

ACADEMIES

ASHCROFT TECHNOLOGY ACADEMY FUNDING AGREEMENT

20th DECEMBER 2006

ACADEMIES

FUNDING AGREEMENT

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INTRODUCTION

1) (A) This Agreement was originally made under section 105 of the Education Reform Act 1988 between the Secretary of State for Education and Science (hereafter the Secretary of State) and the Prospect Education (Technology) Trust Limited referred to originally as "the CTC" but referred to in clause 2 below and the subsequent provisions of this Agreement as "the Trust".

(B) Pursuant to section 68 of the Education Act 2002 the Secretary of State and the Prospect Education (Technology) Trust Limited agree that this Agreement shall, with effect from the Academy Operational Date for all purposes be regarded as having been made under Section 482 of the Education Act 1996 as substituted by section 65 of the Education Act 2002.

2) The Trust is a charitable company incorporated in England and Wales, limited by guarantee with registered no (02484729).

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) "Accounting Officer" - clause 71;
- b) "admission arrangements" - clause 4 of Annex 2;
- c) "annual letter of funding" - clause 65;
- d) "GAG" - clauses 53-60;
- e) "capital expenditure" - clause 39;
- f) "the Academy" - clause 8
- g) "the Trust " - clause 1;
- h) "EAG" - clauses 61-62;
- i) "Financial Handbook" - clause 72;
- j) "financial year" - clause 66;
- k) "Board of Trustees" - clause 11
- l) "recurrent expenditure" - clause 38;
- m) "School Development Plan" - clause 14-16
- n) "start up period" - clause 58a;
- o) "the company" - clause 2;
- p) "the Memorandum and Articles" - Annex 1

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

"Academy Operational Date" means the first date when pupils attend school at the Academy, or such other date as agreed between the Parties;

"ASD Resource Base" means the 16 place ASD Resource Base to be constructed and operated at the College pursuant to the ASD Resource Base Agreement dated on or prior to the date hereof between the Trust and London Borough of Wandsworth;

"Deed" means the deed of variation between the Secretary of State and the Trust;

"LA" means local authority;

"Openview Development" means the leasing and development of a remote sports site known as "Openview" to be owned and operated pursuant to the terms of the Openview Lease Agreement dated on or prior to the date hereof between the Trust and The Mayor and Burgesses of the London Borough of Wandsworth;

"Original Funding Agreement" means the funding agreement dated 21st August 1991, as amended between the Secretary of State for Education and Skills and Prospect Education (Technology) Trust Limited;

"School" means the School established and maintained and carried on pursuant to this Agreement and accordingly in relation to any time before the Academy Operational Date means the School as a City Technology College and in relation to any time on and after the Academy Operational Date means the School as an Academy;

"Headteacher" means the Principal of the Academy;

"Agreement" means this agreement and its Annexes and a reference in the Agreement to a numbered clause or Annex is a reference to the clause or Annex of this Agreement bearing that number.

- 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) Questions arising on the interpretation of the arrangements in this funding agreement shall be resolved by the Secretary of State after consultation with the Academy.
- 7) Section 482 (1) of the Education Act 1996 as substituted states that -

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

- (a) that person undertakes to establish and maintain, and to carry on or provide for the carrying on of, an independent school in England with the characteristics mentioned in subsection (2), and such other characteristics as are specified in the agreement, and
- (b) the Secretary of State agrees to make payments to that person in consideration of those undertakings."

LEGAL AGREEMENT

- 8) In consideration of the Trust undertaking to establish and maintain, and to carry on or provide for the carrying on, of an independent school to be known as Ashcroft Technology Academy ("the Academy") and having such characteristics as are referred to in clauses 9 - 10, the Secretary of State agrees to make payments to the Trust in accordance with the conditions and requirements set out in this Agreement. Any obligations imposed upon or powers given to the Academy by this agreement are also imposed upon the Trust.

CHARACTERISTICS OF AN ACADEMY

- 9) The characteristics of an Academy set down in section 482 (2) of the Education Act 1996 as substituted by the Education Act 2002, are that the school:
 - a) has a broad curriculum with an emphasis on a particular subject area, or particular subject areas, specified in the agreement, and
 - b) provides education for pupils of different abilities and who are wholly or mainly drawn from the area in which the school is situated.

CONDITIONS OF GRANT

General

- 10) Section 482(4) of the Education Act 1996 provides for the agreement to specify other conditions and requirements. These conditions in respect of the Academy are that:
 - a) the school will be at the heart of its community, sharing facilities with other schools and the wider community;
 - b) there will be assessment in the core subjects of the national curriculum at Key Stage 3, and the opportunity to study for external qualifications as defined by section 96 of the Learning and Skills Act 2000;
 - c) the admissions policy and arrangements for the school will be in accordance with admissions law, and the DfES Codes of Practice, as they apply to maintained schools;
 - d) teachers will be required to have qualified teacher status; levels of pay and conditions of service for all employees will be the responsibility of the Board of Trustees;
 - e) there will be an emphasis on the needs of the individual pupils including pupils

with special educational needs (SEN) both those with and without statements of SEN;

- f) there will be no charge in respect of admission to the school and the school will only charge pupils where the law allows maintained schools to charge.

Governance

11) The Academy will be governed by a board of trustees ("the Board of Trustees") who are the directors of the company constituted under the Memorandum and Articles of the Trust. The Board of Trustees shall exercise its powers and functions with a view to fulfilling a largely strategic role in the running of the school and shall consider any advice given by the Headteacher and the Academy shall be conducted in accordance with the Scheme of Management from time to time agreed with the Secretary of State. The Board of Trustees may exercise its powers and fulfil its functions through its servants or agents.

12) Subject to the Memorandum and Articles, and to this Agreement, the Board of Trustees may regulate its own procedure and that of any of its committees.

Conduct

13) The Academy shall be conducted in accordance with:

- a) the Memorandum and Articles (attached as Annex 1 to this Agreement) which Memorandum or Articles shall not be amended by the Trust without the explicit consent of the Secretary of State, such consent not to be unreasonably withheld;
- b) all provisions by or under statute which confer rights or impose obligations on Academies;
- c) the terms of this Agreement.

Development Plan and target setting

14) The Academy shall draw up a School Development Plan each year in accordance with a format and timetable to be advised by the Secretary of State. The School Development Plan shall, in particular:

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

15) The Academy shall set such targets in areas to be specified by the Secretary of State each year. The target areas for the initial year shall be:

- a) percentage of pupils achieving five or more GCSEs at grades A* - C; and
- b) percentage of pupils achieving level 5 or above at Key Stage 3 in English, maths science and ICT;

- c) the average point scores at Key Stage 4 for Approved Qualifications

In this clause "Approved Qualification" means an external qualification at entry level, level 1 or level 2 (as set out in the Qualifications and Curriculum Authority's National Qualifications Framework and determined by the Qualifications and Curriculum Authority) or a GCE AS level, which is approved under section 98 of the Learning and Skills Act 2000 and which is appropriate for pupils of compulsory school age.

- 16) The Academy shall consult the Secretary of State and the LA in whose area it is situated each year before setting these targets and shall take into account but not be bound by any comments received from the Secretary of State and/or the LA. The Academy shall set its targets in accordance with the timetable for target setting which applies to maintained schools.

Pupils

- 17) The Academy is an all ability and inclusive school. The arrangements for:

- a) the admission of pupils to the Academy; and
- b) the admission of and support for pupils with Special Educational Needs and with disabilities (for pupils who have and who do not have statements of Special Educational Needs) (including the appointment of a responsible person);

are set out in Annexes 2 and 3 to this Agreement, together with the arrangements for making changes to such arrangements, including the requirement to secure the consent of the Secretary of State, such consent not to be unreasonably withheld. Arrangements for pupil exclusions are set out in Annex 4.

Teachers and other staff

- 18) The Trust shall not engage anyone under a contract of employment or for services to carry out planning and preparing lessons and courses for pupils, delivering lessons to pupils, assessing the development, progress and attainment of pupils, and reporting on the development, progress and attainment of pupils ("specified work") who is not -

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

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

- 20) The Board of Trustees shall ensure that all employees other than teachers have access to the Local Government Pension Scheme.

- 21) Reasonable notice shall be given to the Secretary of State of any meeting of the Board of Trustees of the Academy or any committee or sub-committee thereof (including meetings of the Executive Board and any interview or appointments panel), at which the appointment of a Principal of the Academy is being considered and a representative of the Secretary of State shall be entitled to attend and speak at any such meeting whether or not they are also entitled to attend such meeting by virtue of clause 109 of this agreement. Advice given by any such representative shall be taken into account by those persons considering the appointment of the Principal before a decision is made.
- 22) It shall be the responsibility of the Board of Trustees to agree levels of pay and conditions of service with its employees, and to determine and employ such numbers of staff as may be appropriate. The Board of Trustees shall approve policies for:
- a) staffing structure, and staff remuneration; and
 - b) staff discipline and performance management.

Curriculum, curriculum development and delivery and RE and collective worship

- 23) The curriculum provided by the Academy to pupils up to the age of 16 shall be broad and balanced with an emphasis on Information and Communications Technologies and Design and Technology. In providing its curriculum, the Academy shall ensure that:
- a) English, Mathematics, Science and Information and Communication Technology are taught to pupils in Years 7, 8 and 9; and
 - b) English, Mathematics and Science are taught to pupils in Years 10 and 11;
- except that the Academy is not required to teach an individual pupil or groups of pupils in one or more subjects where, in the opinion of the principal, it is inappropriate to do so.
- 24) The Academy shall make provision for the teaching of Religious Education and for a daily act of collective worship.
- 25) Subject to clause 27, provision shall be made for Religious Education to be given to all pupils at the Academy in accordance with the requirements for agreed syllabuses in section 375(3) of the Education Act 1996 and paragraph 2(5) of Schedule 19 to the School Standards and Framework Act 1998, and having regard to the requirements of the Qualifications and Curriculum Authority's national framework for religious education in schools.
- 26) Subject to clause 27, the Academy shall comply with the requirements of section 70(1) of, and Schedule 20 to, the School Standards and Framework Act 1998 as if it were a community, foundation or voluntary school which does not have a religious character, except that the provisions of paragraph 4 of that Schedule do not apply. The Academy may apply to the Secretary of State for consent to be relieved of the requirement imposed by paragraph 3(2) of that Schedule, the Secretary of State's consent to such an application not to be unreasonably withheld or delayed.

27) Section 71(1) - (4) of the School Standards and Framework Act 1998 shall apply as if the Academy were a community, foundation or voluntary school, and as if references to "religious education" and to "religious worship" in that section were references to the religious education and religious worship provided at the Academy in accordance with clauses 25 and 26 respectively.

28) The Academy shall have regard to any guidance issued by the Secretary of State on Sex and Relationship Education to ensure that children are protected from inappropriate teaching materials and they learn the nature of marriage and its importance for family life and for bringing up children.

Assessment

29) The Academy will be notified to the National Assessment Agency (NAA) by the Secretary of State and the Academy shall provide the NAA with such information as the NAA shall require for the purposes of enabling all pupils at the Academy to take part in and report to the NAA and its agencies on Key Stage 3 assessments in English, Maths and Science (and from 2008, ICT) and for teacher assessments of pupil's performance in those subjects. The Academy will submit to monitoring of its assessment arrangements and may choose to be monitored either:

(a) by the Local Authority in whose area the Academy exists, with the consent of that Authority; or

(b) by an Agency accredited by the NAA,

but in either event shall notify the Secretary of State of the basis upon which it has chosen to be monitored, or any change to that choice. The NAA will conduct an annual audit of the monitoring arrangements. The Academy shall comply with the relevant provisions of the 'Assessment and Reporting Arrangements' as published from time to time by the Qualifications and Curriculum Authority as they apply to maintained schools.

The results of any such assessments shall be reported to the DfES as required by the Department and set out in the Assessment and Reporting Arrangements from time to time applying.'

30) The results of any test or assessment conducted in accordance with this clause shall also be reported to the Department and/ or the Local Authority as required and as set out in the Assessment and Reporting arrangements, in a format approved by the Department. The Academy may not offer courses which lead to external qualifications, as defined in section 96 of the Learning and Skills Act 2000, unless they are either approved under section 98 of that Act, or, in respect of individual pupils, groups of pupils or all pupils in Key Stage 4, the Secretary of State gives specific consent for such courses to be offered.

Crisis Management Plan

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

School meals

- 32) The Academy shall, if requested to do so by or on behalf of any pupils at the Academy provide school lunches for those pupils unless it would be unreasonable for them to do so. Subject to the provisions of clause 30 charges may be levied for lunches.
- 33) In relation to a pupil who is himself or whose parents are in receipt of benefits mentioned in section 512(3)B of the Education Act 1996 (or equivalent provision governing the entitlement to free school lunches of pupils at maintained schools), the Academy shall ensure that a school lunch is provided for such a pupil, which shall be provided free of charge.

Charging

- 34) Sections 402 (Obligation to enter pupils for public examinations), 450 - 457 (charges), 459 (regulations about information about charges and school hours) and 460 (voluntary contributions), 461 (recovery of sums as civil debt) - 462 (Interpretation re charges) of the Education Act 1996 shall be deemed to apply to the Academy with the following modifications:
- a) references to any maintained school shall be treated as references to the Academy;
 - b) references to registered pupils shall be treated as references to registered pupils at the Academy;
 - c) references to the governing body or the local education authority shall, in each case, be treated as references to the Board of Trustees of the Academy;
 - d) the charging and remissions policies required to be determined under section 457, and any amendment thereto, shall require the approval of the Secretary of State; and
 - e) the Academy may charge persons who are not registered pupils at the Academy for education provided or for facilities used by them at the Academy.

Provision of Information to parents and others

- 35) The Academy shall publish a prospectus annually, shall send this on request (free of charge) to parents of pupils at the Academy and to the Secretary of State; and shall make it available for inspection by other persons at the Academy. The prospectus shall include details of admission arrangements and, except insofar as such information is published in a document known as a School Profile (which would accompany the prospectus) the following:
- a) details of the curriculum offered, of assessment arrangements and of the results of attainment tests and public examinations at school level, but this shall not include details of individual pupils' attainment and examination results;
 - b) details of any religious affiliation of the school; policy on providing for children with SEN; arrangements for pupils with disabilities (as specified in Annex 3 to this agreement); pupil absence rates; and destination of school leavers; and
 - c) such other information as the Board of Trustees may determine;

- d) any further information as set out in Schedule 3 of the Education (School Information) (England) Regulations 2002 (SI 2002/2897) as applies to maintained schools.

36) The prospectus shall be published in the school year immediately preceding the school year to which it relates and shall be published at least six weeks before the closing date for applying for a place.

GRANTS TO BE PAID BY THE SECRETARY OF STATE

General

37) The Secretary of State shall pay grants under this Agreement towards capital and recurrent expenditure. Except with the Secretary of State's prior agreement, the Trust shall not budget for expenditure in any year in excess of expected income. The 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 Trust shall commit the Secretary of State to paying any particular amount of grant.

38) "Recurrent Expenditure" means any expenditure on the establishment, conduct, administration and maintenance of the Academy which does not fall within the categories of capital expenditure set out at clause 39. The Secretary of State shall pay two separate and distinct grants under the Agreement in respect of recurrent expenditure: General Annual Grant (GAG) and Earmarked Annual Grant (EAG). He will also pay a grant, known as Implementation Grant, as defined in clause 48.

CAPITAL GRANT

39) "Capital Expenditure" means expenditure on:

- a) the acquisition of land and buildings;
- b) the erection, enlargement, improvement or demolition of any building including fixed plant, installation, wall, fence or other structure, or any playground or hard standing;
- c) the installation of electrical, mechanical or other services;
- d) the purchase of vehicles and other self-propelled mechanical equipment;
- e) the installation and equipping of premises with furnishings and equipment, other than necessary replacements, repairs and maintenance due to normal wear and tear;
- f) the installation and equipping of premises with computers, networking for computers, operating software and information and communication technology equipment, other than necessary updates or necessary replacements, repairs and maintenance due to normal wear and tear;

- g) the provision and equipping of premises, including playing fields and other facilities for social activities and physical recreation;
- h) works of a permanent character other than the purchase or replacement of minor day-to day items;
- i) any major repairs or replacements which are specified as constituting capital expenditure in any grant letter relating to them;
- j) such other items (whether of a like or dissimilar nature to any of the foregoing) of a substantial or enduring nature as the Secretary of State may agree shall constitute capital expenditure for the purposes of the 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 under the Agreement in respect of capital expenditure.

- 40) The Trust has agreed with the Secretary of State the Capital Cost Spreadsheet attached as Annex 5 to the Agreement. The Capital Cost Spreadsheet shows the limit of the capital costs which the parties have agreed the Trust may incur in connection with the conversion of the School to an Academy, the development and construction of the ASD Resource Base and the development and construction of facilities at Openview. Annex 5 includes capital costs incurred prior to the execution of the Agreement and capital costs to be incurred after execution of the Agreement and before the Academy opens. The Academy opens on the first day that its pupils attend school at the Academy.
- 41) Annex 6A of the Agreement shows the capital expenditure incurred before execution of the Agreement. The Trust has agreed with the Secretary of State the Capital Cash Flow Programme attached as Annex 6B to the Agreement which shows the projected cashflow of capital expenditure by the Trust after execution of the Agreement.
- 42) Both parties recognise that as the project develops it may be necessary to revise costs in the Capital Cost Spreadsheet (Annex 5) and to move costs between spreadsheet elements in order to ensure that the project remains within its approved budget. Where the Trust wishes to make such adjustments of over £10,000, it must submit the requested adjustment with the reasons for it to the Secretary of State for approval.
- 43) Where the Trust foresees a significant change in the timing of capital expenditure, that is a change to the figures in Annex 6B of over £100,000, a revised Capital Cash Flow Programme must be submitted to the Secretary of State for approval. The Trust must ensure that no pattern of spending is allowed to develop which cannot be contained within the approved capital expenditure limits. The Secretary of State must be informed immediately if any danger of any of the capital costs set out in

Annex 5 being exceeded is foreseen so that steps can be taken to rectify the situation and ensure that the project remains within its capital cash limit.

Capital Expenditure Necessary to Establish the Academy

- 44) The Secretary of State and the Trust hereby agree that the Academy will be constructed and refurbished in accordance with the architect's drawings and specification on materials set out at Annex 6C of the Agreement and that:
- a) the amount of capital expenditure necessary to convert the Academy, develop and construct the ASD Resource Base and develop and construct the facilities at Openview is £13,889,163 ("the Cash Limit"). The Cash Limit includes capital expenditure incurred for the purposes of or in connection with the establishment of the Academy prior to the date of this agreement as described in Annexes 6A and 6B;
 - b) the Secretary of State will bear £11,970,000 of the Cash Limit and the Trust will bear £1,919,163 of the cash limit. The Trust has put agreement in place as follows for this funding:
 - i) An Agreement with London Borough of Wandsworth for £826,000 to fund the ASD Resource Base;
 - ii) An Agreement with the Spencer Club for £133,163 to fund enhancements to the facilities at Openview; and
 - iii) £960,000 from the Trust.
 - c) the arrangements (including timing) for payments for these costs are set out in clause 47 and Annex 6B of the Agreement. Payment by the Secretary of State will be dependent on his approval of the matters set out in Annex 7 to the Agreement;
 - d) if the costs finally incurred for the purposes set out in clause 41(a) above are less than the Cash Limit, the costs borne by the Secretary of State shall be reduced accordingly and the Trust shall pay the same amount as indicated in clause 41(b);
 - e) if at any stage it appears that the costs incurred for the purposes set out in clause 44(a) are likely to exceed the cash limit, the parties to the Agreement shall urgently consider how to reduce those costs, if necessary by amending the specification of the Academy;
 - f) if the costs incurred for the purposes set out in clause 44(a) exceed the cash limit and the parties have not agreed to meet such excess in accordance with clause 44(g), the additional costs shall be the responsibility of the Trust except that in circumstances where it is agreed that any necessary additional costs could not have been reasonably foreseen at the time the cash limit was set, and where the additional costs are agreed with the Secretary of State before the work is undertaken, and provided that clause 44(e) has been complied with the Secretary of State shall contribute in full any agreed necessary additional costs.

- g) if the parties agree that additional Capital Expenditure to convert the School into an Academy, other than that specified in clause 44(a) may be incurred then the parties shall divide such additional costs between them in such proportions as may be agreed between them. No such additional expenditure is to be incurred without prior agreement in writing between the parties.

Other Capital Expenditure

- 45) Any Capital Expenditure during the life of this Agreement beyond the Cash Limit referred to in clause 44(a) on which grant payments are sought from the Secretary of State will require the specific agreement of the Secretary of State. Such consent shall not be unreasonably withheld. Unless the Trust undertakes to meet such capital costs entirely itself such approved costs as are incurred will be shared in a proportion to be agreed between the Secretary of State and the Trust in relation to, and having regard to the nature of, each such capital project. Notwithstanding the preceding sentence, the proportion contributed by the Secretary of State will not be expected to exceed the proportion mentioned in clause 44(f) save that any Capital Expenditure required in order to meet the requirements of legislation enacted or made after the date of this Agreement shall be funded at least to the percentage referred to in clause 44(f) by the Secretary of State.

Conditions on Capital Grant

- 46) Any payment of Capital Grant under the Agreement is subject to the fulfilment of the following conditions:
- a) such grants are used to provide accommodation constructed and equipped to standards agreed by the Secretary of State as described in Annex 7, or to defray other expenditure approved by the Secretary of State;
 - b) the payment of such grants is subject to the Trust certifying and providing evidence that all planning and other consents necessary for the development and all related infrastructure to be completed have been obtained or put in place.

Arrangements for Payment of Capital Grant

- 47) Capital Grant will be paid by the Secretary of State to the Trust on the basis of claims for grant submitted to the Secretary of State in the notified format with supporting invoices and certificates as required by the Secretary of State. Capital Grant will be paid within 21 days from the day on which a claim for grant is received if the claim is in the proper format, supported by the appropriate documentation and the conditions on its payment set out at clause 46 are complied with. If a dispute arises as to whether a grant claim is acceptable or not both parties undertake to attempt to resolve it in good faith.

Implementation Grant

- 48) The Secretary of State shall pay grant (known as "Implementation Grant") towards the conversion of the City Technology College to the Academy. Implementation

Grant covers the recurrent expenditure that the parties agree is necessary to establish and open the Academy.

- 49) The Trust shall prepare and submit to the Secretary of State by 9 January 2007 for approval an Implementation Budget showing recurrent costs to be incurred before the Academy opens and for which grant is sought. No grant will be paid under clause 48 until such budget has been submitted and approved.
- 50) Both parties recognise that as the project develops it may be necessary to revise individual costs in the Implementation Budget and to move costs between budget headings in order to ensure that the project remains within its approved budget. Where the Trust wishes to make such an adjustment of over £10,000, the reason for the change and a revised Implementation Budget must be submitted to the Secretary of State for approval.

Arrangements for Payment of Implementation Grant

- 51) The Secretary of State will pay the Implementation Grant to the Trust on the basis of claims for grant submitted to the Secretary of State in accordance with the approved Implementation Budget and in the notified format with supporting invoices, receipts and documents as required by the Secretary of State. If the grant claim is acceptable the Secretary of State undertakes to pay the amount due within 21 days from the day on which it was received. If a dispute arises over whether a grant claim or part of it is acceptable, both parties undertake to attempt to resolve the dispute in good faith.
- 52) Any amount of approved Implementation Grant in respect of which the expenditure has not been incurred by the Trust, by the date on which the Academy opens, will lapse and no Implementation Grant will be payable in respect of that part of the approved implementation budget. Any amount of Implementation Grant which has been paid but remains unexpended on relevant expenditure by the date on which the Academy opens will, without prejudice to any other mode of recovery, be taken into account in determining the total amount of grant to be paid to the Academy after it has opened. Any amount of Implementation Grant which is found to have been used on ineligible expenditure will, without prejudice to any other mode of recovery, be taken into account in determining the total amount of grant to be paid to the Academy.

General Annual Grant

- 53) General Annual Grant will be paid by the Secretary of State to the Trust in order to cover normal running costs of the Academy. These costs 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 educational support staff, administrative and clerical staff and manual and premises related staff);
 - c) employees' expenses;

- d) the purchase, maintenance, repair and replacement of teaching and learning materials and other educational equipment including books, stationery, ICT equipment and software, sports and laboratory equipment and materials, other supplies and services;
- e) examination fees;
- f) repairs, servicing and maintenance of buildings (including redecoration, heating, plumbing, lighting etc); maintenance of grounds (including boundary fences and walls); cleaning materials and contract cleaning; water and sewage; fuel and light (including fuel oil, solid and other fuel, electricity and gas); rents; rates; purchase, maintenance, repairs and replacement of furniture and fittings;
- g) insurance;
- h) medical equipment and supplies;
- i) staff development (including in-service training);
- j) curriculum development;
- k) the costs of providing school meals for pupils (including the cost of providing free school meals to pupils who are eligible to receive them) and discretionary grants to pupils to meet the cost of pupil support, including support for pupils with special educational needs or disabilities (taking account of the fact that separate additional money will be available for pupils with statements of special educational needs);
- l) administration;
- m) establishment expenses and other institutional costs.

54) Subject to clauses 58 to 60, GAG for each financial year of the Trust will be the total of the following areas of funding;

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

54(A) The Secretary of State reserves the right to make in year adjustments to the level of GAG payable to the Trust in the following circumstances:

(a) In the event that the Trust is not working in partnership (federating) with a specified school (the identity of the school to be agreed between the LA, the Secretary of State and the Trust) ("Specified School") to the reasonable satisfaction of the Secretary of State to raise educational standards within the Specified School and to assist the Specified School in becoming an academy within 3 years, the payments of GAG may be reduced until acceptable partnership arrangements are in place. The quantum of any such reductions shall not exceed £150,000 each such financial year.

(b) For the first academic year of the Academy's operation the amount of GAG calculated by the method set out in clauses 58(a) to 58(b) will be compared with an amount established by taking the City Technology College's 'overall grant' for the academic year prior to conversion and adding to that the cash sum delivered by applying the Secretary of State's minimum funding guarantee to the City Technology College's 'basic grant' for the academic year prior to conversion, with no change in pupil numbers. The actual GAG payable to the Academy will be the higher of these two amounts. Once the GAG calculated by the method set out in clauses 58(a) to (b) is higher, that method will be used for each succeeding year.

55) The GAG for the Academy will also include, subject to the Secretary of State's agreement and on an equivalent basis to maintained schools where appropriate and for as long as they are deemed necessary by the Secretary of State, funding for matters for which it is necessary for the Academy to incur extra costs.

56) The basis of the pupil number count for the purposes of determining GAG will initially be the Board of Trustees estimate each November for numbers on roll in the following September. However, the basis of the pupil number count will be the Schools Census for the January preceding the academic year in question (preceding September Pupil Count or autumn term Schools Census for pupils in Year 12 and above), once the following conditions have been satisfied for the academic year for which funding is being calculated;

a) all planned year-groups will be present (that is, all the pupil cohorts relevant to the age-range of the academy will have some pupils present); and

b) the total number of pupils as measured in the Schools Census for the preceding January is 90% or more of the planned final size of the Academy, that is 1300 pupils.

and this basis will continue in all subsequent years.

57) For any academic year in which GAG has been based on the Board of Trustees estimate, an adjustment will be made to the following year's formula funding element of GAG to recognise any variation from that estimate greater than 2.5%, the additional or clawed-back grant being only that amount relevant to the number of pupils beyond the 2.5% variation. For any academic year in which GAG is based on the Schools Census (or the September Pupil Count for sixth form pupils), no

adjustment will be made to the formula funding element for actual pupil numbers which are below those used to calculate GAG. Neither will an adjustment normally be made to the formula funding element for actual pupil numbers higher than those used; but an adjustment may be made by the Secretary of State if the Trust demonstrates that there has been a significant impact on costs (eg an extra class had been added). For any other element of GAG the Secretary of State may make adjustments to recognise a variation in pupil numbers from that used to calculate the element of grant in question; the basis of these will be set out in the annual letter of funding.

58) The Secretary of State recognises that:

- a) in relation to Academies which open with intakes representing only a proportion of the final planned size of the Academy, payments based simply upon the number of pupils present are unlikely to be sufficient to meet the Academy's needs in the years before all age groups are present at their planned size (the "start-up period") because of a lack of economies of scale. The Secretary of State undertakes to pay an appropriately larger GAG in the start-up period than would be justified solely on the basis of the methods set out in clauses 54 and 55, in order to enable the Academy to operate effectively. The Academy will make a bid to the Secretary of State for this addition to GAG, based upon need and providing appropriate supporting evidence;
- b) in relation to Academies which open with pupils transferred from one or more LA-maintained schools which have closed, additional GAG resources will be required to take account of transitional costs including any costs associated with supporting the integration of pupils from the closed schools and - where necessary - to offer a dual curriculum.

59) During the start-up period or during the period when year groups are present who have transferred from a predecessor school or schools, the Secretary of State will pay a further element of GAG additional to that calculated in accordance with the methods set out in clauses 54 and 55 to allow the Academy to:

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

After the start-up period these costs will be met through the ordinary GAG.

60) The Secretary of State recognises that if he serves notice of intention to terminate this Agreement under clause 92 the intake of new pupils during the 7 year notice period is likely to decline and that in such circumstances payments based simply upon the number of pupils attending the Academy are unlikely to be sufficient to meet the Academy's needs during the notice period. The Secretary of State undertakes to pay a reasonable and appropriately larger GAG in the notice period than would be justified solely on the basis of the methods set out in clauses 54 and 55, in order to enable the Academy to operate effectively.

Earmarked Annual Grant

- 61) Earmarked Annual Grant shall be paid by the Secretary of State to the Trust in respect of either recurrent or capital expenditure for such specific purposes as may from time to time be agreed between the Secretary of State and the Trust and as described in the relevant funding letter. The Academy is free to determine how best to use each of its EAGs within the scope, terms and conditions of the grant set out in the relevant funding letter.
- 62) Where the Trust is seeking a specific EAG in relation to any financial year, it shall submit a letter outlining its proposals and the reasons for its request to the Academies Division, Sanctuary Buildings, Great Smith Street, London SW1P3BT, by 15th February preceding the financial year in question.

Arrangements for Payment of GAG and EAG

- 63) The Secretary of State shall notify the Trust in December preceding the start of each financial year of the GAG and EAG figures which, subject to Parliamentary approval, the Secretary of State plans for that year and of the assumptions and figures on which these are based.
- 64) If an error in the calculation of GAG or EAG occurs for any year, whether in the calculation or because of erroneous data supplied to the Secretary of State, the Secretary of State reserves the right to correct the calculation and, if appropriate, amend the baseline calculations for GAG in subsequent years. If an underpayment or overpayment has occurred as a consequence of the error, the Secretary of State will consider paying additional grant, and reserves the right to recover overpaid grant, as appropriate, having considered all the relevant circumstances.
- 65) The amount of GAG for an Academy financial year will be determined annually by the Secretary of State. The amount of GAG will be notified to the Trust in a funding letter not later than 1 April preceding that financial year ("the annual letter of funding"). The annual letter for funding will not include the amount that the 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 Trust wherever possible in the annual letter of funding or as soon as practicable thereafter.
- 66) For the purposes of this Agreement, the Academy's financial year shall be deemed to run from September to August, in order to align it to the school academic year. The Secretary of State undertakes to pay GAG in monthly instalments on or before the twenty fifth day of each month, each such instalment to fund the salaries and other payroll costs for the relevant month of all monthly paid employees and all other costs payable during the next following month. The detailed arrangements for payment will be set out in the annual letter of funding.

Other relevant funding

- 67) The Secretary of State shall meet a proportion of the costs arising from the inclusion of Academies in the Schedules to the Redundancy Payments (Continuity of Employment in Local Government) (Modification) Order 1999. The Secretary of State shall meet the costs of the employee's prior eligible service and the Trust shall meet the costs of service in the Academy. The Academy shall seek the Secretary of State's consent for these redundancies, such consent not to be unreasonably withheld, before committing to the redundancies.
- 68) The Secretary of State may meet costs incurred by the Trust in connection with the transfer of employees from a predecessor school under the Transfer of Undertakings (Protection of Employment) Regulations 1981. Payment of grant in respect of such costs is to be agreed between the parties on a case by case basis and the Trust shall not budget on the basis that it will receive any grant in respect of such costs unless it is specifically notified that such grant will be paid.
- 69) The Trust may also receive funding from LAs in respect of the provision detailed in statements of special educational needs for pupils attending the Academy in accordance with the provisions of Section 483A of the Education Act 1996 and regulations made under that section. The Academy shall ensure that all provision detailed in statements of SEN is provided for such pupils.
- 70) The Trust should also receive funding from the LA in whose area it is located, from the Standards Fund. The scheme under which the Standards Fund money is to be distributed by the Secretary of State to LAs and schools will permit LAs to receive grants on behalf of Academies in the same way as they can do for maintained schools. The Academy must use any grants received under the Standards Fund in accordance with any conditions specified in relation to that grant. Grants paid to the Trust from the Standards Fund are not paid under this Agreement.

Financial and Accounting Requirements

- 71) The Headteacher shall be the Academy's Accounting Officer. The Accounting Officer will be personally responsible to the Trustees through the Finance and Resources Committee as specified in section 9 of the Scheme of Management, for ensuring regularity and propriety, and for the economic, efficient and effective use of resources (i.e. ensuring value for money), and administration of the financial affairs of the Academy. As further specified in section 10 of the Scheme of Management, the Trustees may appoint others, such as a Director of Resources, to assist the Accounting Officer in carrying out these responsibilities.
- 72) The Academy shall abide by the provisions within the Academies Financial Handbook, as published by the Department for Education and Skills 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.
- 73) The formal budget should take in to account items in the School Development Plan requiring expenditure and must be approved each year by the Board of Trustees.
- 74) Any payment of grant by the Secretary of State is subject to his being satisfied as to

the fulfilment by the Academy of the following conditions:

- a) that in its conduct and operation the Academy shall apply financial and other controls which conform with the requirements both of propriety and of good financial management;
 - b) that arrangements have been made to maintain proper accounting records and that statements of income and expenditure and balance sheets are produced in such form and frequency as the Secretary of State may from time to time reasonably direct;
 - c) that such financial statements are published at the end of each financial year (as defined in clause 66) in such form and manner as the Secretary of State may reasonably direct and a copy sent to him by 31 December each year. These should carry an audit report stating that, in the opinion of the auditors, the statements show a true and fair view of the Academy affairs and that the grants were used for the purposes intended;
 - d) that the Academy prepares and files with the Companies Registry such annual accounts as are required by the Companies Act 1985;
 - e) that a statement of the accounting policies used is sent to the Secretary of State with the financial statements;
 - f) that the Academy insures or procures insurance by another person of its assets in accordance with normal commercial practice or under the terms of any subsisting leases in respect of the leasehold interest of the site upon which the Academy is situated;
 - g) (i) that the Academy prepares and files with the Charity Commission annual accounts prepared in accordance with the Statement of Recommended Practice;

(ii) the Board of Trustees shall comply with their obligation under the Charities Act 1993 (or any statutory re-enactment or modification of that Act) with regard to the preparation of an annual report and its transmission to the Charity Commissioners;
 - h) The Board of Trustees shall secure that the Academy's accounts are audited annually by independent auditors appointed under arrangements approved by the Secretary of State.
- 75) In addition, and at his expense, the Secretary of State may instruct auditors to report to him on the adequacy and effectiveness of the accounting systems and internal controls to standards determined by the Secretary of State and to make recommendations for improving the financial management of the Academy.
- 76) The books and accounts and all relevant records, files and reports of the Academy including those relating to financial controls, shall be open at all reasonable times to officials of the Department for Education and Skills and the National Audit Office and to contractors retained by the Department for Education and Skills or the National Audit Office for inspection or the carrying out of value for money studies; and the Academy shall secure that those officials and contractors are given reasonable assistance with their enquiries. For the purposes of this clause, relevant means in

any way relevant to the provision and use of grants provided by the Secretary of State under this Agreement.

77) The Board of Trustees shall submit indicative budgets to the Secretary of State not later than by 15 February before the start of each Academy financial year. Such budgets shall set out clearly the prospective income and expenditure of the Academy and shall differentiate, and give adequate details of:

- a) a statement of expected income for that year including cash donations and gifts in kind from sources other than GAG, EAG and grants from the Secretary of State towards capital and revenue expenditure, distinguishing between income from public funds including the national lottery and income from other sources;
- b) a statement of proposed recurrent expenditure for that financial year;
- c) a statement of proposed capital expenditure for that financial year.

78) At the beginning of any year the Company may hold unspent GAG from previous years amounting to 12% of the total GAG payable in the year just ended or such higher amount figure as may from time to time be agreed. This carried forward amount may be used as follows:

a) equivalent to 2% of the total GAG payable in the year just ended, may be used for any of the purposes for which GAG is paid;

(b) equivalent to 12% of the total GAG payable in the year just ended, or such higher amount figure as may from time to time be agreed, minus any amount used under clause (a), may be used on the upkeep and improvement of premises, including the cost of equipment and routine repairs and maintenance, and on capital expenditure

Any grant paid in accordance with clauses 58 and 59 may be carried forward without limitation or deduction to the end of the start up period or until the circumstances referred to in clause 60 come to an end.

79) Any savings of GAG not allowed under clause 78 will be taken into account in the payment of subsequent grant.

80) The Board of Trustees may also accumulate funds from private sources or public sources other than grant from the Secretary of State for application to the benefit of the Academy as it sees fit. Any surplus arising from private sources or public sources other than grant from the Secretary of State shall be separately identified in the balance sheet.

81) The Trust shall not, without the prior written consent of the Secretary of State which shall not be unreasonably withheld or delayed:

- a) give any guarantees, indemnities (except such as are given in normal contractual relations) or letters of comfort;
- b) write off any debts or liabilities owed to it above a value to be set out in the annual funding letter, nor offer or make any ex gratia payments;

- c) make any freehold sale or purchase; or
- d) grant or take up any leasehold or tenancy agreement for a term exceeding three years.

82) Each discovered loss of an amount exceeding the amount set out in the annual letter of funding, and arising from suspected theft or fraud, shall be reported by the Board of Trustees to the Secretary of State at the earliest opportunity.

83) It is the responsibility of the Board of Trustees to ensure that the Academy balances its budget from year to year.

Borrowing Powers

84) The Trust shall not operate an overdraft except to cover irregularities in cash flow. Such an overdraft, and the maximum amount to be borrowed, shall require approval by the Trust in General Meeting and in writing by the Department, and shall be subject to any conditions which the Department may reasonably impose.

DISPOSAL OF ASSETS

85) Where the 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 at nil or nominal consideration and which were previously used for the purposes of a school or where transferred from an LA; the value of which assets shall be disregarded.

86) The sale, or disposal by other means, or reinvestment of proceeds from the disposal, of a capital asset by an Trust shall require the consent of the Secretary of State where:

- a) the Secretary of State paid Capital Grant in excess of £20,000 for the asset; or
- b) the asset was transferred to the Trust from a Local Authority ("whether before or after the Academy Operational Date") for no or nominal consideration

such consent not to be unreasonably withheld or delayed. Furthermore, reinvestment exceeding £1m or with other special features will be subject to Parliamentary approval.

87) 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, where the asset was acquired by the Trust (whether before or after the Academy Operational Date). In this event, the 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 Trust for its charitable purposes.

88) 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 Trust from a Local Education Authority 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 Local Education Authority from which the asset was transferred, taking into account the amount of the proceeds to be reinvested by the Trust. The Secretary of State will have regard to any representations from the Trust and the Local Education Authority from which the asset was transferred before giving a consent under this clause.

89) Except with the consent of the Secretary of State, the Trust shall not dispose of assets for a consideration less than the best that can reasonably be obtained.

TERMINATION

90) Subject to prior termination of this agreement under clauses 92 - 98, the Secretary of State shall continue payments in respect of current expenditure for a period of not less than seven years.

91) Either party may give seven years written notice of its intention to terminate this Agreement, such notice to expire on 31 August in any year.

92) If the Secretary of State is of the opinion that the Academy no longer has the characteristics set out in clause 9 or that the conditions and requirements set out in clauses 10 - 36 are not being met, or that before the Academy Operational Date the conditions and requirements in clauses 19 to 46 of the Original Funding Agreement are not being met, or is otherwise in breach of the provisions of this Agreement, the Secretary of State may give notice of his provisional intention to terminate this Agreement.

93) Any such notice shall be in writing and shall:

- a) state the grounds on which he considers the Academy no longer has the characteristics set out in clause 9 or is not meeting the conditions and requirements of clauses 10 - 36 or is otherwise in breach of the provisions of this Agreement;
- b) specify the measures needed to remedy the situation;
- c) specify the date by which these measures are to be implemented; and
- d) state the form in which the Board of Trustees is to provide its response and the date by which it must be provided.

94) If no response is received by the date specified in clause 93d, the Secretary of State may give the Board of Trustees 12 months, or such lesser period as he considers appropriate in the circumstances, written notice of his intention to terminate this Agreement.

95) If a response is received by the date specified in clause 93d, the Secretary of State shall consider it, and any representations made by the Board of Trustees, and shall, within 3 months of its receipt, indicate that:

- a) he is content with the response and that the measures which he specified are being implemented; or

- b) he is content, subject to any further measures he specifies being implemented by a specified date or any evidence he requires that implementation of such measures have been successfully completed; or
- c) he is not satisfied, that he does not believe that he can be satisfied, and that he will proceed to terminate the Agreement.

96) In the circumstances of clause 95c the Secretary of State shall notify the Board of Trustees why he believes that he cannot be satisfied and, if so requested by the Board of Trustees within thirty days from such notification, he shall meet a deputation from the Trustees of the Academy to discuss his concerns. If following such meeting he has good reasons for remaining satisfied that the Academy does not and will not have the characteristics set out in clause 9 or does not and will not meet the conditions and requirements set out in clauses 10 - 36 or does not and will not otherwise comply with the provisions of this Agreement, he shall give the Board of Trustees twelve months written notice of his termination of this Agreement.

97) If the Secretary of State has cause to serve a notice on the Board of Trustees under s.165 of the Education Act 2002 and the matters specified in the notice are not remedied, the period of twelve months notice referred to in clause 94 may be shortened to a period deemed appropriate by the Secretary of State.

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

- a) the 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 Trust proposes a voluntary arrangement within Section 1 of the Insolvency Act 1986; or
- c) the 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 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; or
- d) the Trust has a receiver (and manager with the exception of Receivers and Managers appointed by the Charity Commission under the Charities Act 1993 or any subsequent re-enactment of that Act), administrator or administrative receiver appointed over all or any part of its undertakings, assets or income; or
- e) any restraint, execution or other process is levied or enforced on any of the Trust's property and is not paid out, withdrawn or discharged within fifteen Business Days; or
- f) the Trust has passed a resolution for its winding up; or
- g) the Trust has a petition presented to any Court for its winding up or for an administration order; or

- h) the Academy has ceased to operate as a Academy (except where such cessation occurs temporarily by reason of an event of Force Majeure);
- i) both: ia) following an inspection of the Academy under Chapter 1 of Part 1 of the Education Act 2005, the Chief Inspector has provided a notice to the Secretary of State under subsection 13 (3)(a) of the Education Act 2005 specifying that the case falls within subsection 1(a) of that section ("*school requiring special measures*") (a Special Measures Notice) ; and

ib) not less than 12 months after the provision of any Special Measures Notice provided in respect of the Academy, a subsequent inspection of the Academy has been made under Part 1 of the Education Act 2005 whilst the Special Measures Notice still applies and the person making the subsequent inspection has made a report stating that in his opinion the Academy has made insufficient progress since the last inspection, or has otherwise failed to improve to the extent required by the person making the inspection.

"Business Days" in this clause, means any day other than a Saturday, a Sunday, Christmas Day, Good Friday or a day which is a bank holiday within the meaning of the Banking and Financial Dealings Act 1971.

Effect of Termination

- 99) In the event of termination of this agreement, however occurring, the school shall cease to be an Academy.
- 100) If the Secretary of State terminates this Agreement for reasons other than that the Academy no longer has the characteristics set out in clause 9, or is no longer meeting the conditions and requirements set out in clauses 10 - 36 or is otherwise in breach of the provisions of this Agreement, the Secretary of State shall indemnify the Trust.
- 101) The amount of any such indemnity shall be determined by the Secretary of State having regard to any representations made to him by the Trust, and shall be paid at such times and in such manner as the Secretary of State may reasonably think fit.
- 102) The amounts and categories of expenditure incurred by the Trust in consequence of the termination of the Agreement in respect of which the Secretary of State shall indemnify the 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.
- 103) In the event of the termination of this Agreement however occurring the Secretary of State shall procure that his nominee shall resign as a member of the Trust and shall co-operate in making any associated amendments to the Trust Articles of Association.
- 104) Subject to clause 105, on the termination of this agreement, however occurring, the Trust shall repay to the Secretary of State a sum in respect of the capital contribution made by him under clauses 44-45 above. The amount to be repaid to the Secretary of State shall be a percentage of the value of the assets belonging to

the Academy Trust at the date of termination (or by agreement with the Secretary of State) at the date of subsequent disposal of those assets, such percentage to be the same as the percentage of the capital contribution made by the Secretary of State to the original value of those assets, whether that contribution was made on the establishment of the Academy or later.

- 105) The Secretary of State may waive in whole or in part the repayment due under the above clause if:
- a) The Trust is unable to realise the market value of land or premises because they are returned to the Local Education Authority at less than market value; or
 - b) The Trust obtains his permission to invest the proceeds of sale for its charitable objects; or
 - c) The Secretary of State directs all or part of the repayment to be paid to the Local Education Authority.
- 106) If any land or premises of the Academy were acquired from a Local Authority by a scheme under Schedule 35A of the Education Act 1996 or otherwise acquired (whether before or after the Academy Operational Date) at less than the market price, and the Secretary of State does not make a scheme as provided for in Schedule 35A (Paragraph 8) of the Education Act 1996, the Trust may dispose of its interest in that land or premises but only with the consent of the Secretary of State, who shall have regard to any representations from the Trust and the Local Education Authority from which the land was transferred before giving or withholding that consent.

GENERAL

- 107) Without prejudice to any other provision of this Agreement, the Secretary of State acting reasonably may from time to time call for information on, inter alia, the Academy's:
- a) curriculum;
 - b) arrangements for the assessment of pupils;
 - c) targets, including those set in accordance with the provisions of clause 14;
 - d) teaching staff including numbers, qualifications, experience, salaries, and teaching loads;
 - e) class sizes;
 - f) outreach work with other schools and the local community;
 - g) operation of the admission criteria and over subscription arrangements for the Academy including numbers of applications for places and the number and characteristics of pupils accepted for admission;
 - h) numbers of pupils excluded (including permanent and fixed term exclusions);

- i) levels of authorised and unauthorised attendance;
- j) the Academy's charging and remissions policies and the operation of those policies;
- k) organisation, operation and building management;
- l) financial controls; and
- m) membership and proceedings of the Board of Trustees.

108) The Board of Trustees 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 Board of Trustees with such information as they may reasonably require of him for the running of the Academy.

Access by the Secretary of State's Officers

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

110) The Academy shall ensure that:

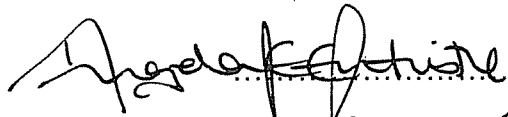
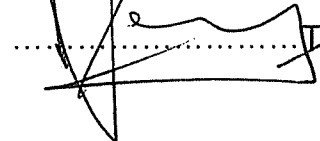
- i) the agenda for every meeting of the Board of Trustees or the Executive Board or any sub-committee thereof;
 - ii) the draft minutes of every such meeting, if they have been approved by the person acting as chairman of that meeting;
 - iii) the signed minutes of every such meeting; and
 - iv) any report, document or other paper considered at any such meeting, are made available for inspection at the Academy and, as soon as is reasonably practicable, sent to the DfES.
- a) There may be excluded from any item required to be made available and sent to the DfES by virtue of clause 110, any material relating to:
 - b) a named teacher or other person employed, or proposed to be employed, at the Academy;
 - c) a named pupil at, or candidate for admission to, the Academy; and
 - d) any matter which, by reason of its nature, the Board of Trustees are satisfied should remain confidential.

Notices

- 111) Any notice or other communication concerning this Agreement shall be sent, in the case of a notice or communication from the Secretary of State to the Board of Trustees at [Ashcroft Technology Academy, 100 West Hill, London, SW15 2UT or such other addressee/address as may be notified in writing from time to time by the Academy and, in the case of a notice or communication from the Academy to the Secretary of State to Head of Academies Division, Department for Education and Skills, Sanctuary Buildings, Great Smith Street, London SW1P 3BT; or such other address as may be notified from time to time by the Secretary of State and where any such notice or communication is sent by post, unless the contrary is proved, it shall be deemed, subject to satisfactory proof of posting, to be effected at the time at which the letter would be received in the ordinary course of post.
- 112) This Agreement may be amended in writing at any time by agreement between the Secretary of State and the Trust.
- 113) The service by the Secretary of State of a notice of termination under any clause of this Agreement shall not prejudice the ability of the Academy (if it wishes to do so) during the notice period to admit pupils in accordance with the provisions of clause 17 and Annex 2 to this Agreement and to receive GAG and EAG in respect of them.
- 114) The Secretary of State and the Trust recognise the difficulties in catering in this Agreement for all the circumstances which may arise in relation to the Academy and undertake in good faith to conduct such consultations as may from time to time be desirable in order to promote the interests of the Academy throughout the period of this Agreement.

This document is executed as a Deed on: 20th December 2006

EXECUTED as a Deed of by)
PROSPECT EDUCATION (TECHNOLOGY))
TRUST LIMITED in the presence of:)

 Trustee
 Trustee/Secretary

The Corporate Seal of the Secretary of State for Education and Skills hereunto affixed was authenticated by-

Duckley Anis

Authorised by the Secretary of State for Education and Skills

