its response and a reasonable date by which it must be provided.
- 116) If no response is received by the date specified in accordance with clause 115(d), the Secretary of State may give the Academy Trust 12 months, or such lesser period as he considers appropriate in the circumstances, written notice to terminate this Agreement.
- 117) If a response is received by the date specified in accordance with clause 115(d) the Secretary of State shall consider it, and any representations made by the Academy Trust, and shall, within three months of its receipt, indicate that:
- a) he is content with the response and/or that the measures which he specified are being implemented; or
  - b) he is content, subject to any further measures he reasonably specifies being implemented by a specified date or any evidence he requires that implementation of such measures have been successfully completed; or
  - c) he is not satisfied, that he does not believe that he can be reasonably satisfied, and that he will proceed to terminate this Agreement.
- 118) In the circumstances of clause 117(c) the Secretary of State shall notify the Academy Trust why he believes that he cannot be reasonably satisfied and, if so requested by the Academy Trust within thirty days from such notification, he shall meet a deputation including representatives from Governing Body 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 this Agreement or does not and will not meet the conditions and requirements set out in clauses 13-59B of this Agreement or the Academy Trust is in material breach of the provisions of this Agreement and such breach will not be remedied to his reasonable satisfaction, he shall give the Academy Trust twelve months written notice to terminate this Agreement.
- 119) If the Secretary of State has cause to serve a notice on the Academy Trust under section 165 of the Education Act 2002 and a determination (from which all rights of appeal have been exhausted) has been made that the Academy shall be struck off the Register of Independent Schools, the period of twelve months notice referred to in clause 118 may be shortened to a period deemed appropriate by the Secretary of State.

- 120) A **"Special Measures Termination Event Occurs"** when:
- a) the Chief Inspector gives a notice to the Academy Trust **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 Academy Trust to deliver within 10 Business Days a written statement (a **"Further Action Statement"**) of the action the Academy Trust 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 Academy Trust 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.
- 121) If a Special Measures Termination Event occurs, the Secretary of State may:
- a) by notice in writing to the Academy Trust terminate this Agreement forthwith; or
  - b) appoint such Further Governors to the Academy Trust as he thinks fit in accordance with the Articles and/or may provide up to 12 months' notice in writing to terminate this Agreement.
- 122) In the event that the Secretary of State appoints Further Governors in accordance with clause 121(b), the Academy Trust must, upon the request of the Secretary of State, procure the resignation of the Sponsor Governors (as defined in the Articles) in accordance with the Articles.
- 123) The Secretary of State may at any time by notice in writing terminate this Agreement forthwith on the occurrence of any of the following events:-

- a) the Academy Trust calls a meeting of its creditors (whether formal or informal) or enters into any composition or arrangement (whether formal or informal) with its creditors; or
  - b) the Academy Trust proposes a voluntary arrangement within Section 1 of the Insolvency Act 1986; or
  - c) the Academy Trust is unable to pay its debts within the meaning of Section 123 of the Insolvency Act 1986 provided that, for the purposes of this clause, Section 123 (1)(a) of the Insolvency Act 1986 shall have effect as if the amount of £10,000 was substituted for £750. The Academy Trust shall not be deemed unable to pay its debts for the purposes of this clause if any such demand as is mentioned in the said Section is being contested in good faith by the Academy Trust; or
  - d) the Academy Trust has a receiver and manager (with the exception of Receivers and Managers or Interim Managers appointed by the Charity Commission under the Charities Act 1993 or any subsequent re-enactment of that Act), administrator or administrative receiver appointed over all or any part of its undertakings, assets or income; or
  - e) any distraint, execution or other process is levied or enforced on any of the Academy Trust's property and is not paid out, withdrawn or discharged within fifteen Business Days; or
  - f) the Academy Trust has passed a resolution for its winding up; or
  - g) an order is made for the winding up or administration of the Academy Trust.
- 124) The Academy Trust shall notify the Secretary of State as soon as possible after receiving any petition which may result in an order for the winding up or administration of the Academy Trust and shall provide an explanation to the Secretary of State of the circumstances giving rise to the service of such a petition.

#### **Effect of Termination**

- 125) 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 Academy Trust and shall co-operate in making any associated amendments to the Articles.

- 126) 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.
- 127) Subject to clause 128, if the Secretary of State terminates this Agreement for reasons other than that a Special Measures Termination Event occurs, that the Academy no longer has the characteristics set out in clause 12 of this Agreement, or is no longer meeting the conditions and requirements set out in clauses 13-59B of this Agreement or that the Academy Trust is otherwise in material breach of the provisions of this Agreement, the Secretary of State shall indemnify the Academy Trust.
- 128) The amount of any such indemnity shall be determined by the Secretary of State having regard to any representations made to him by the Academy Trust, and shall be paid at such times and in such manner as the Secretary of State may reasonably think fit.
- 129) The categories of expenditure incurred by the Academy Trust in consequence of the termination of this Agreement in respect of which the Secretary of State shall indemnify the Academy Trust include (but not by way of limitation), staff compensation and redundancy payments, compensation payments in respect of broken contracts, expenses of disposing of assets or adapting them for other purposes, legal and other professional fees, and dissolution expenses.
- 130) Subject to clause 131, on the termination of this Agreement however occurring, the Academy Trust shall in respect of any of its capital assets at the date of termination:
- (a) promptly transfer a proportion of the assets to a person nominated by the Secretary of State, if the Secretary of State considers that all or some of those assets need to be used for 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 130(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.

131) The Secretary of State may waive in whole or in part the repayment due under clause 130(b) if:

a) The Academy Trust obtains his permission to invest the proceeds of sale for its charitable objects; or

b) The Secretary of State directs all or part of the repayment to be paid to the LA.

132) If any land or premises of the Academy were acquired by the Academy Trust 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 Academy Trust 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 Academy Trust and the LA from which the land was transferred before giving or withholding that consent.

## **GENERAL**

### **Information**

133) Without prejudice to any other provision of this Agreement, the Secretary of State acting reasonably may from time to time call for information on, inter alia, the 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 absence;
- 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 Governing Body.

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

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

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

136) The Academy Trust shall ensure that:

- a) the agenda for every meeting of the Governing Body;
- b) the draft minutes of every such meeting, if they have been approved by the person acting as chairman of that meeting;



- c) the signed minutes of every such meeting; and
- d) any report, document or other paper considered at any such meeting,

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

137) 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 136, any material relating to:

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

#### **Notices**

138) Any notice or other communication concerning this Agreement shall be sent, in the case of a notice or communication from the Secretary of State to the Academy Trust at its registered office or such other addressee/address as may be notified in writing from time to time by the Academy Trust and, in the case of a notice or communication from the Academy Trust to the 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.

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


General

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

This Agreement was executed as a Deed on 11<sup>th</sup> January 2009

EXECUTED on behalf of Maltby Academy

by :

  
.....

Director

  
.....

[either

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:

  
.....  
N P BEACH

Duly Authorised



**ANNEX B**

**THE ADMISSION OF PUPILS TO THE PROPOSED MALTBY  
ACADEMY**

**GENERAL**

1. This annex may be amended in writing at any time by agreement between the Secretary of State and the Maltby Academy Trust, hereafter referred to as the Academy Trust.
2. The Academy Trust will act in accordance with, and will ensure that the Independent Appeal Panel is trained to act in accordance with, all relevant provisions of the School Admissions Code and the School Admission Appeals Code published by the Department for Children, Schools and Families ("the Codes") as they apply at any given time to maintained schools and with equalities law and the law on admissions as they apply to maintained schools. For this purpose, reference in the Codes or law to "admission authorities" shall be deemed to be references to the governing body of the Academy Trust.
3. Notwithstanding the generality of paragraph 2 of this Annex B, the Academy Trust will take part in the Admissions Forum set up by the Rotherham MBC LA, hereafter referred to as the LA, and have regard to its advice; and will participate in the co-ordinated admission arrangements operated by the LA and the local in-year fair access protocol.
4. Notwithstanding any provision in this Agreement, the Secretary of State may:
  - (a) direct the Academy Trust to admit a named pupil to the Maltby Academy, hereafter referred to as the Academy, on application from a local authority. Before doing so the Secretary of State will consult the Academy Trust.
  - (b) direct the Academy Trust to admit a named pupil to the Academy if the Academy Trust has failed to act in accordance with this Annex or has otherwise failed to comply with applicable admissions and equalities legislation or the provisions of the Codes.
5. The Academy Trust shall ensure that parents and 'relevant children' will have the right of appeal to an Independent Appeal Panel if they are dissatisfied with an admission decision of the Academy Trust. The Independent Appeal Panel will be independent of the Academy Trust. The arrangements for appeals will comply with the School Admission Appeals Code published by the Department for Children, Schools and Families as it applies to Foundation and Voluntary Aided schools. The determination of the appeal panel is binding on all parties.
6. The Academy Trust shall prepare guidance for parents and relevant children

about how the appeals process will work and provide them with a named contact who can answer any enquiries they may have about the process. The Academy Trust may, if it chooses, enter into an agreement with a LA or any other organisation for it to recruit, train and appoint appeal panel members, and to arrange for the process to be independently administered and clerked.

7 In paragraphs 5 and 6 above, 'relevant children' means:

- a) in the case of appeals for entry to a sixth form, the child; and
- b) in any other case, children who are above compulsory school age, or will be above compulsory school age by the time they start to receive education at the school.

### **Relevant Area**

8 Subject to paragraph 9, "relevant area for consultation" means the "Relevant Area" determined by the local authority for maintained schools in the area (in accordance with the meaning of "Relevant Area" within the School Admissions Code).

9. If the Academy does not consider this meaning to be appropriate, it must apply to the Secretary of State by 1 August for a determination, setting out the reasons for this view.

10. The Secretary of State will consider the Academy's application and will by 30 September either:

- a. determine the area for consultation; or
- b. determine that the meaning within paragraph 8 should apply.

11. The Secretary of State may consult the local authority before making such a determination

12. Within 14 days of the Secretary of State's determination, the Academy will notify the consultees listed in paragraph 14 of the determination.

13. In the event of a paragraph 10a determination, a map of the relevant area (or a list of post-codes) will be attached as an appendix to this annex B.

## **ANNUAL PROCEDURES FOR DETERMINING ADMISSION ARRANGEMENTS**

### **Consultation**

14. The Academy Trust shall consult the following parties on the Academy's proposed admission arrangements for a minimum of eight weeks between 1 November and 1 March in the 'Determination Year'<sup>1</sup>:

<sup>1</sup> A 'determination year' is the Academy Financial Year beginning two years before the Academy Financial Year which the admissions arrangements will be for e.g. consultation to end in March 2009 and determination to be in April 2009 for admissions in September 2010

- a) The LA.
- b) The admission forum for the LA.
- c) Any other admission authorities for primary and secondary schools located within the relevant area for consultation.
- d) Any other governing body for primary and secondary schools (as far as not falling within paragraph c)) located within the relevant area for consultation.
- e) Affected admission authorities in neighbouring local authority areas.
- f) Parents living in the relevant area for consultation whose children have attained the age of two but are not above compulsory school age and who are or will be eligible to apply to be admitted to the Academy;
- g) Community groups which the Academy considers relevant;
- h) Teaching unions if the consultation includes an increase in admission number.

Such consultation shall be in line with the requirements of the Codes and relevant admissions legislation, which at the date of this Agreement is section 89 of the School Standards and Framework Act 1998 as amended, and Regulations under that section.

15. From 2011-12, and for subsequent years, consultation in line with paragraph 14 is not required in any year where the following conditions are met:

- a) the admission arrangements were consulted upon in one or both of the previous two years; and
- b) there have been no changes, or proposed changes, since the last consultation.

16. As soon as any changes are made to arrangements, or proposed, the consultation cycle in paragraph 14 must be followed for the next determination year.

#### **Academy Trust Determination of Admission Arrangements**

17. The Academy Trust will consider comments made by those consulted in accordance with paragraph 14, including any requests to amend the proposed admission number, before determining the admission arrangements for the Academy.

18. The Academy Trust will determine the Academy's admission arrangements annually by 15 April of the Determination Year and notify consultees listed in paragraph 14 what has been determined within 14 days of that decision being made.

#### **Representations about admission arrangements**

19. Where the Academy Trust has determined the Academy's admission

arrangements and notified all consultees listed in paragraph 14, if any of those persons or bodies object to the Academy's admission arrangements, including the proposed admission number, they can make representations to the Secretary of State. Any representations must be made by 30 June in the Determination Year.

### **Secretary of State's Consent for Changes to Admission Arrangements**

20. Where the admission arrangements determined in a Determination Year in accordance with paragraph 18 are different from the admission arrangements currently in existence for the Academy, the Academy Trust shall by 30 June in the Determination Year apply to the Secretary of State for him to consent to such amended admission arrangements.

### **Secretary of State's Power to Accept, Modify or Reject Admission Arrangements**

21. Where the Secretary of State has received any representations made in accordance with paragraph 19, the Secretary of State must consult the Academy Trust on such representations. Following such consultation, by 31 July in the Determination Year the Secretary of State may direct that the Academy Trust amends the proposed admission arrangements for the Academy. The Academy Trust shall comply with any such direction.

22. Where the Secretary of State has received an application made in accordance with paragraph 20 seeking his consent to any amended admission arrangements, the Secretary of State must by 31 July in the Determination Year either approve the amended admission arrangements or direct that the amended admission arrangements are not implemented or must be modified. The Academy Trust must comply with any such direction.

### **Publication of Admission Arrangements**

23. The Academy Trust shall each Determination Year publish the Academy's agreed admission arrangements by:

- a) copies being sent to the persons consulted in paragraph 14;
- b) copies being sent to primary and secondary schools in the LA's area;
- b) copies being sent to the offices of the LA;
- c) copies being made available without charge on request from the Academy;
- d) copies being sent to public libraries in the area of the LA for the purposes of being made available at such libraries for reference by parents and other persons; and
- e) a copy being uploaded to the Academy's website (if it has one).

24. The published admission arrangements will set out:
- a) the name and address of the Academy and contact details;
  - b) a summary of the admission policy, including full oversubscription criteria and any arrangements for post-16 admission;
  - c) a statement of any religious affiliation if relevant;
  - d) numbers of places and applications for those places in the previous year; and
  - e) arrangements for hearing appeals.

**Proposed Changes to Admission Arrangements by the Academy After Arrangements Have Been Published**

25. Subject to paragraph 26, once the Academy's admission arrangements have been determined for a particular year and published, the Academy Trust will not make any change to such arrangements unless there is a major change of circumstances and the following procedures have been followed:

- a) the Academy Trust has consulted those who are required to be consulted under paragraph 14 above on the proposed variation;
- b) following such consultation, the Academy Trust has applied to the Secretary of State to approve the change setting out:
  - i) the proposed change;
  - ii) reasons for wishing to make such a change;
  - iii) any comments or objections to the proposal from those consulted; and
- c) following such application, the Secretary of State has provided his consent to the proposed variation.

26. The Academy Trust shall following the prior written agreement or direction of the Secretary of State vary the Academy's admission arrangements where such changes are necessary to ensure compliance with the relevant provisions of admissions law or the Codes as they apply to maintained schools. Such changes may be made at any time.

27. Any changes to the Academy's admission arrangements brought about through the variation processes in paragraphs 25 or 26 above must be published within the Academy's prospectus and on its website (if it has one) and be communicated within 7 days to those persons who must be consulted under paragraph 14.

28. The Academy Trust must make arrangements for a parent of a child who has attained the age of two but is not above compulsory school age and who has

been, is or will be eligible to apply to be admitted to the Academy to make representations to the Secretary of State that any aspect of the Academy's admission arrangements does not comply with the relevant provisions of admissions law or the Codes as they apply to maintained schools.

29. Where a representation is made in accordance with paragraph 28, the Secretary of State may, after consulting the Academy Trust, direct that the Academy Trust modify its arrangements for the admission of pupils to the Academy so that they comply with the relevant provisions of admissions law and the Codes as they apply to maintained schools. The Academy Trust must comply with any such direction.

30. Records of applications and admissions to the Academy shall be kept by the Academy Trust for a minimum period of ten years and shall be open for inspection by the Secretary of State.

### **PROCEDURE FOR ADMITTING PUPILS TO THE ACADEMY**

#### **Admission Number(s)**

31. The Academy Trust has the following agreed admission number for the Academy for the year 2010/2011 and, subject to any changes approved or required by the Secretary of State, for subsequent years:

a) 200 for pupils in Year 7.

b) The Academy has capacity for 200 pupils in the sixth form. It will provide places for at least 125 internal and external pupils in year 12. Of these places, 10 will be offered to external applicants (the 'admission number'). The Academy will accordingly provide for the admission of 10 pupils to the sixth form if sufficient requests for entry are received.

32. In any specific year, the Academy Trust may set a higher admission number than the Academy's agreed admission number for an applicable year group. Before setting an admission number higher than its agreed admission number, the Academy Trust will consult those listed at paragraph 14. Pupils will not be admitted in any year group above the published admission number for that year group unless exceptional circumstances apply and such circumstances shall be reported to the Secretary of State.

33. If the Academy admits a total of 26 pupils in excess of its admission number in any 3 year period it will determine a higher admission number, after consulting those bodies listed at paragraph 14.

#### **Process of Application**

34. Arrangements for applications for places at the Academy will be made in accordance with the LA's co-ordinated admission arrangements and will be made on the Common Application Form provided and administered by the relevant local authority.



35. The Academy Trust will use the RMBC LA's timetable for applications to the Academy each year (exact dates within the months may vary from year to year). This will fit in with the timetable for the co-ordination of admission arrangements within LA as agreed by the, Admissions Forum, RMBC LA, local schools and Academies

**a) By September - The Academy Trust will publish in the Academy's prospectus information about the arrangements for admission, including oversubscription criteria, for September 2011. This will include details of open evenings and other opportunities for prospective pupils and their parents to visit the school. The Academy Trust will also provide information in relation to the Academy to the LA for inclusion in the composite prospectus, as required;**

**b) September/October - The Academy Trust will provide opportunities for parents to visit the Academy;**

**c. October - Common Application Form to be completed and returned to the pupil's home LA to administer**

**d) LA sends Academy applications to the Academy Trust;**

**e) Academy Trust sends list of pupils to be offered places at the Academy to LA;**

**f) February - LA applies agreed scheme for own schools, informing other LA's of offers to be made to their residents.**

**g) 1<sup>st</sup> March offers made to parents. ]**

36. From 2011-12 there will be a national closing date for applications as follows:

a) 31 October for secondary applications; and

b) 15 January for Primary applications.

The Academy will ensure its application processes enable parents to apply before these deadlines.

### **Consideration of Applications**

37. The Academy Trust will consider all applications for places at the Academy. Where fewer than the published admission number(s) for the relevant year groups are received, the Academy Trust will offer places at the Academy to all those who have applied.

### **Procedures where the Academy is oversubscribed**

38. Where the number of applications for admission is greater than the published admission number, applications will be considered against the criteria set out below. After the admission of pupils with statements of Special Educational Needs where the Academy is named on the statement, the criteria will be applied in the order in which they are set out below:

a) children in public care;

b) Medical reason: Children who have a specific medical reason confirmed by a medical practitioner who the Academy Trust is satisfied makes attendance at the Academy essential. Parents should ensure that they attach full supporting information to the Application Form. Children living in the catchment area: map attached to show the catchment area;

c) Social reason. Children with a compelling social reason which the Academy Trust is satisfied make attendance at the Academy essential. The kind of overriding social reasons which could be accepted are where there is evidence that the child's education would be seriously impaired if he or she did not attend the preferred school. Parents should ensure that they attach full supporting information to the Application Form. Please note: very few cases are likely to be agreed on Social Grounds;

d) children who on the closing date live in the catchment area;

e) children living outside the catchment area with an older brother or sister on the roll of the Academy at the time of their admission. For the sibling criterion to be applicable one of the following conditions must exist:

\* brother and/or sister to be permanently resident at the same address

\* stepbrother and/or stepsister to be permanently resident at the same address

\* half brothers and/or half sisters to be permanently resident at the same address.

\* brother and/or sister who do not live at the same residence but, who share the same parents;

f) Children who on the closing date attend an associated primary school: Lilly Hall, Maltby Crags, Maltby Manor, Maltby Redwood, Ravenfield; and

f) Proximity. Children who on the closing date live nearest to the school measured by a straight line on a horizontal plane (a measurement commonly known 'as the crow flies'). Where places are being allocated on the distance criteria, or as part of the distance tie-breaker, and there are insufficient places within the admission for two (or more) pupils living within the same building (e.g. flats) or otherwise distant from the school, then any final place will be allocated by the simple drawing of lots.

39. The Academy Trust will publish specific criteria in relation to minimum academic entrance requirements for admission or transfer to the post-16 provision. Both internal and external pupils wishing to enter the sixth form will be expected to

have met the minimum academic entry requirements for the sixth form.

In addition to the sixth form's minimum academic entry requirements, pupils will need to satisfy minimum entrance requirements for the courses for which they are applying. If either internal or external applicants fail to meet the minimum course requirements they will be given the option of pursuing any alternative courses for which they do meet the minimum academic requirements.

These academic entry requirements will be the subject of consultation with those listed in paragraph 14 and published in the academy's prospectus and in the LA composite admissions prospectus.

When the sixth form is undersubscribed all applicants meeting the minimum academic entry requirements will be admitted.

When there are more external applicants that satisfy any academic entry requirements than the number of post-16 places available and after the admission of pupils with statements of Special Educational Needs where the [ Academy is named on the statement, the criteria which have been identified in paragraph 38 will be applied.

40. There will be a right of appeal to an Independent Appeals Panel for internal pupils refused transfer and external applicants refused admission.

#### **Operation of waiting lists**

41. Subject to any provisions regarding waiting lists in the LA's co-ordinated admission scheme, the Academy will operate a waiting list for each year group. Where in any year the Academy receives more applications for places than there are places available, a waiting list will operate until the end of the first term. This will be maintained by the Academy Trust and it will be open to any parent to ask for his or her child's name to be placed on the waiting list, following an unsuccessful application.

42. Children's position on the waiting list will be determined solely in accordance with the oversubscription criteria set out in paragraphs 38 and 39 above. Where places become vacant they will be allocated to children on the waiting list in accordance with the oversubscription criteria.

#### **Arrangements for Admitting Pupils to Other Year Groups, Including To Replace any Pupils who have left the Academy**

43. From 2011-2012 local authorities will co-ordinate admissions for in-year applications and for applications for year groups other than the normal point(s) of entry. This will not affect Academies' right to determine which applicants have priority for admission.

44. Subject to any provisions in the LA's co-ordinated admission arrangements relating to applications submitted for years other than the normal year of entry, the Academy Trust will consider all such applications and if the year group applied for has a place available, admit the child unless one of the permitted reliefs apply. If more applications are received than there are places available, the oversubscription criteria in paragraph 38 or 39 shall apply. Parents whose application is turned down shall be entitled to appeal.

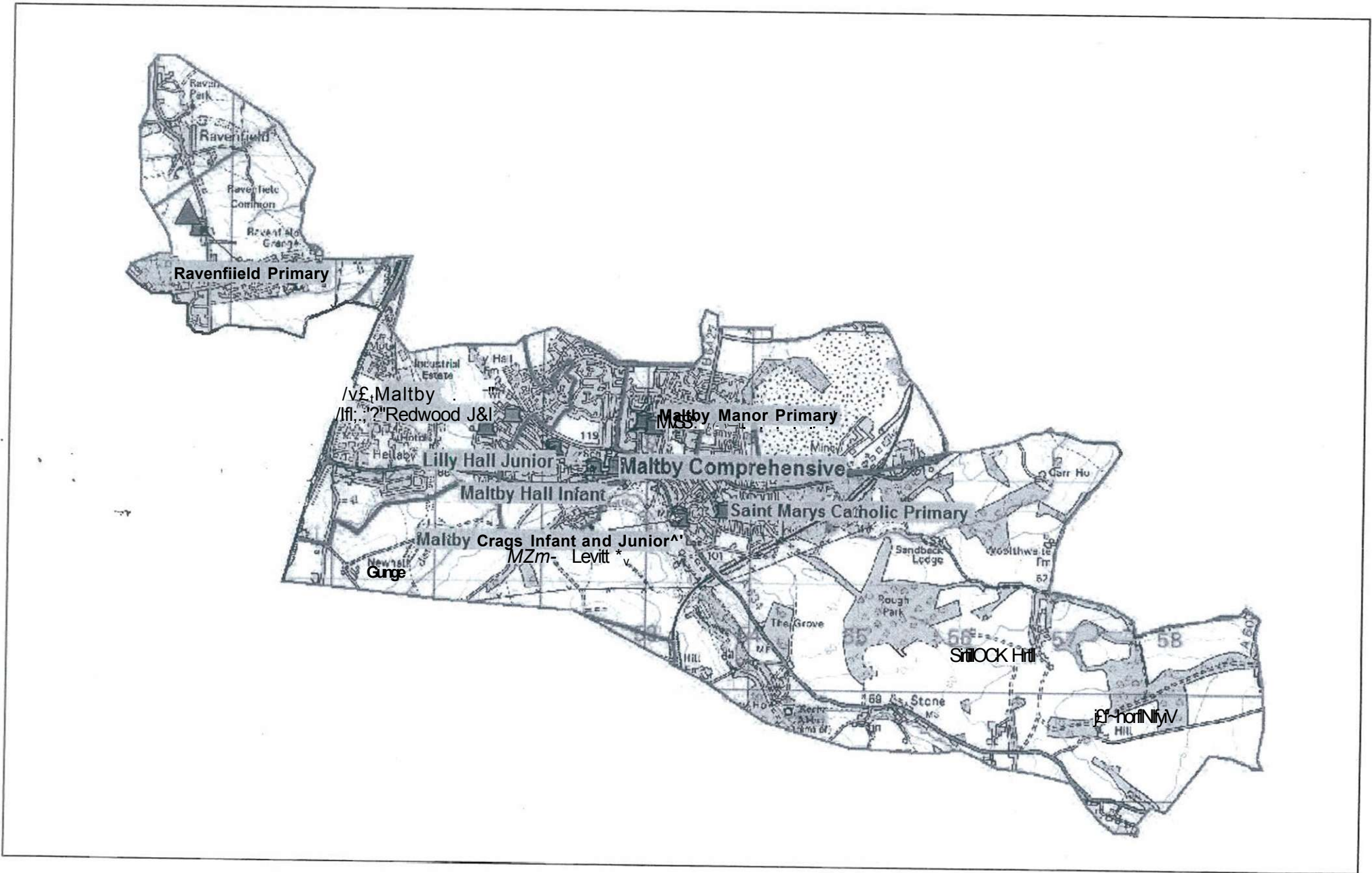
**Arrangements for Admission of pupils as the Academy Builds to its Full Capacity**

45. The Academy will open on 1 January 2010 with a Published Admission Number relating solely to pupils in Year 7 from the following September 2010 and, where relevant, Year 12. Pupils in subsequent Years will have been transferred automatically from the predecessor school, Maltby Community School, which will close on 31 December 2009.

46. Admission to Year groups without a Published Admission Number will be based upon the size of teaching groups already existing in the Academy and the efficient use of resources.

47. There will be a right of appeal to an Independent Appeal Panel for unsuccessful applicants.

# MALTBY LEARNING COMMUNITY



**The proposed Maltbv Academy**

**Annex C**

**Arrangements for pupils with SEN and disabilities at the proposed Maltbv Academy**

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

1. The Academy Trust 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 Governing Body of the Academy Trust shall designate the Principal, the chair of governors or another governor to be the responsible person for the purposes of the following duties in relation to pupils with SEN.

3. The Governing Body of the Academy Trust shall:

- use their best endeavours, in exercising their functions in relation to the school, 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 and those needs are made known to all who are likely to teach the pupil;
- secure that the teachers in the school 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 the 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 Academy prospectus shall include details of the Academy Trust'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 Academy Trust shall ensure that pupils with SEN are admitted on an equal basis with others in accordance with its admissions policy.

7. Where a local authority proposes to name the Academy in a statement of SEN made in accordance with section 324 of the Education Act 1996, the Academy Trust 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 Academy Trust 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 Academy Trust and the local authority over the proposed naming of the Academy in a statement, the Academy Trust 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 the Academy in the child's SEN statement or asking the Tribunal to name the 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 Academy Trust has consented to the 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 Academy Trust shall admit the child to the Academy notwithstanding any provision of Annex B to this agreement.

The proposed Maltby Academy

ANNEX D

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

**General Duties**

1. Subject to the exceptions in paragraph 4, the Academy Trust shall act and shall ensure that the Principal shall act in accordance with the law on exclusions as if the 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 Governing Body of the Academy Trust.
2. Without limiting the generality of paragraph 1, the Academy Trust shall ensure that the Local Authority is informed of an exclusion decision in the same circumstances as required by maintained schools under the law on exclusions.
3. Subject to the exceptions in paragraph 4, the Academy Trust shall ensure that in carrying out their functions the Principal, the Governing Body and the Independent Appeal Panel (established in accordance with paragraph 5) have regard to the Secretary of State's guidance on exclusions<sup>1</sup>, as if the Academy were a maintained school.
4. The exceptions to the duties imposed under paragraphs 1 and 3 are:
  - the Academy Trust, 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 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 Academy Trust'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

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.

Maltby Academy 3 June 2009



who have been permanently excluded from school does not apply.

### **Independent Appeal Panels**

5. The Academy Trust shall, in relation to the 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 Academy Trust shall arrange suitable training for appeal panel members and clerks.

7. The Independent Appeal Panel's decision is final and binding on the Academy Trust. 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.