FREEDOM OF INFORMATION REDACTION SHEET

Dv8 Academy

FUNDING AGREEMENT

Exemptions in full

n/a

Partial exemptions

Personal information has been redacted from this document under Section 40 of the Freedom of Information (FOI) Act.

Section 40 of the FOI Act concerns personal data within the meaning of the Data Protection Act 1998.

Factors for disclosure	Factors for withholding
▪ to further the understanding of and increase participation in the public debate of issues concerning Free Schools. ▪ to ensure transparency in the accountability of public funds	▪ to comply with obligations under the Data Protection Act

<u>Reasons why public interest favours withholding information</u>

Whilst releasing the majority of Dv8 Academy's funding agreement will further the public understanding of Free Schools, the whole of Dv8 Academy's funding agreement cannot be revealed. If the personal information redacted was to be revealed under the FOI Act, personal data would be prejudiced.

DV8 ACADEMY

MODEL 16 TO 19 FREE SCHOOL
FUNDING AGREEMENT

4 August 2014

DV8 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 DV8 Academy Limited (the "Academy Trust").

2) The Academy Trust is a Company incorporated in England and Wales, limited by guarantee with registered Company number 8333424.

3) The following expressions used in this Agreement have the respective meanings assigned to them by the numbered clauses of this Agreement referred to immediately after the reference to the expressions -

   a) "Academies Financial Handbook" - clauses 59 and 68;

   b) "Accounting Officer" – clause 58;

   c) "Annual Letter of Funding" - clause 53;

   d) "GAG" – clause 41;

   e) "Capital Expenditure" - clause 36;

   f) "Capital Grant" – clause 36;

   g) "EAG" - clause 48;

   h) "Governing Body" – clause 13;

   i) "Recurrent Expenditure" – clause 35.

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

   "Academy Financial Year" means the year from 1st September to 31st August in any year or such other period as the Secretary of State may from time to time specify by notice in writing to the Academy Trust;

   "the Articles" means the Articles of Association of the Academy Trust for the time being in force;

“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;

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

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

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

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

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

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

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

“EFA” means Education Funding Agency and any successor;

“DfE” means Department for Education and any successor;

“Insured Risks” means fire, lightning, explosion, earthquake, storm, tempest, flood, subsidence, landslip, heave, impact, terrorism, bursting or

overflowing of water tanks and pipes, damage by aircraft and other aerial devices or articles dropped there from, riot and civil commotion, labour disturbance and malicious damage and such other risks as the Academy Trust insures against from time to time, subject in all cases to any exclusions or limitations as may from time to time be imposed by the insurers or underwriters;

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

“the Land” means the land (including for the avoidance of doubt all buildings, structures landscaping and other erections) situated at and known as Webbs Industrial Site 108 Blackhorse Lane and 47 Sutherland Road Walthamstow and registered under EGL433992 making up the permanent site of the Academy or the part of such land remaining in the ownership of the Academy Trust, following any disposal in accordance with clause 108I(c) ii or clause 108K;

“the Lease” means the full repairing and insuring lease in respect of the Land for a term of 125 years from 1 September 2014 at a peppercorn rent which may be entered into between (1) the Secretary of State for Education and (2) DV8 Academy Trust in respect of the site upon which the 16 to 19 Academy is situated;

“Memorandum” means the Memorandum of Association of the Academy Trust for the time being in force;

“parents” means parents or guardians;

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

“Principal” means the head teacher of the 16 to 19 Academy;

“Principal Regulator” means the body or person appointed as the Principal Regulator under the Charities Act 2011;

“Rent” means a payment made by the Academy Trust to a third party

pursuant to the Lease but subject to the terms of clause 56 of this Agreement;

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

references to "Secretary of State" shall where the context so admits be references to the EFA acting on the Secretary of State's behalf; and

"Start-up period" means a period of two Academy Financial Years (and for the avoidance of doubt the calculation of student number count provided for at clause 43B will be used for the third academic year in which the 16 to 19 Academy is open, and for each year thereafter)."[1]

5) The Interpretation Act 1978 shall apply for the interpretation of this Agreement as it applies for the interpretation of an Act of Parliament.

6) Expressions defined in this Agreement shall have the same meaning where used in any Annex to this Agreement.

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

8) Section 1 (3) of the Academies Act 2010 states that:

(3) An Academy agreement is an agreement between the Secretary of State and the other party under which-

(a) the other party gives the undertakings in subsection (5), and

(b) the Secretary of State agrees to make payments to the other party in consideration of those undertakings.

LEGAL AGREEMENT

9) In consideration of the Academy Trust undertaking to establish and maintain,

[1] When an institution will have a significant proportion of their students undertaking three year courses, DfE will consider requests for the start-up period to be three years.

and to carry on or provide for the carrying on of, an educational institution in England to be known as the DV8 Academy ("the 16 to 19 Academy") and meeting such requirements as are referred to in clause 10, the Secretary of State agrees to make payments to the Academy Trust in accordance with the conditions and requirements set out in this Agreement. For the avoidance of doubt, any obligations imposed upon or powers given to the Academy by this Agreement are also imposed upon the Academy Trust.

16 TO 19 ACADEMY REQUIREMENTS

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

16 TO 19 ACADEMY OPENING DATE

11) The 16 to 19 Academy shall open as an educational institution on 22 September 2014.

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

CONDITIONS OF GRANT

General

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

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

b) there will be the opportunity to study for qualifications in accordance with

clause 29(d) and there will be assessment of students' performance appropriate to the qualifications studied;

c) the admissions policy and arrangements for the 16 to 19 Academy will be formulated in accordance with clause 17 of this agreement;

d) levels of pay and conditions of service for all staff, including teachers, at the 16 to 19 Academy will be the responsibility of the Academy Trust;

e) there will be an emphasis on the needs of the individual students including students with learning difficulties and disabilities;

f) not used.

g) there will be no charge to students (or their parents) in respect of admission to the 16 to 19 Academy and the 16 to 19 Academy is only permitted to charge where: (i) the law allows institutions within the further education sector to charge; and (ii) in accordance with clause 33 of this Agreement;and

(h) the Academy Trust shall ensure that, so far as reasonably practicable, learning takes place in safe, healthy and supportive environments, which meet the needs of students;

(i) the Academy Trust shall comply with all relevant statutory requirements and the most recent policies and national minimum standards, including those in relation to financial health and/or control, which may from time to time be issued by DfE, EFA, awarding organisations and the Chief Inspector, including but not limited to, those published on the relevant body's website.

Governance

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

14) The Governing Body shall have regard to (but for the avoidance of doubt shall

not be bound by) any guidance as to the governance of Academy Trusts that the Secretary of State may publish.

14A) The Academy Trust must provide to the Secretary of State the names of all new or replacement Governors and members of the Academy Trust, stating whether they have been appointed or elected, the date of their appointment or election and, where applicable, the name of the Governor or member they replaced as soon as is practicable and in any event within 14 days of their appointment or election.

14B) The Academy Trust must not appoint any new or replacement Governors or members until it has first informed them, and they have agreed, that their names will be shared with the Secretary of State to enable him to assess their suitability.

Conduct

15) The Academy Trust will conduct the 16 to 19 Academy in accordance with:

a) the Articles;

b) all provisions by or under statute which confer rights or impose obligations on 16 to 19 Academies;

c) the terms of this Agreement.

15A) The Academy Trust must ensure that so far as is reasonably practicable and consistent with this Agreement and the Equality Act 2010, the policies and practices adopted by the Academy (in particular regarding curriculum, uniform and school food) enable pupils of all faiths and none to play a full part in the life of the Academy, and do not disadvantage pupils or parents of any faith or none. For the avoidance of doubt, this requirement applies irrespective of the proportion of pupils of any faiths or none currently attending or predicted to join the school.

Disclosure and Barring Service Checks and other checks

16) The Academy Trust agrees to comply with any obligations that apply to it by virtue of provisions in the Safeguarding and Vulnerable Groups Act 2006 as may

be amended from time to time in respect of, but not limited to, the performance of barred list checks.

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

a) references to “the governing body of a further education institution” or to “the governing body” shall be treated as references to the Academy Trust;

b) references to “a further education institution” or “the institution” shall be treated as references to the 16 to 19 Academy, except in regulations 9(1)(b) and 19(2)(a)(ii) where they shall have their normal meaning;

c) the Academy Trust shall not have to comply with any of the requirements in relation to relevant staff qualifications specified in regulation 3(2)**,** namely: regulations 5(3); regulation 17(1) only in so far as it relates to regulation 18(3); regulation 22 only in so far as it relates to paragraph 4 of Part 1of the Schedule; and regulation 23 only in so far as it relates to paragraph 2(3) of Part 2 of the Schedule. For the avoidance of doubt, the relevant staff qualification requirements do not need to be met by members of staff at the 16 to 19 Academy; and

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

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

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

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

iv) where the Academy Trust is required to carry out an enhanced disclosure and barring service check in respect of the Chair of the Governing Body it must be counter signed by the Secretary State.

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

Secondary education provided to persons of compulsory school age

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

16D)

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

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

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

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

Students

17) The planned capacity of the 16 to 19 Academy is 400 places in the age range 16-19. The 16 to 19 Academy will be an educational institution principally concerned with providing full-time or part-time education suitable to the requirements of persons over compulsory school age but under 19 whose requirements for:

a) the admission of students to the 16 to 19 Academy;

b) the admission to the 16 to 19 Academy of and support for students with learning difficulties and with disabilities; and

c) student exclusions;

are set out in written policies. Such policies will be fair, objective and transparent, and will be formulated in accordance with the Academy Trust's legal powers and duties in relation to 16 to 19 provision and for the avoidance of doubt adherence to those policies forms part of this Agreement.

17B) The Secretary of State agrees that the Academy Trust may vary such policies subject to the Academy Trust informing the Secretary of State of any variation to the policies in writing as soon as reasonably practicable.

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

Teachers and other staff

18) Subject to clause 19, the Academy Trust shall, in accordance with any

guidance which the Secretary of State may issue on the qualifications of teaching and other staff in Academies, employ anyone it deems is suitably qualified or is otherwise eligible under a contract of employment or for services to carry out planning and preparing lessons and courses for students, delivering lessons to students, assessing the development, progress and attainment of students, and reporting on the development, progress and attainment of students.

19) Not used.

20) The Academy Trust shall ensure that all teachers employed at the 16 to 19 Academy have access to the Teachers Pension Scheme and, in so doing, will comply with the statutory provisions underlying the scheme.

21) The Academy Trust shall ensure that all employees at the 16 to 19 Academy other than teachers ("Non-teaching Staff") have access to the Local Government Pension Scheme in accordance with the Local Government Pension Scheme (Administration) Regulations 2008 [SI 2008/239] or such other regulations as may for the time being be applicable.

21A) Where a teacher employed at the 16 to 19 Academy applies for a teaching post at another Academy, maintained school, school maintained by a local authority, or institution within the further education sector, the Academy Trust must at the request of the governing body or Academy Trust of that other educational institution:

a) advise in writing whether or not, in the preceding two years, there has been any formal consideration of that teacher's capability to perform their role at the 16 to 19 Academy; and

b) provide written details of the concerns which gave rise to any such consideration of that teacher's capability, the duration of the proceedings and their outcome.

Curriculum, curriculum development and delivery and collective worship

22) The curriculum provided by the 16 to 19 Academy should be suitable to the

requirements of the students and can include vocational, social, physical and recreational training.

22A) The Academy Trust shall publish information in relation to its current curriculum provision. Such information shall include details relating to:

a) the content of the curriculum;

b) its approach to the curriculum;

c) the qualifications offered by the 16 to 19 Academy;

d) not used; and

e) how students and parents (including prospective students and parents) can obtain further information in relation to the 16 to 19 Academy's curriculum.

22B) Subject to the requirements of clauses 22, 22A and 24 to 28B, the curriculum will be the responsibility of the Academy Trust.

23) Not used.

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

24A) The Academy Trust shall not make provision in the context of any subject for the teaching, as an evidence-based view or theory, of any view or theory that is contrary to established scientific and/or historical evidence and explanations.

24B) Where relevant to the curriculum, the Academy Trust shall make provision for the teaching of evolution as a comprehensive, coherent and extensively evidenced theory.

25) Not used.

26) Not used.

27) Not used.

28) Not used.

28A) Not used.

28B) The Academy Trust shall ensure that principles are promoted which support fundamental British values, including: respect for the basis on which the law is made and applied in England; respect for democracy and support for participation in the democratic processes; support for equality of opportunity for all; support and respect for the liberties of all within the law; and respect for and tolerance of different faiths and religious and other beliefs.

Assessment

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

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

b) Not used.

c) Not used.

d) The Academy Trust may offer:-

(i) any course of education or training at the 16 to 19 Academy which leads to a qualification that is approved by the Secretary of State for the purposes of section 96 of the Learning and Skills Act 2000; and

(ii) any course of education or training not falling within paragraph (i) if the Secretary of State gives his specific written approval for it.

29A) The Academy Trust shall ensure it publishes on its website such information in relation to the 16 to 19 Academy's performance as the Secretary of State may request in writing from time to time.

International Education Surveys

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

30) Not used.

31) Not used.

32) Not used.

Charging

33) The 16 to 19 Academy shall only be permitted to make charges in the circumstances that institutions within the further education sector are permitted to as set out in the current 16 to 19 Funding Guidance published by the Secretary of State, as amended from time to time, or such other guidance on 16 to 19 funding issued by the Secretary of State as may from time to time be applicable.

33A) The Academy Trust must comply with any guidance issued by or on behalf the Secretary of State, as amended from time to time, in relation to free meals in the further education sector, as far as it applies to the Academy.

DURATION OF SCHOOL DAY AND YEAR

33B) The duration of the school day and year will be the responsibility of the Academy Trust, and for the purpose of this paragraph "school" means the 16 to 19 Academy.

GRANTS TO BE PAID BY THE SECRETARY OF STATE

General

34) The Secretary of State shall pay grants towards Recurrent Expenditure and may pay grants towards Capital Expenditure for the 16 to 19 Academy. 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 (subject to clause 72). The Academy Trust shall not enter into commitments which are likely to have substantial implications for future levels of grant, or for the period for which grant may be required. No decision by the Academy Trust shall commit the Secretary of State to paying any particular amount of grant.

35) "Recurrent Expenditure" means any expenditure on the establishment, conduct, administration and maintenance of the 16 to 19 Academy which does not fall within the categories of capital expenditure set out at clause 36. The Secretary of State shall pay separate and distinct grants in respect of Recurrent Expenditure: General Annual Grant ("GAG"), Earmarked Annual Grant ("EAG") and where appropriate Additional Funding under clause 56.

Capital Grant

36) "Capital Expenditure" means expenditure on:

a) the acquisition of land and buildings;

b) the erection, enlargement, improvement or demolition of any building including fixed plant, installation, wall, fence or other structure, or any playground or hard standing;

c) the installation of electrical, mechanical or other services other than necessary replacements, repairs and maintenance due to normal wear and tear;

d) the purchase of vehicles and other self-propelled mechanical equipment;

e) the installation and equipping of premises with furnishings and

equipment, other than necessary replacements, repairs and maintenance due to normal wear and tear;

f) the installation and equipping of premises with computers, networking for computers, operating software and information and communication technology equipment, other than necessary updates or necessary replacements, repairs and maintenance due to normal wear and tear;

g) the provision and equipping of premises, including playing fields and other facilities for social activities and physical recreation other than necessary replacements, repairs and maintenance due to normal wear and tear;

h) works of a permanent character other than the purchase or replacement of minor day-to day items;

i) any major repairs or replacements which are specified as constituting capital expenditure in any grant letter relating to them;

j) such other items (whether of a like or dissimilar nature to any of the foregoing) of a substantial or enduring nature as the Secretary of State may agree shall constitute capital expenditure for the purposes of this Agreement;

k) all professional fees properly and reasonably incurred in connection with the provision of any of the above;

l) VAT and other taxes payable on any of the above.

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

37) Where the Academy is to open in new premises, or where existing premises are to be substantially refurbished or remodelled to enable the 16 to 19 Academy to open in such premises, the Secretary of State may, in his absolute discretion, be responsible for meeting the incurred Capital Expenditure for that 16 to 19 Academy. To that end, the Secretary of State will

consider providing funding in accordance with any arrangements as he considers appropriate.

38) Any Capital Expenditure incurred in respect of the 16 to 19 Academy, on which Capital Grant payments are sought from the Secretary of State, will require the specific prior written agreement of the Secretary of State, which agreement shall not be unreasonably withheld or delayed.

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

a) such grants are used solely to defray expenditure approved by the Secretary of State;

b) the Academy Trust certifying and providing evidence that all planning and other consents necessary for the development and all related infrastructure to be completed have been obtained or put in place; and

c) any other conditions that the Secretary of State may specify.

Arrangements for Payment of Capital Grant

40) Capital Grant will be paid by the Secretary of State to the Academy Trust on the basis of claims for grant submitted to the Secretary of State in the notified format with supporting invoices and certificates as required by the Secretary of State. If a dispute arises as to whether a claim is or is not acceptable both parties undertake to attempt to resolve it in good faith. In the event of such a dispute, the Secretary of State shall pay to the Academy Trust so much of the claim as shall not be in dispute.

General Annual Grant

41) GAG will be paid by the Secretary of State to the Academy Trust in order to cover the normal running costs of the 16 to 19 Academy. These will include, but are not limited to:

a) teachers' salaries and related costs (including full and part-time teaching staff and seconded teachers);

b) non-teaching staff salaries and related costs (including pension contributions, educational support staff, administrative and clerical staff and manual and premises related staff);

c) employees' expenses;

d) the purchase, maintenance, repair and replacement:

    (i) of teaching and learning materials and other educational equipment, including books, stationery and ICT equipment and software, sports equipment and laboratory equipment and materials;

    (ii) of other supplies and services;

e) examination fees;

f) repairs, servicing and maintenance of buildings (including redecoration, heating, plumbing, lighting etc); maintenance of grounds (including boundary fences and walls); cleaning materials and contract cleaning; water and sewage; fuel and light (including fuel oil, solid and other fuel, electricity and gas); rents; rates; purchase, maintenance, repairs and replacement of furniture and fittings;

g) insurance;

h) medical equipment and supplies;

i) staff development (including in-service training);

j) curriculum development;

k) discretionary grants to students to meet the cost of student support, including support for students with learning difficulties or disabilities (taking account of the fact that separate additional money will be available for students with learning difficulties or disabilities);

l) administration;

m) establishment expenses and other institutional costs.

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

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

b) Not used.

c) Funding for matters for which it is necessary for the 16 to 19 Academy to incur extra costs, to the extent that those costs are deemed in the discretion of the Secretary of State to be necessary; and

d) Payments equivalent to further, specific grants made available to institutions within the further education sector, where the 16 to 19 Academy meets the requisite conditions and criteria necessary for an institution within the further education sector to receive these grants, such payments to be at the discretion of the Secretary of State.

43) During the “Start-up period” the basis of the student number count for the purposes of determining GAG for an Academy Financial Year for the 16 to 19 Academy will be the Academy Trust's estimate each year for numbers on roll in the following September for the 16 to 19 Academy, such estimate to be based on an objective assessment of student numbers and agreed with the Secretary of State.

43A) The Secretary of State shall in advance of each Academy Financial Year for the Academy, at such time or times as he shall determine, request that the Academy Trust provides an estimate of the number of students on roll in the following September for the 16 to 19 Academy for the purposes of determining GAG for an Academy Financial Year, and the Academy Trust shall provide the requested estimate (such estimate to be based on an objective assessment of numbers) to the Secretary of State as soon as reasonably practicable.

43B) After the “Start-up period” the arrangements for calculating the student number count for the purpose of determining GAG for the 16 to 19 Academy shall be those provided for in guidance on the national funding system published by the Secretary of State under section 15ZD of the Education Act 1996 for the relevant Academy Financial Year, in respect of persons who have reached the age of 16 but have not reached the age of 19, or are aged 19-24 and have a learning difficulty and/or disability and are the subject of a learning difficulty assessment.

43C) For any Academy Financial Year in which GAG for the 16 to 19 Academy has been calculated in accordance with clause 43, an adjustment may be made to the following Academy Financial Year's formula funding element of GAG for the 16 to 19 Academy to recognise any variation from that estimate. The Secretary of State may for the purpose of calculating any adjustment to the formula funding element of GAG under this clause, use the Individualised Learner Record for the Academy Financial Year in question as a means of determining student numbers in an Academy Financial Year. The additional or clawed-back grant will be only that amount relevant to the number of students above or below that estimate.

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

44) The Secretary of State may pay further grant in the Start-up period, as determined and specified by him, for costs which cannot otherwise be met from GAG.

45) The Secretary of State recognises that if he serves notice of intention to terminate this Agreement, the intake of new students during the notice period is likely to decline and that in such circumstances payments based simply upon the number of students attending the 16 to 19 Academy are unlikely to be sufficient to meet the Academy's needs during the notice period. In those circumstances, the Secretary of State may undertake to pay a reasonable and appropriately larger GAG with respect to the 16 to 19 Academy in the notice period than would be justified solely on the basis of the methods set out in clauses 42-43D, in order to enable the 16 to 19 Academy to operate effectively.

46) The Secretary of State also recognises that if this Agreement is terminated for any reason by either party the number of students at the 16 to 19 Academy is likely to decline. In these circumstances both parties undertake to attempt to resolve issues arising from such termination in good faith and with the aim of protecting the interests and the education of the students at the 16 to 19 Academy.

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

Earmarked Annual Grant

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

49) Where the Academy Trust is seeking a specific EAG in relation to any Academy Financial Year, it shall submit a letter outlining its proposals and the reasons for its request to the DfE.

Arrangements for Payment of GAG and EAG

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

start of each Academy Financial Year of the GAG and EAG figures in respect of the 16 to 19 Academy which, subject to Parliamentary approval, the Secretary of State plans for that Academy Financial Year and of the assumptions and figures on which these are based.

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

a) if this leads to an underpayment of GAG, the Secretary of State will correct the underpayment in subsequent Academy 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.

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

a) if this leads to an underpayment of GAG, the Secretary of State may correct the underpayment in subsequent Academy 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.

53) The amounts of GAG for an Academy Financial Year will be determined annually by the Secretary of State. The amount of GAG for the 16 to 19 Academy for the initial Academy Financial Year will be notified to the Academy Trust in a funding letter at a date preceding that year. For subsequent years the amount of GAG will be notified to the Academy Trust in a funding letter preceding that Academy Financial Year (the “Annual Letter of Funding"). The Annual Letter of Funding or its equivalent will not include the amount that the Academy Trust will receive in respect of grants for which information to enable timely calculation

is not available or is incomplete. Such grants will be notified as soon as practicable later in the year. Amounts of EAG will be notified to the Academy Trust wherever possible in the Annual Letter of Funding or its equivalent or as soon as practicable thereafter.

54) The Secretary of State undertakes to pay GAG in monthly instalments on or before the twenty-fifth day of each month, each such instalment to fund the salaries and other payroll costs for the relevant month of all monthly paid employees and all other costs payable during the next following month. The detailed arrangements for payment will be set out in the Annual Letter of Funding or its equivalent.

Additional Funding

55) Not used.

56) The Secretary of State shall meet the Academy Trust's costs arising from Rent payable by the Academy Trust under the Lease. Such costs shall include those costs arising from any rent rise payable by the Academy Trust under the terms of the Lease, so long as the relevant rent rise is properly evidenced in writing by the Academy Trust to the Department as soon as is reasonably practicable, but such costs shall not include any amount in respect of service charge payments or insurance premiums. Where the definition of rent in the Lease includes service charge payments or insurance premiums, the Secretary of State shall exclude from the total grant payable in respect of Rent an amount in respect of such service charge payments or insurance premiums.

57) Not used.

Financial and Accounting Requirements

General

58) The Academy Trust shall appoint an Accounting Officer and shall notify the Secretary of State of that appointment.

59) In relation to the use of grant paid to the Academy Trust by the Secretary of State, the Academy Trust shall abide by the requirements of and have regard to

the guidance in the Academies Financial Handbook published by the DfE and amended from time to time, which sets out in detail provisions for the financial management of the Academy including guidance on financial systems and controls and accounting and reporting requirements, in so far as these are not inconsistent with any accounting and reporting requirements and guidance that it may be subject to by virtue of it being a charity.

59A) The Academy Trust shall abide by the requirements of the current 16 to 19 Funding Guidance published by the Secretary of State, as amended from time to time, or such other guidance on 16 to 19 funding issued by the Secretary of State as may from time to time be applicable, in respect of any of its provision for persons who are above compulsory school age until the academic year in which they reach the age of 19.

60) The formal budget plan must be approved each Academy Financial Year by the Governing Body of the Academy Trust.

61) Any payment of grant by the Secretary of State in respect of the 16 to 19 Academy is subject to his being satisfied as to the fulfilment by the Academy Trust of the following conditions:

a) in its conduct and operation it shall apply financial and other controls which conform to the requirements both of propriety and of good financial management;

b) arrangements have been made to maintain proper accounting records and that statements of income and expenditure and balance sheets may be produced in such form and frequency as the Secretary of State may from time to time reasonably direct;

c) in addition to the obligation to fulfil the statutory requirements referred to in sub-clause f) below, the Academy Trust shall prepare its financial statements, Directors' report, Annual Accounts and its Annual Return for each Academy Financial Year in accordance with the Statement of Recommended Practice as issued by the Charity Commission and updated from time to time as if the Academy Trust was a non-exempt Charity and/or

in such form or manner as the Secretary of State may reasonably direct and shall file these with the Secretary of State and the Principal Regulator by 31 December each Academy Financial Year;

d) a statement of the accounting policies used should be sent to the Secretary of State with the financial statements and should carry an audit report stating that, in the opinion of the auditors, the statements show a true and fair view of the Academy Trust's affairs and that the grants were used for the purposes intended;

e) the Academy Trust shall ensure that its accounts are audited annually by independent auditors appointed under arrangements approved by the Secretary of State;

f) the Academy Trust prepares and files with the Companies Registry such annual accounts as are required by the Companies Act 2006;

g) the Academy Trust shall publish on its website its Annual Accounts, Annual Report, Memorandum and Articles, Funding Agreement and a list of the names of the Governors of the Academy Trust;

h) the Academy Trust insures or procures insurance by another person of its assets in accordance with normal commercial practice or under the terms of the Lease.

62) In addition, and at his expense, the Secretary of State may instruct auditors to report to him on the adequacy and effectiveness of the accounting systems and internal controls maintained by the Academy Trust to standards determined by the Secretary of State and to make recommendations for improving the financial management of the Academy Trust.

63) The books of accounts and all relevant records, files and reports of the Academy Trust including those relating to financial controls, shall be open at all reasonable times to officials or agents of the DfE and the National Audit Office and to contractors retained by the DfE or the National Audit Office for inspection or the carrying out of value for money studies; and the Academy Trust shall

secure that those officials and contractors are given reasonable assistance with their enquiries. For the purposes of this clause 'relevant' means in any way relevant to the provision and use of grants provided by the Secretary of State under this Agreement.

64) The Academy Trust shall submit information relating to the 16 to 19 Academy's finances to the Secretary of State in accordance with the requirements of the Academies Financial Handbook as amended from time to time or as otherwise specified from time to time by the Secretary of State.

65) At the beginning of any Academy Financial Year the Academy Trust may hold unspent GAG from previous Academy Financial Years amounting to such percentage (if any) as for the time being specified in the Academies Financial Handbook or otherwise as the Secretary of State may specify by notice in writing to the Academy Trust prior to the beginning of that Academy Financial Year of the total GAG payable for the Academy in the Academy Financial Year just ended or such higher amount as may from time to time be agreed. The Academy Trust shall use such carried forward amount for such purpose, or subject to such restriction on its use, as for the time being specified in the Academies Financial Handbook or otherwise as the Secretary of State may specify by notice in writing to the Academy Trust.

66) Notwithstanding clause 65, any additional grant provided over and above that set out in clauses 42-43D, and made in accordance with clauses 44-45 may be carried forward without limitation or deduction until the Start-up Period or the circumstances set out in clause 45 come to an end.

67) Any unspent GAG not allowed to be carried forward under clauses 65-66 will be taken into account in the payment of subsequent grant.

67A) If the Secretary of State pays grant not including GAG to the Academy Trust on condition either that such grant be used for a particular purpose or purposes or that such grant be used by a certain date, any failure on the part of the Academy Trust to use such grant for such a purpose or purposes or by such date may be taken into account by the Secretary of State either:

(i) in the same Academy Financial Year that such grant is paid to the Academy Trust; or

(ii) in the calculation and/or payment of any subsequent grant to the Academy Trust; or

(iii) by an adjustment to the GAG paid by the Secretary of State to the Academy Trust in the following Academy Financial Year or Academy Financial Years.

67B) If the Secretary of State or his agents pay any grant to the Academy Trust which includes an amount to cover the VAT which will be payable by the Academy Trust in using any such grant for the purposes intended, the Academy Trust shall, having paid the VAT to a third party for any goods or services it has purchased from such a third party, where entitled, promptly and, in any event, as soon as is reasonably practicable, submit a VAT reclaim application to Her Majesty's Revenue and Customs (HMRC) in respect of such VAT payment. Any failure, on the part of the Academy Trust to submit a VAT reclaim application or repay the amount recouped to the Secretary of State as soon as reasonably practicable following the receipt of such payment from HMRC may be taken into account by the Secretary of State either:

(i) in the same Academy Financial Year that such grant is paid to the Academy Trust; or

(ii) in the calculation and/or payment of any subsequent grant to the Academy Trust; or

(iii) by an adjustment to the GAG paid by the Secretary of State to the Academy Trust in the following Academy Financial Year or Academy Financial Years.

67C) GAG paid by the Secretary of State shall only be used by the Academy Trust for the educational charitable purpose of advancing for the public benefit education in the United Kingdom, in particular but without prejudice to the generality of the foregoing by establishing, maintaining, carrying on, managing and developing a 16 to 19 Academy. Such funds shall not be used by the Academy Trust for any other charitable purpose without the prior written consent

of the Secretary of State, except where the use of such funds for that charitable purpose is merely incidental to their use for the educational charitable purpose of advancing for the public benefit education in the United Kingdom.

68) The Academy Trust may also spend or accumulate funds from private sources or public sources other than grants from the Secretary of State for application to the benefit of the Academy as it sees fit provided that it complies with all applicable requirements relating to the proper and regular use of funds in the Academies Financial Handbook. Any surplus arising from private sources or public sources other than grants from the Secretary of State shall be separately identified in the Academy Trust's balance sheet.

69) The Academy Trust shall not, in relation to assets or property funded (whether in whole or in part) by the Secretary of State or otherwise coming within the meaning of publicly funded land as defined by paragraph 22(3) of Schedule 1 to the Academies Act 2010, 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 above a value as for the time being specified in the Academies Financial Handbook or otherwise as the Secretary of State may specify by notice in writing to the Academy Trust from time to time;

b) write off any debts or liabilities owed to it, nor offer to make any ex gratia payments (such as staff severance or compensation payments), above a value as for the time being specified in the Academies Financial Handbook or otherwise as the Secretary of State may specify by notice in writing to the Academy Trust from time to time ;

c) except as may be permitted in the Academies Financial Handbook or otherwise as the Secretary of State may specify by notice in writing to the Academy Trust, make any sale or purchase of or otherwise dispose of freehold or leasehold property including entering into a contract to dispose of land or granting an option to acquire an interest in land; or

d) take up any leasehold or tenancy agreement.

70) The Academy Trust shall provide 30 days prior written notice to the Secretary of State, whether or not the circumstances require the Secretary of State's approval, of its intention to:

a) give any guarantees, indemnities or letters of comfort;

b) write off any debts owed to it or offer to make any ex gratia payments;

c) make any sale or purchase of or otherwise dispose of freehold or leasehold property including entering into a contract to dispose of land or granting an option to acquire an interest in land; or

d) take up any leasehold or tenancy agreement.

71) Each discovered loss of an amount exceeding the amount from time to time being specified by the Secretary of State, and arising from suspected theft or fraud, shall be reported by the Academy Trust to the Secretary of State at the earliest opportunity.

72) It is the responsibility of the Academy Trust to ensure that the Academy balances its budget from Academy Financial Year to Academy Financial Year. For the avoidance of doubt, this does not prevent the Academy Trust from:

a) subject to clause 65, carrying a surplus from one Academy Financial Year to the next; or

b) carrying forward from a previous Academy Financial Year or Academy Financial Years a sufficient surplus or sufficient cumulative surpluses on grants from the Secretary of State to meet an in-year deficit on such grants in a subsequent financial year; or

c) incurring an in-year deficit on funds from sources other than grants from the Secretary of State in any Academy Financial Year, provided it does not affect the Academy Trust's responsibility to ensure that the 16 to 19 Academy balances its overall budget from Academy Financial Year to Academy Financial Year.

72A) The Academy Trust shall abide by the requirements of and have regard to the Charity Commission's guidance to charities and charity trustees and in particular the Charity Commission's guidance in the Protecting Charities from Harm ('the compliance toolkit'), and in "CC9: Speaking Out, Campaigning and Political Activities by Charities" as amended from time to time. Any references in such guidance which require charity trustees to report to the Charity Commission should instead be interpreted as references to report to the Principal Regulator.

Borrowing Powers

73) Except as may be permitted in the Academies Financial Handbook (as amended from time to time) or otherwise as the Secretary of State may specify by notice in writing to the Academy Trust, the Academy Trust shall not borrow against or so as to put at risk property or assets funded (whether in whole or in part) by the Secretary of State without specific approval of the Secretary of State, such approval at the absolute discretion of the Secretary of State. The Academy Trust shall not operate an overdraft except to cover irregularities in cash flow. Such an overdraft, and the maximum amount to be borrowed, must be approved by the Academy Trust in a General Meeting and in writing by the Secretary of State, and shall be subject to any conditions which the Secretary of State may reasonably impose.

74) The Academy Trust shall provide 30 days written notice to the Secretary of State of its intention to borrow, whether or not such borrowing requires the Secretary of State's approval under clause 73 above.

Disposal of Assets

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

76) The sale or disposal by other means, or reinvestment of proceeds from the

disposal, of a capital asset by the Academy Trust shall require the consent of the Secretary of State, such consent not to be unreasonably withheld or delayed, where:

a) the Secretary of State paid capital grant in excess of the value from time to time being specified by the Secretary of State for the asset; or

b) the asset was transferred to the Academy Trust from a LA for no or nominal consideration.

77) Furthermore, reinvestment of a percentage of the proceeds of disposal of a capital asset paid for with a capital grant from the Secretary of State shall require the Secretary of State's consent in the circumstances set out above and reinvestment exceeding the value from time to time being specified by the Secretary of State or with other special features will be subject to Parliamentary approval. The percentage of the proceeds for which consent is needed is the percentage of the initial price of the asset which was paid by capital grant from the Secretary of State.

78) This clause applies in the event, during the lifetime of this Agreement, of the disposal of a capital asset for which capital grant of any amount was paid by the Secretary of State, where the asset was acquired by the Academy Trust. In this event, the Academy Trust shall repay to the Secretary of State the same proportion of the proceeds of the disposal as equates with the proportion of the original cost met by the Secretary of State, unless the Secretary of State agrees to some or all of the proceeds being retained by the Academy Trust for its charitable purposes.

79) This clause applies in the event, during the lifetime of this Agreement, that the Secretary of State consents to the disposal of an asset which was transferred to the Academy Trust from an LA for no or nominal consideration. In this event the Secretary of State may give consent on the basis that all or part of the proceeds of the disposal should be made over to the LA from which the asset was transferred, taking into account the amount of the proceeds to be reinvested by the Academy Trust. The Secretary of State will have regard to any representations from the Academy Trust and the LA from which the asset was

transferred before giving consent under this clause.

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

81) The Academy Trust shall provide 30 days notice to the Secretary of State of its intention to dispose of assets for a consideration less than the best price that can reasonably be obtained, whether or not such disposal requires the Secretary of State's consent under clause 80 above.

TERMINATION

General

82) Either party may give not less than seven Academy Financial Years' written notice to terminate this Agreement, such notice to expire on 31 August 2021or any subsequent anniversary of that date, save where the provisions of this Agreement otherwise provide.

Termination Warning Notice

83) The Secretary of State shall be entitled to issue to the Academy Trust a written notice of his intention to terminate this Agreement ("Termination Warning Notice") where he considers that:

a) the 16 to 19 Academy is no longer meeting the requirements referred to in clause 10 of this Agreement (subject to clause 89);
b) the conditions and requirements set out in clauses 12-33A of this Agreement are no longer being met;
c) the standards of performance of students at the 16 to 19 Academy are unacceptably low;
d) there has been a serious breakdown in the way the 16 to 19 Academy is managed or governed;
e) the safety of students is threatened (whether by breakdown of discipline or otherwise); or
f) the Academy Trust is otherwise in material breach of the provisions of this

Agreement.

83A) A Termination Warning Notice issued by the Secretary of State in accordance with clause 83 shall specify:

a) reasons for the Secretary of State's issue of the Termination Warning Notice;
b) the remedial measures which the Secretary of State requires the Academy Trust to carry out, with associated deadlines, in order to rectify the defaults identified ("Specified Remedial Measures"); and
c) the date by which the Academy Trust must respond to the Termination Warning Notice providing its representations with regard thereto or confirm that it accepts and agrees to undertake the Specified Remedial Measures.

84) The Secretary of State shall consider any response and representations from the Academy Trust which are received by the date specified in accordance with clause 83A)c) and shall confirm whether he considers that:

a) in light of the Academy Trust's representations in response to the Termination Warning Notice, some or all of the Specified Remedial Measures are not required to be implemented (and if so which) and/or the Specified Remedial Measures are being or will be implemented with the specified timeframe; or
b) subject to any further measures he reasonably requires ("Further Remedial Measures") being implemented by a specified date or any evidence he requires being provided, the implementation of such measures has been or will be successfully completed within the specified timeframes; or
c) he is not satisfied that the Academy Trust will rectify the defaults identified in the Termination Warning Notice within the specified timeframes. (In such circumstances, the Secretary of State may notify the Academy Trust of his intention to terminate the Agreement on a specified date.)

85) The Secretary of State may by notice in writing terminate this Agreement with effect from a specified date in the event that:

a) the Academy Trust has not by the date specified in clause 83A(c) responded to the Termination Warning Notice either confirming that it accepts and agrees to undertake the Specified Remedial Measures or providing its representations with regard to the Specified Remedial Measures; or
b) the Academy Trust has not carried out the Specified Remedial Measures and/or Further Remedial Measures within the specified timeframes;

provided that having considered any representations made by the Academy Trust pursuant to clause 83A)c), the Secretary of State remains satisfied that it is appropriate to terminate the Agreement.

Notice of Intention to Terminate

86) The Secretary of State may at any time give written notice of his intention to terminate the Agreement where the Chief Inspector has made a report under section 124(4)(a) or 125(4)(a) of the Education and Inspections Act 2006 and stated that he does not consider the education or training inspected in the 16 to 19 Academy to be of a quality adequate to meet the reasonable needs of those receiving it;

87) Any notice issued by the Secretary of State in accordance with clause 86 shall invite the Academy Trust to respond with any representations within a specified timeframe.

88) Where the Secretary of State has given notice of his intention to terminate this Agreement in accordance with clauses 86 and 87 and

a) he has not received any representations from the Academy Trust within the timeframe specified in clause 87; or
b) having considered the representations made by the Academy Trust pursuant to clause 87, the Secretary of State remains satisfied that it is appropriate to terminate this Agreement

he may by notice in writing terminate this Agreement with effect from a specified date.

Termination with Immediate Effect

89) Not used.

90) The Secretary of State may at any time by notice in writing terminate this Agreement, such termination to take effect on the date of the notice, on the occurrence, or where in his reasonable opinion there is a serious risk of 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 2011 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 distrait, 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.

91) 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.

91A) Not used

91A.1) If

a) Any Governor or member of the Academy Trust refuses to consent to any checks required under this Agreement, or as otherwise requested by the Secretary of State; or

b) The Secretary of State determines that any Governor or member of the Academy Trust is unsuitable,

the Secretary of State may:

i. direct the Academy Trust to ensure that the Governor or member resigns or is removed within 42 days, failing which the Secretary of State may serve a Termination Notice; or

ii. serve a Termination Notice.

91A.2) For the purposes of clause 91A.1 a Governor or member of the Academy Trust will be “unsuitable” if that Governor or member:

a) has been convicted of an offence;

b) has been given a caution in respect of an offence;

c) is subject to a relevant finding in respect of an offence; or

d) has engaged in relevant conduct,

as a result of which, the Secretary of State considers that that Governors or member is unsuitable to take part in the management of the Academy.

91A.3) For the purposes of clause 91A.2:

a) a Governor or member of the Academy Trust will be subject to a “relevant finding” in respect of an offence if:

i) that Governor or member has been found not guilty of the offence by reason of insanity;

ii) that Governor or member has been found to be under a disability

and to have done the act charged against them in respect of the offence; or

iii) a court outside the United Kingdom has made a finding equivalent to that described in paragraphs (i) and (ii) above.

b) "relevant conduct" is conduct by a Governor or member of the Academy Trust which is:

i) aimed at undermining the fundamental British values of democracy, the rule of law, individual liberty and mutual respect and tolerance of those with different faiths and beliefs; or

ii) found to be in breach of professional standards by a professional body; or

iii) so inappropriate that, in the opinion of the Secretary of State, it makes that Governor or member unsuitable to take part in the management of the Academy.

91B) If on or after 1st *September* 2014 or at any time after signing this Agreement and before the Academy opens, the total number of prospective students having accepted offers of places to attend at the Academy in 1st September 2014 is fewer than 147, the Secretary of State may by written notice to the Academy Trust:-

(a) require the Academy Trust not to open the Academy until 147 prospective students have accepted offers of places to attend at the Academy; or

(b) terminate this Agreement such termination to take effect on the date specified in the notice.

91C) If at any time after signing this Agreement and after the Academy has opened, the Secretary of State is of the opinion that, by virtue of low student numbers, the Academy is not financially viable, then the Secretary of State may:-

(a) give a Warning Notice to the Academy Trust; or

(b) by written notice terminate this Agreement forthwith; or

(c) by written notice provide such notice as he deems appropriate in the circumstances to terminate this Agreement.

For the purposes of this clause a “Warning Notice” means a notice in writing by the Secretary of State to the Academy Trust requiring the Academy Trust to procure the admission of a sufficient number of students by such date as he deems appropriate in the circumstances and setting out the consequences of not procuring the admission of a sufficient number of students by the date specified in such Warning Notice.

91D) If at any time after signing this Agreement, the Parties agree that by virtue of low student numbers the Academy is not financially viable, then the Parties jointly may terminate this Agreement having agreed first the precise terms of termination.

92) If the Academy Trust has not obtained full planning permission (including where relevant listed building consent), in respect of the site on which it is proposed that the 16 to 19 Academy will be situated, by 30/05/2015, the Secretary of State may terminate this Agreement by notice in writing to the Academy Trust such termination to take effect on the date of the notice.

93) If at any time after the signing of this Agreement but prior to the 16 to 19 Academy opening date, the Secretary of State is of the view that:

I. the 16 to 19 Academy would, on opening, provide an unacceptably low standard of education or training; or

II. the safety of students or staff at the 16 to 19 Academy would, on opening, be threatened; or

III. the staff employed at the 16 to 19 Academy are unsuitable;

IV. there is a serious breakdown in the way the Academy Trust is being managed or governed; or

V. the buildings and other structures on the Land are unsuitable or the Academy Trust has not obtained Building Regulation approval;

he may in writing either:

(a) require the Academy Trust (i) not to open the 16 to 19 Academy; and/or (ii) not to admit students of a particular age range, to be determined by the Secretary of State; and/or (iii) not to use any building or other structure on the Land until such time as the relevant matter or matters listed in I. to IV. above has or have been resolved to the Secretary of State's satisfaction; or

(b) terminate this Agreement by notice in writing to the Academy Trust such termination to take effect on the date of the notice.

94) If the Academy Trust has not entered into the Lease by 30/05/2015, the Secretary of State may terminate this Agreement by notice in writing to the Academy Trust such termination to take effect on the date of the notice.

Change of control of the Academy Trust

95) (i) The Secretary of State may at any time by notice in writing, subject to sub-clause (iii) below, terminate this Agreement forthwith terminate this Agreement by notice in writing to the Academy Trust such termination to take effect on the date of the notice in the event that there is a change:

(a) in the Control of the Academy Trust; or
(b) in the Control of a legal entity that Controls the Academy Trust.

Provided that where a person ('P') is a member or director of the body corporate (as a corporation sole or otherwise) by virtue of an office, no change of Control arises merely by P's successor becoming a member or director in P's place.

(ii) The Academy Trust shall, as soon as it is reasonably practicable to do so after it has become aware of any change or proposed change of Control within the meaning of clause 95A)(i), give written notice to the Secretary of State of such change or proposed change of control.

(iii) At the time of notifying the Secretary of State in accordance with sub-clause (ii) above, the Academy Trust may seek the Secretary of State's agreement that, if the Secretary of State is satisfied that the person assuming the Control is suitable, he will not in those circumstances exercise his right to terminate this Agreement further to clause 95A)(i).

Effect of Termination

96) Not used.

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

98) Subject to clause 99 and 100, if the Secretary of State terminates this Agreement pursuant to clause 82 of this Agreement, the Secretary of State shall indemnify the Academy Trust. If the Secretary of State terminates this Agreement otherwise than pursuant to clause 82 of this Agreement, the Secretary of State may in his absolute discretion indemnify or (to such extent if any as he may in his absolution discretion consider appropriate) compensate the Academy Trust.

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

100) The categories of expenditure incurred by the Academy Trust in consequence of the termination of this Agreement in respect of which the Secretary of State shall (where the Secretary of State terminates this Agreement pursuant to clause 82) indemnify the Academy Trust and may (where the Secretary of State terminates this Agreement otherwise than pursuant to clause

82) in his absolute discretion indemnify or compensate the Academy Trust include (but not by way of limitation), staff compensation and redundancy payments, compensation payments in respect of broken contracts, expenses of disposing of assets or adapting them for other purposes, legal and other professional fees, and dissolution expenses.

101) Subject to clause 102, on the termination of this Agreement however occurring, the Academy Trust shall in respect of any of its capital assets at the date of termination:

a) promptly transfer a proportion of the assets to a person nominated by the Secretary of State, if the Secretary of State considers that all or some of those assets need to be used for any educational purpose by that nominee. The proportion of the assets to be transferred shall be the same as the proportion of the capital contribution made by the Secretary of State to the original value of those assets, whether that contribution was made on the establishment of the 16 to 19 Academy or later; or

b) if the Secretary of State confirms that a transfer under clause 101(a) is not required, promptly repay to the Secretary of State a sum equivalent to the percentage of the value of the assets at the date of termination, or, by agreement with the Secretary of State, at the date of subsequent disposal of those assets. Such percentage to be the same as the percentage of the capital contribution made by the Secretary of State to the original value of those assets, whether that contribution was made on the establishment of the 16 to 19 Academy or later.

102) The Secretary of State may waive in whole or in part the repayment due under clause 101(b) if:

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

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

103). The sale or disposal by other means of publicly funded land held for the purposes of an Academy is now governed by Part 3 of Schedule 1 to the Academies Act 2010.

GENERAL

Information

104) Without prejudice to any other provision of this Agreement, the Secretary of State acting reasonably may from time to time call for information on the Academy relating to, but not restricted to, the following matters:

a) curriculum;

b) arrangements for the assessment of students;

c) teaching staff including numbers, qualifications, experience, salaries, and teaching loads;

d) class sizes;

e) outreach work with other educational institutions and the local community;

f) operation of the admission criteria and over subscription arrangements for the Academy including numbers of applications for places and the number and characteristics of students accepted for admission;

g) numbers of students excluded (including permanent and fixed-term exclusions);

h) levels of authorised and unauthorised absence;

i) charging and remissions policies and the operation of those policies;

j) organisation, operation and building management;

k) financial controls;

l) compliance with the requirements of the Charity Commission's guidance to charities and charity trustees and in particular the Charity Commission's guidance in the Protecting Charities from Harm ('the compliance toolkit') and in "CC9 Speaking Out, Campaigning and Political Activities by Charities" as amended from time to time;

m) membership and proceedings of the Governing Body together with any other relevant information concerning the management or governance of the Academy which, subject to clause 108), is reasonably necessary for the Secretary of State to carry out his functions generally and in relation to this Agreement.

105) The Academy Trust shall make such information available to the Secretary of State in such form and manner and at such times as may reasonably be required. The Secretary of State shall provide the Academy Trust with such

information as it may reasonably require of him for the running of the 16 to 19 Academy.

105A) (i) The Academy Trust shall provide to the Secretary of State the name of any new or replacement Member or Governor of the Academy Trust, whether such a person has been appointed or elected, together with the date of such an appointment or election and, where applicable, the name of the Member or Governor such a person replaces as soon as is practicable and in any event within 14 days of the appointment or election of such a person.

105A) (ii) In this regard, the Academy Trust shall not appoint any new or replacement Members or Governors of the Academy Trust until it has first (a) notified such persons that their name shall be shared with the Secretary of State and (b) explained to the new or replacement Members or Governors of the Academy Trust that the reason their name is being shared with the Secretary of State is to enable the Secretary of State to assess their suitability.

105B) i) If the Academy Trust is in material breach of the provisions of the Lease or if it is reasonably foreseeable that the Academy Trust will be in material breach of the Lease, the Academy Trust shall forthwith give written notice to the Secretary of State specifying the exact nature of the material breach or reasonably foreseeable material breach and such notice shall set out the steps taken or to be taken by the Academy Trust to remedy the material breach or reasonably foreseeable material breach and, where appropriate, shall include the timescales relating to any remedial action.

105B) ii) The Academy Trust will at its own cost provide all information reasonably required by the Secretary of State in respect of any material breach or reasonably foreseeable material breach.

105C) Following the receipt by the Secretary of State of the written notice under clause 105B), the Academy Trust shall permit the Secretary of State to take all such steps in conjunction with or instead of the Academy Trust as may be necessary to remedy or prevent the material breach referred to in the said notice.

The Academy Trust shall, in such circumstances, use its best endeavours to assist the Secretary of State to remedy or prevent such material breach.

105D)(i) The Academy Trust shall, within 14 days of receiving any order, notice, proposal, demand or any other requirement materially affecting the ability of the Academy Trust to use the Land for the purposes of the 16 to 19 Academy from any competent authority (including the Landlord), give full particulars by written notice to the Secretary of State and deliver to the Secretary of State copies of such documents as he may require. Such notice shall state what steps, if any actions are required, the Academy Trust intends to take in response to the order, notice, proposal, demand or other requirement affecting the Land.

105D) (ii) The Academy Trust will at its own cost provide all information reasonably required by the Secretary of State in respect of order, notice, proposal, demand or any other requirement affecting the Land as referred to in clause 105D(i).

105E) Following the receipt by the Secretary of State of the written notice under clause 105D)(i), the Academy Trust shall permit the Secretary of State to take all steps in conjunction with or instead of the Academy Trust as may be necessary to comply with any order, notice, proposal, demand or other requirement affecting the Land referred to in the said notice. The Academy Trust shall, in such circumstances, use all reasonable endeavours to assist the Secretary of State to take the appropriate required steps.

105F) The Academy Trust agrees to comply with the “Specification of the Individualised Learner Record for 2012/13” published by the Information Authority as may be amended or replaced from time to time.

Access by the Secretary of State's Officers

106) The Academy Trust shall allow access to the premises of the 16 to 19 Academy at any reasonable time to DfE officials and/or agents of the Secretary of State. All records, files and reports relating to the running of the 16 to 19 Academy shall be available to them at any reasonable time. The Academy Trust

shall provide the Secretary of State in advance with papers relating to the Academy prepared for meetings of the Governing Body and of the Members of the Academy Trust. Two DfE officials shall be entitled to attend and to speak at all such meetings, but shall withdraw from any discussion of the 16 to 19 Academy's or the Academy Trust's relationship with the Secretary of State or any discussion of bids for funding to the Secretary of State. The Academy Trust shall take any steps which are required to secure its compliance with the obligations imposed by this clause of this Agreement.

107) The Academy Trust shall ensure that:

a) the agenda for every meeting of the Governing Body or any committee to whom the Governing Body delegates one or more of its functions to;
b) the draft minutes of every such meeting, if they have been approved by the person acting as chairman of that meeting;
c) the signed minutes of every such meeting; and
d) any report, document or other paper considered at any such meeting,

are made available for inspection by any interested party at the 16 to 19 Academy and, as soon as is reasonably practicable, sent to the Secretary of State upon request.

108) There may be excluded from any item required to be made available for inspection by any interested party and to be sent to the Secretary of State by virtue of clause 107, any material relating to:

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

A. Land clauses

Obligations of the Academy Trust

108C) (i) 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, save that the Academy Trust shall ensure that any actions undertaken in compliance with this clause shall be consistent with the terms of the Lease. In compliance with this clause, the Academy Trust shall not do or cause or permit to be done anything to lessen the value or marketability of the Land save with the express written consent of the Secretary of State.

108C)(ii) The Academy Trust shall observe and comply with its obligations under the Lease and shall promptly enforce its rights against the Landlord.

108C)(iii) The Academy Trust agrees it shall seek and obtain the prior written consent of the Secretary of State, not to be unreasonably withheld or delayed before taking any steps to:

a) terminate, vary, surrender or dispose of the Lease; and / or

b) grant any consent or licence in respect of the Land or any part of it; and / or

c) create or permit to arise or continue any encumbrance affecting the Land or any part of it; and / or

d) part with or share possession or occupation of the Land or any part of it; and / or

e) enter into any onerous or restrictive obligations affecting the Land or any part of it.

108C) iv) **Not used**

Insurance

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

a) keep the Land insured as in accordance with the terms of the Lease and in any event with a reputable insurance office against loss or damage by the Insured Risks in the sum the Academy Trust is advised represents the reinstatement value of the Land from time to time;

b) pay the premiums for insurance promptly as they become due and maintain in force the policies of insurance on the Land;

c) 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;

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

e) not knowingly do anything whereby any policy of insurance relating to the Land may become void or voidable.

f) insure against liability in respect of property owners' and third party risks including occupiers liability.

Sharing of the Land

108I) The Academy Trust agrees that if:

a) the 16 to 19 Academy does not reach its planned capacity over a period of four Academy Funding Years; or

b) notice of termination is served by either the Academy Trust or the Secretary of State in accordance with clause 82 of this Agreement; or

c) in the reasonable opinion of the Secretary of State the operation of the 16 to 19 Academy at planned capacity does not require the use of the full extent of the Land,

it will share occupation of the Land with such other Academies as the Secretary of State deems appropriate in the circumstances and enter into such legal arrangements in respect of the same as are required by the Secretary of State.Notices

109) A notice or communication given to a party under or in connection with this Agreement:

(a) shall be in writing and in English;

(b) shall be sent to the party for the attention of the contact and at the address listed in clause 109A;

(c) shall be sent by a method listed in clause 109C; and

(d) is deemed received as set out in clause 109C if prepared and sent in accordance with this clause.

109A) The parties' addresses and contacts are:

Name of Party	Position of Contact	Address
Secretary of State	Head of Free Schools Division	Department for Education, Sanctuary Buildings, Great Smith Street, London SW1P 3BT
The Academy Trust	Chairman of Governors	c/o [redacted] who lives at [redacted]

109B) A party may change its details given in the table in clause 109A) by giving notice, the change taking effect for the party notified of the change at 9.00 am on

the date five Business Days after deemed receipt of the notice.

109C) Any notice or other communication required to be given to a party under or in connection with this Agreement shall be delivered by hand or sent by pre-paid first-class post or other next working day delivery service. Any notice or communication shall be deemed to have been received if delivered by hand, on signature of a delivery receipt or at the time the notice is left at the address specified in Clause 109A, or otherwise at 9.00 am on the second Business Day after posting.

109D) This clause does not apply to the service of any proceedings or other documents in any legal action. For the purposes of clause 109, "writing" shall not include e-mail.

110) The service by the Secretary of State of a notice of termination of this Agreement shall not prejudice the ability of the Academy Trust (if it wishes to do so) during the notice period to admit students to the 16 to 19 Academy in accordance with the provisions of this Agreement and to receive GAG and EAG in respect of them.

General

111) This Agreement shall not be assignable by the Academy Trust.

111A) No delay, neglect or forbearance on the part of the Secretary of State in enforcing (in whole or in part) any provision of this Agreement or in exercising (in whole or in part) any right conferred on him by this Agreement shall be or be deemed to be a waiver of such provision or right or a waiver of any other provision or right or shall in any way prejudice any right of the Secretary of State under this Agreement or shall amount to an election not to enforce such provision or exercise such right (including, for the avoidance of doubt, any right to terminate this Agreement).

112) The Secretary of State and the Academy Trust recognise the difficulties in catering in this Agreement for all the circumstances which may arise in relation to the 16 to 19 Academy and undertake in good faith to conduct such consultations

as may from time to time be desirable in order to promote the interests of the 16 to 19 Academy throughout the currency of this Agreement.

113) Termination of this agreement, for any reason, shall not affect the accrued rights, remedies, obligations or liabilities of the parties existing at termination.

113A) This Agreement may be executed in any number of counterparts, each of which when executed and delivered shall constitute a duplicate original, but all the counterparts shall together constitute the one agreement.

114) This Agreement and any dispute or claim arising out of or in connection with it or its subject matter or formation (including non-contractual disputes or claims) shall be governed by and construed in accordance with the law of England and Wales.

115) The parties irrevocably agree that the courts of England and Wales shall have exclusive jurisdiction to settle any dispute or claim that arises out of or in connection with this agreement or its subject matter or formation (including non-contractual disputes or claims).

This Agreement was executed as a Deed on 4 August 2014

Executed on behalf of 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:

[redacted]

Duly Authorised

ANNEX A

2013

THE COMPANIES ACT 2006

A COMPANY LIMITED BY GUARANTEE

ARTICLES OF ASSOCIATION

OF

Dv8 ACADEMY

THE COMPANIES ACT 2006

COMPANY LIMITED BY GUARANTEE

ARTICLES OF ASSOCIATION

OF

Dv8 ACADEMY

INTERPRETATION

1. In these Articles:-

   a. "the 16 – 19 Academy" means the 16 – 19 Academy referred to in Article 4a and established by the Academy Trust;

   b. "Academy Financial Year" means the academic year from 1st of September to 31st of August the following year;

   c. "the Academy Trust" means the company intended to be regulated by these Articles and referred to in Article 2;

   d. "the Articles" means these Articles of Association of the Academy Trust;

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

   f. "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 to take effect;

   g. "Clerk" means the clerk to the Governors or any other person appointed to perform the duties of the clerk to the Governors, including a joint, assistant or deputy clerk;

h. “Electronic means” has the meaning given in section 1168 of the Companies Act 2006;

i. “financial expert” means an individual, company or firm who is authorised to give investment advice under the Financial Services and Markets Act 2000;

j. “Funding Agreement” means the agreement made under section 1 of the Academies Act 2010 between the Academy Trust and the Secretary of State to establish the 16 to 19 Academy;

k. “the Governors” means the directors of the Academy Trust (and “Governor” means any one of those directors), subject to the definition of this term at Article 6.10(b) in relation to Articles 6.2-6.10;

l. “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;

m. “Member” means a member of the Academy Trust and someone who as such is bound by the undertaking contained in Article 8;

n. “the Memorandum” means the Memorandum of Association of the Academy Trust;

o. “Office” means the registered office of the Academy Trust;

p. “the Parent Governors” means the Governors appointed pursuant to Articles 53 to 58 inclusive;

q. “Principal" means the head teacher of the 16 to 19 Academy;

r. “Principal Regulator” means the body or person appointed as the Principal Regulator under the Charities Act 2011;

s. “the seal” means the common seal of the Academy Trust if it has one;

t. “Secretary of State” means the Secretary of State for Education or successor;

u. “Sponsor” means Dv8 Training Ltd a company limited by guarantee with registered company number 03942925 whose registered office is at Outset Centre, 2 Grange Road, London, E17 8AH or any organisation which substantially succeeds to its function;

v. “Staff Governor” means an employee of the Academy Trust who may be appointed as a Governor pursuant to Article 50A;

w. “Student Governor” means a registered student of the 16 – 19 Academy who may be appointed as a Governor pursuant to Article 50;

x. “teacher” means a person employed under a contract of employment or a contract for services or otherwise engaged to provide his services as a teacher at the 16 to 19 Academy;

y. “the United Kingdom” means Great Britain and Northern Ireland;

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

aa. 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;

bb. any reference to a statute or statutory provision shall include any statute or statutory provision which replaces or supersedes such statute or statutory provision including any modification or amendment thereto.

2. The company’s name is Dv8 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**”) are specifically restricted to the

following:

to advance for the public benefit education in the United Kingdom, in particular but without prejudice to the generality of the foregoing by establishing, maintaining, carrying on, managing and developing a 16 to 19 Academy offering a curriculum appropriate to the needs of its students ("the 16 to 19 Academy").

5. In furtherance of the Object but not further or otherwise the Academy Trust may exercise the following powers:-

(a) to draw, make, accept, endorse, discount, execute and issue promissory notes, bills, cheques and other instruments, and to operate bank accounts in the name of the Academy Trust;

(b) to raise funds and to invite and receive contributions provided that in raising funds the Academy Trust shall not undertake any substantial permanent trading activities and shall conform to any relevant statutory regulations;

(c) to acquire, alter, improve and (subject to such consents as may be required by law) to charge or otherwise dispose of property;

(d) subject to Article 6 below to employ such staff, as are necessary for the proper pursuit of the Object and to make all reasonable and necessary provision for the payments of pensions and superannuation to staff and their dependants;

(e) to establish or support, whether financially or otherwise, any charitable companies, trusts, associations or institutions formed for all or any of the Object;

(f) to co-operate with other charities, independent and maintained schools, other16-19 Academies institutions within the further education sector, voluntary bodies and statutory authorities operating in furtherance of the Object and to exchange information and advice with them;

(g) to pay out of funds of the Academy Trust the costs, charges and expenses of and incidental to the formation and registration of the Academy Trust;

(h) to establish, maintain, carry on, manage and develop the 16 to 19 Academy;

(i) to offer scholarships, exhibitions, prizes and awards to students and former students, and otherwise to encourage and assist students and former students;

(j) to provide educational facilities and services to students of all ages and the wider community for the public benefit;

(k) to carry out research into the development and application of new techniques in education in particular in relation to its approach to curriculum development and delivery and to publish the results of such research, and to develop means of benefiting from application of the experience of industry, commerce, schools institutions within the further education sector and other 16 – 19 Academies and the voluntary sector to the education of students in academies;

(l) subject to such consents as may be required by law and/or by any contract entered into by or on behalf of the Academy Trust to borrow and raise money for the furtherance of the Object in such manner and on such security as the Academy Trust may think fit;

(m) to deposit or invest any funds of the Academy Trust not immediately required for the furtherance of its Object (but to invest only after obtaining such advice from a financial expert as the Governors consider necessary and having regard to the suitability of investments and the need for diversification);

(n) to delegate the management of investments to a financial expert, but only on terms that:

(i) the investment policy is set down in writing for the financial

expert by the Governors;

(ii) each transaction is recorded in regular reports to the Governors;

(iii) the performance of the investments is reviewed regularly with the Governors;

(iv) the Governors are entitled to cancel the delegation arrangement at any time;

(v) the investment policy and the delegation arrangement are reviewed at least once a year;

(vi) all payments due to the financial expert are on a scale or at a level which is agreed in advance and are notified promptly to the Governors on receipt; and

(vii) the financial expert must not do anything outside the powers of the Governors.

(o) to arrange for investments or other property of the Academy Trust to be held in the name of a nominee company acting under the control of the Governors or of a financial expert acting under their instructions, and to pay any reasonable fee required;

(p) to provide indemnity insurance to Governors in accordance with, and subject to the conditions of section 232 to 235 of the Companies Act 2006, section 189 of the Charities Act 2011 or any other provision of law applicable to charitable companies and any such indemnity is limited accordingly;

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

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

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

6.2 None of the income or property of the Academy Trust may be paid or

transferred directly or indirectly by way of dividend bonus or otherwise by way of profit to any member of the Academy Trust. Nonetheless a member of the Academy Trust who is not also a Governor may:

a) benefit as a beneficiary of the Academy Trust;

b) be paid reasonable and proper remuneration for any goods or services supplied to the Academy Trust;

c) be paid rent for premises let by the member of the Academy Trust if the amount of the rent and other terms of the letting are reasonable and proper; and

d) be paid interest on money lent to the Academy Trust at a reasonable and proper rate, such rate not to exceed 2 per cent per annum below the base lending rate of a UK clearing bank selected by the Governors, or 0.5%, whichever is the higher.

6.3 A Governor may benefit from any indemnity insurance purchased at the Academy Trust's expense to cover the liability of the Governors which by virtue of any rule of law would otherwise attach to them in respect of any negligence, default or breach of trust or breach of duty of which they may be guilty in relation to the Academy Trust: provided that any such insurance shall not extend to (i) 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 (ii) the costs of any unsuccessful defence to a criminal prosecution brought against the Governors in their capacity as directors of the Academy Trust. Further, this Article does not authorise a Governor to benefit from any indemnity insurance that would be rendered void by any provision of the Companies Act 2006, the Charities Act 2011 or any other provision of law.

6.4 A company, which has shares listed on a recognised stock exchange and of which any one Governor holds no more than 1% of the issued capital of that company, may receive fees, remuneration or other benefit in money or

money's worth from the Academy Trust.

6.5 A Governor may at the discretion of the Governors be reimbursed from the property of the Academy Trust for reasonable expenses properly incurred by him or her when acting on behalf of the Academy Trust, but excluding expenses in connection with foreign travel.

6.6 No Governor may:

(a) buy any goods or services from the Academy Trust;

(b) sell goods, services, or any interest in land to the Academy Trust;

(c) be employed by or receive any remuneration from the Academy Trust (other than the Principal or a Staff Governor whose employment and/or remuneration is subject to the procedure and conditions in Article 6.8);

(d) receive any other financial benefit from the Academy Trust;

unless:

(i) the payment is permitted by Article 6.7 and the Governors follow the procedure and observe the conditions set out in Article 6.8; or

(ii) the Governors obtain the prior written approval of the Charity Commission and fully comply with any procedures it prescribes.

6.7 Subject to Article 6.8, a Governor may:

(a) receive a benefit from the Academy Trust in the capacity of a beneficiary of the Academy Trust.

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

(c) receive interest on money lent to the Academy Trust at a reasonable and proper rate not exceeding 2% per annum below the base rate of a clearing bank to be selected by the Governors, or 0.5%, whichever is the higher.

(d) receive rent for premises let by the Governor to the Academy Trust if the amount of the rent and the other terms of the lease are reasonable and proper.

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

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

(b) the Governor is absent from the part of any meeting at which there is discussion of:

- i) his or her employment, remuneration, or any matter concerning the contract, payment or benefit; or
- ii) his or her performance in the employment, or his or her performance of the contract; or
- iii) any proposal to enter into any other contract or arrangement with him or her or to confer any benefit upon him or her that would be permitted under Article 6.7; or
- (iv) any other matter relating to a payment or the conferring of any benefit permitted by Article 6.7.

(c) the Governor does not vote on any such matter and is not to be counted when calculating whether a quorum of Governors is present at the meeting.

(d) save in relation to employing or contracting with the Principal or a Staff Governor the other Governors are satisfied that it is in the interests of the Academy Trust to employ or to contract with that Governor rather than with someone who is not a Governor. In reaching that decision the Governors must balance the advantage of employing a Governor against the disadvantages of doing so (especially the loss of the Governor's services as a result of dealing with the Governor's conflict of interest).

(e) the reason for their decision is recorded by the Governors in the minute book.

(f) a majority of the Governors then in office have received no such payments or benefit.

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

6.10 In Articles 6.2-6.10:

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

- holds more than 50% of the shares; or
- controls more than 50% of the voting rights attached to the shares; or
- has the right to appoint one or more directors to the board of the company.
-

(b) "Governor" shall include any child, stepchild, parent, grandchild, grandparent, brother, sister or spouse of the governor or any person living with the governor as his or her partner

(c) the employment or remuneration of a Governor includes the engagement or remuneration of any firm or company in which the Governor is:

(i) a partner;

(ii) an employee;

(iii) a consultant;

(iv) a director;

(v) a member; or

(vi) a shareholder, unless the shares of the company are listed on a recognised stock exchange and the Governor holds less than 1% of the issued capital.

7. The liability of the members of the Academy Trust is limited.

8. Every member of the Academy Trust undertakes to contribute such amount as may be required (not exceeding £10) to the Academy Trust's assets if it should be wound up while he or she is a member or within one year after he or she ceases to be a member, for payment of the Academy Trust's debts and liabilities before he or she ceases to be a member, and of the costs, charges and expenses of winding up, and for the adjustment of the rights of the contributories among themselves.

9. If the Academy Trust is wound up or dissolved and after all its debts and liabilities (including any under section 2 of the Academies Act 2010) have been satisfied there remains any property it shall not be paid to or distributed among the members of the Academy Trust, but shall be given or transferred to some other charity or charities having objects similar to the Object which prohibits the distribution of its or their income and property to an extent at least as great as is imposed on the Academy Trust by Article 6 above, chosen by the members of the Academy Trust at or before the time of dissolution and if that cannot be done then to some other charitable object.

10. Not used.

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

MEMBERS

12. The Members of the Academy Trust shall comprise

    (a) the signatories to the Memorandum;

    (b) Up to 8 person(s) who may be appointed by the Sponsor;

(c) the chairman of the Governors; and

(d) any person appointed under Article 16.

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

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

(a) in the case of an individual, die or become legally incapacitated;

(b) in the case of a corporate entity, cease to exist and are not replaced by a successor institution;

(c) becomes insolvent or makes any arrangement or composition with their creditors generally; or

(d) ceases to be a Member;

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

15. Membership will terminate automatically if:

(a) a Member (which is a corporate entity) ceases to exist and is not replaced by a successor institution;

(b) a Member (which is an individual) dies or becomes incapable by reason of illness or injury of managing and administering his own affairs; or

(c) a Member becomes insolvent or makes any arrangement or composition with that Member's creditors generally.

15A. The Members may agree unanimously in writing to remove any Member(s) who is a signatory to the Memorandum (save that the agreement of a

signatory to the Memorandum who is to be removed shall not be required), provided that it is in the interests of the Academy Trust to remove such a Member(s).

16. The Members may agree by passing a special resolution in writing to appoint such additional Members as they think fit and may agree by passing a special resolution in writing to remove any such additional Members, provided that such appointment or removal is in the interests of the Academy Trust.

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

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

GENERAL MEETINGS

19. Not used.

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

NOTICE OF GENERAL MEETINGS

21. General meetings shall be called by at least fourteen clear days' notice but a general meeting may be called by shorter notice if it is so agreed by a

majority in number of Members having a right to attend and vote and together representing not less than 90% of the total voting rights at that meeting.

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

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

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

PROCEEDINGS AT GENERAL MEETINGS

23. No business shall be transacted at any meeting unless a quorum is present. A Member counts towards the quorum by being present either in person or by proxy. Two persons entitled to vote upon the business to be transacted, each being a Member or a proxy of a Member or a duly authorised representative of a Member organisation shall constitute a quorum but such quorum must include the duly authorised representative of the Sponsor, as long as the Sponsor is still a Member of the Academy Trust.

24. If a quorum is not present within half an hour from the time appointed for the meeting, or if during a meeting a quorum ceases to be present, the meeting shall stand adjourned to the same day in the next week at the same time and place or to such time and place as the Governors may determine.

25. The chairman, if any, of the Governors or in his absence some other Governor nominated by the Governors shall preside as chairman of the meeting, but if neither the chairman nor such other Governor (if any) be

present within fifteen minutes after the time appointed for holding the meeting and willing to act, the Governors present shall elect one of their number to be chairman and, if there is only one Governor present and willing to act, he shall be the chairman.

26. If no Governor is willing to act as chairman, or if no Governor is present within fifteen minutes after the time appointed for holding the meeting, the Members present and entitled to vote shall choose one of their number to be chairman.

27. A Governor shall, notwithstanding that he is not a Member, be entitled to attend and speak at any general meeting.

28. The chairman may, with the consent of a majority of the Members at a meeting at which a quorum is present (and shall if so directed by the meeting), adjourn the meeting from time to time and from place to place, but no business shall be transacted at any adjourned meeting other than the business which might properly have been transacted at the meeting had the adjournment not taken place. When a meeting is adjourned for fourteen days or more, at least seven clear days' notice shall be given specifying the time, date and place of the adjourned meeting and the general nature of the business to be transacted. Otherwise it shall not be necessary to give any such notice.

29. A resolution put to the vote of the meeting shall be decided on a show of hands unless before, or on the declaration of the result of the show of hands a poll is duly demanded. Subject to the provisions of the Companies Act 2006, a poll may be demanded:-

    (a) by the chairman; or

    (b) by at least two Members having the right to vote at the meeting; or

    (c) by a Member or Members representing not less than one-tenth of the total voting rights of all the Members having the right to vote at the meeting.

30. Unless a poll is duly demanded a declaration by the chairman that a

resolution has been carried or carried unanimously, or by a particular majority, or lost, or not carried by a particular majority and an entry to that effect in the minutes of the meeting shall be conclusive evidence of the fact without proof of the number or proportion of the votes recorded in favour of or against such resolution.

31. The demand for a poll may be withdrawn, before the poll is taken, but only with the consent of the chairman. The withdrawal of a demand for a poll shall not invalidate the result of a show of hands declared before the demand for the poll was made.

32. A poll shall be taken as the chairman directs and he may appoint scrutineers (who need not be Members) and fix a time, date and place for declaring the results. The result of the poll shall be deemed to be the resolution of the meeting at which the poll was demanded.

33. A poll demanded on the election of the chairman or on a question of adjournment shall be taken immediately. A poll demanded on any other question shall be taken either immediately or at such time, date and place as the chairman directs not being more than thirty days after the poll is demanded. The demand for a poll shall not prevent continuance of a meeting for the transaction of any business other than the question on which the poll is demanded. If a poll is demanded before the declaration of the result of a show of hands and the demand is duly withdrawn, the meeting shall continue as if the demand had not been made.

34. No notice need be given of a poll not taken immediately if the time, date and place at which it is to be taken are announced at the meeting at which it is demanded. In other cases at least seven clear days' notice shall be given specifying the time, date and place at which the poll is to be taken.

35. A resolution in writing agreed by such number of Members as required if it had been proposed at a general meeting shall be as effectual as if it had been passed at a general meeting duly convened and held provided that a copy of the proposed resolution has been sent to every Member. The resolution may consist of several instruments in the like form each agreed

by one or more Members.

VOTES OF MEMBERS

36. On the show of hands every Member present in person shall have one vote. On a poll every Member present in person or by proxy shall have one vote.

37. Not used.

38. No Member shall be entitled to vote at any general meeting unless all moneys then payable by him to the Academy Trust have been paid.

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

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

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

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

Resolution No. 1 *for * against

Resolution No. 2 *for * against.

- Strike out whichever is not desired.

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

Signed on …. 20[ ]"

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

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

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

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

Governor;

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

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

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

GOVERNORS

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

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

(a) Up to 10 Governors, appointed under Article 50;

(b) a minimum of two Parent Governors appointed under Articles 58A-58E;

(c) the Principal.

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

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

49. Future Governors shall be appointed or elected, as the case may be, under these Articles. Where it is not possible for such a Governor to be appointed or elected due to the fact that a 16 to 19 Academy has not yet been established, then the relevant Article or part thereof shall not apply.

APPOINTMENT OF GOVERNORS

50. Under this Article:

(a) The Members may appoint up to 4 Governors;

(b) The Sponsor may appoint up to 5 Governors; and

(c) The Members may appoint up to 1 Student Governor who shall be nominated through such process as they may determine.

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

50B. The total number of Governors (including the Principal) who are employees of the Academy Trust shall not exceed one third of the total number of Governors.

51. to 58. not used.

58A. The Parent Governors shall either be elected by parents of registered students at the 16 to 19 Academy, pursuant to Articles 58B to 58D, or be appointed by the Governing Body, pursuant to Article 58E. A Parent Governor must be a parent of a student at the 16 to 19 Academy at the time when he is either elected or appointed.

58B. In electing a Parent Governor, the Governing Body shall make all necessary arrangements for, and determine all other matters relating to, an election of Parent Governors, including any question of whether a person is a parent of a registered student at the 16 to 19 Academy. Any election of Parent Governors which is contested shall be held by secret ballot.

58C. 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 student at the 16 to 19 Academy.

58D. 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 student at the 16 to 19 Academy is informed of the vacancy and that it is required to be filled by election, informed that he is entitled to stand as a candidate, and vote at the election, and given an opportunity to do so.

58E. In appointing a Parent Governor, the Governing Body shall appoint a person who is the parent of a registered student at the 16 to 19 Academy; or where it is not reasonably practical to do so, a person who is the parent of a child above compulsory school age but not above the age of 19.

CO-OPTED GOVERNORS

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

60. to 64. Not used.

TERM OF OFFICE

65. The term of office for any Governor shall be four years. Subject to remaining eligible to be a particular type of Governor, any Governor may be re-appointed or re-elected.

RESIGNATION AND REMOVAL

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

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

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

68A. Not used.

DISQUALIFICATION OF GOVERNORS

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

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

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

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

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

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

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

74. A Governor shall cease to hold office if he ceases to be a Governor by virtue of any provision in the Companies Act 2006 or is disqualified from acting as a trustee by virtue of section 178 of the Charities Act 2011 (or any statutory re-enactment or modification of that provision).

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

76. Not used.

77. Not used.

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 178 of the Charities Act 2011.

79. After the 16 to 19 Academy has opened, a person shall be disqualified

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

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

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

CLERK TO THE GOVERNORS

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

CHAIRMAN AND VICE-CHAIRMAN OF THE GOVERNORS

83. The Governors shall each school 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 Clerk. The chairman or vice-chairman shall cease to hold office if -

(a) he ceases to be a Governor;

(b) he is employed by the Academy Trust;

(c) he is removed from office in accordance with these Articles; or

(d) in the case of the vice-chairman, he is elected in accordance with these Articles to fill a vacancy in the office of chairman.

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

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

88. to 90. Not used.

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

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

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

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

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

POWERS OF GOVERNORS

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

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

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

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

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

97. Any bank account in which any money of the Academy Trust is deposited

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

CONFLICTS OF INTEREST

98. Any Governor who has or can have any direct or indirect duty or personal interest (including but not limited to any Personal Financial Interest) which conflicts or may conflict with his duties as a Governor shall disclose that fact to the Governors as soon as he becomes aware of it.

98A A Governor must absent himself from any discussions of the Governors in which it is possible that a conflict will arise between his duty to act solely in the interests of the Academy Trust and any duty or personal interest (including but not limited to any Personal Financial Interest).

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

THE MINUTES

100. The minutes of the proceedings of a meeting of the Governors and records of resolutions shall be prepared and kept for the purpose by the person acting as Clerk for the purposes of the meeting; and shall be signed (subject to the approval of the Governors) at the same or next subsequent meeting by the person acting as chairman thereof.

COMMITTEES

101. Subject to these Articles, the Governors may establish any committee. Subject to these Articles, the constitution, membership and proceedings of any committee shall be determined by the Governors. The establishment, terms of reference, constitution and membership of any committee of the Governors shall be reviewed at least once in every twelve months. The membership of any committee of the Governors may include persons who

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

DELEGATION

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

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

PRINCIPAL

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

MEETINGS OF THE GOVERNORS

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

106. The Governors shall hold at least three meetings in every school year.

Meetings of the Governors shall be convened by the Clerk. In exercising his functions under this Article the Clerk shall comply with any direction –

(a) given by the Governors; or

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

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

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

(a) notice in writing thereof (including by Electronic Means), signed by the Clerk, and sent to each Governor at the address provided by each Governor from time to time; and

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

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

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

110. A resolution to rescind or vary a resolution carried at a previous meeting of the Governors shall not be proposed at a meeting of the Governors unless the consideration of the rescission or variation of the previous resolution is

a specific item of business on the agenda for that meeting.

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

(a) the Governors so resolve; or

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

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

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 Clerk 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.

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

116. The quorum for the purposes of -

(a) appointing a parent Governor under Article 57;

(b) any vote on the removal of a Governor in accordance with Article 67;

(c) any vote on the removal of the chairman of the Governors in accordance with Article 91;

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

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

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

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

(a) any vacancy among their number; or

(b) any defect in the election, appointment or nomination of any Governor.

120.1 A resolution in writing (including by Electronic Means), signed or approved 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.

120.2 Such a resolution may, if in writing, consist of several documents in the same form, each signed by one or more of the Governors.

120.3 Such a resolution, if passed by Electronic Means, shall comply with the following conditions:

(a) approval from each Governor must be received by one person

being either such person as all the Governors have nominated in advance for that purpose or such other person as volunteers if necessary ("the Recipient"), which person may for the avoidance of doubt be one of the Governors;

(b) following receipt of responses from all of the Governors, the Recipient must communicate to all of the Governors (by any means) whether the resolution has been formally approved by the Governors in accordance with this Article 120.3;

(c) the date of the decision shall be the date of the communication from the Recipient confirming formal approval; and

(d) the Recipient must prepare a minute of the decision in accordance with Article 100 (minutes).

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

(a) the agenda for every meeting of the Governors;

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

(c) the signed minutes of every such meeting; and

(d) any report, document or other paper considered at any such meeting,

are, as soon as is reasonably practicable, made available at the 16 to 19 Academy to persons wishing to inspect them.

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

(a) a named teacher or other person employed, or proposed to be employed, at the 16 to 19 Academy;

(b) a named student at, or candidate for admission to, the 16 to 19 Academy; and

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

123. Any Governor shall be able to participate in meetings of the Governors by telephone or video conference or other means by which participants can communicate simultaneously provided that:

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

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

PATRONS AND HONORARY OFFICERS

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

THE SEAL

125. The seal, if any, shall only be used by the authority of the Governors or of a committee of Governors authorised by the Governors. The Governors may determine who shall sign any instrument to which the seal is affixed and unless otherwise so determined it shall be signed by a Governor and by the Clerk 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 their 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 for which Article 108 shall apply) shall be in writing or shall be given using electronic communications to an address for the time being notified for that purpose to the person giving the notice. In these Articles, “Address” in relation to electronic communications, includes a number or address used for the purposes of such communications.

130. A notice may be given by the Academy Trust to a Member either personally or by sending it by post in a prepaid envelope addressed to the Member at his registered address or by leaving it at that address or by giving it using electronic communications to an address for the time being notified to the Academy Trust by the Member. A Member whose registered address is not within the United Kingdom and who gives to the

Academy Trust an address within the United Kingdom at which notices may be given to him, or an address to which notices may be sent using electronic communications, shall be entitled to have notices given to him at that address, but otherwise no such Member shall be entitled to receive any notice from the Academy Trust.

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

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

INDEMNITY

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

RULES

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

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

(a) the admission and classification of Members of the Academy Trust (including the admission of organisations to membership) and the rights and privileges of such Members, and the conditions of membership and the terms on which Members may resign or have their membership terminated and the entrance fees, subscriptions and other fees or payments to be made by Members;

(b) the conduct of Members of the Academy Trust in relation to one another, and to the Academy Trust's servants;

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

(d) the procedure at general meetings and meetings of the Governors and committees of the Governors in so far as such procedure is not regulated by the Articles; and

(e) generally, all such matters as are commonly the subject matter of company rules.

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

AVOIDING INFLUENCED COMPANY STATUS

136. Notwithstanding the number of Members from time to time, the maximum aggregate number of votes exercisable by Local Authority Associated Persons shall never exceed 19.9% of the total number of votes

exercisable by Members in general meeting and the votes of the other Members having a right to vote at the meeting will be increased on a pro-rata basis.

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

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

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

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

be) who are Local Authority Associated Persons shall be deemed to have resigned in order of their appointment date the most recently appointed resigning first.

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

Model Memorandum of Association

THE COMPANIES ACT 2006

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

A COMPANY LIMITED BY GUARANTEE

MEMORANDUM OF ASSOCIATION

OF

DV8 ACADEMY

THE COMPANIES ACT 2006

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

SCHEDULE 2

A COMPANY LIMITED BY GUARANTEE

Regulation 2(b)

MEMORANDUM OF ASSOCIATION OF

Dv8 ACADEMY

Each subscriber to this memorandum of association wishes to form a company under the Companies Act 2006 and agrees to become a member of the company.

Name of each subscriber	*Authentication by each subscriber*
Dv8 Training Ltd (registered Company Number 03942925	
[redacted]	
[redacted]	

Dated 17 December 2012

DEED OF VARIATION TO THE FUNDING AGREEMENT

THIS DEED is made the day of 2015

BETWEEN

1) The Secretary of State for Education (the "**Secretary of State**"); and
2) Big Creative Academy (formerly DV8 Academy Limited) , (the "**Company**") a charitable company incorporated in England and Wales with registered number 8333424, together, the "**Parties**".

INTRODUCTION

A. The Parties entered into a funding agreement dated on or about 4 August 2014 (the "**Funding Agreement**") relating to the establishment, maintenance and funding of an Academy then known as the DV8 Academy in accordance with the Funding Agreement.

B. The Parties now wish to vary and amend certain terms and conditions of the Funding Agreement in accordance with the terms of this Deed.

C. This Deed is supplemental to the Funding Agreement.

1. INTERPRETATION

1. 1 Words, expressions and interpretations used in this Deed shall, unless the context expressly requires otherwise, have the meaning given to them in, and shall be interpreted in accordance with, the Funding Agreement.

2. VARIATION OF THE FUNDING AGREEMENT

2.1 The Parties agree that with effect from the date of this Deed the Funding Agreement shall be amended as follows:

2.1.1 In clause 1, "DV8 Academy Limited" shall be deleted and replaced with "Big Creative Academy".

2.1.2 In clause 4, after the definition of "EFA" there shall be an additional definition of "Debt" which shall read:

""Debt" means the amount equal to 100% of the Land Value"

2.1.3 In clause 4, after the definition of "DfE" there shall be an additional definition of "Discharge Process" which shall read:

""Discharge Process"

means the removal of:

i. the Legal Charge registered with Companies House as against the Academy Trust;

ii. *the Legal Charge from the charges register at the Land Registry against the title for the Land;*

iii. *the restriction in the proprietorship register as referred to in 108B(a); and*

iv. *the notice in the proprietorship register as referred to in 108F(a)"*

2.1.4 In clause 4 the definition of "the Land" shall be replaced with:

"the Land" means the land (including for the avoidance of doubt all buildings structures landscaping and other erections situated at and known as the former Willowfield School, Clifton Avenue, London E17 8AH and which is shown for the purposes of identification edged red on the plan attached as Annex B to this Agreement, making up the permanent site of the Academy;

2.1.5 In clause 4, after the revised definition of "the Land" there shall be a new definition of "Land Value" which shall read:

"Land Value" means, at any time:-

(a) where there has been a disposal of the Land as a result of the enforcement of the Legal Charge by the Secretary of State, the proceeds of that disposal after payment of any necessary and reasonable costs incurred by the seller in connection with such disposal; or

(b) in any other case, the Market Value of the Land;

2.1.6 In clause 4 the definitions of "the Lease" and "the Rent" shall be deleted.

2.1.7 In clause 4, after the inserted definition of "Land Value" there shall be new definitions of "Legal Charge" and "Market Value" which shall read:

"Legal Charge" means the legal charge to be entered into [within two weeks of the opening of the 16 to 19 Academy][upon the acquisition of the legal interest in the Land] by the Academy Trust in favour of the Secretary of State over the Land, in a form and substance satisfactory to the Secretary of State;

"Market Value" the market value of the relevant part of the Land (as that term is defined or referred to in the RICS Appraisal and Valuation Manual (current edition) published by RICS), as determined by a professionally qualified independent valuer;

2.1.8 The text of clause 56 shall be replaced with the words "Not used."

2.1.9 Clause 61(h) shall be deleted.

2.1.10 In clause 94 the words "entered into the Lease" shall be replaced with the words "acquired the Land."

2.1.11 The text of each of clauses 105B and 108C shall be replaced with the words "Not used."

2.1.12 Clauses 108C)(i) (from and including the preceding heading "A. Land Clauses") to clause 108D shall be replaced with the following:

"LAND CLAUSES

Debt

108A) a) The Secretary of State has agreed to make payments of Capital Grant to the Academy Trust pursuant to Clause 37;

108A) b) The payments referred to at 108A(a) are made available to the Academy Trust on an interest free basis;

108A) c) In consideration of the Secretary of State making the payments referred to at 108A(a) and financing the acquisition of the Land, the Academy Trust shall pay the Debt upon termination of this Agreement or in accordance with clauses 108H(b) or 108K(a) or upon any disposition by way of sale of the whole or part of the Land, whether or not such sale has been consented to by the Secretary of State; and

108A) d) The Debt shall be secured by the Legal Charge.

Restrictions on Land transfer

108B) In consideration that it has or will be obtaining a legal interest in the Land, such acquisition being financed by the Secretary of State, the Academy Trust:

a) shall, within 28 days from the acquisition of the legal interest in the Land apply to the Land Registry for restrictions in the proprietorship register (under section 43(1)(a) of the Land Registration Act 2002 in Form RX1 as prescribed by Rule 91 and Schedule 4 of the Land Registration Rules 2003) ('LRR 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 is to be registered without a written consent signed by the proprietor for the time being of

the charge dated [date][1] in favour of The Secretary of State for Education of Sanctuary Buildings, Great Smith Street, London SW1P 3BT referred to in the charges register or, if appropriate, signed on such proprietor's behalf by its conveyancer.[2]

b) *shall take any further steps reasonably required to ensure that the restriction[s] referred to in clause 108B(a) is entered on the proprietorship register,*

c) *shall provide the Secretary of State with confirmation of the entry of the restriction referred to in clause 108B(a) as soon as reasonably practicable after it receives notification from the Land Registry,*

d) *in the event that it has not registered the restriction referred to in clause 108B(a), hereby consents to the entering of the restriction referred to in 108B(a) in the register by the Secretary of State (under s. 43(1)(b) of the Land Registration Act 2002); and*

e) *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 108B(a) or 108B(d) above, whether by itself, a holding company, a subsidiary company, or a receiver, administrator or liquidator acting in the name of the Academy Trust.*

Obligations of the Academy Trust

108C) (i) 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. In compliance with this clause, the Academy Trust shall not do or cause or permit to be done anything to lessen the value or marketability of the Land save with the express written consent of the Secretary of State.

108C)(ii) Not used.

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[1] Date to be inserted should be date charge is entered into. This is not inserted into the clause in the Funding Agreement, but sets out what the restriction should be when registered with the Land Registry.
[2] This restriction will apply if the Academy Trust is an exempt charity at the time of the acquisition of the land and enters into the legal charge upon acquisition.

108C)(iii) The Academy Trust agrees it shall seek and obtain the prior written consent of the Secretary of State, not to be unreasonably withheld or delayed before taking any steps to:

a) *grant any consent or licence in respect of the Land or any part of it; and / or*

b) *create or permit to arise or continue any encumbrance affecting the Land or any part of it; and / or*

c) *part with or share possession or occupation of the Land or any part of it; and / or*

d) *enter into any onerous or restrictive obligations affecting the Land or any part of it.*

108C) iv) The Academy Trust agrees that prior to taking any steps, including but not limited to the service of any notice or waiver of any condition, under any contractual arrangement entered into in respect of the acquisition of the legal interest in the Land, it shall seek and obtain the written consent of the Secretary of State, not to be unreasonably withheld or delayed.

Insurance

108D) The Academy Trust shall:-

a) *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;*

b) *pay the premiums for insurance promptly as they become due and maintain in force the policies of insurance on the Land;*

c) *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;*

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

e) *not knowingly do anything whereby any policy of insurance relating to the Land may become void or voidable.*

f) *insure against liability in respect of property owners' and third party risks including occupiers liability.*

Transfer of Land

108E) In consideration that it has or will be obtaining a legal interest in the Land, such acquisition being financed by the Secretary of State, the Academy Trust hereby grants and the Secretary of State hereby accepts an option, exercisable by the Secretary of State or his nominee, to acquire the said Land or any part thereof at nil consideration. The option hereby granted shall be exercisable (by notice in writing by or on behalf of the Secretary of State) on the termination of this Funding Agreement for whatever cause or in circumstances where the Academy Trust is unable to use all or part of the Land as the permanent site of the Academy in accordance with clauses 108H or 108K. On the exercise of this option, the Law Society's Standard Conditions of Sale for Commercial Property in force at the date of such exercise shall apply to the transaction and completion shall take place 28 days after such exercise.

108F) In consideration that it has or will be obtaining a legal interest in the Land, such acquisition being financed by the Secretary of State, the Academy Trust:

a) shall, within 14 days from the transfer to it of the Land or the signing of this Agreement, whichever is the latter, apply to the Land Registry in Form AN1 as prescribed by Rule 81 of the Land Registration Rules 2003 for a notice to be entered in the register (under section 34(3)(a) of the Land Registration Act 2002) to protect the option granted under clause 108E and including a copy of this Agreement as evidence of that option,

b) shall take any further steps required to ensure that the notice referred to in clause 108F(a) is entered on the proprietorship register,

c) shall provide the Secretary of State with confirmation of the entry of the notice referred to in clause 108F(a) as soon as practicable after it receives notification from the Land Registry,

d) in the event that it has not registered the notice referred to in clause 108F(a), hereby consents to the entering of the notice referred to in 108F(a) in the register by the Secretary of State (by application in Form UN1 under s. 34(3)(b) of the Land Registration Act 2002),

e) shall not, without the consent of the Secretary of State, apply to dis-apply, modify or remove (by cancellation or otherwise) a notice entered in accordance with clause 108F(a) or 108F(d) above, whether by itself, a holding company, a subsidiary company, or a receiver, administrator or liquidator acting in the name of the Trust, and

f) in the case of previously unregistered land, for the further protection of the option granted in Clause 108E the Academy Trust shall within 14 days of the acquisition of the legal interest in the Land or the signing of this Agreement, whichever is the latter, make application to register a Class C (iv) land charge in the Land Charges Registry and a Caution against First Registration in the Land Registry and shall provide the Secretary of State with copies of the entries secured thereby within 7 days of completing each registration, respectively. If the Secretary of State is of the view that the Academy Trust has failed to perform the registration obligations in this sub-clause he shall be at liberty to make his own applications to secure these registrations.

Legal Charge

108G) In consideration that it has or will be obtaining a legal interest in the Land, such acquisition being financed by the Secretary of State, the Academy Trust:

a. shall enter into the Legal Charge upon completion of the acquisition of said interest[3];

b. shall, within 21 days from the entry into of the Legal Charge register the Legal Charge with Companies House or if required by the Secretary of State shall use all reasonable endeavours to assist the Secretary of State to register the Legal Charge at Companies House, including signing and executing any documents, deeds and/or forms as required;

c. shall, within 28 days from the date of the Legal Charge apply to the Land Registry for the Legal Charge to be entered on the charges register, using forms AP1 (Rule 13 LRR 2003) and CH1 (Rule 103 LRR 2003) or such form as may be required by the Secretary of State;

d. shall take any further steps required to ensure that the Legal Charge is entered on the charges register;

e. shall provide the Secretary of State with confirmation of the registration of the Legal Charge as soon as reasonably practicable after it receives notification from the Land Registry; and

f. in the event that it has not registered the Legal Charge hereby consents to the registration of the Legal Charge by the Secretary of State. To enable the Secretary of State to do so, the Academy Trust shall use all reasonable endeavours to assist the Secretary of State to register the Legal Charge including signing and executing any documents, deeds and/or forms as required, specifically but not limited to providing the Secretary of State with the executed Legal Charge and completed AP1/CH1 forms, and dealing with any requisitions raised by the Land Registry.

Failure to use the Land for the purposes of the 16-19 Academy

108H) If the Academy Trust is unable to use the Land or any part thereof as the permanent site of the 16 to 19 Academy but the Secretary of State agrees not to terminate this Agreement on that basis, the Secretary of State may give notice to the Academy Trust that:

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[3] The choice here will depend upon whether or not the Academy Trust is an exempt or non-exempt charity at the time the land is acquired. Where the Academy is a non-exempt charity at that time the first option will apply, whilst the second option will apply if the Academy Trust is an exempt charity.

a) *he intends to exercise the option granted under clause 108E) to transfer the Land or the relevant part thereof for nil consideration to himself or his nominee;*
b) *the Academy Trust pays the Debt or the Market Value; and/or*
c) *the Academy Trust shall dispose of the Land or the relevant part thereof and that, pursuant to clause 78, the Academy Trust may retain some or all of the proceeds of sale of the Land or the relevant part thereof in order to fulfil its charitable purposes by funding the purchase of an alternative permanent site for the Academy, save that any proceeds not used to fund the purchase of an alternative permanent site shall be accounted for to the Secretary of State or his nominee.*

Sharing of the Land

108I) *The Academy Trust agrees that if:*

a) *the 16 to 19 Academy does not reach its planned capacity over a period of 4 Academy Funding Years; or*
b) *notice of termination is served by either the Academy Trust or the Secretary of State in accordance with clause 82 of this Agreement; or*
c) *in the reasonable opinion of the Secretary of State the operation of the 16 to 19 Academy at planned capacity does not require the use of the full extent of the Land,*

    i. *it will share occupation of the Land with such other Academies as the Secretary of State deems appropriate in the circumstances and enter into such legal arrangements in respect of the same as are required by the Secretary of State; or*
    ii. *it will dispose of part of the Land as required by the Secretary of State and account for any proceeds of such disposal to the Secretary of State or his nominee as part payment of the Debt. Upon such disposal and part payment of the Debt, the Secretary of State will discharge the Legal Charge in respect of the part of the Land that has been disposed of.*

Exercise of Rights

108J) On the termination of this Agreement, the Secretary of State may give notice of his intention to exercise the rights conferred upon the Secretary of State pursuant to clause 101, 102, 108E and the Legal Charge:

a) *any such notice shall be in writing and shall confirm which clause of this Agreement the Secretary of State intends to exercise without prejudice to the Secretary of State's right to exercise all and any other rights available to him;*

b) *in the event that upon termination of this Agreement for whatever reason, the Secretary of State exercises his option granted and the legal interest in the Land is transferred to the Secretary of State or his nominee for nil consideration by the Academy Trust pursuant to clause 108E, the Academy Trust's obligation to pay the Debt shall be deemed to have been satisfied in full, the obligation on the Academy Trust to pay a proportion of the proceeds of sale of the Land to the Secretary of State under clause 101(b) shall be deemed to been complied with, and the Secretary of State shall take all steps reasonably required to carry out the Discharge Process;*

c) *in the event that upon termination of this Agreement for whatever reason the Secretary of State enforces the Legal Charge, the Academy Trust's obligation to pay the Debt shall be deemed to have been satisfied in full following the realisation of the Debt by any receiver, the obligation on the Academy Trust to pay a proportion of the proceeds of sale of the Land to the Secretary of State under clause 101(b) shall be deemed to been complied with, and the Secretary of State shall take all steps reasonably required to carry out the Discharge Process;*

d) *in the event that upon termination of this Agreement for whatever reason, the Secretary of State exercises his rights under clause 101, the Academy Trust's obligations to pay the Debt shall be deemed to have been satisfied in full and the Secretary of State shall take all steps reasonably required to carry out the Discharge Process; and*

e) *in the event that upon termination of this Agreement for whatever reason, the Secretary of State agrees that pursuant to clause 102 the Academy Trust may invest the proceeds of the sale of the Land for its charitable objects or directs the Academy Trust to pay all or part of the proceeds of sale of the Land to the LA, the Academy Trust's obligations to pay the Debt shall be*

deemed to have been satisfied in full and the Secretary of State shall take all steps reasonably required to carry out the Discharge Process.

108K) On the Academy Trust applying to the Secretary of State for consent to the disposal of all or part of the Land during the lifetime of this Agreement, the Secretary of State shall, should he agree that the Land is no longer required or cannot be used for the purposes of the Academy, subject to clause 76,

a) consent to the disposal subject to any one or a combination of the following conditions:-

iii. that (notwithstanding the provisions of clause 78) the Academy Trust pays the Debt in full or, in the event of a proposed disposal of part, repays to the Secretary of State the Market Value;

iv. that pursuant to clause 78, the Academy Trust may retain some or all proceeds of the disposal for its charitable purposes, subject to the Academy Trust accounting to the Secretary of State for any remaining proceeds of sale that the Secretary of State does not agree that the Academy Trust may retain for such charitable purposes; or

v. that pursuant to clause 79, the Academy Trust pays all or some of the proceeds of sale to the LA and / or may reinvest all or some of the proceeds of sale for its charitable purposes,

and any such notice of consent and conditions shall be in writing; or

b) exercise the option granted to him pursuant to clause 108E to transfer the relevant part of the Land to him or his nominee for nil consideration.

108L) In the event that the Secretary of State consents to the disposal of the Land during the lifetime of this Agreement, subject to any of the conditions set out in clause 108K(a):

a) if the Secretary of State enforces the Legal Charge, the Academy Trust's obligation to pay the Debt shall be deemed to have been satisfied in full following the realisation of the Debt by any receiver, the obligations on the Academy Trust to pay a proportion of the proceeds of sale of the Land to the Secretary of State under clause 78 shall be deemed to have been complied

with, and the Secretary of State shall take all steps reasonably required to carry out the Discharge Process.

b) *if the Secretary of State agrees that the Academy Trust may retain some or all proceeds of the disposal for its charitable purposes, subject to the Academy Trust accounting to the Secretary of State for any remaining proceeds of sale that the Secretary of State does not agree that the Academy Trust may retain for such charitable purposes, the Academy Trust's obligations to pay the Debt shall be deemed to have been satisfied in full, the obligations on the Academy Trust to pay a proportion of the proceeds of sale of the Land to the Secretary of State under clause 78 shall be deemed to have been complied with and the Secretary of State shall take all steps reasonably required to carry out the Discharge Process, provided that in the event of a disposal of part of the Land, the Academy Trust's obligation to pay the Debt shall be deemed to have been satisfied to the extent of the Market Value, the Academy Trust's obligation under clause 78 shall be deemed to have been satisfied in relation to the relevant part of the Land, the Legal Charge shall be released and the restriction and the notice shall be removed in relation to such part and the Legal Charge, the restriction and the notice shall remain in place in relation to the balance of the Land.*

c) *if the Secretary of State directs the Academy Trust to pay all or part of the proceeds of sale of the Land to the LA pursuant to clause 79 or agrees that the Academy Trust may reinvest the proceeds of the sale for its charitable purposes, the Secretary of State shall take all steps reasonably required to carry out the Discharge Process, provided that in the event of a disposal of part of the Land the restriction and notice shall remain in place in relation to the balance of the Land.*

108M) In the event that the Secretary of State exercises his option during the lifetime of this Agreement under clause 108K(b) and the legal interest in the Land is transferred to the Secretary of State or his nominee for nil consideration by the Academy Trust pursuant to clause 108E, the Academy Trust's obligation to pay the Debt shall be deemed to have been satisfied in full, the obligations on the Academy Trust to pay a proportion of the proceeds of sale of the Land to the Secretary of State under clause 78 shall be deemed to have been complied with, and the Secretary of State shall take all steps reasonably required to carry out the Discharge Process, provided that in the

event of the exercise of the option in relation to part of the Land, the Academy Trust's obligation to pay the Debt shall be deemed to have been satisfied to the extent of the Market Value, the Academy Trust's obligation under clause 78 shall be deemed to have been satisfied in relation to the relevant part of the Land and the Legal Charge shall be released and the restriction and notice shall be removed in relation to such part and the Legal Charge, the restriction and the notice shall remain in place in relation to the balance of the Land.

Payment of Debt

108N) In the event that the Academy Trust pays all the Debt, upon termination of this Agreement or at any other time, the Secretary of State shall take all steps reasonably required to carry out the Discharge Process.

108O) Should the Academy Trust:

(a) dispose of any or all parts of the Land, in accordance with clause 108K, or

(b) make payment to the Secretary of State to pay the Debt in full,

it shall enter into negotiations with the Secretary of State in respect of a deed of variation for this Agreement.

2.1.13 The plan attached as Annex 1 to this Deed shall be attached and referred to as Annex B of the Funding Agreement.

2.2 Except as varied by this Deed, the Funding Agreement shall remain in full force and effect.

3. Governing law and jurisdiction

3.1 This Deed, and any disputes or claims arising out of or in connection with it, its subject matter or formation (including non-contractual disputes or claims), shall be governed by and construed in accordance with English law.

3.2 The parties irrevocably agree that the English courts have exclusive jurisdiction to settle any dispute or claim that arises out of or in connection with this Deed or its subject matter or formation (including non-contractual disputes or claims).

4. Counterparts

4.1 This Deed may be executed in any number of counterparts and by the parties

to it on separate counterparts, each of which when so executed and delivered shall be an original, but all the counterparts shall together constitute one and the same instrument.

IN WITNESS whereof this Deed has been executed by the parties hereto and is intended to be and is hereby delivered on the date first above written.

EXECUTED as a deed by affixing the corporate seal of the **Secretary of State for Education** authenticated by:-)

.....
Duly authorised by the Secretary of State for Education

EXECUTED as a deed by Big Creative Academy , acting by:

....

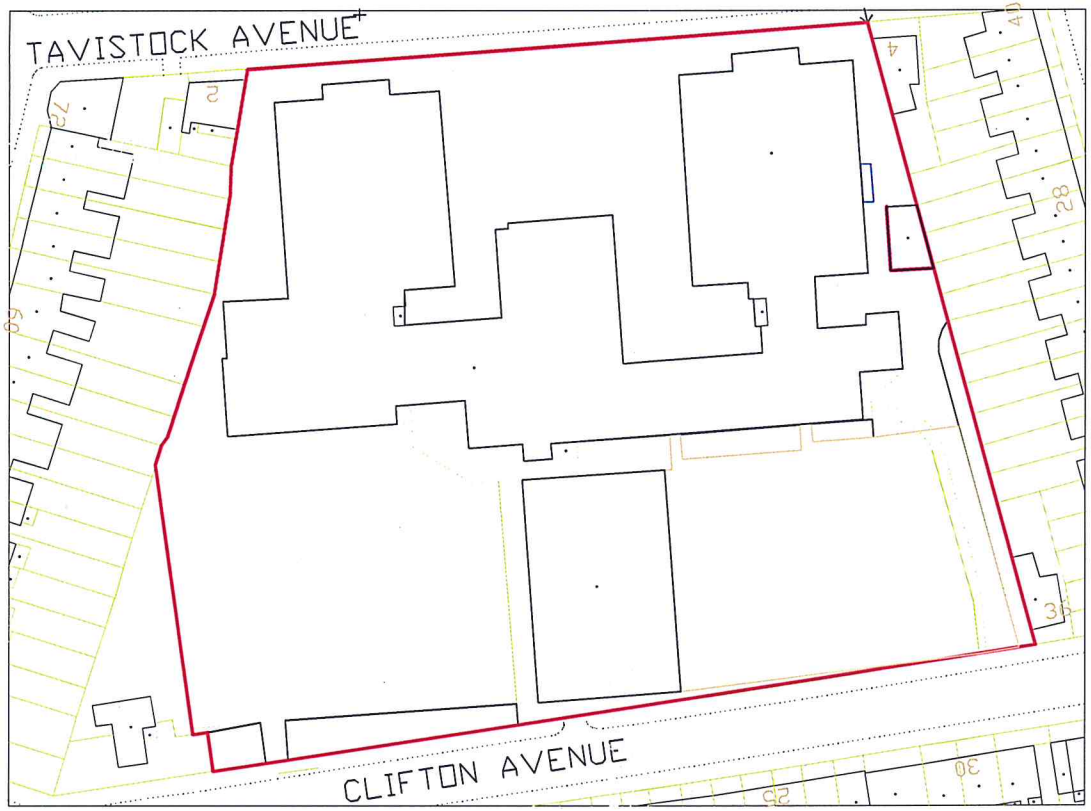
Director **Director/Secretary**

Sample details

Location Key

NOTES

Ref.	Description	Date



Willowfield SEC

Site Area = 11247.91
Perimeter = 422.13
Building Footprint = 4255.53
Total External Area = 6992.65
HSP (bitmac) = 4941.34
SOFT = 414.63
CARPK = 1627.86
PAVED = 8.82

10 0 10 20 30 40 50

London Borough of Waltham Forest
GIS External Areas July 2003

Waltham Forest
Schools Organisation
Partnership Development

Project : Willowfield Secondary School

Drawing Title : Site Plan

No .of floors :

Scale :	1:750@A3	Drawing No.	
Date :	07/01/2011	3204066/01	
Drawn :		Revision :	

DEED OF VARIATION

The parties to this Deed are:

(1) The Secretary of State for Education ("the Secretary of State"),

- and –

(2) Big Creative Academy Trust a charitable company incorporated in England and Wales with registered number 08333424 ("the Company").

together referred to as the "Parties"

INTRODUCTION

A. The Parties entered into a funding agreement dated 4 August 2014 ("the Funding Agreement") relating to the establishment, maintenance and funding of an Academy in accordance with the Funding Agreement.

B. The Parties entered into a Deed of Variation on 24 March 2015 ("Deed of Variation to the Funding Agreement") relating to the name change from "DV8 Academy Limited" to "Big Creative Academy".

C. The Parties now wish to vary and amend the terms and conditions of the Funding Agreement in accordance with the terms of this Deed.

D. This Deed is supplemental to the Funding Agreement.

LEGAL AGREEMENT

1. Words, expressions and interpretations used in this Deed shall, unless the context expressly requires otherwise, have the meaning given to them in, and shall be interpreted in accordance with, the Funding Agreement.

2. The Secretary of State and the Company agree that with effect from the date of this Deed the Funding Agreement shall be amended in accordance with Schedule 1 to this Deed.

3. As varied by this Deed, the Funding Agreement shall remain in full force and effect.

GOVERNING LAW AND JURISDICTION

4. This Deed, and any dispute or claim arising out of or in connection with it, its subject matter or formation (including non-contractual disputes or claims) shall be governed by and interpreted in accordance with the law of England and Wales.

5. The Parties irrevocably agree that the courts of England and Wales shall have exclusive jurisdiction to settle any dispute or claim that arises out

of, or in connection with, this Deed or its subject matter or formation (including non-contractual disputes or claims).

COUNTERPARTS

6. This Deed may be executed in any number of counterparts and by the parties to it on separate counterparts, each of which when so executed and delivered shall be an original, but all the counterparts shall together constitute one and the same instrument.

EXECUTED AND DELIVERED AS A DEED by the Parties on the 22 day of October 2020

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

.....

Duly Authorised by the Secretary of State for Education



Big Creative Academy Trust

acting by two directors or a director and a secretary

Director:

Print name: Mr Alexis Michaelides

Director/~~Secretary~~

Print name: Ms Sacha Corcoran

Witnessed by

Full name: Kunle Dare

Address: Myrobella, West Kingsdown, Kent

Occupation: Accountant

Schedule 1

Amendments to the Big Creative Academy Trust Funding Agreement

1. Clause 43B of the Big Creative Academy Funding Agreement shall be deleted and replaced with the following:

43B1. Subject to clause 43, the Secretary of State agrees to pay GAG and EAG to the Company in relation to the Academy Funding Years ending 31 August 2020 to 31 August 2022 in accordance with the Master Agreement and clause 43B2.

43B2. The Secretary of State will initially determine the pupil number count for the year in question in accordance with the previous year's October Census figure, but will, at the earliest opportunity make an adjustment to the calculation of GAG to take account of the actual pupil number count for that year as determined in the October Census figure for that Academy Funding Year.

43B3. After the 2021/2022 Academic Funding Year (unless otherwise determined by the Secretary of State) the basis of the pupil count for the purpose of determining GAG will no longer be the estimate provided in accordance with clause 43B2, but in that and all following Academy Financial Years will revert to lagged census funding.