

MEMORANDUM OF UNDERSTANDING

PURPOSE AND SCOPE OF THE MEMORANDUM

The aim of this document is to define the relationship between Capel Manor Limited (the Company) and Capel Manor College (the College).

The primary purpose of the Company is to generate additional income which will ultimately be used to support the activities of the College.

OWNERSHIP OF THE COMPANY

The Company is a company limited by shares and the total shareholding of the Company is owned by the College. No Company shares may be disposed of or transferred without the express permission of the full board of governors of the College.

All Company profits will be covenanted back to the College according to the judgement of the Company directors.

REPRESENTATION

The following arrangements will apply:

- The Chief Executive will act as Managing Director of the company
- The Director of Finance of the College will act as Finance Manager of the Company and as Company Secretary
- A Governor or former Governor of the College will be a Director of the company
- The other members of the SMT of the College will also be Directors of the company
- For objectivity, an independent Director will be appointed who has commercial acumen and genuine sympathy to the objectives of the Company and the College.

In addition to the above, the following arrangements will apply when the Company is commercially trading:

- The Chair will be elected by Directors not employed by the College
- A local firm of solicitors will provide legal advice to the Company
- The Clerk to the Governors of the College will act as the shareholders' representative at the Company Annual General Meeting

BUSINESS PLAN

The Director of Finance of the College will annually review the operational performance of the College between March and July to determine whether the Company should continue to trade. Such a decision will be reported to the Governing body of the College who will then issue instructions to the Directors of the Company.

In each trading year the company will produce a business plan for the ensuing three year period. It will submit this plan to the College governors for discussion and approval. The Company will not undertake any activities which fall outside of the scope of this business plan without the prior authorisation of the College governors.

The Company will not incur any expenditure on any actual or planned overseas activity without the prior authorisation of the College governors.

The Company will not employ any staff or purchase any fixed assets without the prior authorisation of the College governors.

USE OF COLLEGE RESOURCES

The use of the College resources is set out in the Management Agreement attached as Appendix A to this document.

COLLEGE STAFF REMUNERATION

No College staff will be provided with any remuneration from Company resources without the prior approval of the College's governors.

REPORTING ARRANGEMENTS

Each month the Company will provide to the College, within 21 days of the end of each month, a report on its financial performance and financial position for the month just ended. Also included will be a summary of Company activity during that month.

FINANCIAL CONTROL AND AUDIT ARRANGEMENTS

The Company will operate under the financial procedures of the College which will be evaluated for completeness and appropriateness by the internal auditors of the College.

The Company will operate within the framework provided by the College financial regulations.

The internal auditors of the College will also provide an internal audit service to the Company's board of Directors. As such the internal auditors will have right of access to all systems and records of the Company.

The external auditors of the College will also act as external auditors to the Company. Auditors of the funding bodies will also be given rights of access to the Company records and procedures.

The Company will provide its own stationery.

The Company will establish its own bank account and borrowing facilities without requiring the College as guarantor.

Any monies advanced by the College as seed funding will be repaid by the Company as a priority out of its trading surpluses. A commercial rate of interest will be paid on monies advanced by the College to the Company.

All commercial borrowings will require the approval of the College governors.

TERMINATION

Any decision to dispose of the College investment in the Company will be ratified by the College's board of governors and this information will be formally passed to the board of directors of the Company.

ACTIONS OF CAPEL MANOR LIMITED REQUIRING APPROVAL BY THE COLLEGES' GOVERNORS

Capel Manor Limited will require approval from the College's Finance & General Purposes Committee for the following actions:

- The acquisition and disposal of assets
- The annual budget (including management fee) for the year
- The Director's Annual Report and Accounts

REVIEW

This Memorandum which constitutes the current state of intent of Capel Manor College and Capel Manor Limited will be reviewed in March of each year prior to the June submission to the College of the Company budget for the following year.

Dated 1 August 2016

CAPEL MANOR COLLEGE (1)

CAPEL MANOR LIMITED (2)

MANAGEMENT AGREEMENT

THIS AGREEMENT is dated 1 August 2016.

PARTIES

- (1) **CAPEL MANOR LIMITED** (Company Number 279578) whose registered office is at Capel Manor College, Bullsmoor Lane, Enfield, Middlesex, EN1 4RQ ("the Company")
- (2) **CAPEL MANOR COLLEGE** of Bullsmoor Lane, Enfield, Middlesex, EN1 4RQ ("the Charity")

PRELIMINARIES

- (A) The Charity is a body established for charitable purposes only which are exclusively educational purposes and is an exempt charity for the purposes of the Charity Act 2011.
- (B) The Company is a wholly owned subsidiary of the Charity.
- (C) The Company and the Charity now wish to enter into this Agreement to record the relationship between them and the terms and conditions upon which the Charity will provide certain facilities and employees to the Company.

OPERATIVE PROVISIONS

1. DEFINITIONS AND INTERPRETATIONS

1.1 DEFINITIONS

In this Agreement (unless the context otherwise requires) the following expressions shall have the following meanings:

- | | |
|-----------------|---|
| "the Employees" | such employees of the Charity as are from time to time seconded by the Charity to the Company pursuant to the terms of this Agreement: |
| "the Equipment" | such office and other business equipment and facilities owned by the Charity as the parties agree from time to time that the Company is permitted to use subject to the terms and conditions of this Agreement: |
| "Force Majeure" | any circumstances outside the reasonable control of the Charity including (without limitation) strikes, lock-outs, shortages of labour, raw materials or components, civil commotion, riot, invasion, war, threat of or preparation for war, fire, explosion, storm, flood, |

earthquake, subsidence, epidemic or other natural physical disaster.

“the Premises” such freehold or leasehold property as the Charity from time to time occupies for the carrying out of its purposes at the site known as Capel Manor College Bullsmoor Lane Enfield Middlesex EN1 4RQ.

“the Services” management services including the provision of accounting services, data and document processing, provision of management information and administration services.

1.2 **INTERPRETATION**

In this Agreement unless the context otherwise requires:

1.2.1 references to clauses or schedules shall be interpreted as references to clauses of and schedules to this Agreement and references to this Agreement shall include its schedules;

1.2.2 a reference to (or to any specified provision of) this Agreement or any other document shall be construed as a reference to this Agreement that provision or that document as in force for the time being and as amended in accordance with the agreement of the relevant parties;

1.2.3 a reference to any gender shall include every other gender;

1.2.4 the singular shall include the plural and vice versa;

1.2.5 references to persons shall include individuals firms companies unincorporated associations partnerships and government entities (whether or not having a separate legal personality);

1.2.6 a reference to any party shall include its successors in title and permitted assigns;

1.2.7 a reference to a statute or statutory provision shall include a reference to that statute or statutory provision as replaced amended or re-enacted from time to time and all statutory instruments or orders made pursuant to it.

1.3 **HEADINGS**

Clause headings are for convenience only and shall not affect the construction of this Agreement.

2. **THE CHARITY'S OBLIGATIONS**

In consideration of the sums paid by the Company to the Charity under this Agreement the Charity agrees to provide the Services the Equipment the Premises and the Employees to the Company on the terms and subject to the conditions set out in this Agreement.

3. **PROVISION OF EMPLOYEES**

- 3.1 For so long as this Agreement remains in force the Charity shall make available to the Company the services of such number of employees of the Charity as the Charity from time to time deems appropriate in order to enable the Company properly to carry out its business and provide services to the Charity.
- 3.2 If at any time the Company shall require the services of any additional employees of the Charity beyond those supplied pursuant to clause 3.1 herein the Company may give notice of that requirement to the Charity specifying the function which each additional employee is to perform and the Charity shall use its reasonable endeavours in the light of its then existing manpower resources and its own requirements to second such additional employees on the terms set out in this Agreement.
- 3.3 The services of the of the Employees provided pursuant to this Agreement shall be provided subject to non-availability due to ill health or injury and during holidays granted in accordance with the normal policy of the Charity in force from time to time and the Charity shall not be required to provide any replacement to cover any periods of non-availability.
- 3.4 The Employees seconded by the Charity to the Company pursuant to this Agreement shall be seconded on the terms upon which they are from time to time employed by the Charity and the Company undertakes with the Charity to observe such terms as if the Company was the employer (other than payment of remuneration which shall be the responsibility of the Charity) and the Company shall not do or

omit to do anything which would cause the Charity to breach any of its obligations to such employees.

3.5 The Company shall notify the Charity forthwith of any difficulty of a disciplinary or other nature arising in respect of any of the Employees during their secondment and the Charity shall be entitled to deal with such difficulties as it considers appropriate. The Company shall not have any authority (without express authorisation from the Charity) to dismiss or otherwise discipline any of the Employees.

3.6 The Company agrees that it will comply with its duties under:

3.6.1 the Health and Safety at Work etc. Act 1974;

3.6.2 all relevant statutory provisions (as defined in that Act);

3.6.3 all other statutes and regulations relating to health and safety;
and

3.6.4 common law in respect of the Employees and that it will indemnify and keep indemnified the Company in respect of all liabilities costs claims demands expenses fines and other penalties (including legal fees and expenses) which the Charity may incur or sustain as a result of any failure by the Company to so comply.

3.7 Without prejudice to clause 3.6 the parties agree that the Employees shall while performing duties for the Company be deemed to be the agents of the Company and that the Company shall be liable to the Charity for any liability incurred by the Charity arising out of any act omission or error of judgement (whether negligent or not) which may be committed by any of the Employees whilst performing such duties and the Company shall indemnify and keep indemnified the Charity in respect of all liabilities costs claims demands expenses fines and other penalties (including legal fees and expenses) which the Company may incur or sustain by reason of such an act omission or error of judgement whether arising out of common law statute or otherwise.

3.8 Nothing in this clause 3 or elsewhere in this Agreement shall exclude restrict or limit the liability of either party for death or personal injury caused by that party's negligence or fraud.

3.9 The Company shall use all reasonable endeavours to procure that none of the Employees shall, during this Agreement or at any time thereafter use for his own purposes or divulge or communicate to any person (other than as authorised by the Company or as required for the purpose of performing services under this Agreement) any confidential information relating to the business of the Company, being information which is marked 'confidential' or which the Company shall have notified the Employees is to be kept confidential or which would by its nature normally be regarded as confidential or which to the knowledge of the Employees or any of them has been acquired by the Company from a third party on terms which require the Company to keep it confidential but this obligation shall not extend to information or knowledge which is for the time being in the public domain (other than by reason of its wrongful disclosure) or which is required to be disclosed by law.

3.10 The Company shall pay the Charity a fee for the secondment of each Employee which shall be equal to:

$$A \times (B/C)$$

Where:

"A" is such sum as from time to time represents the full costs incurred by the Company in respect of salary bonus and such other amounts or benefits paid or provided to the Employees by the Charity during their respective periods of secondment which shall include all taxes pension and national insurance contributions and any other social security contributions payable by the Company in respect of such Employee:

"B" is the number of hours which the Employee has spent working under the direction of the Company during the period to which the fee relates:

"C" is the number of hours which the Employee has spent working for either the Company or the Charity during the period to which the fee relates.

3.11 The Charity shall invoice the Company quarterly in respect of such fees in arrears on 31 October 31 January 30 April 31 July each such invoice relating to the services of the Employees rendered in the previous quarter and the Company shall pay such invoice within

fourteen days of the issue of it. The Charity may charge the Company interest of one per cent over the Base Rate of Lloyds Bank PLC for each day payment is withheld.

- 3.12 In addition to the payment of the said fees to the Charity the Company shall pay, discharge indemnify and keep the Charity indemnified against all expenses and disbursements reasonably and properly incurred by the Employees in connection with the performance and discharge of their duties on behalf of the Company upon presentation to the Company of all appropriate supporting invoices and receipts in respect of such expenses and disbursements.

4. **THE SERVICES**

- 4.1 The Charity shall provide the Services to the Company at the times and at the places from time to time agreed between the parties.
- 4.2 The Company shall pay charges for the provision of the Services on an hourly basis which shall be determined by the Charity taking into account the grade of the personnel used by the Charity in providing the Services. The Charity shall invoice the Company quarterly in arrears for the Services provided and the Company shall pay such invoice within fourteen days of the issue of it. The Charity may charge the Company interest at the rate stipulated in Clause 3.11 for each day payment is withheld.
- 4.3 In performing the Services the Charity shall act as an independent contractor and not the agent of the Company.
- 4.4 In performing the Services the Charity shall use all reasonable care and skill and comply with generally accepted standards of good practice. All conditions and warranties which would otherwise be implied herein by statute common law or otherwise are expressly excluded to the fullest extent permitted by law.
- 4.5 In respect of those Services which are of a managerial or advisory nature the Charity shall not be liable to the Company for any loss suffered or liability incurred by the Company arising out of any act omission or error of judgement which may be committed by the Charity or by any of its agents employees or sub-contractors in the course of the provision of those Services except where such loss or

liability arises from the dishonesty or wilful default of the Charity or of any such agents employees or sub-contractors.

4.6 The Charity shall not be liable to the Company in respect of any indirect or consequential loss including loss of anticipated profits goodwill or reputation howsoever caused which is suffered by the Company.

4.7 Nothing in this clause 4 or elsewhere in this Agreement shall exclude restrict or limit the liability of either party for death or personal injury caused by that party's negligence or fraud.

5. **USE OF EQUIPMENT AND FACILITIES**

5.1 The Charity shall determine from time to time which Equipment the Charity shall permit the Company to use on the terms set out in this Agreement.

5.2 The Company shall pay charges for the provision of the Equipment of such amount as the Charity shall from time to time determine taking into account the value of the Equipment and the period for which the Equipment is to be used by the Company.

5.3 Save in respect of death or personal injury arising out of negligence of the Charity the Charity shall have no liability in respect of any costs claims actions proceedings damages or expenses incurred by or brought against the Company in respect of the use of the Equipment by the Company.

5.4 Subject to clause 5.5 the Charity gives the Company the right (during the continuance of this Agreement) in common with the Charity and all others authorised by the Charity (so far as is not inconsistent with the rights given) to use the Premises for the purposes of the Company's business.

5.5 The Company agrees and undertakes as follows:

5.5.1 The Charity shall invoice the Company such fees as the Charity from time to time determines in respect of the rights granted under clause 5.4 such fees to be paid by the Company in arrears on 31 October 31 January 30 April 31 July the first payment (or a due proportion of it apportioned on a day-to-day basis) to be made on the date of this Agreement and must

pay on demand a fair and reasonable proportion of all rates and other outgoings of a periodically recurring nature incurred in respect of the Premises. The Charity may charge the Company interest at the rate stipulated in Clause 3.11 for each day payment is withheld.

5.5.2 The Company must not bring any furniture equipment goods or chattels onto the Premises without the consent of the Charity.

5.5.3 The Company must keep the Premises clean and tidy and clear of rubbish and leave them in a clean and tidy condition and free of the Company's furniture equipment goods and chattels on termination of this Agreement.

5.5.4 The Company must not use the Premises in such a way as to cause any damage or interference to the Premises or adjoining or neighbouring property or to the Charity or occupiers or users of any adjoining or neighbouring property.

5.5.5 The Company must not do anything that will or might constitute a breach of any statutory requirement affecting the Premises or that will or might wholly or partly vitiate any insurance effected in respect of the Premises from time to time.

5.6 The benefit of this license is personal to the Company and not assignable and the rights given in clause 5.4 may only be exercised by the Company.

5.7 The Charity gives no warranty that the Premises are legally or physically fit for the Company's purposes.

5.8 The Charity is not to be liable for the death of or injury to the Company or for damage to any property of the Company or for any losses claims demands actions proceedings damages costs or expenses or other liability incurred by the Company in the exercise or purported exercise of the rights granted by clause 5.

6. **DURATION**

6.1 This Agreement replaces the original Agreement dated 1 August 1999 and shall commence on the date hereof for an initial period of three

years and shall automatically continue thereafter until terminated by either party serving on the other not less than 12 months' notice in writing.

6.2 Either party shall be entitled to terminate this Agreement forthwith by written notice to the other if:

6.2.1 that other party commits a material breach of any of the provisions of this Agreement and in the case of a breach capable of remedy fails to remedy the same within 30 days of receipt of a written notice giving full particulars of the breach and requiring it to be remedied;

6.2.2 an encumbrancer takes possession or a receiver is appointed over any of the property or assets of that other party;

6.2.3 that other party makes any voluntary arrangement with its creditors or becomes subject to an administration order;

6.2.4 that other party goes into liquidation (except for the purpose of amalgamation or reconstruction and in such manner that the company resulting therefrom effectively agrees to be bound by or assume the obligations imposed on that other party under this Agreement).

7. **GENERAL PROVISIONS**

7.1 **FORCE MAJEURE**

If and to the extent that the provision of the Services or the Equipment is prevented or delayed by Force Majeure the Charity shall promptly notify the Company specifying the matters constituting the Force Majeure and specifying the period for which it is estimated that the prevention or delay will continue and the Charity shall then be relieved of any liability for failure to perform or for delay in performing the Services or providing the Equipment but shall nevertheless use its reasonable endeavours to resume full performance of them and shall make such alternative arrangements for doing so as may be practicable without incurring additional expense. If as a result of the Force Majeure the Services or the Equipment are not supplied for more than 6 months the Company may terminate this Agreement by notice in writing to the Charity.

7.2 ENTIRE AGREEMENT

This Agreement constitutes the entire agreement between the parties in relation to its subject matter and supersedes any prior written or oral agreement between them relating to such subject matter and the parties confirm that they have not entered into this Agreement on the basis of any representations that are not expressly incorporated in this Agreement.

7.3 VARIATION

This Agreement may not be varied except by an instrument in writing signed by the authorised representatives of all of the parties to this Agreement.

7.4 WAIVER

No delay or failure by a party to exercise any of its powers, rights or remedies under this Agreement will operate as a waiver of them nor will any single or partial exercise of any such powers, rights or remedies preclude any other or further exercise of them. Any waiver to be effective must be in writing.

7.5 NON-ASSIGNMENT

The provisions of this Agreement shall be binding upon and shall ensure for the benefit of the successors and permitted assigns of the parties but none of the rights of any party under this Agreement may be assigned or transferred without the prior written consent of the other party.

7.6 NO PARTNERSHIP OR AGENCY

Nothing in this Agreement shall be deemed to create a partnership between the parties nor constitute any party the agent of the other party.

7.7 VALUE ADDED TAX

All fees and charges payable under this Agreement are exclusive of value added tax which shall (where applicable) be payable in addition.

NOTICES

8.1 All notices to be given under this Agreement shall be in writing and shall either be delivered personally or sent by first class pre-paid post or by facsimile transmission or by email transmission and shall be deemed duly served:

8.1.1. in the case of a notice delivered personally at the time the same is left at the address of or handed to a representative of the party to be served;

8.1.2 in the case of a notice sent by first class pre-paid post, two clear business after the date of despatch;

8.1.3 in the case of a facsimile transmission if sent during normal business hours then at the time of transmission and if sent outside normal business hours then on the next following business day provided that a confirmatory copy is sent by first class pre-paid post or by hand by the end of the next business day.

8.1.4 in the case of an email transmission if sent during normal business hours then at the time of transmission and if sent outside normal business hours then on the next following business day provided that a confirmatory copy is sent by first class pre-paid post or by hand by the end of the next business day.

8.2 Each notice shall be addresses to the address of the party concerned set out at the head of this Agreement or to such other address as may be notified in writing for this purpose from time to time.

9. LAW AND JURISDICTION

9.1 This Agreement shall be governed by and construed in accordance with English law.

9.2 The parties submit to the exclusive jurisdiction of the English courts.

SIGNED BY)

Duly authorised on behalf of)

CAPEL MANOR LIMITED)

In the presence of:)

SIGNED BY)

Duly authorised on behalf of)

CAPEL MANOR COLLEGE)

In the presence of:)

DATED:-