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East Midlands Education Trust
TERMS OF REFERENCE
for
KIMBERLEY SCHOOL

East Midlands Education Trust
Terms of Reference for the Local Governing Body of
KIMBERLEY SCHOOL

1 General

- 1.1 The East Midlands Education Trust (MAT) is a charitable company limited by guarantee (company number 07530373). It is governed by a board of charity Trustees which has overall responsibility for the general control and management of the administration of the MAT and the Academies run by the MAT in accordance with the provisions set out in the Articles of Association.
- 1.2 The MAT has entered into agreements with the Secretary of State for Education. There is a Master Funding Agreement (MFA) which applies to the MAT overall and an individual Supplemental Funding Agreement (SFA) for each of the Academies. It is the MAT that is ultimately responsible to the Secretary of State for Education pursuant to the Funding Agreements.
- 1.3 The Trustees deal with strategic planning and the setting of policy. The MAT overall is managed through business planning, monitoring of budgets, performance management, the setting of standards and the implementation of quality management processes.
- 1.4 The detailed functioning of each Academy is delegated to a Local Governing Body (LGB) for each Academy. Legally, the LGB is a committee of the MAT and every power or duty given to the LGB has to be given directly by the MAT. This document defines the roles and responsibilities of the LGB and the extent of its decision-making powers. The degree to which powers are delegated to the LGB may be different for different Academies depending on the capacity of the LGB in question. These terms of reference relate specifically to the Kimberley School. The LGB will act in accordance with these Terms of Reference and the Scheme of Delegation for the Academy unless otherwise directed by the Trustees.
- 1.5 These terms of reference are made under the powers conferred on the MAT in its Articles of Association to make regulations governing the conduct of the LGB.

2 The following powers are reserved to the Trustees and cannot be exercised by a LGB unless in any specific instance the Trustees delegate a power to the LGB. The Trustees may delegate any of their functions to the [Chief Executive/Finance Trustee] as they think fit and any such delegation may include the power to sub-delegate and give directions to a LGB.

2.1 Generally

- 2.1.1 Appointment of the Principal of the Academy and the setting of the ISR, taking into account the views of the LGB which should not reasonably be disregarded;
- 2.1.2 Not used.
- 2.1.3 determination of terms and conditions of service for all staff (but subject to consultation with the LGB, the Academy Principal and staff groups where legally required or where the Trustees deem this appropriate);
- 2.1.4 Suspension and lifting of suspension of the Principal
- 2.1.5 Appointment of any Responsible Officer for the Academy
- 2.1.6 Provision of Governor evaluation through the ongoing oversight of the academies pupil and financial performance.

2.2 Finances

- 2.2.1 oversight of the finances of the MAT and the Academy, including compliance with the Academies Financial Handbook and the financial and accounting requirements detailed within the Funding Agreements;
- 2.2.2 Appointment of the Accounting Officer for the MAT, typically the CEO.
- 2.2.3 Determination of the Academy's annual budget in consultation with the LGB;

- 2.2.4 Determination, after consultation with the LGB, of the extent of the services provided to the Academy by the MAT and how the costs for such services should be allocated, apportioned or retained;
- 2.2.5 Determining procurement policies for the MAT; including procurement by the LGB;
- 2.2.6 Setting guidelines for the local maintenance of assets and appropriate registers.

Policies and Targets

- 2.3 The Trustees shall:
 - 2.3.1 Not used.
 - 2.3.2 Determine the employment and financial policies for use by the Academy, in consultation with the LGBs within the MAT.
 - 2.3.3 Consider and evaluate performance in relation to academic achievement, finances, and principal performance;
 - 2.3.4 Not used.
 - 2.3.5 Determine any additional financial and reporting targets for the Academy;
 - 2.3.6 Not used.

3 THE LOCAL GOVERNING BODY

- 3.1 It is the desire of the Trustees to delegate as much autonomy as possible to the LGB who are a committee of the Trustees. These Terms of Reference define the delegated autonomy given to the LGB. Accordingly, the LGB can discharge these delegated responsibilities as they see fit but ensuring they act in the best interest of the Academy. The LGB will report, through minutes of their meetings, to the Trustees and be accountable to the Trustees for its decisions.

Composition

- 3.2 The Trustees will determine the membership of the LGB and terms of office from time to time as indicated in schedule 1.

Disqualification of Members of the LGB

- 3.3 Schedule [2] sets out the circumstances in which a member of the LGB is disqualified from continuing to serve on the LGB.
- 3.4 Where, by virtue of these Terms of Reference a person becomes disqualified from holding, or continuing to hold office, he shall upon becoming so disqualified give written notice of that fact to the [Clerk]/[Secretary].
- 3.5 A member's term of office shall be terminated if:
 - 3.5.1 he resigns by serving written notice to the [Clerk]/[Secretary];
 - 3.5.2 the Trustees terminate his appointment;
 - 3.5.3 he is removed by the persons appointing him (although this does not apply to elected staff or Parent Local Governors);
 - 3.5.4 in the case of a Staff Member, his employment is terminated;
- 3.6 The LGB may continue to act notwithstanding a temporary vacancy in its composition.

4 The LGB's Delegated powers

General Provisions

4.1 Subject to the limitations set out in these Terms of Reference, any restrictions in the MAT's Financial Manual and Staff Handbook/HR Manual and any individual limitations that may be notified to the LGB by the Trustees from time to time, the Trustees delegate the running of the Academy to the LGB which specifically has the following duties:

- 4.1.1 To advise the Trustees on strategic issues relating to the Academy including consulting with the Trustees on the proposed admissions policy;
- 4.1.2 To report to the Trustees both generally and specifically as the Trustees may require;
- 4.1.3 To oversee and control the financial performance of its Academy within the limits specified in the MAT's Financial Manual including maintaining such records as the Trustees may require and advising the Trustees generally on financial issues;
- 4.1.4 To determine such policies as the MAT may delegate to the LGB and to advise the MAT on all other policies;
- 4.1.5 To act as a critical friend to the Academy and to provide support to the Headteacher and the staff;
- 4.1.6 To have the general oversight of the Academy's activities including monitoring and evaluating the standards and performance of the Academy (ensuring that standards of attainment and progress by the students of the Academy are high) and the application of designated funding such as the Pupil Premium. In doing so it is required
 - (a) To be aware of and take into account views of parents, students, staff and the wider community that its academy serves and report on these as appropriate to the Trustees;
 - (b) To review the curriculum on advice from the Principal;
 - (c) To support the Principal in her/his functions and to receive from the Principal and consider such reports as the LGB may require;
 - (d) To take all actions required to comply with statutory regulations and the MFA and SFA including matters relating to student discipline, student and staff welfare, special educational needs, safeguarding, equality issues generally, religious education and collective worship, health and safety and the implementation of charging policies;
 - (e) To consult with the Trustees with regard to admissions (including taking of all admission decisions in accordance with the School Admissions Code through an Admissions Committee to be set up by the LGB) and to determine the admission policy in accordance with the code;
 - (f) To implement the educational vision of the Academy including developing reviewing and monitoring the Academy's Development Plan;
 - (g) To maintain the Academy estate in accordance with any guidelines set out by the MAT;
 - (h) To implement the MAT's procurement policies insofar as they impact on the Academy and seek value for money (and being able to demonstrate that value for money has been achieved);
 - (i) To provide to the Chief Financial Officer (CEO) details to enable draft budgets to be considered by the Trustees, and to be submitted to the DfE as required by the Funding Agreements and provide such further support in connection with the budgetary process as may be required (except where prior permission has been obtained from the Trustees and where there is a clear and reasonable deficit recovery plan, the Academy budget is to be prepared to show break even or better;

- (j) To comply with the final budget and manage the Academy's cash flow and monitoring expenditure by the Academy in accordance with policies determined by the Trustees;
- (k) To maintain proper accounting records and the preparation of income and expenditure and balance sheets as required by the CFO;
- (l) To notify the MAT of any changes to fixed assets used by the Academy in relation to freehold land, buildings and assets above £50,000;
- (m) To manage, in accordance with policies and procedures laid down by the MAT, the appointment, job description, appraisal and dismissal of all members of staff of the Academy other than the Principal.

Sub-committees and Delegation Powers of the LGB

- 4.2 Each member of the LGB shall act in the best interests of the Company and the Academy at all times and must keep confidential all information of a confidential nature obtained by them relating to the Academy or the MAT. No member of the LGB shall act or omit to act in a way which would be prejudicial to the interests of the Academy or the MAT at any time, including any actions or omissions which might create bad publicity for the Academy or the MAT.
- 4.3 The LGB may delegate any of its functions to the Principal of the academy, to an individual member of the LGB (a named governor) or to a sub-committee of the LGB but no individual or sub-committee may delegate further unless expressly authorised to do by the LGB.
- 4.4 In addition to any other sub-committees that the LGB shall establish it shall have the following sub-committees (or a named governor) which/who will have responsibility for the indicated areas
- 4.4.1 Finance including premises
 - 4.4.2 Personnel to deal with the following¹:-
 - (a) Pay
 - (b) Discipline appeal
 - (c) Grievance
 - 4.4.3 Standards, teaching and learning (to include curriculum)
 - 4.4.4 Safeguarding (Child protection), SEN and discipline
 - 4.4.5 Admissions²
 - 4.4.6 The functions indicated above may be divided between sub-committees/named governor as the LGB may determine.
 - 4.4.7 The LGB shall determine the extent if at all to which such sub-committees/named governor are to have decision-making powers. Any such decision-making powers may not be wider than the powers conferred on the LGB. Subject to this, these terms of reference will apply to all sub-committees/named governor unless the Trustees direct otherwise.
- 4.5 The LGB will review the sub-committee/named governor structure, terms of reference, constitution and membership of any sub-committee and all other delegations of power at least once each year
- 4.6 Every decision made by the LGB either directly or under sub-delegation shall be reported to the next available meeting of the Trustees. Full minutes of the LGB will be sent to the

¹ These sub-committees cannot be single named governors

² Cannot be a named governor

Trustees after each LGB meeting. Every decision made by an individual or sub-committee of the LGB shall be reported to the next available meeting of the LGB

The Principal of the Academy shall be entitled to attend any meeting of the LGB and of any sub-committee established by the LGB. The CEO will attend when this is agreed or requested by the LGB, or instructed by the Trustees.

- 4.7 Unless prohibited under its terms of reference, the LGB and any sub-committee may invite attendance by persons who are neither Governors nor committee members where such attendance is considered by the members of the LGB or sub-committee to benefit its deliberations.
- 4.8 The membership of any sub-committee may include persons who do not also serve on the LGB, provided that a majority of the members of any such sub-committee shall be members of the LGB or Trustees.
- 4.9 The LGB may determine that some or all of the members of a sub-committee who are not Trustees or who do not serve on the LGB shall be entitled to vote in any proceedings of the sub-committee. No vote on any matter shall be taken at a meeting of a sub-committee unless the majority of members of the sub-committee present either are Trustees or serve on the LGB.
- 4.10 Copies of the minutes of sub-committee meetings are to be circulated to all members of the LGB and those who are entitled to attend LGB meetings.
- 4.11 Annexed to these terms of reference is a table setting out the level at which delegated decisions can be taken. This table is indicative and if any direction by the Trustees is inconsistent with the table, that direction will prevail. The Trustees will, however, use their reasonable endeavours to honour the contents and spirit of this document.

Financial Management

- 4.12 The LGB shall at all times act in accordance with the MAT's Finance Policy, its Financial Manual and the DfE's Academies Financial Handbook.

5 CHAIR AND VICE CHAIR OF THE LGB

- 5.1 The Chair of the LGB shall be appointed from amongst all of the governors by the LGB.
- 5.2 The term of office of the Chair shall be 1 year.
- 5.3 The Vice-Chair of the LGB shall be appointed by the Governors from amongst all of the Governors for a term of 1 year.
- 5.4 If both the Chair and the Vice-Chair are absent from any meeting of the LGB, those Governors present shall appoint one of their number to chair the meeting.
- 5.5 The Chair (or, in the absence or inability to act of the Chair, the Vice-Chair) shall have the following powers
 - 5.5.1 If the Chair is of the opinion that, if a particular function of the LGB or of a sub-committee of the LGB were not exercised before the earliest date on which it would be reasonably practicable for a meeting of the LGB, or of a sub-committee to which the function in question has been delegated, to be held, the delay would be likely to be seriously detrimental to the interests of—
 - (a) the Academy;
 - (b) any pupil at the Academy, or their parent; or
 - (c) a person who works at the Academy

the chair shall have the power to exercise that function.

5.6 The Chair or Vice-Chair shall cease to hold office if:

5.6.1 he ceases to serve on the LGB;

5.6.2 he is removed from office in accordance with the Terms of Reference; or in the case of the Vice-Chair, he is elected in accordance with the Terms of Reference to fill a vacancy in the office of Chair.

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

5.8 Where the Vice-Chair is also absent from the meeting, or there is at the time a vacancy in the office of Vice-Chair, the members of the LGB shall elect one of their number to act as a chair for the purposes of that meeting, provided that the person elected shall not be a person who is employed by the MAT (whether or not at the Academy) and shall not be a Trustee.

5.9 A Trustee (or, in the absence of a Trustee, the Clerk to the LGB) shall act as Chair during that part of any meeting at which the Chair is elected excluding the CEO or Staff Trustees.

5.10 Any election of the Chair or Vice-Chair which is contested shall be held by secret ballot.

5.11 The Chair or Vice-Chair may only be removed from office by the Trustees at any time, or by the LGB in accordance with these terms of reference.

5.12 A resolution to remove the Chair or Vice-Chair from office which is passed at a meeting of the LGB shall not have effect unless:

5.12.1 the matter of the Chairman's or Vice-Chair's removal from office is specified as an item of business on the agenda

5.13 Before a resolution is passed by the LGB at the relevant meeting as to whether to confirm to remove the Chair or Vice-Chair from office, the person or persons proposing his removal shall at that meeting state their reasons for doing so and the Chair or Vice-Chair shall be given an opportunity to make a statement in response.

6 CONDUCT OF MEETINGS OF THE LGB AND SUB-COMMITTEES

6.1 The LGB shall meet at least once in every term, and shall hold such other meetings as may be necessary.

6.2 Meetings of the LGB and any sub-committee shall be convened and conducted in the same way, as provided in the Articles of Association of the MAT for meetings of the Trustees of the MAT as though references in those Articles to Trustees were references to members of the LGB or the sub-committee in question.

6.3 A member of the LGB may not vote by proxy.

7 ROLE OF THE PRINCIPAL

7.1 The Principal shall be appointed by the Trustees having sought views of the LGB.

7.2 The Trustees and the LGB hereby delegates such powers and functions as are required by the Principal for the internal organisation, management and control of the Academy (including the implementation of all policies approved by the Trustees and the LGB) and for the direction of the teaching and curriculum at the Academy.

- 7.3 The Principal shall be responsible to the LGB for:-
- 7.3.1 implementing the agreed policies and procedures laid down by the LGB including compliance with the MFA, the SFA and all statutory and regulatory requirements;
 - 7.3.2 advising the LGB on strategic direction, forward planning and quality assurance;
 - 7.3.3 the leadership and management of the Academy;
 - 7.3.4 managing the delegated budget and resources agreed by the LGB;
 - 7.3.5 advising the LGB on the appointment of the Deputy Principal and such other senior posts as the LGB may determine;
 - 7.3.6 the appointment of all other staff and (except to the extent directed otherwise by the Trustees and/or the LGB), the salary grading, allocation of duties, appraisal and discipline of all staff;
 - 7.3.7 the maintenance of good order and discipline by the pupils, including their exclusion in accordance with legal requirements, within any framework laid down by the LGB; and
 - 7.3.8 all such additional functions as may be assigned under the job description or contract of employment.

8 **CONDUCT OF STAFF**

- 8.1 The MAT is the employer of all of the staff at the Academy.
- 8.2 The LGB is responsible for implementing the human resource policies, procedures and terms and conditions of service for all employees including the upholding of appropriate rules for the conduct of staff. Changes to such policies and procedures will be effected only after consultation with the Trustees and staff groups where appropriate.
- 8.3 The LGB shall be responsible for the appointment and management of all staff to be employed at the Academy (other than the Principal) provided that the LGB shall:
- 8.3.1 comply with all policies dealing with staff issued by the Trustees from time to time;
 - 8.3.2 take account of any terms set by the Trustees;
 - 8.3.3 adopt any standard contracts or terms and conditions for the employment of staff issued by the Trustees.
- 8.4 The LGB will have oversight of the appraisal of all staff (including the Principal but upon the advice of the CEO) and shall put in place procedures for the proper professional and personal development of staff.
- 8.5 Not used.

9 **PREMISES**

- 9.1 The day to day maintenance of the buildings and facilities used in respect of the Academy is the responsibility of the LGB to the extent that it has funding to enable it to discharge that responsibility. The LGB shall have regard at all times to the safety of the users of the buildings and the facilities and the legal responsibilities of the Trustees (and/or any others) as owners of such buildings and facilities.
- 9.2 The LGB shall advise the Trustees as the Trustees may require on matters relating to estate management strategy, the suitability of building and facilities in light of long term curriculum needs and the need for and availability of capital investment
- 9.3 The responsibility for any disposals or acquisitions of land to be used by the Academy will be that of the Trustees.
- 9.4 It is the responsibility of the LGB, on behalf of the Trustees, to insure the land, buildings and activities of the Academy.

- 9.5 The LGB will notify the Trustees as soon as reasonably practicable following the occurrence of a significant event in respect of which insurance has been obtained. The responsibility for notifying the insurers is the LGB. The Trustees and the LGB will provide each other with all necessary information and assistance as may be helpful in the management of any insurance claims.

10 **CONFLICTS OF INTEREST**

- 10.1 The income and property of the Academy must be applied solely towards the provision of the Objects as detailed in the Articles. The restrictions and procedures which apply to the Trustees in the Articles with regard to having a Personal Financial Interest shall also apply to the members of the LGB.
- 10.2 Any member of the LGB who has any duty or personal interest (including but not limited to any Personal Financial Interest) which conflicts or may conflict with his duties as a member of the LGB shall disclose that fact to the other members of the LGB as soon as he becomes aware of it. A member of the LGB must absent himself from any discussions of the LGB or any committee in which it is possible that a conflict will arise between his duty to act solely in the interests of the Academy and any duty or personal interest (including but not limited to any Personal Financial Interest).

11 **RULES AND BYE-LAWS**

- 11.1 The LGB shall have power to make rules and bye-laws in respect of the government and conduct of the Academy as it shall think fit. Such rules and bye-laws shall be subject to the provisions of the Terms of Reference and to approval by the Trustees.

12 **OTHER MATTERS**

- 12.1 The LGB will comply with all policies of the Trustees communicated to the LGB from time to time.
- 12.2 The Trustees and all members of the LGB have a duty to act independently and not as agents of those who may have appointed them and will act with integrity, objectivity and honesty in the best interests of the Company and the Academy and shall be open about decisions and be prepared to justify those decisions except in so far as any matter may be considered confidential if so deemed by those present in the meeting.
- 12.3 The LGB will review its policies and practices on a regular basis, having regard to recommendations made by the Trustees from time to time, in order to ensure that the governance of the Academy is best able to adapt to the changing political and legal environment.
- 12.4 The LGB shall provide such data and information regarding the business of the Academy and the pupils attending the Academy as the Trustees may require from time to time.

13 **EFFECTIVE DATE**

- 13.1 These Terms of Reference shall come into effect on such date as determined by the Trustees.

14 **AMENDMENT OF TERMS OF REFERENCE**

- 14.1 These Terms of Reference are drafted and maintained by the MAT. The Trustees may make amendments to these Terms of Reference from time to time. In the event that amendments are made, the Trust shall notify the Chair of each Local Governing Body, who shall be expected to make the other members of the LGB aware of such changes.
- 14.2 This document shall be subject to review by the Trustees, as and when required.

SCHEDULE [1]

Membership of the LGB

The LGB is to be constituted by containing; up to 8 community members appointed by the directors, up to 4 parent governors elected by parents, up to 2 staff governors appointed by the LGB, 1 ex-officio principal/headteacher and the CEO

All terms of office will be for a maximum of four years and existing start and end dates will transfer over as they exist now. That is to say, terms of office will not start afresh upon conversion into EMET.

SCHEDULE [2]

Disqualification of members of the LGB

- 14.3 No person shall be qualified to serve on the LGB unless he is aged 18 or over at the date of his election or appointment. No current pupil of the Academy shall be entitled to serve on the LGB.
- 14.4 A person serving on the LGB shall cease to hold office if he becomes incapable by reason of mental disorder, illness or injury of managing or administering his own affairs.
- 14.5 A person serving on the LGB shall cease to hold office if he is absent without the permission of the Chair of the LGB from [all meetings] of the LGB held within a period of six months and the LGB resolves that his office be vacated.
- 14.6 A person shall be disqualified from serving on the LGB if:
- 14.6.1 his estate has been sequestrated and the sequestration has not been discharged, annulled or reduced; or
 - 14.6.2 he is the subject of a bankruptcy restrictions order or an interim order.
- 14.7 A person shall be disqualified from serving on the LGB at any time when he is subject to a disqualification order or a disqualification undertaking under the Company Trustees Disqualification Act 1986 or to an order made under section 429(2)(b) of the Insolvency Act 1986 (failure to pay under county court administration order).
- 14.8 A person serving on the LGB shall cease to hold office if he would cease to be a Trustee (of any company) by virtue of any provision in the Companies Act 2006 or is disqualified from acting as a trustee by virtue of section 178 of the Charities Act 2011 (or any statutory re-enactment or modification of that provision) or he is otherwise found to be unsuitable by the Secretary of State for Education under the provisions of the funding agreements.
- 14.9 A person shall be disqualified from serving on the LGB if he has been removed from the office of charity trustees or trustee for a charity by an order made by the Charity Commission or the High Court on the grounds of any misconduct or mismanagement in the administration of the charity for which he was responsible or to which he was privy, or which he by his conduct contributed to or facilitated.
- 14.10 A person shall be disqualified from serving on the LGB if he has not provided to the Chairman a criminal records certificate at an enhanced disclosure level under section 113B of the Police Act 1997. In the event that the certificate discloses any information which would in the opinion of either the chairman or the Chief Executive Officer confirm their unsuitability to work with children that person shall be disqualified. If a dispute arises as to whether a person shall be disqualified, a referral shall be made to the Secretary of State to determine the matter. The determination of the Secretary of State shall be final.
- 14.11 A person shall be disqualified from serving on the LGB if he is a person in respect of whom a direction has been made under section 142 of the Education Act 2002 or is subject to any prohibition or restriction which takes effect as if it contained in such a direction.
- 14.12 A person shall be disqualified from serving on the LGB where he has, at any time, been convicted of any criminal offence, excluding any that have been spent under the Rehabilitation of Offenders Act 1974 as amended, and excluding any offence for which the maximum sentence is a fine or a lesser sentence except where a person has been convicted of any offence which falls under section 178 of the Charities Act 2011.

