

DATED 20 Dec 2010

WHITBURN CHURCH OF ENGLAND ACADEMY

FUNDING AGREEMENT



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WHITBURN CHURCH OF ENGLAND ACADEMY

FUNDING AGREEMENT

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INTRODUCTION

1. This Agreement is made under section 1 of the Academies Act 2010 between the Secretary of State for Education ("the Secretary of State") and Whitburn Church of England Academy (the "Academy Trust").
2. The Academy Trust is a Company incorporated in England and Wales, limited by guarantee with registered Company number 07465520.
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:-

"Academies Financial Handbook" clause 72;

"Academy Financial Year" clause 62;

"Accounting Officer" clause 71;

"Annual Letter of Funding" clause 65;

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

"GAG" clause 35;

"Capital Expenditure" clause 36;

"Capital Grant" clause 36;

"EAG" clause 35;

"Recurrent Expenditure" clause 35;

"Start-up Period" clause 55;

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;

"DfE" means Department for Education;

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

"Insured Risks" means fire lightning explosion earthquake storm tempest flood subsidence landslip heave impact terrorism bursting or overflowing of

- 33.2 references to registered pupils shall be treated as references to registered pupils at the Academy;
- 33.3 references to the governing body or the local education authority shall, in each case, be treated as references to the Academy Trust;
- 33.4 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
- 33.5 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.

GRANTS TO BE PAID BY THE SECRETARY OF STATE

General

- 34. 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.
- 35. "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 36. 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

- 36. "Capital Expenditure" means expenditure on:
 - 36.1 the acquisition of land and buildings;
 - 36.2 the erection, enlargement, improvement or demolition of any building including fixed plant, installation, wall, fence or other structure, or any playground or hard standing;
 - 36.3 the installation of electrical, mechanical or other services;
 - 36.4 the purchase of vehicles and other self-propelled mechanical equipment;
 - 36.5 the installation and equipping of premises with furnishings and equipment, other than necessary replacements, repairs and maintenance due to normal wear and tear;
 - 36.6 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;
 - 36.7 the provision and equipping of premises, including playing fields and other facilities for social activities and physical recreation;
 - 36.8 works of a permanent character other than the purchase or replacement of minor day-to-day items;

- 36.9 any major repairs or replacements which are specified as constituting capital expenditure in any grant letter relating to them;
- 36.10 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;
- 36.11 all professional fees properly and reasonably incurred in connection with the provision of any of the above;
- 36.12 VAT and other taxes payable on any of the above.

"Capital Grant" means grant paid to the Academy Trust in respect of Capital Expenditure.

- 37. Where the 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, may, in his absolute discretion be responsible for meeting the incurred Capital Expenditure for that Academy. To that end, the Secretary of State will consider providing funding in accordance with any arrangements as he considers appropriate.
- 38. Any Capital Expenditure incurred in respect of the Academy on which Capital Grant payments are sought from the Secretary of State will require the specific prior written agreement of the Secretary of State, which agreement shall not be unreasonably withheld or delayed.
- 39. Any payment of Capital Grant to the Academy Trust under this Agreement is subject to the fulfilment of the following conditions:
 - 39.1 such grants are used solely to defray expenditure approved by the Secretary of State;
 - 39.2 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

- 40. Capital Grant will be paid by the Secretary of State to the Academy Trust on the basis of claims for grant submitted to the Secretary of State in the notified format with supporting invoices and certificates as required by the Secretary of State. 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 39 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

- 41. "Implementation Grant" means payments towards Recurrent Expenditure incurred for the establishment of the Academy prior to it opening.
- 42. 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.

- 74.6 the Academy Trust prepares and files with the Companies Registry such annual accounts as are required by the Companies Act 2006;
- 74.7 the Academy Trust shall publish on its website its Annual Accounts, Annual Report, Memorandum and Articles of Association, Funding Agreement and a list of the names of the Governors of the Academy Trust;
- 74.8 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.
75. 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.
76. 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 DfE and the National Audit Office and to contractors retained by the DfE or the National Audit Office for inspection or the carrying out of value for money studies; and the Academy Trust shall secure that those officials and contractors are given reasonable assistance with their enquiries. For the purposes of this clause 'relevant' means in any way relevant to the provision and use of grants provided by the Secretary of State under this Agreement.
77. 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:
- 77.1 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;
- 77.2 a statement of proposed recurrent expenditure for that Academy Financial Year;
- 77.3 a statement of proposed capital expenditure for that Academy Financial Year.
78. 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:
- 78.1 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;
- 78.2 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 78.1 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.

93. Except with the consent of the Secretary of State, the Academy Trust shall not dispose of assets funded (whether in whole or in part) by the Secretary of State for a consideration less than the best price that can reasonably be obtained, such consent not to be unreasonably withheld or delayed.
94. The Academy Trust shall provide 30 days notice to the Secretary of State of its intention to dispose of assets for a consideration less than the best price that can reasonably be obtained, whether or not such disposal requires the Secretary of State's consent under clause 93 above.

TERMINATION

95. Either party may give not less than seven Academy Financial Years' written notice to terminate this Agreement, such notice to expire on 31 August 2018 or any subsequent anniversary of that date.
96. If the Secretary of State is of the opinion that the Academy no longer has the characteristics set out in clause 10 of this Agreement or that the conditions and requirements set out in clauses 12-33 of this Agreement are not being met, or that the Academy Trust is otherwise in material breach of the provisions of this Agreement, the Secretary of State may give notice of his provisional intention to terminate this Agreement.
97. Any such notice shall be in writing and shall:
- 97.1 state the grounds on which the Secretary of State considers the Academy no longer has the characteristics set out in clause 10 of this Agreement or is not meeting the conditions and requirements of clauses 12-33 of this Agreement or the Academy Trust is otherwise in material breach of the provisions of this Agreement;
 - 97.2 specify the measures needed to remedy the situation or breach;
 - 97.3 specify a reasonable date by which these measures are to be implemented; and
 - 97.4 state the form in which the Academy Trust is to provide its response and a reasonable date by which it must be provided.
98. If no response is received by the date specified in accordance with clause 97.4, 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.
99. If a response is received by the date specified in accordance with clause 97.4 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:
- 99.1 he is content with the response and/or that the measures which he specified are being implemented; or
 - 99.2 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
 - 99.3 he is not satisfied, that he does not believe that he can be reasonably satisfied, and that he will proceed to terminate this Agreement.
100. In the circumstances of clause 99.3 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 10 of this Agreement or does not and will not meet the conditions and requirements set out in clauses 12-33 of this Agreement or the Academy Trust is in material breach of the provisions of this Agreement and such breach will not be remedied to his reasonable satisfaction, he shall give the Academy Trust twelve months written notice to terminate this Agreement.

101.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 100 may be shortened to a period deemed appropriate by the Secretary of State.

102. A "Special Measures Termination Event Occurs" when:

102.1 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

102.2 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

102.3 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

102.4 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.

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

103.1 by notice in writing to the Academy Trust terminate this Agreement forthwith; or

103.2 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.

104.In the event that the Secretary of State appoints Further Governors in accordance with clause 103.2, the Academy Trust must, upon the request of the Secretary of State, procure the resignation of the Governors appointed in accordance with the Article 50 of the Articles of Association.

105.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:-

105.1 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

- 105.2 the Academy Trust proposes a voluntary arrangement within Section 1 of the Insolvency Act 1986; or
- 105.3 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
- 105.4 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
- 105.5 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
- 105.6 the Academy Trust has passed a resolution for its winding up; or
- 105.7 an order is made for the winding up or administration of the Academy Trust.

106. 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.

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

108. The Secretary of State's right to terminate this Agreement under clause 107 shall cease if he removes any of the Additional Governors or Further Governors which he has appointed pursuant to the Articles of Association.

Effect of Termination

109. 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 cooperate in making any associated amendments to the Articles.

110. In the event of termination of this Agreement however occurring, the school shall cease to be an Academy within the meaning of Section 1 of the Academies Act 2010.

111. Subject to clause 112, 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 10 of this Agreement, or is no longer meeting the conditions and requirements set out in clauses 12-33 of this Agreement or that the Academy Trust is otherwise in material breach of the provisions of this Agreement, the Secretary of State shall indemnify the Academy Trust.

112. 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.
113. 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.
114. Subject to clause 115, 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:
- 114.1 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
- 114.2 if the Secretary of State confirms that a transfer under clause 114.1 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.
115. The Secretary of State may waive in whole or in part the repayment due under clause 114.2 if:
- 115.1 The Academy Trust obtains his permission to invest the proceeds of sale for its charitable objects; or
- 115.2 The Secretary of State directs all or part of the repayment to be paid to the LA.
116. If any land or premises of the Academy were acquired by the Academy Trust from an LA by a scheme under Paragraph 1 of Schedule 1 of the Academies Act 2010 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 Paragraph 6 of Schedule 1 of the Academies Act 2010, 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

117. 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:
- 117.1 curriculum;
- 117.2 arrangements for the assessment of pupils;

- 117.3 teaching staff including numbers, qualifications, experience, salaries, and teaching loads;
 - 117.4 class sizes;
 - 117.5 outreach work with other schools and the local community;
 - 117.6 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;
 - 117.7 numbers of pupils excluded (including permanent and fixed term exclusions);
 - 117.8 levels of authorised and unauthorised absence;
 - 117.9 charging and remissions policies and the operation of those policies;
 - 117.10 organisation, operation and building management;
 - 117.11 financial controls; and
 - 117.12 membership and proceedings of the Governing Body.
118. 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

119. The Academy Trust shall allow access to the premises of the Academy at any reasonable time to DfE 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 DfE 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.
120. The Academy Trust shall ensure that:
- 120.1 the agenda for every meeting of the Governing Body;
 - 120.2 the draft minutes of every such meeting, if they have been approved by the person acting as chairman of that meeting;
 - 120.3 the signed minutes of every such meeting; and
 - 120.4 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.

121. 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 120, any material relating to:

121.1 a named teacher or other person employed, or proposed to be employed, at the Academy;

121.2 a named pupil at, or candidate for admission to, the Academy; and

121.3 any matter which, by reason of its nature, the Academy Trust is satisfied should remain confidential.

LAND

Restrictions on Land Transfer

121A The Academy Trust:

121A.1 shall, within 28 days from the transfer to it of the Land, apply to the Land Registry for a restriction in the proprietorship register (under section 43(1)(a) of the Land Registration Act 2002 in Form N as prescribed by Rule 91 and Schedule 4 of the Land Registration Rules 2003) in the following terms:-

No disposition of the registered estate by the proprietor of the registered estate, or by the proprietor of any registered charge, not being a charge registered before the entry of this restriction is to be registered without a written consent signed by the Secretary of State for Education, of Sanctuary Buildings, Great Smith Street, London SW1P 3BT.

121A.2 shall take any further steps required to ensure that the restriction referred to in clause 121 A.1 is entered on the proprietorship register,

121A.3 shall provide the Secretary of State with confirmation of the entry of the restriction referred to in clause 121 A.1 as soon as practicable after it receives notification from the Land Registry,

121A.4 in the event that it has not registered the restriction referred to in clause 121A.1, hereby consents to the entering of the restriction referred to in 121 A.1 in the register by the Secretary of State (under s. 43(1)(b) of the Land Registration Act 2002),

121A.5 shall not, without the consent of the Secretary of State, apply to dis-apply, modify or remove (by cancellation or otherwise) a restriction entered in accordance with clause 121A.1 or 121A.4 above.

Repair and Upkeep

121B The Academy Trust shall keep the Land clean and tidy and make good any damage it causes to the Land and / or any deterioration to the condition of the Land that may arise from the date of this Agreement.

Insurance

121C The Academy Trust shall:-

121 C.1 keep the Land insured with a reputable insurance office against loss or damage by the Insured Risks in the sum the Academy Trust is advised represents the reinstatement value of the Land from time to time;

121C.2 pay the premiums for insurance promptly as they become due and maintain in force the policies of insurance on the Land;

121C.3 following the incidence of damage to or destruction of the Land and subject to receipt of all necessary consents licences permissions and the like apply the proceeds of the policy of the insurance received for those purposes in rebuilding and reinstating the Land (provided that this clause should be satisfied if the Academy Trust provides premises not necessarily identical to the Land as the same existing prior to such damage or destruction occurring) as soon as may be reasonably practicable;

121C.4 produce to the Secretary of State a copy of the insurance policy whenever reasonably requested and the receipt for the last or other evidence of renewal and up to date details of the amount of cover (but no more often than once in any period of 12 months in both cases);

121C.5 not knowingly do anything whereby any policy of insurance relating to the Land may become void or voidable.

121C.6 insure against liability in respect of property owners' and third party risks including occupiers liability.

Transfer of Land on Termination of Agreement

121D On termination of this Agreement the Academy Trust shall, if the Secretary of State so requires by notice in writing to the Academy Trust, immediately transfer its interest in the Land to the Secretary of State or such other person as the Secretary of State may nominate.

Notices

122. 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 Education, Sanctuary Buildings, Great Smith Street, London SW1P 3BT; or such other address as may be notified from time to time by the Secretary of State and where any such notice or communication is sent by post, unless the contrary is proved, it shall be deemed, subject to satisfactory proof of posting, to be effected at the time at which the letter would be received in the ordinary course of post.

123. 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

124 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 *20 December* 2010

Executed on behalf of Whitburn Church of England Academy by:

~~{Either~~



.....
Director

~~In the presence of:~~

~~Witness:~~

Address:

.....

.....

~~Occupation:~~

~~{Or~~



.....
Director

.....
~~Director/Secretary]~~

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



.....
Duly Authorised



16600945_1

ANNEX A

MEMORANDUM AND ARTICLES OF ASSOCIATION

THE COMPANIES ACT 2006

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

A COMPANY LIMITED BY GUARANTEE

MEMORANDUM OF ASSOCIATION

OF

WHITBURN CHURCH OF ENGLAND ACADEMY



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[INSERT] 2010

THE COMPANIES ACT 2006

A COMPANY LIMITED BY GUARANTEE

ARTICLES OF ASSOCIATION

OF

WHITBURN CHURCH OF ENGLAND ACADEMY

COMPANY NUMBER: 07465520



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THE COMPANIES ACT 2006
COMPANY LIMITED BY GUARANTEE
ARTICLES OF ASSOCIATION
OF
WHITBURN CHURCH OF ENGLAND ACADEMY

INTERPRETATION

1. In these Articles:-

"Academy"	means the school referred to in Article 4 and established by the Academy Trust;
"Academy Financial Year"	means the academic year from 1 st of September to 31 st of August in any year;
"Academy Trust"	means the company intended to be regulated by these Articles and referred to in Article 2;
"Additional Governors"	means the Governors appointed pursuant to Article 62 and 62A;
"Area Dean(s)"	means the Area Dean(s) of the Church of England Deaner[y][ies] in which the academy is situated and/ or which it serves;
"the Articles"	means these Articles of Association of the Academy Trust;
"Chief Inspector"	means Her Majesty's Chief Inspector of Education, Children's Services and Skills or his successor;
"Clear Days"	in relation to the period of a notice means the period excluding the day when the notice is given or deemed to be given and the day on which it is given or on which it is to take effect;
"Diocese"	means the Church of England diocese in which the Academy is situated;
"Diocesan Bishop"	means the Bishop of the Diocese or a diocesan official appointed by him for the role to be undertaken by the Diocesan Bishop in these Articles;
"Diocesan Board of Education"	means that body constituted under the Diocesan Boards of Education Measure 1991 for the relevant diocese and any successor body;
"Diocesan Board of Finance"	means the Diocesan Board of Finance for the Diocese;
"Financial Expert"	means an individual, company or firm who is authorised to give investment advice under the Financial Services and Markets Act

	2000;
"Funding Agreement"	means the agreement made under section 1 of the Academies Act 2010 between the Academy Trust and the Secretary of State to establish the Academy;
"Further Governors"	means the Governors appointed pursuant to Article 63;
"Governors"	means the directors of the Academy Trust (and "Governor" means any one of those directors), subject to the definition of this term at Article 6.9(b) in relation to Articles 6.2-6.9;
"the Incumbent(s)"	means the Incumbent(s) of the Parish or in the case of a vacancy or unwillingness of the Incumbent(s) to act such person(s) as may be appointed to act in their stead by the Archdeacon in consultation with the Diocesan Director of Education;
"LA"	means the local authority covering the area in which the Academy is situated;
"LA Governor"	means the Governor who may be appointed pursuant to Article 51;
"Local Authority Associated Persons"	means any person associated with any local authority within the meaning given in section 69 of the Local Government and Housing Act 1989;
"Member"	means a member of the Academy Trust and someone who as such is bound by the undertaking contained in Article 8;
"Memorandum"	means the Memorandum of Association of the Academy Trust;
"Office"	means the registered office of the Academy Trust;
"Parent Governors"	means the Governors appointed pursuant to Articles 53 to 58 inclusive;
"Parish" "Principal"	means the Church of England parish in which the Academy is situated or one which it serves;
"Principal Regulator"	means the head teacher of the Academy;
"SIAS"	means the body or person appointed as the Principal Regulator under the Charities Act 2006;
"seal" "Secretary"	means the Statutory Inspection of Anglican Schools or any successor inspection of such schools
"Secretary of State"	means the common seal of the Academy Trust if it has one;
	means the secretary of the Academy Trust or any other person appointed to perform the duties of the secretary of the Academy Trust, including a joint, assistant or deputy secretary;
	means the Secretary of State for Education or successor;

- "Staff Governor" means an employee of the Academy Trust who may be appointed as a Governor pursuant to Article 50A;
- Teacher- means a person employed under a contract of employment or a contract for services or otherwise engaged to provide his services as a teacher at the Academy;
- Trustees' means those trustees holding the school site and providing it to the Academy Trust for use and occupation by the Academy;
- United Kingdom¹ means Great Britain and Northern Ireland;
- 1.1 words importing the masculine gender only shall include the feminine gender. Words importing the singular number shall include the plural number, and vice versa;
- 1.2 subject as aforesaid, words or expressions contained in these Articles shall, unless the context requires otherwise, bear the same meaning as in the Companies Act 2006, as appropriate;
- 1.3 any reference to a statute or statutory provision or measure shall include any statute or statutory provision or measure which replaces or supersedes such statute or statutory provision or measure including any modification or amendment thereto.
2. The company's name is Whitburn Church of England Academy (and in this document it is called "the Academy Trust").
3. The Academy Trust's registered office is to be situated in England and Wales.

OBJECTS

4. The Academy Trust's object ("the Object") is specifically restricted to the following: to advance for the public benefit education in the United Kingdom, in particular but without prejudice to the generality of the foregoing by establishing, maintaining, carrying on, managing and developing a school with a designated Church of England religious character offering a broad and balanced curriculum conducted in accordance with the principles, practices and tenets of the Church of England both generally and in particular in relation to arranging for religious education and daily acts of worship (as required by the Funding Agreement), and in having regard to the advice of the Diocesan Board of Education("the Academy").
5. In furtherance of the Object but not further or otherwise the Academy Trust may exercise the following powers:-
- 5.1 to draw, make, accept, endorse, discount, execute and issue promissory notes, bills, cheques and other instruments, and to operate bank accounts in the name of the Academy Trust;
- 5.2 to raise funds and to invite and receive contributions provided that in raising funds the Academy Trust shall not undertake any substantial permanent trading activities and shall conform to any relevant statutory regulations;
- 5.3 (subject to such further consents as may be required by law or as may be required from the Trustees as landlord/licensor where this is the case) to acquire, alter, improve and charge or otherwise dispose of property;

- 5.14.6 all payments due to the financial expert are on a scale or at a level which is agreed in advance and are notified promptly to the Governors on receipt; and
 - 5.14.7 the financial expert must not do anything outside the powers of the Governors.
 - 5.15 to arrange for investments or other property of the Academy Trust to be held in the name of a nominee company acting under the control of the Governors or of a financial expert acting under their instructions, and to pay any reasonable fee required;
 - 5.16 to provide indemnity insurance to cover the liability of Governors which by virtue of any rule of law would otherwise attach to them in respect of any negligence, default, breach of trust or breach of duty of which they may be guilty in relation to the Academy Trust: Provided that any such insurance shall not extend to any claim arising from any act or omission which the Governors knew to be a breach of trust or breach of duty or which was committed by the Governors in reckless disregard of whether it was a breach of trust or breach of duty or not and provided also that any such insurance shall not extend to the costs of any unsuccessful defence to a criminal prosecution brought against the Governors in their capacity as Governors;
 - 5.17 to establish subsidiary companies to carry on any trade or business for the purpose of raising funds for the Academy Trust;
 - 5.18 to do all such other lawful things as are necessary for or are incidental to or conducive to the achievement of the Object and appropriate to the religious character of the Academy.
-
- 6.1 The income and property of the Academy Trust shall be applied solely towards the promotion of the Object.
 - 6.2 None of the income or property of the Academy Trust may be paid or transferred directly or indirectly by way of dividend bonus or otherwise by way of profit to any member of the Academy Trust. Nonetheless a Member of the Academy Trust who is not also a Governor may:
 - 6.2.1 benefit as a beneficiary of the Academy Trust;
 - 6.2.2 be paid reasonable and proper remuneration for any goods or services supplied to the Academy Trust;
 - 6.2.3 be paid rent for premises let by the Member of the Academy Trust if the amount of the rent and other terms of the letting are reasonable and proper; and
 - 6.2.4 be paid interest on money lent to the Academy Trust at a reasonable and proper rate, such rate not to exceed 2 per cent per annum below the base lending rate of a UK clearing bank selected by the Governors, or 0.5%, whichever is the higher.
 - 6.3 A Governor may benefit from any indemnity insurance purchased at the Academy Trust's expense to cover the liability of the Governors which by virtue of any rule of law would otherwise attach to them in respect of any negligence, default or breach of trust or breach of duty of which they may be guilty in relation to the Academy Trust: Provided that any such insurance shall not extend to any claim arising from any act or omission which the Governors knew to be a breach of trust or breach of duty or which was committed by the Governors in reckless disregard to whether it was a breach of trust or

breach of duty or not and provided also that any such insurance shall not extend to the costs of any unsuccessful defence to a criminal prosecution brought against the Governors in their capacity as directors of the Academy Trust.

- 6.4 A company, which has shares listed on a recognised stock exchange and of which any one Governor holds no more than 1% of the issued capital of that company, may receive fees, remuneration or other benefit in money or money's worth from the Academy Trust.
- 6.5 A Governor may at the discretion of the Governors be reimbursed from the property of the Academy Trust for reasonable expenses properly incurred by him or her when acting on behalf of the Academy Trust, but excluding expenses in connection with foreign travel.
- 6.6 No Governor may:
 - 6.6.1 buy any goods or services from the Academy Trust;
 - 6.6.2 sell goods, services, or any interest in land to the Academy Trust;
 - 6.6.3 be employed by or receive any remuneration from the Academy Trust (other than the Principal and any Staff Governor whose employment and/or remuneration is subject to the procedure and conditions in Article 6.8);
 - 6.6.4 receive any other financial benefit from the Academy Trust; unless:
 - (a) the payment is permitted by Article 6.7 and the Governors follow the procedure and observe the conditions set out in Article 6.8; or
 - (b) the Governors obtain the prior written approval of the Charity Commission and fully comply with any procedures it prescribes.
- 6.7 Subject to Article 6.8, a Governor may:
 - 6.7.1 receive a benefit from the Academy Trust in the capacity of a beneficiary of the Academy Trust.
 - 6.7.2 be employed by the Academy Trust or enter into a contract for the supply of goods or services to the Academy Trust, other than for acting as a Governor.
 - 6.7.3 receive interest on money lent to the Academy Trust at a reasonable and proper rate not exceeding 2% per annum below the base rate of a clearing bank to be selected by the Governors, or 0.5%, whichever is the higher.
 - 6.7.4 receive rent for premises let by the Governor to the Academy Trust if the amount of the rent and the other terms of the lease are reasonable and proper.
- 6.8 The Academy Trust and its Governors may only rely upon the authority provided by Article 6.7 if each of the following conditions is satisfied:
 - 6.8.1 the remuneration or other sums paid to the Governor do not exceed an amount that is reasonable in all the circumstances.
 - 6.8.2 the Governor is absent from the part of any meeting at which there is discussion of:

39. No objections shall be raised to the qualification of any person to vote at any general meeting except at the meeting or adjourned meeting at which the vote objected to is tendered, and every vote not disallowed at the meeting shall be valid. Any objection made in due time shall be referred to the chairman whose decision shall be final and conclusive.

40. An instrument appointing a proxy shall be in writing, signed by or on behalf of the appointer and shall be in the following form (or in a form as near thereto as circumstances allow or in any other form which is usual or which the Governors may approve) -

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

Signed on 20[]"

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

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

This form is to be used in respect of the resolutions mentioned below as follows: Resolution No. 1

*for*against Resolution No. 2 *for *against. *Strike out whichever is not desired.

Unless otherwise instructed, the proxy may vote as he thinks fit or abstain from voting. Signed on 20[]"

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

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

42.2 in the case of a poll taken more than 48 hours after it is demanded, be deposited as aforesaid after the poll has been demanded and not less than 24 hours before the time appointed for the taking of the poll;

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

- 50.3. 3 persons nominated by the PCC;
- 50.4. 3 persons who are parents of pupils at the Academy; and
- 50.5. the Incumbent

50A. The Members may appoint 3 Staff Governors through such process as they may determine,

- 51. The LA may appoint the LA Governor.
- 52. The Principal shall be treated for all purposes as being an ex officio Governor.
- 53. Subject to Article 57, the Parent Governors shall be elected by parents of registered pupils at the Academy. A Parent Governor must be a parent of a pupil at the Academy at the time when he is elected.
- 54. The Governing Body shall make all necessary arrangements for, and determine all other matters relating to, an election of Parent Governors, including any question of whether a person is a parent of a registered pupil at the Academy. Any election of Parent Governors which is contested shall be held by secret ballot.
- 55. The arrangements made for the election of a Parent Governor shall provide for every person who is entitled to vote in the election to have an opportunity to do so by post or, if he prefers, by having his ballot paper returned to the Academy Trust by a registered pupil at the Academy.
- 56. Where a vacancy for a Parent Governor is required to be filled by election, the Governing Body shall take such steps as are reasonably practical to secure that every person who is known to them to be a parent of a registered pupil at the Academy is informed of the vacancy and that it is required to be filled by election, informed that he is entitled to stand as a candidate, and vote at the election, and given an opportunity to do so.
- 57. The number of Parent Governors required shall be made up by Parent Governors appointed by the Governing Body if the number of parents standing for election is less than the number of vacancies.
- 58. In appointing a Parent Governor the Governing Body shall appoint a person who is the parent of a registered pupil at the Academy; or where it is not reasonably practical to do so, a person who is the parent of a child of compulsory school age.

CO-OPTED GOVERNORS

- 59. The Governors with the consent of the Diocesan Board of Education may appoint up to 2 Co-opted Governors for such term (not exceeding four years) and otherwise upon such conditions as they shall think fit. A 'Co-opted Governor' means a person who is appointed to be a Governor by being Co-opted by Governors who have not themselves been so appointed. The Governors may not co-opt an employee of the Academy Trust as a Co-opted Governor if thereby the number of Governors who are employees of the Academy Trust would exceed one third of the total number of Governors (including the Principal).

APPOINTMENT OF ADDITIONAL GOVERNORS

- 60. The Secretary of State may give a warning notice to the Governors (which he shall copy to the Diocesan Board of Education) where he is satisfied—
 - 60.1 that the standards of performance of pupils at the Academy are unacceptably low, or

60.2 that there has been a serious breakdown in the way the Academy is managed or governed, or

60.3 that the safety of pupils or staff of the Academy is threatened (whether by a breakdown of discipline or otherwise).

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

61.1 the matters referred to in Article 60;

61.2 the action which he requires the Governors to take in order to remedy those matters; and

61.3 the period within which that action is to be taken by the Governors ('the compliance period').

62. The Secretary of State may appoint such Additional Governors as he thinks fit (after consultation with the Diocesan Board of Education) if the Secretary of State has:

62.1 given the Governors a warning notice in accordance with Article 60; and

62.2 the Governors have failed to comply, or secure compliance, with the notice to the Secretary of State's satisfaction within the compliance period.

62A The Secretary of State may also appoint such Additional Governors (after consultation with the Diocesan Board of Education) where following an Inspection by the Chief Inspector in accordance with the Education Act 2005 (an "Inspection") the Academy Trust receives an Ofsted grading (being a grade referred to in The Framework for School Inspection or any modification or replacement of that document for the time being in force) which amounts to a drop, either from one Inspection to the next Inspection or between any two Inspections carried out within a 5 year period, of two Ofsted grades. For the purposes of the foregoing the grade received by [insert name of predecessor school] shall be regarded as the grade received by the Academy.

63. The Secretary of State may also appoint such Further Governors as he thinks fit (after consultation with the Diocesan Board of Education) if a Special Measures Termination Event (as defined in the Funding Agreement) occurs in respect of the Academy.

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

TERM OF OFFICE

65. The term of office for any Governor (other than Co-opted Governors under Article 59) shall be 4 years, save that this time limit shall not apply to the Principal, or the Incumbent. Subject to remaining eligible to be a particular type of Governor, any Governor may be re-appointed or reelected.

- 76.1 included in the list kept by the Secretary of State under section 1 of the Protection of Children Act 1999; or
 - 76.2 disqualified from working with children in accordance with Section 35 of the Criminal Justice and Court Services Act 2000; or
 - 76.3 barred from regulated activity relating to children (within the meaning of section 3(2) of the Safeguarding Vulnerable Groups Act 2006)
77. A person shall be disqualified from holding or continuing to hold office as a Governor if he is a person in respect of whom a direction has been made under section 142 of the Education Act 2002 or is subject to any prohibition or restriction which takes effect as if contained in such a direction.
78. A person shall be disqualified from holding or continuing to hold office as a Governor where he has, at any time, been convicted of any criminal offence, excluding any that have been spent under the Rehabilitation of Offenders Act 1974 as amended, and excluding any offence for which the maximum sentence is a fine or a lesser sentence except where a person has been convicted of any offence which falls under section 72 of the Charities Act 1993.
79. After the Academy has opened, a person shall be disqualified from holding or continuing to hold office as a Governor if he has not provided to the chairman of the Governors a criminal records certificate at an enhanced disclosure level under section 113B of the Police Act 1997. In the event that the certificate discloses any information which would in the opinion of either the chairman or the Principal confirm their unsuitability to work with children that person shall be disqualified. If a dispute arises as to whether a person shall be disqualified, a referral shall be made to the Secretary of State to determine the matter. The determination of the Secretary of State shall be final.
80. Where, by virtue of these Articles a person becomes disqualified from holding, or continuing to hold office as a Governor; and he is, or is proposed, to become such a Governor, he shall upon becoming so disqualified give written notice of that fact to the Secretary.
81. Articles 69 to 80 and Articles 98-99 also apply to any member of any committee of the Governors who is not a Governor.

SECRETARY TO THE GOVERNORS

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

CHAIRMAN AND VICE-CHAIRMAN OF THE GOVERNORS

83. The Governors shall each school year, at their first meeting in that year, elect a chairman and a vice-chairman from among their number. A Governor who is employed by the Academy Trust shall not be eligible for election as chairman or vice-chairman.
84. Subject to Article 85, the chairman or vice-chairman shall hold office as such until his successor has been elected in accordance with Article 86.
85. The chairman or vice-chairman may at any time resign his office by giving notice in writing to the Secretary. The chairman or vice-chairman shall cease to hold office if—

- 85.1 he ceases to be a Governor;
- 85.2 he is employed by the Academy Trust;
- 85.3 he is removed from office in accordance with these Articles; or
- 85.4 in the case of the vice-chairman, he is elected in accordance with these Articles to fill a vacancy in the office of chairman.
86. Where by reason of any of the matters referred to in Article 85, a vacancy arises in the office of chairman or vice-chairman, the Governors shall at their next meeting elect one of their number to fill that vacancy.
87. Where the chairman is absent from any meeting or there is at the time a vacancy in the office of the chairman, the vice-chairman shall act as the chair for the purposes of the meeting.
88. Where in the circumstances referred to in Article 87 the vice-chairman is also absent from the meeting or there is at the time a vacancy in the office of vice-chairman, the Governors shall elect one of their number to act as a chairman for the purposes of that meeting, provided that the Governor elected shall not be a person who is employed by the Academy Trust.
89. The Secretary shall act as chairman during that part of any meeting at which the chairman is elected.
90. Any election of the chairman or vice-chairman which is contested shall be held by secret ballot.
91. The Governors may remove the chairman or vice-chairman from office in accordance with these Articles.
92. A resolution to remove the chairman or vice-chairman from office which is passed at a meeting of the Governors shall not have effect unless:-
- 92.1 it is confirmed by a resolution passed at a second meeting of the Governors held not less than fourteen days after the first meeting; and
- 92.2 the matter of the chairman's or vice-chairman's removal from office is specified as an item of business on the agenda for each of those meetings.
93. Before the Governors resolve at the relevant meeting on whether to confirm the resolution to remove the chairman or vice-chairman from office, the Governor or Governors proposing his removal shall at that meeting state their reasons for doing so and the chairman or vice-chairman shall be given an opportunity to make a statement in response.

POWERS OF GOVERNORS

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

Governors may determine that some or all of the members of a committee who are not Governors shall be entitled to vote in any proceedings of the committee. No vote on any matter shall be taken at a meeting of a committee of the Governors unless the majority of members of the committee present are Governors.

DELEGATION

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

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

PRINCIPAL AND STAFF

104. The Governors [after having consulted the Diocesan Director of Education and having made use of their powers under s124A of the School Standards and Framework Act 1998) or [with the consent of the Diocesan Board of Education and having made use of their powers under s124A of the School Standards and Framework Act 1998 shall appoint the Principal. The Governors may delegate such powers and functions as they consider are required by the Principal for the internal organisation, management and control of the Academy (including the implementation of all policies approved by the Governors and for the direction of the teaching and curriculum at the Academy).

104A. In appointing staff the governors will have regard to their powers under s124A of the School Standards and Framework Act 1998 and to their power to declare a Genuine Occupational Requirement for non-teaching appointments where they believe this to be justified.

MEETINGS OF THE GOVERNORS

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

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

106.1 given by the Governors; or

106.2 given by the chairman of the Governors or, in his absence or where there is a vacancy in the office of chairman, the vice-chairman of the Governors, so far as such direction is not inconsistent with any direction given as mentioned in 106.1.

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

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

108.1 notice in writing thereof, signed by the Secretary, and sent to each Governor at the address provided by each Governor from time to time; and

108.2 a copy of the agenda for the meeting;

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

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

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

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

111.1 the Governors so resolve; or

111.2 the number of Governors present ceases to constitute a quorum for a meeting of the Governors in accordance with Article 114, subject to Article 116.

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

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

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

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

116. The quorum for the purposes of:-

116.1 appointing a parent Governor under Article 57;

116.2 any vote on the removal of a Governor in accordance with Article 67;

116.3 any vote on the removal of the chairman of the Governors in accordance with Article 91, shall be any two-thirds (rounded up to a whole number) of the persons who are at the time Governors entitled to vote on those respective matters.

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

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

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

119.1 any vacancy among their number; or

119.2 any defect in the election, appointment or nomination of any Governor.

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

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

121.1 the agenda for every meeting of the Governors;

121.2 the draft minutes of every such meeting, if they have been approved by the person acting as chairman of that meeting;

121.3 the signed minutes of every such meeting; and

121.4 any report, document or other paper considered at any such meeting,

are, as soon as is reasonably practicable, made available at the Academy to persons wishing to inspect them.

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

122.1 a named teacher or other person employed, or proposed to be employed, at the Academy;

122.2 a named pupil at, or candidate for admission to, the Academy; and

122.3 any matter which, by reason of its nature, the Governors are satisfied should remain confidential.

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

123.1 he has given notice of his intention to do so detailing the telephone number on which he can be reached and/or appropriate details of the video conference suite from which he shall be taking part at the time of the meeting at least 48 hours before the meeting; and

123.2 the Governors have access to the appropriate equipment if after all reasonable efforts it does not prove possible for the person to participate by telephone or video conference the meeting may still proceed with its business provided it is otherwise quorate.

PATRONS AND HONORARY OFFICERS

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

THE SEAL

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

ACCOUNTS

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

ANNUAL REPORT

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

ANNUAL RETURN

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

NOTICES

129. Any notice to be given to or by any person pursuant to the Articles (other than a notice calling a meeting of the Governors) shall be in writing or shall be given using electronic communications to an address for the time being notified for that purpose to the person giving the notice. In these Articles, "Address" in relation to electronic communications, includes a number or address used for the purposes of such communications.
130. A notice may be given by the Academy Trust to a Member either personally or by sending it by post in a prepaid envelope addressed to the Member at his registered address or by leaving it at that address or by giving it using electronic communications to an address for the time being notified to the Academy Trust by the Member. A Member whose registered address is not within the United Kingdom and who gives to the Academy Trust an address within the United Kingdom at which notices may be given to him, or an address to which notices may be sent using electronic communications, shall be entitled to have notices given to him at that address, but otherwise no such Member shall be entitled to receive any notice from the Academy Trust.
- 131 A Member present, either in person or by proxy, at any meeting of the Academy Trust shall be deemed to have received notice of the meeting and, where necessary, of the purposes for which it was called.

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

INDEMNITY

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

RULES

134. The Governors may from time to time make such rules or bye laws as they may deem necessary or expedient or convenient for the proper conduct and management of the Academy Trust, and in particular but without prejudice to the generality of the foregoing, they may by such rules or bye laws regulate:

134.1 the setting aside of the whole or any part or parts of the Academy Trust's premises at any particular time or times or for any particular purpose or purposes;

134.2 the procedure at meetings of the Governors and committees of the Governors in so far as such procedure is not regulated by the Articles; and

134.3 generally, all such matters as are commonly the subject matter of company rules.

135. The Academy Trust in general meeting shall have power to alter, add or to repeal the rules or bye laws but only with the consent of the Diocesan Board of Education. Provided that no rule or bye law shall be inconsistent with, or shall affect or repeal anything contained in the Articles.

AVOIDING INFLUENCED COMPANY STATUS

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

137. No person who is a Local Authority Associated Person may be appointed as a Governor if, once the appointment had taken effect, the number of Governors who are Local Authority Associated Persons would represent 20% or more of the total number of Governors. Upon any resolution put to the Governors, the maximum aggregate number of votes exercisable by any Governors who are Local Authority Associated Persons shall represent a maximum of 19.9% of the total number of votes cast by the Governors on such a resolution and the votes of the other Governors having a right to vote at the meeting will be increased on a pro-rata basis.

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

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

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

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

ANNEX B

REQUIREMENTS FOR THE ADMISSION OF PUPILS TO WHITBURN CHURCH OF ENGLAND ACADEMY

GENERAL

1. This annex may be amended in writing at any time by agreement between the Secretary of State and the Academy Trust.
2. The Academy Trust will act in accordance with, and will ensure that an 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 Education ("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 legislation 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, the Academy Trust will take part in any mandatory Admissions Forum set up by the local authority ("LA") in which they are situated and have regard to its advice, and will participate in the co-ordinated admission arrangements operated by the LA and the local Fair Access Protocol.
4. Notwithstanding any provision in this Annex, the Secretary of State may:
 - 4.1 direct the Academy Trust to admit a named pupil to the Whitburn Church of England Academy on application from an LA. This will include complying with a School Attendance Order. Before doing so the Secretary of State will consult the Academy Trust.
 - 4.2 direct the Academy Trust to admit a named pupil to the Whitburn Church of England 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.
 - 4.3 direct the Academy Trust to amend its admission arrangements where they fail to comply with the School Admissions Code or the Admission Appeals Code.
- 4A. Whitburn Church of England Academy is a faith Academy in the Diocese of Durham..
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 Education as it applies to Foundation and Voluntary Aided schools. The determination of the appeal panel is binding on all parties.

Relevant Area

6. Subject to paragraph 7, the meaning of "Relevant Area" for the purposes of consultation requirements in relation to admission arrangements is that determined by the local authority for maintained schools in the area in accordance with the Education (Relevant Areas for Consultation on Admission Arrangements) Regulations 1999.

7. If the Academy does not consider the relevant area determined by the local authority for the maintained schools in the area to be appropriate, it must apply to the Secretary of State by 1 August for a determination of the appropriate relevant area for the Academy, setting out the reasons for this view. The Secretary of State will consult the Academy and the LA in which the Academy is situated in reaching a decision.

Requirement to admit pupils

8. Pupils on roll in any predecessor maintained or independent school will transfer automatically to the Academy on opening. All children already offered a place at any predecessor school will be admitted.
9. The Academy will:
 - 9.1 subject to its right of appeal to the Secretary of State in relation to a named pupil, admit all pupils with a statement of special educational needs naming the Academy;
 - 9.2 adopt admission oversubscription criteria that give highest priority to looked after children, in accordance with the relevant provisions of the School Admissions Code.

Oversubscription criteria, admission number, consultation, determination and objections.

10. The Academy admission arrangements will include oversubscription criteria, and an admission number for each relevant age group. The Academy will consult on its admission arrangements and determine them in line with the requirements within the School Admissions Code.
11. The Young People's Learning Agency (YPLA) may consider objections on the Secretary of State's behalf. The Academy Trust should therefore make it clear, when determining the Academy's admission arrangements, that objections should be submitted to the YPLA.
12. A determination of an objection by the YPLA on behalf of the Secretary of State, or by the Secretary of State will be binding upon the Academy.

ANNEX B

ARRANGEMENTS FOR PUPILS WITH SPECIAL EDUCATIONAL NEEDS ('SEN') AND DISABILITIES AT WHITBURN CHURCH OF ENGLAND ACADEMY

DUTIES IN RELATION TO PUPILS WITH SEN

1. The Governing Body of the Academy Trust must comply with all of the duties imposed upon the governing bodies of maintained schools in:
 - 1.1 Part 4 of the Education Act 1996 as amended from time to time;
 - 1.2 The Education (Special Educational Needs) (Information) Regulations 1999 as amended from time to time;
 - 1.3 The Education (Special Educational Needs Co-ordinators) (England) (Amendment) Regulations 2008 as amended from time to time.
2. Notwithstanding any provision in this Agreement, the Secretary of State may (whether following a complaint made to him or otherwise) direct the Academy Trust to comply with an obligation described in this Annex where the Academy Trust has failed to comply with any such obligation.
3. Where a child who has SEN is being educated in the Academy, those concerned with making special educational provision for the child must secure that the child engages in the activities of the school together with children who do not have SEN, so far as is reasonably practicable and is compatible with:
 - 3.1 the child receiving the special educational provision which his learning difficulty calls for,
 - 3.2 the provision of efficient education for the children with whom he will be educated, and
 - 3.3 the efficient use of resources.
4. In addition to complying with the duties imposed upon the governing bodies of maintained schools set out in The Education (Special Educational Needs) (Information) Regulations 1999 (as amended from time to time), the Academy Trust must ensure that the Academy's website includes details of the arrangements for the admission of disabled pupils; the steps taken to prevent disabled pupils from being treated less favourably than other pupils; and the facilities provided to assist access to the Academy by disabled pupils (disabled pupils meaning pupils who are disabled for the purposes of the Equality Act 2010).

ADMISSIONS

5. The Academy Trust must ensure that pupils with SEN are admitted on an equal basis with others in accordance with its admissions policy.
6. Where a local authority ("LA") proposes to name the Academy in a statement of SEN made in accordance with section 324 of the Education Act 1996, it must give the Academy Trust written notice that it so proposes. Within 15 days of receipt of the LA's notice that it proposes to name the Academy in a statement, the Academy Trust must consent to being named, except where admitting the child would be incompatible with the provision of efficient education for other children; and where no reasonable steps may be made to secure compatibility. In deciding whether a child's inclusion would be incompatible with the efficient education of other children,

the Academy Trust must have regard to the relevant guidance issued by the Secretary of State to maintained schools.

7. If the Academy Trust determines that admitting the child would be incompatible with the provision of efficient education, it must, within 15 days of receipt of the LA's notice, notify the LA in writing that it does not agree that the Academy should be named in the pupil's statement. Such notice must set out all the facts and matters the Academy relies upon in support of its contention that:
 - 7.1 admitting the child would be incompatible with efficiently educating other children; and
 - 7.2 the Academy Trust cannot take reasonable steps to secure this compatibility.
8. After service by the Academy Trust on the LA of any notice (further to paragraph 7 above) stating that it does not agree with the LA's proposal that the Academy be named, the Academy Trust must seek to establish from the LA, as soon as is reasonably practicable, whether or not the LA agrees with the Academy Trust. If the LA notifies the Academy that it does not agree with the Academy Trust's response, and names the Academy in the child's statement, the Academy Trust must admit the child to the school on the date specified in the statement or on the date specified by the LA.
9. Where the Academy Trust consider that the Academy should not have been named in a child's statement, they may ask the Secretary of State to determine that the LA has acted unreasonably in naming the Academy and to make an order directing the LA to reconsider.
10. The Secretary of State's determination shall, subject only to any right of appeal which any parent or guardian of the child may have to the First-tier Tribunal (Special Educational Needs and Disability), be final.
11. If a parent or guardian of a child in respect of whom a statement is maintained by the local authority appeals to the First-tier Tribunal (Special Educational Needs and Disability) either against the naming of the 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 9 above, be substituted for the Secretary of State's decision.
12. Where the Academy, the Secretary of State or the First-tier Tribunal (Special Educational Needs and Disability) have determined that it should be named, the Academy Trust shall admit the child to the Academy notwithstanding any provision of Annex B to this agreement.

ANNEX B

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 and the Governing Body have regard to the Secretary of State's guidance on exclusions including in relation to any appeals process as if the Academy were a maintained school.
4. The exceptions to the duties imposed under paragraphs 1 and 3 are>
 - 4.1 the Academy Trust shall make arrangements for enabling appeals against any decision of the Governing Body to permanently exclude a pupil in accordance with the functions assigned to the Local Authority. Any appeal panel will be impartial, constituted in accordance with the Secretary of State's guidance and any decision of such a panel will be binding on the Academy Trust. The requirements in relation to appeals apply to the Academy Trust only to the extent that the Local Authority is required to carry out such functions for maintained schools under the law on exclusions.
 - 4.2 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 4.3 consider an exclusion at the request of a parent; and
 - 4.4 subject to the Academy Trust's obligations under clause an agreement with the LA on the flow of funds following for money to follow pupils who have been permanently apply. 30 of this Agreement relating to an exclusion, the arrangements excluded from school does not