

## **Schedule 2**

### **Master Funding Agreement**

**CWA ACADEMY TRUST**

**MASTER FUNDING AGREEMENT**

**2013**

**CWA ACADEMY TRUST**  
**MASTER FUNDING AGREEMENT**

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**SCHEDULE 1**

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## INTRODUCTION

1. This Agreement is made under Section 1 of the Academies Act 2010, between the Secretary of State for Education ("the Secretary of State") and CWA Academy Trust (the "Company").
2. The Company is a company incorporated in England and Wales, limited by guarantee with registered Company number 7338780.
3. The Company intends to establish and maintain, and to carry on or provide for the carrying on of a number of Academies in accordance with this Agreement and the Supplemental Agreements.
4. This Agreement and the Supplemental Agreements will apply in respect of an Academy from such time as a Supplemental Agreement relating to that Academy shall have been entered into between the Secretary of State and the Company.
5. The following expressions used in this Agreement have the respective meanings assigned to them by the numbered clauses of this Agreement referred to immediately after the reference to the expressions –
  - (a) "Academies Financial Handbook" - clause 67;
  - (b) "Accounting Officer" – clause 66;
  - (c) "Annual Letter of Funding" - clause 60;
  - (d) "GAG" – clause 36;
  - (e) "Capital Expenditure" - clause 37;
  - (f) "Capital Grant" – clause 37;
  - (g) "EAG" - clause 36;
  - (h) "Local Governing Body" – clause 15;
  - (i) "Recurrent Expenditure" – clause 36;
  - (j) "Start-up Period" – clause 50;

6. In this Agreement the following words and expressions shall have the following meanings:-

<b>"Academy Financial Year"</b>	means the year from 1st September to 31st August or such other period as the Secretary of State may from time to time specify by notice in writing to the Company;
<b>"Academy"</b>	means a Mainstream Academy, an Alternative Provision Academy or a Special Academy in respect of which a Supplemental Agreement has been entered into between the Secretary of State and the Company and the expression "Academies" shall refer to all or any of such Academies;
<b>"admission requirements"</b>	are annexed to the relevant Supplemental Agreement;
<b>"Alternative Provision Academy"</b>	means an Academy which meets the requirements set out in section 1C of the Academies Act 2010;
<b>the "Articles"</b>	means the Articles of Association of the Company for the time being in force;
<b>"this Agreement"</b>	means this agreement and its annexes and a reference in this Agreement to a numbered clause or annex is a reference to the clause or annex of this Agreement bearing that number or letter as the same may be amended or supplemented from time to time;
<b>"Business Day"</b>	means any day other than a Saturday, Sunday, Christmas Day, Good Friday or a day which is a bank holiday with the meaning given to that expression in the Banking and Financial Dealings Act 1971;
<b>"Commissioner"</b>	means local authorities and/or schools referring children/pupils to the Alternative Provision Academy for admission under the legal powers set out in the relevant annex to the Supplemental Agreement;
<b>"Control"</b>	In relation to a body corporate ('Entity') means either the legal or beneficial ownership of 30 per cent or more of the issued shares in the Entity ordinarily having voting rights or the power of a person ('A') otherwise to secure –

	<p>(a) either by means of the holding of shares in that Entity or having an interest conferring voting rights at general meetings of the membership of the Entity or of any other body corporate;</p> <p>(b) by virtue of any powers conferred by the Articles or other document regulating that Entity or any other Entity or partnership including, without limitation, the power to appoint or remove a majority of the directors thereof, or</p> <p>(c) by virtue of any agreement, understanding or arrangement between any person or persons,</p> <p>that the affairs of the first-mentioned Entity are conducted in accordance with the wishes of A and 'Controls' shall be construed accordingly;</p>
<b>"DfE"</b>	means Department for Education and any successor;
<b>"LA"</b>	means the Local Authority in the area in which the relevant Academy is situated;
<b>"Mainstream Academy"</b>	means an Academy meeting the requirements referred to in clause 12;
<b>"Memorandum"</b>	means the memorandum of association of the Company for the time being in force;
<b>"parents" means parents or guardians;</b>	"persons" includes a body of persons, corporate or incorporate;
<b>"Principal"</b>	means the head teacher of an Academy;
<b>"Principal Regulator"</b>	means the body or person appointed as the Principal Regulator under the Charities Act 2011;
<b>"Pupil Referral Unit"</b>	means any school established in England and maintained by a local authority which is specially organised to provide education for children falling within section 19(1) of the Education Act 1996;
<b>references to "school"</b>	shall where the context so admits be references to an Academy;
<b>"SEN"</b>	means special educational needs, and the expressions "special educational needs" and "special educational provision" have the meaning set out in section 312 of the Education

<b>"SENCO"</b>	Act 1996; means Special Educational Needs Co-ordinator;
<b>"Special Academy"</b>	means an Academy specially organised to make special educational provision for pupils with SEN;
<b>"Statement of SEN"</b>	means a statement made under section 324 of the Education Act 1996; and
<b>"Supplemental Agreement"</b>	means an agreement supplemental to this Agreement, substantially in the form set out in Schedule 1 to this Agreement to be entered into by the Secretary of State and the Company pursuant to which the Company agrees to establish and maintain, and to carry on or provide for the carrying on, and the Secretary of State agrees to fund, an Academy in accordance with the terms and conditions of that Supplemental Agreement and this Agreement.

7. The Interpretation Act 1978 shall apply for the interpretation of this Agreement and any Supplemental Agreement as it applies for the interpretation of an Act of Parliament.
8. Expressions defined in this Agreement shall have the same meaning where used in any Annex to this Agreement or Supplemental Agreement.
9. Questions arising on the interpretation of the arrangements in this Agreement shall be resolved by the Secretary of State after consultation with the Company.
10. Section 1 (3) of the Academies Act 2010 states that -
  - (3) An Academy agreement is an agreement between the Secretary of State and the other party under which -
    - (a) the other party gives the undertakings in subsection (5), and
    - (b) the Secretary of State agrees to make payments to the other party in consideration of those undertakings."



## LEGAL AGREEMENT

11. In consideration of the Company undertaking to establish and maintain, and to carry on or provide for the carrying on of a number of schools / independent schools in England specially organised to make special educational provision for pupils with SEN (**"the Special Academies"**) or meeting the requirements referred to in clause 12 (**"the Mainstream Academies"**), or meeting such requirements as referred to in clause 12B (**"the Alternative Provision Academies"**), the Secretary of State agrees to make payments to the Company in accordance with the conditions and requirements set out in this Agreement and Supplemental Agreements. If it is agreed between the Secretary of State and the Company that the Company will establish and maintain, and to carry on or provide for the carrying on of an Academy, the parties will enter into a Supplemental Agreement in relation to that Academy. For the avoidance of doubt, any obligations imposed upon or powers given to an Academy by this Agreement or any Supplemental Agreement are also imposed upon the Company.

## REQUIREMENTS OF A MAINSTREAM ACADEMY

12. The requirements of a **Mainstream Academy** are those set down in Section 1A of the Academies Act 2010<sup>1</sup>.

## THE SEN OBLIGATIONS

- 12A. In respect of **Special Academies**:

- (a) The Company must comply with all of the obligations imposed upon the governing bodies of maintained special schools in Chapter 1 of Part 4 of the Education Act 1996 and in Regulations in force at the date of this agreement or made from time to time under any provision in that Chapter (as amended from time to time<sup>2</sup>).

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<sup>1</sup> Any Supplemental Funding Agreement entered into in relation to an Academy which is a "selective school" within the meaning of Section 6(4) of the Academies Act 2010 will clarify that section 1A(1)(c) (requirement to provide education for pupils of different abilities) will not apply.

<sup>2</sup> Currently these duties are in section 313 (Duty to have regard to the Special Educational Needs Code of Practice 2001); section 317(5), (6) and (6A) (Duties in relation to the publication of information relating to arrangements and facilities for disabled pupils at the school); and 324(5)(b) (Duty to admit the child where a school is named in the statement); and the Education (Special Educational Needs)(Information)(England) Regulations 1999 (S.I. 1999/2506). For the avoidance of doubt, the obligations in clause 12A of this agreement are in addition to any obligations imposed upon Academy proprietors directly in legislation or regulations.

- (b) Notwithstanding any provision in this Agreement, the Secretary of State may (whether following a complaint made to him or otherwise) direct the Company to comply with an obligation imposed by this Agreement where the Company has failed to comply with any such obligation.
- (c) The Company must ensure that each Academy's website includes details of the arrangements for the admission of disabled pupils; the steps taken to prevent disabled pupils from being treated less favourably than other pupils; the facilities provided to assist access to the Academy by disabled pupils; and the plan prepared by the Company under paragraph 3 of Schedule 10 to the Equality Act 2010. Disabled pupils in this paragraph mean pupils who are disabled for the purposes of the Equality Act 2010<sup>3</sup>.

## ALTERNATIVE PROVISION ACADEMY REQUIREMENTS

12B. The Alternative Provision Academy requirements are those set down in Section 1C of the Academies Act 2010.

## CONDITIONS OF GRANT

### General

13. Other conditions and requirements in respect of an Academy, unless specified otherwise in a Supplemental Agreement, are that:
- (a) the school will be at the heart of its community, promoting community cohesion and sharing facilities with other schools and the wider community;
  - (b) there will be assessments of pupils' performance as they apply to maintained schools (this will also apply to **Alternative Provision Academies** unless there are exceptional reasons to do otherwise), and the opportunity to study for qualifications in accordance with clause 30 (d);
  - (c) in respect of **Mainstream Academies**, the admissions policy and arrangements for the school will be in accordance with admissions law, and the DfE Codes of Practice, as they apply to maintained schools, and in respect of **Alternative Provision Academies** the admissions policy and

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<sup>3</sup> This obligation is in addition to the obligation to comply with the duties to publish information imposed upon the governing bodies of maintained special schools set out in the Education (Special Educational Needs) (Information) Regulations 1999 (as amended from time to time) which clause 12A has the effect of imposing.

arrangements for the school will be set out in the relevant annex to the Supplemental Agreement;

- (d) teachers' levels of pay and conditions of service will be the responsibility of the Company;
  - (e) there will be an emphasis on the needs of the individual pupils including pupils with SEN, both those with and without statements of SEN;
  - (f) there will be no charge to pupils (or their parents or guardians) in respect of admission to, or attendance at, the school and the school will only charge pupils where the law allows maintained schools to charge;
  - (g) the Company shall as soon as reasonably practicable establish an appropriate mechanism for the receipt and management of donations and shall use reasonable endeavours to procure donations through that mechanism for the purpose of the objects specified in the Articles.
- 13A. Clause 13f) does not prevent the Company receiving funds from a local authority or a charity in respect of the admission of a pupil with special educational needs to an Academy.
- 13B. Clause 13 f) does not prevent the Company receiving funds/income from Commissioners in respect of the admission and attendance of a pupil at the **Alternative Provision Academy**.

## **Governance**

14. Each Academy will be governed by the Company. The Company shall have regard to (but for the avoidance of doubt shall not be bound by) any guidance as to the governance of Academies that the Secretary of State may publish.
15. The Company shall establish, for each Academy, an Advisory Body, whose role shall be to provide advice to the Company in relation to the functioning of that Academy. The role of the Advisory Body and the membership of it shall be for the Company to decide, but the Company will, as a minimum, ensure that:
- (a) a minimum of two parents of a pupil at the Academy (to be elected by the parents of registered pupils of the Academy) shall be a member of the Advisory Body;

- (b) any advice of the Advisory Body is brought to the attention of the Directors of the Company;
- (c) to the extent that the Company may, in accordance with the Articles, choose to establish a Local Governing Body, then the Company may additionally constitute the Advisory Body as the Academy's Local Governing Body.

## **Conduct**

16. Each Academy shall be conducted in accordance with:

- (a) the Articles;
- (b) all provisions by or under statute which confer rights or impose obligations on Academies including, without limitation, the independent schools standards prescribed under section 157 of the Education Act 2002 to the extent they apply to the Academy;
- (c) the terms of this Agreement and the relevant Supplemental Agreement.

## **Disclosure and Barring Service Checks**

17. The Company shall comply with the requirements of the Education (Independent School Standards) (England) Regulations 2010 (or such regulations as may for some time being be applicable) in relation to carrying out enhanced criminal records checks, obtaining enhanced criminal records certificates and making any further checks, as required and appropriate for members of staff, supply staff, individual Directors and the Chair of the Local Governing Body.

17A. The Company shall, on receipt of a copy of an enhanced criminal record certificate, on request from the Secretary of State or his agents, as soon as possible thereafter submit information contained in the certificate to the Secretary of State in accordance with section 124 of the Police Act 1997.

## **Pupils**

18. Each **Mainstream Academy** will be an all ability inclusive<sup>4</sup> school whose requirements for:

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<sup>4</sup> If one of the Mainstream Academies is a "selective school" within the meaning of Section 6(4) of the Academies Act 2010 then the Supplemental Funding Agreement for that Academy will provide that that Academy is not required to be an all ability inclusive school.

- (a) the admission of pupils to the Academy are set out in the relevant annex to the Supplemental Agreement;
- (b) the admission to the Academy of and support for pupils with SEN and with disabilities (for pupils who have and who do not have statements of SEN) are set out in Annex B to this Agreement;
- (c) pupil exclusions are set out in regulations made by virtue of section 51A of the Education Act 2002 (as may be amended or modified from time to time, and includes any successor provisions).

**18AAA. Each Special Academy** will be a special school whose requirements for:

- (a) the admission of pupils to the Academy are set out in the relevant annex to the Supplemental Agreement;
- (b) pupil exclusions are set out in regulations made by virtue of section 51A of the Education Act 2002 (as may be amended or modified from time to time, and includes any successor provisions).

**18AA. Each Alternative Provision Academy** will provide education for the cohort of pupils whose characteristics are set out in the requirements at section 1C of the Academies Act and whose requirements for:

- (a) the admission of pupils to the Alternative Provision Academy are set out in the relevant annex to the Supplemental Agreement;
- (b) the admission to the Alternative Provision Academy of and support for pupils with SEN and with disabilities (for pupils who have and who do not have statements of SEN) are set out in Annex B to this Agreement;
- (c) pupil exclusions are set out in regulations made by virtue of section 51A of the Education Act 2002 (as may be amended or modified from time to time, and includes any successor provision(s)).

#### **Designated Teacher for Looked after Children**

**18A.** The Company will in respect of each Academy act in accordance with, and be bound by, all relevant statutory and regulatory provisions and have regard to any guidance and codes of practice issued pursuant to such provisions, as they apply at any time to a maintained school, relating to the designation of a person to

manage the teaching and learning programme for children who are looked after by an LA and are registered pupils at the school. For the purpose of this clause, any reference to the governing body of a maintained school in such statutory and regulatory provisions, or in any guidance and code of practice issued pursuant to such provisions, shall be deemed to be references to the Directors of the Company.

#### **Teachers and other staff**

##### **19. In respect of **Mainstream and Alternative Provision Academies**:**

- (a) subject to clause 19(b), the Company shall, in accordance with any guidance which the Secretary of State may issue on the qualifications of teaching and other staff in Academies, employ anyone it deems is suitably qualified or is otherwise eligible under a contract of employment or for services to carry out planning and preparing lessons and courses for pupils, delivering lessons to pupils, assessing the development, progress and attainment of pupils, and reporting on the development, progress and attainment of pupils.
- (b) clause 19(a) does not apply to anyone who:
  - (i) is appointed as the SENCO by the Company under section 317(3A) of the Education Act 1996, who must meet the requirements set out in Regulation 3 of the Education (Special Educational Needs Co-ordinators) (England) Regulations 2008 (SI 2008/2945); or
  - (ii) is appointed as a designated teacher for looked after children further to clause 18A.

##### **20. In respect of **Special Academies**, subject to clause 20A, the Company shall not employ 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 either:-**

- (a) a qualified teacher within the meaning of regulations made under section 132 of the Education Act 2002; or
- (b) otherwise eligible to do specified work under the Education (Specified Work) (England) Regulations 2012 (SI 2012/762), which for the purpose of



this clause shall be construed as if the relevant Academy were a maintained school.

20A. Clause 20 does not apply to anyone who:

- (a) was transferred to the employment of the Company by virtue of the Transfer of Undertakings (Protection of Employment) Regulations 2006; and
- (b) immediately prior to the transfer, was employed to do specified work; and
- (c) immediately prior to the transfer, was not;
  - (i) a qualified teacher within the meaning of regulations made under section 132 of the Education Act 2002 and registered with full registration with the appropriate body, or
  - (ii) eligible to do specified work under the Education (Specified Work) (England) Regulations 2012 (SI 2012/762)

(a "transferred staff member"). The Company shall use its best endeavours to ensure that any transferred staff member who undertakes specified work and does not meet the requirements of either clause 20(a) or clause 20(b) meets such requirements as soon as possible.

- 21. The Company shall ensure that all teachers employed at each Academy have access to the Teachers' Pension Scheme and, in so doing, will comply with the statutory provisions underlying the scheme.
- 22. The Company shall ensure that all employees at each Academy other than teachers have access to the Local Government Pension Scheme in accordance with the Local Government Pension Scheme (Administration) Regulations 2008 (SI 2008/239) (or such other regulations as may for the time being be applicable).
- 22A. Where a teacher employed at an Academy applies for a teaching post at another Academy, 16 to 19 Academy, maintained school, school maintained by a local authority or institution within the further education sector, the Company must at the request of the governing body or Academy Trust of that other educational institution:
  - (a) advise in writing whether or not, in the preceding two years, there has been any formal consideration of that teacher's capability to perform their role at the Academy, or the school the Academy replaced; and

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

#### **Curriculum, curriculum development and delivery and RE and collective worship**

23. The curriculum provided by each Academy to pupils up to the age of 16 shall be broad and balanced.

23A. Not used.

23B. The Company shall publish information in relation to the current curriculum provision at each Academy. Such information shall include details relating to:

- (a) the content of the curriculum;
- (b) its approach to the curriculum;
- (c) the GCSE options (and other Key Stage 4 qualifications) or other future qualifications, as specified by the Secretary of State, offered by each Academy;
- (d) the names of any phonics or reading schemes in operation for Key Stage 1; and
- (e) how parents (including prospective parents) and Commissioners can obtain further information in relation to the curriculum at each Academy.

23C. Subject to the requirements of clauses 23, 23B and 24 to 29A, the curriculum will be the responsibility of the Company.

24. In respect of **Mainstream and Special Academies**, the Company shall ensure that the broad and balanced curriculum includes English, mathematics and science, and in respect of **Alternative Provision Academies** shall insure that the broad and balanced curriculum includes English and mathematics.

24A. Sections 42A (provision of careers guidance) and 45A (guidance as to discharge of duties) of the Education Act 1997 shall be deemed to apply to each Academy with the following modifications:



- (a) each Academy shall be treated as falling within the meaning of "a school" under section 42A (2);
  - (b) the Company shall be deemed to be the "responsible authorities" for the purposes of subsection 42A(3); and
  - (c) references to registered pupils shall be treated as references to registered pupils at each Academy.
25. The Company shall make provision for the teaching of religious education and for a daily act of collective worship at each **Mainstream Academy**.
26. Where a **Mainstream Academy** is designated with a religious character<sup>5</sup> in accordance with section 124B of the School Standards and Framework Act 1998 or further to section 6(8) of the Academies Act 2010:
- (a) subject to clause 28, and paragraph 4 of Schedule 19 to the School Standards and Framework Act 1998 which shall apply as if the Academy were a voluntary aided school with a religious character, the Company shall ensure that provision is made for religious education to be given to all pupils at the Academy in accordance with the tenets of the specified religion or religious denomination of the Academy;
  - (b) subject to clause 28, the Company shall comply with the requirements of section 70(1) of, and Schedule 20 to, the School Standards and Framework Act 1998 as if the Academy were a foundation school with a religious character or a voluntary school, and as if references to 'the required collective worship' were references to collective worship in accordance with the tenets and practices of the specified religion or religious denomination of the Academy;
  - (c) the Company shall ensure that the quality of religious education given to pupils at the Academy and the contents of the Academy's collective worship given in accordance with the tenets and practice of the specific religion or religious denomination are inspected. Such inspection shall be conducted by a person chosen by the Company and the Academy shall secure that such inspection shall comply with the requirements set out in any statutory provision and regulations as if the Academy were a foundation or voluntary school which has been designated under section

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<sup>5</sup> Alternative provisions are available and would be potentially appropriate for non-denominational faith schools.

69(3) of the School Standards and Framework Act 1998 as having a religious character.

27. Where a **Mainstream Academy** has not been designated with a religious character in accordance with section 124B of the School Standards and Framework Act 1998 or further to Section 6(8) of the Academies Act 2010:

- (a) subject to clause 28, the Company shall ensure that 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;
- (b) subject to clause 28, the Company shall ensure that the Academy complies 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;
- (c) the Company<sup>6</sup>:
  - (1) agrees that before making an application pursuant to the Religious Character of Schools (Designation Procedure) (Independent Schools) (England) Regulations 2003 for each Academy to be designated as a school with religious character it shall seek the prior written consent of the Secretary of State<sup>7</sup>;
  - (2) hereby acknowledges that the Secretary of State may in his absolute discretion refuse or consent to the Company making such an application.

27AAA. Where a **Mainstream Academy** is listed in the Register of Independent Schools as having a religious ethos, but has not been designated with a religious character in accordance with section 124B of the School Standards and Framework Act

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<sup>6</sup> This is required in order to ensure that the process by which an Academy becomes designated as a school with a religious character is comparable to that which applies for maintained schools.

<sup>7</sup> The Company must undertake consultation on the proposal for designation prior to seeking the Secretary of State's consent.

1998 or further to Section 6(8) of the Academies Act 2010, the Company agrees that paragraph 5(b) of Schedule 11 of the Equality Act 2010 shall not apply to the Academy.

27AA. The Company may make provision for the teaching of religious education and for a daily act of collective worship at each **Alternative Provision Academy**.

27A. Where an **Alternative Provision Academy** does (at its discretion in accordance with clause 27AA) make provision for the teaching of religious education and/or for a daily act of collective worship at the Alternative Provision Academy then:

- (a) subject to clause 28, the Company shall ensure that any such provision shall be made for religious education to be given to all pupils at the Alternative Provision 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,
- (b) subject to clause 28, the Company shall ensure that the Alternative Provision Academy complies 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 Alternative Provision 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.

28. Section 71(1) – (6) and (8) of the School Standards and Framework Act 1998 shall apply as if each 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 by each Academy in accordance with clauses 26 or 27 as appropriate.

28A. The Company shall, so far as practical, make provision for the teaching of religious education and for acts of collective worship at each **Special Academy**.

28B. In respect of RE and collective worship at **Special Academies**:

- (a) subject to clause 28Bc), the Company shall ensure that 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;

- (b) The Company shall ensure that each Special Academy complies with the requirements of regulation 5A of the Education (Special Educational Needs) (England) (Consolidation) Regulations 2001 as if it were a maintained special school.
- (c) Regulation 5A of the Education (Special Educational Needs) (England) (Consolidation) Regulations 2001 shall apply as if the Academy were a community or foundation special 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 by the Academy in accordance with this clause.

28C. Where a **Special Academy** is listed in the Register of Independent Schools as having a religious ethos, the Company agrees that paragraph 5(b) of Schedule 11 of the Equality Act 2010 shall not apply to the Academy.

29. The Company shall have regard to any guidance issued by the Secretary of State, further to section 403 of the Education Act 1996, on sex and relationship education to ensure that children at each Academy are protected from inappropriate teaching materials and they learn the nature of marriage and its importance for family life and for bringing up children. The Company shall also have regard to the requirements set out in section 405 of the Education Act 1996 which shall apply to each Academy as if it were a maintained school.

29A. The Company agrees to act in accordance with Sections 406 (Political Indoctrination) and 407 (Duty to secure balance treatment of political issues) of the Education Act 1996 as if it were a maintained school, subject to the following modifications:

- (a) references to any maintained school shall be treated as references to each Academy;
- (b) references to registered pupils shall be treated as references to registered pupils at each Academy;
- (c) references to the governing body or the local authority shall, in each case, be treated as references to the Company; and

- d) references to the head teacher shall, in each case, be treated as references to the Principal of each Academy<sup>8</sup>.

### **Assessment**

30. The Secretary of State will notify the appropriate body for assessment purposes about each Academy.

- (a) The Company shall ensure that each **Mainstream Academy** and each **Special Academy** complies with any guidance issued by the Secretary of State from time to time to ensure that pupils take part in assessments and in teacher assessments of pupils' performance as they apply to maintained schools; and the Company shall also do so for each **Alternative Provision Academy** unless there are exceptional reasons to do otherwise.
- (b) The Company shall report to any body on assessments under clause 30 as the Secretary of State shall require and shall provide such information as may be required by that body as applies to maintained schools.
- (c) In respect of all Key Stages, the Company will submit each Academy to monitoring and moderation of its assessment arrangements as required by the Secretary of State.
- (d) In relation to courses of education or training at an Academy which are funded from its GAG, the Company may offer:
- (i) any course of education or training which leads to a qualification that is approved by the Secretary of State for the purposes of section 96 of the Learning and Skills Act 2000; and
  - (ii) any course of education or training not falling within paragraph (i) if the Secretary of State gives his specific written approval for it.

30A. Subject to clause 30B, the Company shall ensure that the following information is published on the website for each **Mainstream Academy**, for each **Alternative Provision Academy**, and where relevant for each **Special Academy**:

- (a) The school's most recent Key Stage 2 results as published by the Secretary of State under the following column headings in the School Performance Tables published on the Department for Education's website:

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<sup>8</sup> Please also see the Charity Commission guidance (CC9): "Speaking out: Guidance on Campaigning and Political Activities by Charities" <http://www.charity-commission.gov.uk/Publications/cc9.aspx>



- (i) "% achieving Level 4 or above in English and maths";
  - (ii) "% making expected progress";
  - (iii) in relation to English, "% achieving Level 5 or above"; and
  - (iv) in relation to maths, "% achieving Level 5 or above".
- (b) The school's most recent Key Stage 4 results as published by the Secretary of State under the following column headings in the School Performance Tables published on the Department for Education's website:
- (i) "% achieving 5 + A\* - C GCSEs (or equivalent) including English and maths GCSEs";
  - (ii) "% achieving the English Baccalaureate"; and
  - (iii) "% of pupils making expected progress".
- (c) Information as to where and by what means the most recent report about the school published by the Chief Inspector may be accessed.
- (d) Information as to where and by what means the School Performance Tables published by the Secretary of State on the Department for Education's website may be accessed.

30B. There is no requirement to publish information under clause 30A if to do so would be in breach of the Company's obligations under the Data Protection Act 1998.

### **Exclusions Agreement**

31. In respect of **Mainstream Academies**, the Company shall, if invited to do so by an LA, enter into an agreement in respect of an Academy with that LA, which has the effect that where:

- (a) the Company admits a pupil to the Academy who has been permanently excluded from a maintained school, the Academy itself or another Academy with whom the LA has a similar agreement; or
- (b) the Company permanently excludes a pupil from the Academy;

payment will flow between the Company and the LA in the same direction and for the same amount that it would, were the Academy a maintained school, under Regulations made under section 47 of the School Standards and Framework Act 1998 relating to the addition or deduction of a maintained school's budget following a permanent exclusion or the admission of a permanently excluded pupil. At the

date of this Agreement, the applicable Regulation is Regulation 23 of the School Finance (England) Regulations 2011.

### **School Meals**

32. The Company shall, if requested to do so by or on behalf of any pupils at any Academy, provide school lunches for those pupils unless it would be unreasonable for it to do so. Subject to the provisions of clause 33 charges may be levied for lunches, but the Company shall otherwise fund the cost of such school lunches from its GAG for **Mainstream Academies**, or from its resources for **Special Academies** and for **Alternative Provision Academies**.
33. In relation to a pupil who is himself or whose parents are in receipt of benefits mentioned in section 5122B of the Education Act 1996 (or equivalent provision governing the entitlement to free school lunches of pupils at maintained schools), the Company shall ensure that a school lunch is provided for such a pupil free of charge to be funded by the Company.

### **Charging**

34. Sections 402 (obligation to enter pupils for public examinations), 450 - 457 (charges), 459 (regulations about information about charges and school hours), 460 (voluntary contributions), 461 (recovery of sums as civil debt) and 462 (interpretation re charges) of the Education Act 1996 (including, for the avoidance of doubt, any secondary legislation made further to those provisions) shall be deemed to apply to each Academy with the following modifications:
- (a) references to any maintained school shall be treated as references to an Academy;
  - (b) references to registered pupils shall be treated as references to registered pupils at an Academy;
  - (c) references to the governing body or the local authority shall, in each case, be treated as references to the Company;

- (d) the Company may charge persons who are not registered pupils at an Academy for education provided or for facilities used by them at that Academy.<sup>8</sup>

### **International Education Surveys**

34A. Section 538A of the Education Act 1996 (power to direct participation in international surveys) shall be deemed to apply to each Academy with the following modifications:

- (a) references to the governing body shall be treated as references to the Company; and
- (b) references to a community, foundation or voluntary school shall be treated as references to the Academy.

### **Pupil Premium**

34B. For **Mainstream Academies**, and those **Special Academies** that receive Pupil Premium Funding<sup>10</sup>, the Company shall publish in each Academy Financial Year information in relation to:

- (a) the amount of Pupil Premium allocation that it will receive during the Academy Financial Year;
- (b) on what it intends to spend the Pupil Premium allocation;
- (c) on what it spent its Pupil Premium in the previous Academy Financial Year;
- (d) the impact in educational attainment, arising from expenditure of the previous Academy Financial Year's Pupil Premium.

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<sup>8</sup> For clarification, such charging is separate and distinct from any arrangement that the Company may make with Commissioners concerning the referral of pupils to the Alternative Provision Academy.

<sup>10</sup> The Pupil Premium is additional funding for schools to support pupils from low-income families. In instances when those pupils are in special settings, the funding can either be allocated to the setting where they are being educated, or held by the local authority to spend specifically on additional educational support to raise the standard of attainment for these pupils. The authority must consult non-mainstream settings about how the Premium for these pupils should be used. Where Pupil Premium is allocated to the Special Academy by the Local Authority, the company must publish information as set out in clause 34B. There is no requirement for Alternative Provision settings to publish such information.



## **DURATION OF SCHOOL DAY AND YEAR**

- 34C. In respect of **Mainstream Academies and Alternative Provision Academies**, the duration of the school day and year will be the responsibility of the Company.<sup>11</sup>

## **GRANTS TO BE PAID BY THE SECRETARY OF STATE**

### **General**

35. The Secretary of State shall pay grants towards Recurrent Expenditure and may pay grants towards Capital Expenditure for each Academy. Except with the Secretary of State's prior agreement, the Company shall not budget for its expenditure in any Academy Financial Year in excess of expected income (subject to clause 80). The Company 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 Company shall commit the Secretary of State to paying any particular amount of grant.
36. "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 37. The Secretary of State shall pay two separate and distinct grants in respect of recurrent expenditure: General Annual Grant ("GAG") and Earmarked Annual Grant ("EAG").

### **Capital Grant**

37. "Capital Expenditure" means expenditure on:
- (a) the acquisition of land and buildings;
  - (b) the erection, enlargement, improvement or demolition of any building including fixed plant, installation, wall, fence or other structure, or any playground or hard standing;
  - (c) the installation of electrical, mechanical or other services other than necessary replacements, repairs and maintenance due to normal wear and tear;
  - (d) the purchase of vehicles and other self-propelled mechanical equipment;

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<sup>11</sup> In respect of **Special Academies**, regulations made under section 551 of the Education Act 1996 apply (currently the Education (School Day and School Year) (England) Regulations 1999).

- (e) the installation and equipping of premises with furnishings and equipment, other than necessary replacements, repairs and maintenance due to normal wear and tear;
- (f) the installation and equipping of premises with computers, networking for computers, operating software and information and communication technology equipment, other than necessary updates or necessary replacements, repairs and maintenance due to normal wear and tear;
- (g) the provision and equipping of premises, including playing fields and other facilities for social activities and physical recreation other than necessary replacements, repairs and maintenance due to normal wear and tear;
- (h) works of a permanent character other than the purchase or replacement of minor day-to-day items;
- (i) any major repairs or replacements which are specified as constituting capital expenditure in any grant letter relating to them;
- (j) such other items (whether of a like or dissimilar nature to any of the foregoing) of a substantial or enduring nature as the Secretary of State may agree shall constitute capital expenditure for the purposes of this Agreement;
- (k) all professional fees properly and reasonably incurred in connection with the provision of any of the above;
- (l) VAT and other taxes payable on any of the above.

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

- 38. Where an Academy is to open in new premises, or where existing premises are to be substantially refurbished or remodelled to enable the Academy to open in such premises, the Secretary of State, may, in his absolute discretion be responsible for meeting the incurred Capital Expenditure for that Academy. To that end, the Secretary of State will consider providing funding in accordance with any arrangements as he considers appropriate.
- 39. Any Capital Expenditure incurred in respect of each Academy on which Capital Grant payments are sought from the Secretary of State will require the specific

prior written agreement of the Secretary of State, which agreement shall not be unreasonably withheld or delayed.

40. Any payment of Capital Grant to the Company under this Agreement is subject to the fulfilment of the following conditions:
- (a) such grants are used solely to defray expenditure approved by the Secretary of State;
  - (b) the Company 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;
  - (c) Any other conditions that the Secretary of State may specify.

#### **Arrangements for Payment of Capital Grant**

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

#### **General Annual Grant**

- 41A. GAG paid by the Secretary of State in respect of an Academy shall only be spent by the Company towards the normal running costs of the Academies.
42. Clauses 42A to 53 apply in respect of **Mainstream Academies** only.
- 42A. GAG will be paid by the Secretary of State to the Company in order to cover the normal running costs of each **Mainstream Academy**. These will include, but are not limited to:
- (a) teachers' salaries and related costs (including full and part time teaching staff and seconded teachers);
  - (b) non-teaching staff salaries and related costs (including pension contributions, educational support staff, administrative and clerical staff and manual and premises related staff);

- (c) employees' expenses;
- (d) the purchase, maintenance, repair and replacement:
  - (i) of teaching and learning materials and other educational equipment, including books, stationery and ICT equipment and software, sports equipment and laboratory equipment and materials;
  - (ii) of other supplies and services;
- (e) examination fees;
- (f) repairs, servicing and maintenance of buildings (including redecoration, heating, plumbing, lighting etc); maintenance of grounds (including boundary fences and walls); cleaning materials and contract cleaning; water and sewage; fuel and light (including fuel oil, solid and other fuel, electricity and gas); rents; rates; purchase, maintenance, repairs and replacement of furniture and fittings;
- (g) insurance;
- (h) medical equipment and supplies;
- (i) staff development (including in-service training);
- (j) curriculum development;
- (k) 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; and
- (m) establishment expenses and other institutional costs.

43. Subject to clauses to 51-52, GAG for each Academy Financial Year for each **Mainstream Academy** will include:

- (a) funding equivalent to that which would be received by a maintained school with similar characteristics, determined by the Secretary of State and notified in the Annual Letter of Funding or its equivalent, taking account of the number of pupils at each Academy;
  - (b) funding in respect of functions which would be carried out by the LA if each Academy was a maintained school.
- 44. The GAG for each Academy Financial Year for each **Mainstream Academy** will also include, payable on a basis equivalent to that applied to maintained schools:
  - (a) funding for matters for which it is necessary for that Academy to incur extra costs, for as long as those costs are deemed necessary by the Secretary of State; and
  - (b) payments in respect of further, specific grants made available to maintained schools, where the relevant Academy meets the requisite conditions and criteria necessary for a maintained school to receive these grants, such payments to be at the discretion of the Secretary of State.
- 45. Subject to clause 46, the basis of the pupil number count for the purposes of determining GAG for the first Academy Financial Year in which a **Mainstream Academy** opens and the following four Academy Financial Years (for the avoidance of doubt, ending at the end of the fifth Academy Financial Year) (the "Initial Five Year Term") will be the Company's most recent estimate of the numbers of pupils on the roll provided in accordance with clause 45A. However, the Secretary of State may make adjustments to the GAG for the following Academy Financial Year to recognise any variation between the number of pupils that were actually on the roll in the previous September and the Company's estimate provided in accordance with clause 45A. The basis of these will be set out in the Annual Letter of Funding.
- 45A. The Secretary of State shall in advance of each Academy Financial Year for a **Mainstream Academy**, at such time or times as he shall determine, request that the Company provides an estimate of the number of pupils on roll in the following September for the Academy for the purposes of determining GAG for an Academy Financial Year. The Company shall provide the requested estimate (such estimate to be based on an objective assessment of numbers) to the Secretary of State as soon as reasonably practicable.
- 46. If in relation to a **Mainstream Academy** the Conditions (as defined in Clause 47 below) have been met then the basis of the pupil number count for the purpose of

determining GAG for the Academy Financial Year in question will be determined in accordance with Clause 47 and Clause 45 will no longer apply.

47. After: (i) all planned Year-groups are present at the Academy (that is, all the pupil cohorts relevant to the age-range of the Academy will have some pupils present); and (ii) the total number of pupils as measured in the Schools Census which is used to fund maintained schools for the financial year overlapping with the Academy Financial Year in question is 90% or more of the planned final size of the Academy, as specified in the Academy's Supplemental Agreement (together, the "Conditions") the basis of the pupil number count for the purpose of determining GAG for the Academy for Academy Financial Years will be:
- (a) for the pupil number count for pupils in Year 11 and below, the Schools Census which is used to fund maintained schools for the financial year overlapping with the Academy Financial Year in question; and
  - (b) for the pupil number count for pupils in Year 12 and above, the formula which for the time being is in use for maintained schools for the calculation of pupil numbers for pupils in Year 12 and above for the purpose of calculating their level of funding.
48. If either of the Conditions have not been met in respect of an Academy Financial Year and the Initial Five Year Term has come to an end, the basis of the pupil count for a **Mainstream Academy** shall be determined by the Secretary of State, taking account of any diseconomies of scale that the Academy will be under as a result of such Condition(s) not applying.
49. For any Academy Financial Year in which GAG for a **Mainstream Academy** is calculated in accordance with clause 46, no adjustment will be made to the formula funding element in the following Academy Financial Year's formula funding element of GAG unless the Company demonstrates to the satisfaction of the Secretary of State that there has been a significant impact on balances. 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.
50. The Secretary of State recognises that:
- (a) in relation to **Mainstream 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 Academy Financial 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 may 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 43-49, in order to enable the Academy to operate effectively<sup>12</sup>.

- (b) in relation to **Mainstream Academies** which open with pupils transferred from one or more maintained schools which have closed, additional GAG resources may 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. If the Secretary of State has indicated that such additional GAG will be payable, the Company will make a bid for this addition to GAG based upon need and providing appropriate supporting evidence.

51. 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 43-49 to allow the relevant **Mainstream 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.

52. The Secretary of State recognises that if he serves notice of intention to terminate a Supplemental Agreement under that agreement the intake of new pupils during the notice period is likely to decline and that in such circumstances payments based simply upon the number of pupils attending the relevant **Mainstream Academy** are unlikely to be sufficient to meet the Academy's needs during the notice period. The Secretary of State may undertake to pay a reasonable and appropriately larger GAG with respect to that Academy in the notice period than would be justified solely on the basis of the methods set out in clauses 43-49, in order to enable the Academy to operate effectively.

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<sup>12</sup> Note that a larger GAG for the Start-Up Period is only applicable to Academies with approved Academy Action Plans.

53. The Secretary of State also recognises that if this Agreement or a Supplemental Agreement is terminated for any reason by either party the number of pupils at the relevant **Mainstream Academy or Mainstream Academies** is likely to decline. In these circumstances both parties undertake to attempt to resolve issues arising from such termination in good faith and with the aim of protecting the interests and the education of the pupils at the Academy.

54. Not used.

54AAA. Clauses 54AA to 54H apply in respect of **Special Academies** only.

54AA. GAG will be paid by the Secretary of State to the Company as a contribution towards the normal running costs of each **Special Academy**. These will include, but are not limited to:

- (a) teachers' salaries and related costs (including full and part time teaching staff and seconded teachers);
- (b) non-teaching staff salaries and related costs (including pension contributions, educational support staff, administrative and clerical staff and manual and premises related staff);
- (c) employees' expenses;
- (d) the purchase, maintenance, repair and replacement:
  - (i) of teaching and learning materials and other educational equipment, including books, stationery and ICT equipment and software, sports equipment and laboratory equipment and materials;
  - (ii) of other supplies and services;
- (e) examination fees;
- (f) repairs, servicing and maintenance of buildings (including redecoration, heating, plumbing, lighting etc); maintenance of grounds (including boundary fences and walls); cleaning materials and contract cleaning; water and sewage; fuel and light (including fuel oil, solid and other fuel, electricity and gas); rents; rates; purchase, maintenance, repairs and replacement of furniture and fittings;
- (g) insurance;



- (h) medical equipment and supplies;
- (i) staff development (including in-service training);
- (j) curriculum development;
- (k) 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; and
- (m) establishment expenses and other institutional costs.

54A. Subject to clauses 54E – 54F, GAG for each Financial Year for each **Special Academy** will include:

- (a) funding equivalent to that which would be received by a maintained special school with similar characteristics, determined by the Secretary of State and notified in the Annual Letter of Funding or its equivalent, taking account of the number of pupils at each Academy;
- (b) funding in respect of functions which would be carried out by the LA if each Academy was a maintained special school.

54B. The GAG for each Academy Financial Year for each **Special Academy** will also include, payable on a basis equivalent to that applied to maintained special schools:

- (a) funding for matters for which it is necessary for that Academy to incur extra costs, for as long as those costs are deemed necessary by the Secretary of State; and
- (b) payments in respect of further, specific grants made available to maintained special schools, where the relevant Academy meets the requisite conditions and criteria necessary for a maintained school to receive these grants, such payments to be at the discretion of the Secretary of State.

- 54C. The Secretary of State will determine GAG for each **Special Academy** for each Academy Funding Year. The determinations will be made taking into account relevant factors. Arrangements for this will be set out in the Annual Letter of funding or its equivalent.
- 54D. The Secretary of State may make provision, within his absolute discretion, for GAG to be adjusted in-year if the number of pupils attending the relevant academy at specified dates exceeds or falls below thresholds specified by letter. Arrangements for this will be set out in the Annual Letter of Funding.
- 54E. The Secretary of State recognises that a larger GAG may be appropriate to meet additional costs during the start-up period, and may pay start-up grant, on a basis determined by him, during that period, the length of which will be stipulated in the Annual Letter of Funding<sup>13</sup>.
- 54F. The Secretary of State recognises that if he serves notice of intention to terminate a Supplemental Agreement, the intake of new pupils during the notice period is likely to decline and that in such circumstances payments based on a number of places related to the number of pupils attending the relevant **Special Academy** are unlikely to be sufficient to meet the Academy's needs during the notice period. The Secretary of State may undertake to pay a reasonable and appropriately larger GAG with respect to that Academy in the notice period than would be justified solely on the basis of the methods set out in clauses 54A-54D, in order to enable the Academy to operate effectively.
- 54G. The Secretary of State also recognises that if this Agreement or a Supplemental Agreement is terminated for any reason by either party the number of pupils at the relevant **Special Academy or Special Academies** is likely to decline. In these circumstances both parties undertake to attempt to resolve issues arising from such termination in good faith and with the aim of protecting the interests and the education of the pupils at the Academy.
- 54H. Not used.
- 54I. Clauses 54J to 54P apply in respect of **Alternative Provision Academies** only.

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<sup>13</sup> Note that a larger GAG for the Start-Up Period is only applicable to Academies with approved Academy Action Plans.

54J. GAG will be paid by the Secretary of State to the Company as a contribution<sup>14</sup> to the normal running costs of the **Alternative Provision Academy**. These will include, but are not limited to:

- (a) teachers' salaries and related costs (including full and part time teaching staff and seconded teachers);
- (b) non-teaching staff salaries and related costs (including pension contributions, educational support staff, administrative and clerical staff and manual and premises related staff);
- (c) employees' expenses;
- (d) the purchase, maintenance, repair and replacement:
  - (i) of teaching and learning materials and other educational equipment, including books, stationery and ICT equipment and software, sports equipment and laboratory equipment and materials;
  - (ii) of other supplies and services;
- (e) examination fees;
- (f) repairs, servicing and maintenance of buildings (including redecoration, heating, plumbing, lighting etc); maintenance of grounds (including boundary fences and walls); cleaning materials and contract cleaning; water and sewage; fuel and light (including fuel oil, solid and other fuel, electricity and gas); rents; rates; purchase, maintenance, repairs and replacement of furniture and fittings;
- (g) insurance;
- (h) medical equipment and supplies;
- (i) staff development (including in-service training);
- (j) curriculum development;
- (k) 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

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<sup>14</sup> The extent of any such contribution to be within the absolute discretion of the Secretary of State.

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; and
- (m) establishment expenses and other institutional costs.

54K. Subject to clause 54M, GAG for each Academy Financial Year for each **Alternative Provision Academy** will include:

- (a) funding determined by the Secretary of State and notified in the Annual Letter of Funding or its equivalent, taking account of the number of pupils and/or places at the Alternative Provision Academy;
- (b) funding in respect of functions which would be carried out by the local authority if the Alternative Provision Academy were a maintained school.
- (c) funding for matters for which it is necessary for the Alternative Provision Academy to incur extra costs, for as long as those costs are deemed necessary by the Secretary of State; and
- (d) payments in respect of further, specific grants made available to Pupil Referral Units maintained by the local authority, where the Alternative Provision Academy meets the requisite conditions and criteria necessary for a Pupil Referral Unit maintained by the local authority to receive these grants.

54L. For each **Alternative Provision Academy**, the Secretary of State will determine GAG for each Academy Financial Year. The determination will be made taking into account relevant factors. Arrangements for this will be set out in the Annual Letter of Funding or its equivalent.

54M. For each **Alternative Provision Academy**, the Secretary of State may make provision, within his absolute discretion, for GAG to be adjusted in-year if the number of pupils attending the relevant Alternative Provision Academy at specified dates exceeds or falls below thresholds specified by letter. Arrangements for this will be set out in the Annual Letter of Funding or its equivalent.

54N. The Secretary of State recognises that if he serves notice of intention to terminate this Agreement, the intake of new pupils during the notice period is likely to decline

and that in such circumstances the total income of the relevant **Alternative Provision Academy** is unlikely to be sufficient. In such circumstances payments based simply upon the number of pupils attending that Academy are unlikely to be sufficient to meet the Academy's needs during the notice period. The Secretary of State may undertake to pay a reasonable and appropriately larger GAG with respect to the Alternative Provision Academy in the notice period than would be justified solely taking into account factors at clause 54J in order to enable the Alternative Provision Academy to operate effectively.

- 54O. The Secretary of State also recognises that if this Agreement is terminated for any reason by either party the number of pupils at the relevant **Alternative Provision Academy** is likely to decline. In these circumstances both parties undertake to attempt to resolve issues arising from such termination in good faith and with the aim of protecting the interests and the education of the pupils at the Alternative Provision Academy.

#### **Earmarked Annual Grant**

55. Earmarked Annual Grant ("EAG") may be paid by the Secretary of State to the Company in respect of either Recurrent Expenditure or Capital Expenditure for such specific purposes as may from time to time be agreed between the Secretary of State and the Company and as described in the relevant funding letter. The Company shall only spend EAG in accordance with the scope, terms and conditions of the grant set out in the relevant funding letter.
56. Where the Company is seeking a specific EAG in relation to any Academy Financial Year, it shall submit a letter outlining its proposals and the reasons for its request to the DfE.

#### **Arrangements for Payment of GAG and EAG**

57. The Secretary of State shall notify the Company at a date preceding the start of each Academy Financial Year of the GAG and EAG figures in respect of each Academy which, subject to Parliamentary approval, the Secretary of State plans for that Academy Financial Year and of the assumptions and figures on which these are based.
58. If GAG or EAG is calculated incorrectly due to a mistake of the Secretary of State then:
- (a) if this leads to an underpayment of GAG, the Secretary of State will correct the underpayment in subsequent Academy Financial Years;

- (b) if this leads to an overpayment of GAG, the Secretary of State reserves the right to recover any overpaid grant in subsequent Academy Financial Years, as appropriate, having considered all the relevant circumstances and taking into account any representations from the Company.
59. If GAG or EAG is calculated incorrectly because the Company provides incorrect information to the Secretary of State then:
- (a) if this leads to an underpayment of GAG, the Secretary of State may correct the underpayment in subsequent Academy Financial Years;
  - (b) if this leads to an overpayment of GAG, the Secretary of State reserves the right to recover any overpaid grant in subsequent Academy Financial Years, as appropriate, having considered all the relevant circumstances and taking into account any representations from the Company.
60. The amounts of GAG for an Academy Financial Year will be determined annually by the Secretary of State. The amount of GAG for each Academy for the initial Academy Financial Year will be notified to the Company in a funding letter at a date preceding that year. For subsequent years the amount of GAG will be notified to the Company in a funding letter preceding that Academy Financial Year (the "Annual Letter of Funding"). The Annual Letter of Funding will not include the amount that the Company 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 Company wherever possible in the Annual Letter of Funding or its equivalent as soon as practicable thereafter.
61. The Secretary of State undertakes to pay GAG in monthly instalments on or before the twenty-fifth day of each month, each such instalment to fund the salaries and other payroll costs for the relevant month of all monthly paid employees and all other costs payable during the next following month. The detailed arrangements for payment will be set out in the Annual Letter of Funding or its equivalent.

#### **Other relevant funding**

62. With regards to a **Mainstream Academy** or a **Special Academy**, the Company may apply to the Secretary of State for financial assistance in relation to proposed redundancies that it may make. On an application to the Secretary of State, he may (at his absolute discretion) agree to meet a proportion of the Company's costs



arising from the inclusion of Academies in the Schedules to the Redundancy Payments (Continuity of Employment in Local Government)(Modification) Order 1999. In response to an application for financial assistance, the Secretary of State may agree to meet the costs of the employees' prior eligible service, being service prior to opening of the Academy, but the Company will be required to meet the costs of service after the opening of the Academy.

- 62A. With regards to an **Alternative Provision Academy**, the Company may apply to the Secretary of State for financial assistance in relation to proposed redundancies that it may make. On an application to the Secretary of State, he may (at his absolute discretion) agree to meet a proportion of the Company's costs arising from the inclusion of Academies in the Schedules to the Redundancy Payments (Continuity of Employment in Local Government) (Modification) Order 1999. In response to an application for financial assistance, the Secretary of State may agree to meet the costs of the employees' prior eligible service, being service prior to the opening of the Alternative Provision Academy, but the Company will be required to meet the costs of service after the opening of the Academy.
63. The Secretary of State may meet costs incurred by the Company in connection with the transfer of employees from any predecessor school under the Transfer of Undertakings (Protection of Employment) Regulations 2006. Payment of grant in respect of such costs is to be agreed between the parties on a case by case basis and the Company 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.
64. The Company may also receive funding from an LA in respect of the provision detailed in statements of SEN for pupils attending an Academy in accordance with the provisions of Section 483A of the Education Act 1996 and regulations made under that section. The Company shall ensure that all provision detailed in statements of SEN is provided for such pupils.
65. Not used.

## **FINANCIAL AND ACCOUNTING REQUIREMENTS**

### **General**

66. The Company shall appoint an Accounting Officer and shall notify the Secretary of State of that appointment.
67. In relation to the use of grant paid to the Company by the Secretary of State, the Company shall abide by the requirements of, and have regard to the guidance in,

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

- 67A. The Company shall abide by the requirements of the current 16 to 19 Funding Guidance published by the Secretary of State and as amended from time to time, or such other guidance on 16 to 19 funding issued by the Secretary of State as may from time to time be applicable, in respect of any of its provision for persons who are above compulsory school age until the academic year in which they reach the age of 19.
68. The formal budget plan must be approved each Academy Financial Year by the Directors of the Company.
69. Any payment of grant by the Secretary of State in respect of each Academy is subject to his being satisfied as to the fulfilment by the Company of the following conditions:
- (a) in its conduct and operation it shall apply financial and other controls which conform to the requirements both of propriety and of good financial management;
  - (b) arrangements have been made to maintain proper accounting records and that statements of income and expenditure and balance sheets may be produced in such form and frequency as the Secretary of State may from time to time reasonably direct;
  - (c) in addition to the obligation to fulfil the statutory requirements referred to in sub-clause f) below, the Company shall prepare its financial statements, Directors' report, Annual Accounts and its Annual Return for each Academy Financial Year in accordance with the Statement of Recommended Practice as issued by the Charity Commission and updated from time to time as if the Company was a non-exempt Charity and/or in such form or manner and by such date as the Secretary of State may reasonably direct and shall file these with the Secretary of State and the Principal Regulator each Academy Financial Year;



- (d) a statement of the accounting policies used should be sent to the Secretary of State with the financial statements and should carry an audit report stating that, in the opinion of the auditors, the statements show a true and fair view of the Company's affairs and that the grants were used for the purposes intended;
  - (e) the Company shall ensure that its accounts are audited annually by independent auditors appointed under arrangements approved by the Secretary of State;
  - (f) the Company prepares and files with the Companies Registry such annual accounts as are required by the Companies Act 2006;
  - (g) the Company shall publish on its website its Annual Accounts, Annual Report, Memorandum, Articles, Funding Agreement and a list of the names of the Directors of the Company; and
  - (h) the Company 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 each Academy is situated.
70. In addition, and at his expense, the Secretary of State may instruct auditors to report to him on the adequacy and effectiveness of the accounting systems and internal controls maintained by the Company to standards determined by the Secretary of State and to make recommendations for improving the financial management of the Company.
71. The books of accounts and all relevant records, files and reports of the Company including those relating to financial controls, shall be open at all reasonable times to officials of the DfE and the National Audit Office and to contractors retained by the DfE or the National Audit Office for inspection or the carrying out of value for money studies; and the Company 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.
72. The Company shall submit information in relation to the finances of each Academy to the Secretary of State in accordance with the requirements of the Academies Financial Handbook as amended from time to time, or as otherwise specified from time to time by the Secretary of State.

73. At the beginning of any Academy Financial Year the Company may hold unspent GAG for any Academy from previous Academy Financial Years amounting to such percentage (if any) as for the time being specified in the Academies Financial Handbook or otherwise as the Secretary of State may specify by notice in writing to the Company prior to the beginning of that Academy Financial Year of the total GAG payable for the Academy in the Academy Financial Year just ended or such higher amount as may from time to time be agreed. The Company shall use such carried forward amount for such purpose, or subject to such restriction on its use, as for the time being specified in the Academies Financial Handbook or otherwise as the Secretary of State may specify by notice in writing to the Company.
74. Notwithstanding clause 73 any additional grant provided over and above that:
- (a) set out in clauses 43-49 in relation to **Mainstream Academies** and made in accordance with clauses 50-52 may be carried forward without limitation or deduction until the Start-up Period or the circumstances set out in clause 52 come to an end.
  - (b) set out in clauses 54A-54D in relation to **Special Academies** and made in accordance with clauses 54E-54F may be carried forward without limitation or deduction until the Start-up Period or the circumstances set out in clause 54F come to an end.
  - (c) set out in clauses 54K-54M in relation to **Alternative Provision Academies** and made in accordance with clauses 54N may be carried forward without limitation or deduction until the circumstances set out in clause 54N come to an end.
75. Any unspent GAG not allowed to be carried forward under clauses 73-74 may be taken into account in the payment of subsequent grant.
- 75A. GAG paid by the Secretary of State shall only be used by the Company for the educational charitable purpose of advancing for the public benefit education in the United Kingdom, in particular but without prejudice to the generality of the foregoing by establishing, maintaining, carrying on, managing and developing Academies offering a broad and balanced curriculum. Such funds shall not be used by the Company for any other charitable purpose without the prior written consent of the Secretary of State, except where the use of such funds for that charitable purpose is merely incidental to their use for the educational charitable purpose of advancing for the public benefit education in the United Kingdom.

76. The Company may also spend or accumulate funds from private sources or public sources other than grants from the Secretary of State for application to the benefit of an Academy as it sees fit. Any surplus arising from private sources or public sources other than grants from the Secretary of State shall be separately identified in the Company's balance sheet.
77. The Company shall not, in relation to assets or property funded (whether in whole or in part) by the Secretary of State or otherwise coming within the meaning of publicly funded land as defined by paragraph 22(3) of Schedule 1 to the Academies Act 2010, without the prior written consent of the Secretary of State which shall not be unreasonably withheld or delayed:
- (a) except such as are given in normal contractual relations, give any guarantees, indemnities or letters of comfort above a value as for the time being specified in the Academies Financial Handbook or otherwise as the Secretary of State may specify by notice in writing to the Company from time to time;
  - (b) write off any debts or liabilities owed to it, nor offer to make any ex gratia payments (such as staff severance or compensation payments), above a value as for the time being specified in the Academies Financial Handbook or otherwise as the Secretary of State may specify by notice in writing to the Company from time to time;
  - (c) except as may be permitted in the Academies Financial Handbook or otherwise as the Secretary of State may specify by notice in writing to the Company, make any sale or purchase of or otherwise dispose of freehold or leasehold property including entering into a contract to dispose of land or granting an option to acquire an interest in land; or
  - (d) take up any leasehold or tenancy agreement for a term exceeding three years.
78. The Company shall provide 30 days' prior written notice to the Secretary of State, whether or not the circumstances require the Secretary of State's consent, of its intention to:
- (a) give any guarantees, indemnities or letters of comfort;
  - (b) write off any debts owed to it or offer to make any ex gratia payments;

- (c) make any sale or purchase of or otherwise dispose of freehold or leasehold property including entering into a contract to dispose of land or granting an option to acquire an interest in land; or
  - (d) take up any leasehold or tenancy agreement for a term exceeding three years.
- 79. Each discovered loss of an amount exceeding the amount for the time being specified by the Secretary of State and arising from suspected theft or fraud, shall be reported by the Company to the Secretary of State at the earliest opportunity.
- 80. It is the responsibility of the Company to ensure that each Academy balances its budget from Academy Financial Year to Academy Financial Year. For the avoidance of doubt, this does not prevent the Company from:
  - (a) subject to clause 73, carrying a surplus from one Academy Financial Year to the next; or
  - (b) carrying forward from a previous Academy Financial Year or Academy Financial Years a sufficient surplus or sufficient cumulative surpluses on grants from the Secretary of State to meet an in-year deficit on such grants in a subsequent financial year; or
  - (c) incurring an in-year deficit on funds from sources other than grants from the Secretary of State in any Academy Financial Year, provided it does not affect the Company's responsibility to ensure that the Company balances its overall budget from Academy Financial Year to Academy Financial Year.
- 80A. The Company shall abide by the requirements of and have regard to the Charity Commission's guidance to charities and charity trustees and in particular the Charity Commission's guidance in Protecting Charities from Harm ('the compliance toolkit'). Any references in this document which require charity trustees to report to the Charity Commission should instead be interpreted as references to report to the Principal Regulator.

### **Borrowing Powers**

- 81. Except as may be permitted by the Academies Financial Handbook (and amended from time to time) or otherwise as the Secretary of State may specify by notice in writing to the Company, the Company shall not borrow against or so as to put at risk property or assets funded (whether in whole or in part) by the Secretary of

State without specific approval of the Secretary of State, such approval may only be granted in limited circumstances. The Company 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 Company in General Meeting and in writing by the Secretary of State, and shall be subject to any conditions which the Secretary of State may reasonably impose.

82. The Company shall provide 30 days' written notice to the Secretary of State of its intention to borrow, whether or not such borrowing requires the Secretary of State's approval under clause 81 above.

#### **Disposal of Assets**

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

84. The sale or disposal by other means, or reinvestment of proceeds from the disposal, of a capital asset by the Company shall require the consent of the Secretary of State, such consent not to be unreasonably withheld or delayed, where:

- (a) the Secretary of State paid capital grant in excess of the value for the time being specified by the Secretary of State for the asset; or
- (b) the asset was transferred to the Company from an LA for no or nominal consideration.

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

86. This clause applies in the event, during the lifetime of this Agreement, of the disposal of a capital asset for which capital grant of any amount was paid by the



Secretary of State, where the asset was acquired by the Company. In this event, the Company 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 Company for its charitable purposes.

87. 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 Company from an LA for no or nominal consideration. In this event the Secretary of State may give consent on the basis that all or part of the proceeds of the disposal should be made over to the LA from which the asset was transferred, taking into account the amount of the proceeds to be reinvested by the Company. The Secretary of State will have regard to any representations from the Company and the LA from which the asset was transferred before giving consent under this clause.
88. Except with the consent of the Secretary of State, the Company shall not dispose of assets funded (whether in whole or in part) by the Secretary of State for a consideration less than the best price that can reasonably be obtained, such consent not to be unreasonably withheld or delayed.
89. The Company shall provide 30 days' written notice to the Secretary of State of its intention to dispose of assets for a consideration less than the best price that can reasonably be obtained, whether or not such disposal requires the Secretary of State's consent under clause 88 above.

## **TERMINATION**

90. This Agreement shall commence on the date hereof and continue until terminated in accordance with clause 91 or until all Supplemental Agreements have terminated.
91. The Secretary of State may at any time by notice in writing terminate this Agreement and each of the Supplemental Agreements such termination to take effect on the date of the notice, on the occurrence, or where in his reasonable opinion there is a serious risk of occurrence, of any of the following events:-
  - (a) the Company 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 Company proposes a voluntary arrangement within Section 1 of the Insolvency Act 1986 (as amended); or
- (c) the Company 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 Company 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 Company; or
- (d) the Company has a receiver and manager (with the exception of Receivers and Managers or Interim Managers appointed by the Charity Commission under the Charities Act 2011 or any subsequent re-enactment of that Act), administrator or administrative receiver appointed over all or any part of its undertakings, assets or income; or
- (e) any distraint, execution or other process is levied or enforced on any of the Company's property and is not paid out, withdrawn or discharged within fifteen Business Days; or
- (f) the Company has passed a resolution for its winding up; or
- (g) an order is made for the winding up or administration of the Company.

92. The Company shall notify the Secretary of State as soon as possible after receiving any petition which may result in an order for the winding up or administration of the Company and shall provide an explanation to the Secretary of State of the circumstances giving rise to the service of such a petition.

93. Not used.

#### **Change of Control**

93A. The Secretary of State may at any time, subject to clause 93C) below, terminate this Agreement by notice in writing to the Academy Trust such termination to take effect on the date of the notice in the event that there is a change:

- (a) in the Control of the Company;
- (b) in the Control of a legal entity that Controls the Company.



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

- 93B. The Company shall notify the Secretary of State in writing of any change or proposed change of Control within the meaning of clause 93A) above, as soon as reasonably practicable after it has become aware of any such change, or proposed change, of Control.
- 93C. When notifying the Secretary of State further to clause 93B), the Company may seek the Secretary of State's agreement that, if he is satisfied that the person assuming Control is suitable, he will not in those circumstances exercise his right to terminate this Agreement further to clause 93A).
94. Not used.

## GENERAL

### Information

95. Without prejudice to any other provision of this Agreement, the Secretary of State acting reasonably may from time to time call for information on any **Mainstream Academy or Special Academy** relating to, but not restricted to, the following matters:
- (a) curriculum;
  - (b) arrangements for the assessment of pupils;
  - (c) teaching staff including numbers, qualifications, experience, salaries, and teaching loads;
  - (d) class sizes;
  - (e) outreach work with other schools and the local community;
  - (f) operation of the admission criteria and over subscription arrangements for the Academy including numbers of applications for places and the number and characteristics of pupils accepted for admission – for Mainstream Academies only;

- (g) numbers of pupils excluded (including permanent and fixed term exclusions);
- (h) levels of authorised and unauthorised attendance;
- (i) charging and remissions policies and the operation of those policies;
- (j) organisation, operation and building management;
- (k) financial controls;
- (l) compliance with the requirements of the Charity Commission's guidance to charities and charity trustees and in particular the Charity Commission's guidance in the Protecting Charities from Harm ('the compliance toolkit') and in CC9: Speaking Out, Campaigning and Political Activities by Charities, as amended from time to time; and
- (m) membership and proceedings of the Company and the Local Governing Body together with any other relevant information concerning the management or governance of the Academy which, subject to clause 99), is reasonably necessary for the Secretary of State to carry out his functions generally and in relation to this Agreement or the relevant Supplemental Agreement.

95A. Without prejudice to any other provision of this Agreement, the Secretary of State acting reasonably may from time to time call for information on **any Alternative Provision Academy** relating to, but not restricted to, the following matters:

- (a) curriculum and the provision generally (including specifically for SEN pupils);
- (b) arrangements for the assessment of pupils and any information about pupil progress, achievement and attainment;
- (c) staff including numbers, qualifications, experience, salaries, and teaching loads;
- (d) class sizes and pupil organisation;
- (e) outreach work with other schools and the local community;

- (f) operation of the referral and reintegration processes for the Alternative Provision Academy including numbers of requested referrals, the number of referrals that have been refused and the reasons for the refusal in each case and the number and characteristics of pupils accepted for admission and destinations/outcomes of pupils/former pupils;
- (g) numbers of pupils excluded (including permanent and fixed term exclusions), characteristics of pupils excluded, reasons for exclusions; outcomes of any independent review panels;
- (h) levels of authorised and unauthorised absence;
- (i) charging and remissions policies and the operation of those policies;
- (j) organisation, operation and building management;
- (k) financial controls;
- (l) compliance with the requirements of the Charity Commission's guidance to charities and charity trustees and in particular the Charity Commission's guidance in the Protecting Charities from Harm ('the compliance toolkit') and in (CC9): "Speaking Out: Guidance on Campaigning and Political Activities by Charities", as amended from time to time; and
- (m) membership and proceedings of the Company and Local Governing Body together with any other relevant information concerning the management or governance of the Academy which, subject to clause 99), is reasonably necessary for the Secretary of State to carry out his functions generally and in relation to this Agreement or the relevant Supplemental Agreement.

96. The Company 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 Company with such information as it may reasonably require of him for the running of an Academy.

#### **Access by the Secretary of State's Officers**

97. The Company shall allow access to the premises of any Academy at any reasonable time to DfE officials. All records, files and reports relating to the running of the Company and each Academy shall be available to them at any reasonable time. The Company shall provide the Secretary of State in advance with papers relating to each Academy prepared for meetings of the Local

Governing Body, of the Company's directors and of the members of the Company. Two DfE officials shall be entitled to attend and to speak at all such meetings, but shall withdraw from any discussion of an Academy's or the Company's relationship with the Secretary of State or any discussion of bids for funding to the Secretary of State. The Company shall take any steps which are required to secure its compliance with the obligations imposed by this clause of this Agreement.

98. The Company shall ensure that:

- (a) the agenda for every meeting of the relevant Local Governing Body and the Company's directors;
- (b) the draft minutes of every such meeting, if they have been approved by the person acting as chairman of that meeting;
- (c) the signed minutes of every such meeting; and
- (d) any report, document or other paper considered at any such meeting.

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

99. There may be excluded from any item required to be made available for inspection by any interested party and to be sent to the Secretary of State by virtue of clause 98, any material relating to:

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

#### **Notices**

100. A notice or communication given to a party under or in connection with this Agreement:

- (a) shall be in writing and in English;

- (b) shall be sent to the party for the attention of the contact and at the address listed in clause 100A;
- (c) shall be sent by a method listed in clause 100C; and
- (d) is deemed received as set out in clause 100C if prepared and sent in accordance with this clause.

100A. The parties' addresses and contacts are:

Name of Party	Position of Contact	Address
Secretary of State	Head of Academies Division	Department for Education, Sanctuary Buildings, Great Smith Street, London SW1P 3BT
The Company	Chairman of Directors	CWA Academy Trust, The College of West Anglia, Tennyson Avenue, King's Lynn, Norfolk, PE30 2QW

- 100B. A party may change its details given in the table in clause 100A) by giving notice, the change taking effect for the party notified of the change at 9.00 am on the date five Business Days after deemed receipt of the notice.
- 100C. Any notice or other communication required to be given to a party under or in connection with this Agreement shall be delivered by hand or sent by pre-paid first-class post or other next working day delivery service. Any notice or communication shall be deemed to have been received if delivered by hand, on signature of a delivery receipt or at the time the notice is left at the address specified in Clause 100A, or otherwise at 9.00 am on the second Business Day after posting.
- 100D. This clause does not apply to the service of any proceedings or other documents in any legal action. For the purposes of clause 100, "writing" shall not include e-mail.
101. The service by the Secretary of State of a notice of termination of a Supplemental Agreement shall not prejudice the ability of the Company (if it wishes to do so) during the notice period to admit pupils to the relevant Academy in accordance with the provisions of this Agreement and the relevant Supplemental Agreement and to receive GAG and EAG in respect of them.

## Complaints

102. If a complaint is made about matters arising in whole or in part prior to the opening of any **Mainstream Academy** or any **Special Academy**, as referred to in clause 2.4 for **Mainstream Academies** and clause 3.1 for **Special Academies** of the relevant supplemental agreement, and all or part of that complaint was being or had been investigated by the Local Government Ombudsman under Part III or the Local Government Act 1974 ('Part III') or that complaint in whole or in part could have been investigated under Part III had the school the Academy replaced remained a maintained school, the Company:

- (a) will abide by the provisions of Part III as though the Academy were a maintained school;
- (b) agrees that the Secretary of State shall have the power to investigate the matter complained of as if it had taken place after conversion;
- (c) agrees to act in accordance with any recommendation from the Secretary of State as though that recommendation had been made under Part III and the Academy were a maintained school.

102A. If a complaint is made about matters arising in whole or in part prior to the opening of any **Alternative Provision Academy**, as referred to in clause 3.1 of the relevant supplemental agreement, and all or part of that complaint was being or had been investigated by the Local Government Ombudsman under Part III of the Local Government Act 1974 ('Part III') or that complaint in whole or in part could have been investigated under Part III had the Pupil Referral Unit the Alternative Provision Academy replaced remained a Pupil Referral Unit, the Company:

- (a) will abide by the provisions of Part III as though the Alternative Provision Academy were a Pupil Referral Unit;
- (b) agrees that the Secretary of State shall have the power to investigate the matter complained of as if it had taken place after conversion;
- (c) agrees to act in accordance with any recommendation from the Secretary of State as though that recommendation had been made under Part III and the Alternative Provision Academy were a Pupil Referral Unit.

102B. If at the time of the opening of any **Mainstream Academy** or any **Special Academy** the investigation of a complaint made to the governing body of the



school that **Mainstream Academy** or any **Special Academy** replaced (as referred to in clause 2.4 for **Mainstream Academies** and clause 3.1 for **Special Academies** of the relevant Supplemental Agreement) has not yet been completed, the Company shall continue to investigate that complaint in accordance with the complaints procedures established by that governing body.

- 102C. If a complaint is made to the Company about matters arising in whole or in part during the 12 months prior to the opening of any **Mainstream Academy** or any **Special Academy** (as referred to in clause 2.4 for **Mainstream Academies** and clause 3.1 for **Special Academies** of the relevant supplemental agreement) the Company agrees to investigate that complaint as if the matter complained of had taken place after the opening of that **Mainstream Academy** or any **Special Academy**.
- 102D. If a complaint is made about matters arising in whole or in part during the 12 months prior to the opening of any Alternative Provision Academy, the Company agrees to investigate that complaint as if the matter complained of had taken place after the opening of that Alternative Provision Academy.
- 102E. With regards to a Mainstream Academy or a Special Academy, if the Secretary of State could have given an order and/or a direction under section 496 and/or section 497 of the Education Act 1996 to the governing body of the school the Academy replaced (as referred to in clause 2.4 for Mainstream Academies and clause 3.1 for Special Academies of the relevant Supplemental Agreement) and that order and/or direction related to matters occurring within the 12 months immediately prior to conversion, the Company agrees:
- (a) the Secretary of State may give orders and/or directions to the Company as though the Academy were a maintained school and sections 496 and 497 applied to the governing body of that maintained school;
  - (b) to act in accordance with any such order and/or direction from the Secretary of State.
- 102F. With regards to an **Alternative Provision Academy** if the Secretary of State could have given an order and/or a direction under section 496 and/or section 497 of the Education Act 1996<sup>15</sup> to the management committee of the Pupil Referral Unit the Alternative Provision Academy replaced (as referred to in clause 3.1 of the relevant Supplemental Agreement) and that order and/or direction related to

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<sup>15</sup> Section 496/7 of the Education Act 1996 applies to Pupil Referral Units by virtue of the Education (PRU)(Application of Enactments)(England) Regulations 2007



matters occurring within the 12 months immediately prior to conversion, the Company agrees:

- (a) the Secretary of State may give orders and/or directions to the Company as though the Alternative Provision Academy were a Pupil Referral Unit and sections 496 and 497 applied to the management committee of that Pupil Referral Unit;
- (b) to act in accordance with any such order and/or direction from the Secretary of State.

## GENERAL

103. This Agreement shall not be assignable by the Company.

103A. No delay, neglect or forbearance on the part of the Secretary of State in enforcing (in whole or in part) any provision of this Agreement or in exercising (in whole or in part) any right or remedy conferred on him by this Agreement shall be or be deemed to be a waiver of such provision or right or remedy or a waiver of any other provision or right or remedy or shall in any way prejudice any right or remedy of the Secretary of State under this Agreement or shall amount to an election not to enforce such provision or exercise such right or remedy (including, for the avoidance of doubt, any right to terminate this Agreement). No single or partial exercise of such right or remedy shall preclude or restrict the further exercise of that or any other right or remedy.

104. The Secretary of State and the Company recognise the difficulties in catering in this Agreement and the Supplemental Agreements for all the circumstances which may arise in relation to the Academies 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 Academies throughout the currency of this Agreement.

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

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

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

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

This Agreement was executed as a Deed on

2013

Executed on behalf of **CWA Academy Trust** by:

.....  
**Director**

In the presence of:

Witness.....

Address.....

Occupation.....

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

.....

**Duly Authorised**

**SCHEDULE 1**

**MODEL SUPPLEMENTAL AGREEMENT**

**THIS AGREEMENT** made

201[●]

**BETWEEN**

(1) **THE SECRETARY OF STATE FOR EDUCATION;** and

(2) [ ]

**IS SUPPLEMENTAL TO THE MASTER FUNDING AGREEMENT** made between the same parties and dated ● 201[●] (the "Master Agreement").

**1. DEFINITIONS AND INTERPRETATION**

1.1. Except as expressly provided in this Agreement words and expressions defined in the Master Agreement shall have the same meanings in this Agreement as were ascribed to them in the Master Agreement.

1.2. The following words and expressions shall have the following meanings:

"the Academy" means the [●] Academy [to be] established at [●].

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

1.3. Reference in this Agreement to clauses and Annexes shall, unless otherwise stated, be to clauses and annexes of this Agreement.

**2. THE ACADEMY**

2.1. The Company will establish and maintain, and carry on or provide for the carrying on of the Academy in accordance with the Master Agreement and this Agreement<sup>1</sup>.

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<sup>1</sup> Where the Academy is to be a "selective school" within the meaning of section 6(4) of the Academies Act 2010, please see alternative wording for this clause in Section C. of the Appendix of Alternative and Additional Clauses. "

Multi Academy Model  
Mainstream

- 2.2. The curriculum provided by the Academy to pupils up to the age of 16 shall be broad and balanced.
- 2.3. The requirements for the admission of pupils to the Academy are set out at Annex 1.

**ACADEMY OPENING DATE**

- 2.4. The Academy shall open as a school on [insert] replacing [insert name of predecessor school if applicable] [which shall cease to be maintained by the Local Authority on that date, which date shall be the conversion date within the meaning of the Academies Act 2010]<sup>2</sup>.
- 2.5. The planned capacity of the Academy is [insert] in the age range [insert], [including a sixth form of [insert] places] [and a nursery unit of [insert] places].

**3. CAPITAL GRANT**

- 3.1. Pursuant to clause 38 of the Master Funding Agreement, the Secretary of State may, in his absolute discretion provide Capital Expenditure funding in accordance with any arrangements he considers appropriate.

**4. GAG AND EAG**

- 4.1. The Secretary of State agrees to pay GAG and EAG to the Company in relation to the Academy in accordance with the Master Agreement.

**4A COMPLAINTS<sup>3</sup>**

- 4A.1 If a complaint is made about matters arising in whole or in part prior to the opening of the Academy, as referred to in clause 2.4 above, and all or part of that complaint was being or had been investigated by the Local Government Ombudsman under Part III of the Local Government Act 1974 ("Part III") or that complaint in whole or in part could have been investigated under Part III had the school the Academy replaced remained a maintained school, the Company:

- (a) will abide by the provisions of Part III as though the Academy were a maintained school;

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<sup>2</sup> Delete words in square brackets if the SFA is being used for an Academy that is replacing a maintained school following school closure under the Education and Inspections Act 1996.

<sup>3</sup> Only include this clause if it is not already contained in the Master Funding Agreement. Otherwise mark as 'Not used'.

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- (b) agrees that the Secretary of State shall have the power to investigate the matter complained of as if it had taken place after conversion;
  - (c) agrees to act in accordance with any recommendation from the Secretary of State as though that recommendation had been made under Part III and the Academy were a maintained school.
- 4A.2 If at the time of the opening of the Academy the investigation of a complaint made to the governing body of the school the Academy replaced (as referred to in clause 2.4 above) has not yet been completed, the Company shall continue to investigate that complaint in accordance with the complaints procedures established by that governing body.
- 4A.3 If a complaint is made to the Company about matters arising in whole or in part during the 12 months prior to the opening of the Academy, the Company agrees to investigate that complaint as if the matter complained of had taken place after the opening of the Academy.
- 4A.4 If the Secretary of State could have given an order and/or a direction under section 496 and/or section 497 of the Education Act 1996 to the governing body of the school the Academy replaced (as referred to in clause 2.4 above) and that order and/or direction related to matters occurring within the 12 months immediately prior to conversion, the Company agrees:
- (a) the Secretary of State may give orders and/or directions to the Company as though the Academy were a maintained school and sections 496 and 497 applied to the governing body of that maintained school;
  - (b) to act in accordance with any such order and/or direction from the Secretary of State.
5. **TERMINATION**
- 5.1. Either party may give not less than seven Academy Financial Years' written notice to terminate this Agreement, such notice to expire on 31 August [ ] or any subsequent anniversary of that date.

**Termination Warning Notice**

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- 5.2. The Secretary of State shall be entitled to issue to the Company a written notice of his intention to terminate this Agreement ("Termination Warning Notice") where he considers that:
- (a) the Academy is no longer meeting the requirements referred to in clause 12 of the Master Agreement (subject to clause 5.9 of this Agreement);
  - (b) the conditions and requirements set out in clauses 13-34B of the Master Agreement are no longer being met;
  - (c) the standards of performance of pupils at the Academy are unacceptably low;
  - (d) there has been a serious breakdown in the way the Academy is managed or governed;
  - (e) the safety of pupils or staff is threatened (whether by breakdown of discipline or otherwise); or
  - (f) the Company is otherwise in material breach of the provisions of this Agreement or the Master Agreement.
- 5.3. A Termination Warning Notice issued by the Secretary of State in accordance with clause 5.2 shall specify:
- (a) reasons for the Secretary of State's issue of the Termination Warning Notice;
  - (b) the remedial measures which the Secretary of State requires the Company to carry out, with associated deadlines, in order to rectify the defaults identified ("Specified Remedial Measures"); and
  - (c) the date by which the Company must respond to the Termination Warning Notice providing its representations with regard thereto or confirm that it accepts and agrees to undertake the Specified Remedial Measures.
- 5.4. The Secretary of State shall consider any response and representations from the Company which are received by the date specified in accordance with clause 5.3(c) and shall confirm whether he considers that:
- (a) in the light of the Company's representations in response to the Termination Warning Notice, some or all of the Specified Remedial

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Measures are not required to be implemented (and if so which) and/or the Specified Remedial Measures are being or will be implemented within the specified timeframe; or

- (b) subject to any further measures he reasonably requires ("Further Remedial Measures") being implemented by a specified date or any evidence he requires being provided, the implementation of such measures has been or will be successfully completed within the specified timeframes; or
- (c) he is not satisfied that the Company will rectify the defaults identified in the Termination Warning Notice within the specified timeframes. (In such circumstances, the Secretary of State may notify the Company of his intention to terminate the Agreement on a specified date.)

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

- (a) the Company has not, by the date specified in clause 5.3(c), responded to the Termination Warning Notice either confirming that it accepts and agrees to undertake the Specified Remedial Measures or providing its representations with regard to the Specified Remedial Measures; or
- (b) the Company has not carried out the Specified Remedial Measures and/or Further Remedial Measures within the specified timeframes;

provided that having considered any representations made by the Academy Trust pursuant to clause 5.3(c), the Secretary of State remains satisfied that it is appropriate to terminate the Agreement.

**Notice of Intention to Terminate**

5.6. The Secretary of State may at any time give written notice of his intention to terminate this Agreement where the Chief Inspector gives notice to the Company in accordance with section 13(3) of the Education Act 2005 stating that in the Chief Inspector's opinion –

- (a) special measures are required to be taken in relation to the Academy; or
- (b) the Academy requires significant improvement.



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- 5.7. Any notice issued by the Secretary of State in accordance with clause 5.6 shall invite the Company to respond with any representations within a specified timeframe.
- 5.8. Where the Secretary of State has given notice of his intention to terminate this Agreement in accordance with clauses 5.6 and 5.7 and –
- (a) he has not received any representations from the Company within the timeframe specified in clause 5.7; or
  - (b) having considered the representations made by the Company pursuant to clause 5.7, the Secretary of State remains satisfied that it is appropriate to terminate this Agreement

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

**Termination with Immediate Effect**

- 5.9. If the Secretary of State has cause to serve a notice on the Company under section 165 of the Education Act 2002 and a determination (from which all rights of appeal have been exhausted) has been made that the Academy shall be struck off the Register of Independent Schools, he may terminate this Agreement by notice in writing to the Company such termination to take effect on the date of the notice.

**Notice of Intention to Terminate by Company**

- 5.10. The Secretary of State shall, at a date preceding the start of each Academy Financial Year, provide to the Company an indication of the level of funding to be provided by the Secretary of State to the Company by way of GAG and EAG in the next following Academy Financial Year (the "**Indicative Funding**"). If the Company is of the opinion that, after receipt of the Indicative Funding for the next following Academy Financial Year (the "**Critical Year**") and of the taking into account all other resources available and likely to be available to the Academy, including such funds as are set out in clause 73 of the Master Agreement and such other funds as are and likely to be available to the Academy from other academies operated by the Company ("**All Other Resources**"), it is likely that the cost of running the Academy during the Critical Year would cause the Company, on the basis of the Indicative Funding, to become insolvent (and for this reason only) then the Company may give notice of its intention to terminate this Agreement at the end of the then current Academy Financial Year.

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- 5.11. Any notice given by the Company under clause 5.10 shall be in writing and shall be served on the Secretary of State not later than 28 February preceding the Critical Year or, if the Secretary of State shall not have given notice of the Indicative Funding to the Company on or before the date specified in clause 5.10 above, within six weeks after the Secretary of State shall have done so. The notice must specify:
- 5.11.1 the grounds upon which the Company's opinion is based and include the evidence of those grounds and any professional accounting advice the Company has received and including a detailed statement of steps which the Company proposes to take with a view to ensuring that as soon as reasonably practicable the costs of running the Academy are reduced sufficiently to ensure that such costs are less than the Indicative Funding and All Other Resources and the period of time within which such steps will be taken; and
  - 5.11.2 the shortfall in the Critical Year between the Indicative Funding and All Other Resources expected to be available to the Company to run the Academy and the projected expenditure on the Academy; and
  - 5.11.3 a detailed budget of income and expenditure for the Academy during the Critical Year (the "**Projected Budget**").
- 5.12. Both parties undertake to use their best endeavours to agree whether or not the cost of running the Academy during the Critical Year would cause the Company, on the basis of the Indicative Funding and All Other Resources, to become insolvent. Both parties recognise that they will need to engage in a constructive dialogue at the time about how best to provide education for the pupils at the Academy and undertake to use their best endeavours to agree a practical solution to the problem.
- 5.13. If no agreement is reached by 30 April (or such other date as may be agreed between the parties) as to whether the cost of running the Academy during the Critical Year on the basis of the Indicative Funding and All Other Resources would cause the Company to become insolvent, then that question shall be referred to an independent expert (the "**Expert**") for resolution. The Expert's determination shall be final and binding on both parties. The Expert shall be requested to specify in his determination the amount of the shortfall in funding (the "**Shortfall**"). The Expert shall be an insolvency practitioner with significant professional experience of educational institutions or academies. If the parties fail to agree upon the

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appointment of the Expert then the Expert shall be appointed by the President for the time being of the Institute of Chartered Accountants in England and Wales. The Expert's fees shall be borne equally between the parties.

- 5.14. The Expert shall be required in reaching his determination to take account of advice from an educational specialist who is professionally familiar with the issues arising from the budget management of schools. If the parties fail to agree upon the appointment of the educational specialist then the educational specialist shall be appointed by the Chairman for the time being of the Specialist Schools and Academies Trust. The educational specialist's fees shall be borne equally between the parties.
- 5.15. If the Expert determines that the cost of running the Academy during the Critical Year would cause the Company, on the basis of the Indicative Funding and All Other Resources, to become insolvent, and the Secretary of State shall not have agreed to provide sufficient additional funding to cover the Shortfall, then the Company shall be entitled to terminate this Agreement, by notice expiring on 31 August prior to the Critical Year. Any such notice shall be given within 21 days after (a) the Expert's determination shall have been given to the parties or (b), if later, the Secretary of State shall have given written notice of his refusal to provide sufficient additional funding for the Academy to cover the Shortfall.

6. **EFFECT OF TERMINATION**

- 6.1. In the event of termination of this Agreement however occurring, the school shall cease to be an Academy within the meaning of Sections 1 and 1A of the Academies Act 2010.
- 6.2. Subject to clauses 6.3 and 6.4, if the Secretary of State terminates this Agreement pursuant to clause 5.1 of this Agreement, the Secretary of State shall indemnify the Company. If the Secretary of State terminates this Agreement otherwise than pursuant to clause 5.1 of this Agreement, the Secretary of State may in his absolute discretion indemnify or (to such extent if any as he may in his absolute discretion consider appropriate) compensate the Company.
- 6.3. The amount of any such indemnity or compensation shall be determined by the Secretary of State having regard to any representations made to him by the Company, and shall be paid at such times and in such manner as the Secretary of State may reasonably think fit.
- 6.4. The categories of expenditure incurred by the Company in consequence of the termination of the Agreement in respect of which the Secretary of State shall

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(where the Secretary of State terminates this Agreement pursuant to clause 5.1) indemnify the Company and may (where the Secretary of State terminates this Agreement otherwise than pursuant to clause 5.1) in his absolute discretion indemnify or compensate the Company 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.

6.5. Subject to clause 6.6, on the termination of this Agreement however occurring, the Company shall in respect of any of its capital assets at the date of termination:

- (a) promptly transfer a proportion of the assets to a person nominated by the Secretary of State, if the Secretary of State considers that all or some of those assets need to be used for any educational purposes by that nominee. The proportion of the assets to be transferred shall be the same as the proportion of the capital contribution made by the Secretary of State to the original value of those assets, whether that contribution was made on the establishment of the Academy or at a later date; or
- (b) if the Secretary of State confirms that a transfer under clause 6.5(a) is not required, promptly repay to the Secretary of State a sum equivalent to the percentage of the value of the assets at the date of termination, or, by agreement with the Secretary of State, at the date of subsequent disposal of those assets. Such percentage to be the same as the percentage of the capital contribution made by the Secretary of State to the original value of those assets, whether that contribution was made on the establishment of the Academy or later.

6.6. The Secretary of State may waive in whole or in part the repayment due under clause 6.5(b) if:

- (a) the Company obtains his permission to invest the proceeds of sale for its charitable objects; or
- (b) the Secretary of State directs all or part of the repayment to be paid to the LA.

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

7. **ANNEX**

- 7.1. The Annex to this Agreement forms part of and is incorporated into this Agreement.

8. **THE MASTER AGREEMENT**

- 8.1. Except as expressly provided in this Agreement the Master Agreement shall continue in full force and effect.
- 8.2. Clauses [insert clause number(s)] of the Master Agreement do not apply to the Academy<sup>4</sup>.

9. **GENERAL**

- 9.1. This Agreement shall not be assignable by the Company.
- 9.2. No delay, neglect or forbearance on the part of the Secretary of State in enforcing (in whole or in part) any provision of this Agreement or in exercising (in whole or in part) any right or remedy conferred on him by this Agreement shall be or be deemed to be a waiver of such provision or right or remedy or a waiver of any other provision or right or remedy or shall in any way prejudice any right or remedy of the Secretary of State under this Agreement or shall amount to an election not to enforce such provision or exercise such right or remedy (including, for the avoidance of doubt, any right to terminate this Agreement). No single or partial exercise of such right or remedy shall preclude or restrict the further exercise of that or any other right or remedy.
- 9.3. Termination of this agreement, for any reason, shall not affect the accrued rights, remedies, obligations or liabilities of the parties existing at termination.
- 9.4. This deed may be executed in any number of counterparts, each of which when executed and delivered shall constitute a duplicate original, but all the counterparts shall together constitute the one agreement.

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<sup>4</sup> This clause should be included where the Master Agreement contains a requirement for **Mainstream Academies** to employ teachers with QTS. If the Master Agreement does not contain this requirement, clause 8.2 should be removed from this supplemental funding agreement and marked 'not used'. Provisions in the Master Agreement requiring the academy trust to employ only qualified teachers as the SENCO and as the designated teacher for looked after children should remain.

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- 9.5. This Agreement and any dispute or claim arising out of or in connection with it or its subject matter or formation (including non-contractual disputes or claims) shall be governed by and construed in accordance with the law of England and Wales.
- 9.6. The parties irrevocably agree that the courts of England and Wales shall have exclusive jurisdiction to settle any dispute or claim that arises out of or in connection with this agreement or its subject matter or formation (including non-contractual disputes or claims).

This Agreement was executed as a Deed on  
201[•]

Executed on behalf of by:

[Either

.....  
**Director**

In the presence of:

Witness.....

Address.....

Occupation.....]

[Or

.....  
**Director**

.....1  
**Director/Secretary**



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

.....

**Duly Authorised**

**ANNEX TO THIS SUPPLEMENTAL AGREEMENT**

Requirements for the Admission for pupils at the

Academy      Annex 1

**APPENDIX OF ADDITIONAL OR ALTERNATIVE CLAUSES THAT MAY BE NEEDED  
DEPENDING ON THE TYPE OF ACADEMY**

**A. FORMER VC OR FOUNDATION SCHOOLS DESIGNATED UNDER SECTION  
69 SSFA**

*For converting Academies that were previously VC schools or foundation schools  
designated by an order under section 69(3) of the SSFA as a school having a  
religious character.*

*INSERT the following clauses as additional clauses 2.6-2.8. Note that these clauses  
are for use if the Academy was a former VC or foundation school with a religious  
designation and has foundation governors defined as Foundation Governors in the  
Articles.*

**TEACHERS AND OTHER STAFF**

**2.6 The Company shall in relation to:**

- (a) any person who may apply for a position as an employee or to be  
otherwise engaged by the Company, and
- (b) any employee with whom the Company enters into a contract of  
employment or a contract for services

act in accordance with and hereby agrees to be bound by sub-sections 58(2), (3),  
(5), (6) & (9) and sections 59 to 60 of the Schools Standards and Framework Act  
1998 ("SSFA") as modified below, so far as those provisions apply to, and as if the  
Company were, a voluntarily controlled or foundation school designated by an  
order under section 69(3) of the SSFA as a school having a religious character.  
For the avoidance of doubt, the Company agrees and acknowledges that section  
124A of the SSFA shall not therefore apply to it in relation to the persons referred  
to at (a) and (b) above.

**2.7 (1) Section 58 of the SSFA shall apply to the Company with the following  
modifications:**

- (a) in subsection (3) for the words "head teacher" read "principal"
- (b) in subsection (5) & (6) for "foundation governors" read "Foundation  
Governors" as defined in the Articles of Association;

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- (c) in subsection (6)(b) for the words "governing body" read "appropriate body";
- (d) in subsection (9) for (a) and (b) read the words "Company";

(2) Section 60(4) of the SSFA shall apply to the Company with the modification that for the words "head teacher" read "principal" each time they occur.

**RELIGIOUS EDUCATION AND COLLECTIVE WORSHIP**

[2.8] Clause 26 of the Master Agreement shall not apply and Clause 27 of the Master Agreement shall be replaced by the following:

The requirements for religious education and collective worship are as follows:

- (a) subject to clause 28 of the Master Agreement, the Company Trust shall ensure that 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 as if the Academy were a foundation school or voluntary controlled school with a religious character;
- (b) subject to clause 28 of the Master Agreement, the Company shall comply with the requirements of section 70(1) of, and Schedule 20 to, the School Standards and Framework Act 1998 as if the Academy were a foundation school or voluntary controlled school with a religious character, and as if references to 'the required collective worship' were references to collective worship in accordance with the tenets and practices of the specified religion or religious denomination of the Academy;

**[Next section only if the Academy is a denominational faith Academy CE, RC etc. rather than 'Christian']**

- (c) the Company shall ensure that the quality of the Academy's collective worship given in accordance with the tenets and practice of the specific religion or religious denomination is inspected. Such inspection shall be conducted by a person chosen by the Company and the Academy shall secure that such inspection shall comply with the requirements set out in any statutory provision and regulations as if the Academy were a foundation or voluntary controlled school which has been designated under

section 69(3) of the School Standards and Framework Act 1998 as having  
a religious character.

***Where additional clauses 2.6 and 2.7 have been inserted, sub-clause 5.2b) should be replaced with the following:***

b) the conditions and requirements set out in clauses 2.6 and 2.7 of this Agreement and in clauses 13-34B of the Master Agreement are no longer being met;

**B. LAND CLAUSES – FOR INSERTION WHERE FREEHOLD OR LEASEHOLD LAND WILL BE HELD BY THE COMPANY**

***Where a freehold interest in publicly funded land for use by the Academy is to be transferred to the Company insert all of the following clauses (6A-6D and the definitions of "land" and "insured risks" at clause 1.2).***

***Where a leasehold interest in publicly funded land for use by the Academy is to be transferred to the Company using one of the DfE's model leases, insert only clauses 6A and the definition of "land" at clause 1.2 (the other land clauses can be left out as these overlap with what is covered by the lease).***

***Where the Company will have both freehold and leasehold interests in publicly funded land, (because it has been transferred more than one piece of land), then insert all the land clauses but the Company may include a clause saying that clauses 6B-6D do not apply to land in which the Company holds a leasehold interest only.***

***The following definitions are to be inserted into clause 1.2:***

"Insured Risks" means fire,, lightning,, explosion,, earthquake,, storm,, tempest,, flood,, subsidence,, landslip,, heave impact,, terrorism,, bursting or overflowing of water tanks and pipes,, , damage by aircraft and other aerial devices, or articles dropped there from, riot and civil commotion,, labour disturbance,, and malicious damage and such other risks as the Company insures against from time to time subject in all cases to any exclusions or limitations as may from time to time be imposed by the insurers or underwriters.

"the Land" means the publicly funded land (including for the avoidance of doubt all buildings, structures landscaping and other erections) situated at and known as

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[insert address(es) of the land that is to be transferred to the Academy] [and [if applicable] registered under [enter Title number of Land].

**AND**

***Insert the following headings and paragraphs after clause 6.7 to become 6A):***

**LAND**

**Restrictions on Land transfer**

6A. Recognising that they are or will be receiving publicly funded land at nil consideration (which for the purposes of this transaction shall include leases granted at a peppercorn rent) the Company:

- (a) shall, within 28 days from the transfer to it of the Land, apply to the Land Registry for a restriction in the proprietorship register (under section 43(1)(a) of the Land Registration Act 2002 in Form RX1 as prescribed by Rule 91 and Schedule 4 of the Land Registration Rules 2003) in the following terms:

*No disposition of the registered estate by the proprietor of the registered estate is to be registered without a written consent signed by the Secretary of State for Education, of Sanctuary Buildings, Great Smith Street, London SW1P 3BT*

- (b) shall take any further steps required to ensure that the restriction referred to in clause 6A(a) is entered on the proprietorship register,
- (c) shall provide the Secretary of State with confirmation of the entry of the restriction referred to in clause 6A(a) as soon as practicable after it receives notification from the Land Registry,
- (d) in the event that it has not registered the restriction referred to in clause 6A(a), hereby consents to the entering of the restriction referred to in 6A(a) in the register by the Secretary of State (under s. 43(1)(b) of the Land Registration Act 2002),
- (e) shall not, without the consent of the Secretary of State, apply to dis-apply, modify or remove (by cancellation or otherwise) a restriction entered in accordance with clause 6A(a) or 6A(d) above, whether by itself, a holding



company, a subsidiary company, or a receiver, administrator or liquidator acting in the name of the Company.

### **Repair and Upkeep**

- 6B. The Company shall keep the Land clean and tidy and make good any damage it causes to the Land and / or any deterioration to the condition of the Land that may arise from the date of this Agreement.

### **Insurance**

- 6C. The Company shall:-

- (a) keep the Land insured with a reputable insurance office against loss or damage by the Insured Risks in the sum the Company is advised represents the reinstatement value of the Land from time to time;
- (b) pay the premiums for insurance promptly as they become due and maintain in force the policies of insurance on the Land;
- (c) following the incidence of damage to or destruction of the Land and subject to receipt of all necessary consents licences permissions and the like apply the proceeds of the policy of the insurance received for those purposes in rebuilding and reinstating the Land (provided that this clause should be satisfied if the Company provides premises not necessarily identical to the Land as the same existing prior to such damage or destruction occurring) as soon as may be reasonably practicable;
- (d) produce to the Secretary of State a copy of the insurance policy whenever reasonably requested and the receipt for the last or other evidence of renewal and up to date details of the amount of cover (but no more often than once in any period of 12 months in both cases);
- (e) not knowingly do anything whereby any policy of insurance relating to the Land may become void or voidable.
- (f) insure against liability in respect of property owners' and third party risks including occupiers liability.

### **Transfer of Land on Termination of Agreement**

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- 6D. In recognition by the Company that they are or will be taking a transfer of publicly-funded land for nil consideration (which for the purposes of this transaction shall include leases granted at a peppercorn rent), the Company hereby grants and the Secretary of State hereby accepts an option, exercisable by the Secretary of State or his nominee, to transfer the said land pursuant to Schedule 1 to the Academies Act 2010. The option hereby granted shall be exercisable (by notice in writing by or on behalf of the Secretary of State) on the termination of this Funding Agreement for whatever cause. On the exercise of this option, the Law Society's Standard Conditions of Sale for Commercial Property in force at the date of such exercise shall apply to the transaction and completion shall take place 28 days after such exercise.
- 6E. In further recognition by the Company that they are or will be taking a transfer of publicly-funded land for nil consideration, (which for the purposes of this transaction shall include leases granted at a peppercorn rent), to protect the option granted under clause 6D, the Company:
- (a) shall, within 14 days from the transfer to it of the Land, apply to the Land Registry in Form AN1 as prescribed by Rule 81 of the Land Registration Rules 2003 for a notice to be entered in the register (under section 34(3)(a) of the Land Registration Act 2002) to protect the option granted under clause 6D and including a copy of this Agreement as evidence of that option,
  - (b) shall take any further steps required to ensure that the notice referred to in clause 6E(a) is entered on the proprietorship register,
  - (c) shall provide the Secretary of State with confirmation of the entry of the notice referred to in clause 6E(a) as soon as practicable after it receives notification from the Land Registry,
  - (d) in the event that it has not registered the notice referred to in clause 6E(a), hereby consents to the entering of the notice referred to in 6E(a) in the register by the Secretary of State (by application in Form UN1 under s. 34(3)(b) of the Land Registration Act 2002),
  - (e) shall not, without the consent of the Secretary of State, apply to dis-apply, modify or remove (by cancellation or otherwise) a notice entered in accordance with clause 6E(a) or 6E(d) above, whether by itself, a holding company, a subsidiary company, or a receiver, administrator or liquidator acting in the name of the Company.

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- (f) in the case of previously unregistered land, for the further protection of the option granted in Clause 6D the Company shall within 14 days of the signing of this Agreement make application to register a Class C (iv) land charge in the Land Charges Registry and a Caution against First Registration in the Land Registry and shall provide the Secretary of State with copies of the entries secured thereby within 7 days of completing each registration, respectively. If the Secretary of State is of the view that the Company has failed to perform the registration obligations in this sub-clause he shall be at liberty to make his own applications to secure these registrations.

**C. SELECTIVE ACADEMIES**

***Additional clauses to be inserted in the Supplemental FA where the converting school is a Selective Academy and the Annex providing for the removal of the Academy's selective arrangements is to be annexed.***

**1. Insert at the end of clause 2.3:**

The procedure for the removal of the Academy's selective admission arrangements is set out at Annex 2.

**2. On the final page ANNEXES TO THIS SUPPLEMENTAL AGREEMENT insert:**

The procedure for the removal of the Academy's selective admission arrangements at the Academy Annex 2

***Amendments to be made to clause 2.1 where the converting school is a Selective Academy.***

***Insert the following words at the end of clause 2.1:***

***"...save that clauses 12 and 18 of the Master Agreement do not apply in so far as they require the Academy to be an all ability inclusive school as the Academy is a "selective school" within the meaning of Section 6(4) of the Academies Act 2010."***

**D. ACADEMIES WITH PFI ARRANGEMENTS**

***There are a number of PFI specific clauses that need to be inserted into Funding Agreements where there are PFI arrangements in existence relating to the land/property of the Academy.***

***Your Project Lead will provide you with the additional clauses that will be needed.***

**E. FOR ACADEMIES WITH SEN UNITS/PROVISION RESERVED FOR PUPILS WITH SEN**

***For Academies with SEN Units and/or Resourced Provision the following additional clauses should be inserted:***

- 2.3A. Subject to Clause 2.3B), the academy will operate designated places reserved for pupils with special educational needs (SEN Unit and or Resourced Provision) with up to [insert] planned places for pupils [with insert SEN category] in the age range [insert].
- 2.3B. The Secretary of State may at any time determine that the [SEN Unit/Resourced Provision] should cease to operate.
- 2.3C. In making any determination under clause 2.3B) the Secretary of State shall:
- (i) have regard to the views of the Academy and local authorities in the area (in their strategic role in the commissioning of SEN provision); and
  - (ii) consider the impact of such a determination on the local authorities' ability to secure suitable SEN provision for all children within the area.

***For Academies with SEN Units and/or Resourced Provision clause 2.5 should be replaced with the following clause:***

- 2.5. The planned capacity of the Academy is [insert] in the age range [insert], [including a sixth form of [insert] places] [and a nursery unit of [insert] places] and will subject to Clause 2.3B) operate designated reserved provision for pupils with special educational needs (SEN Unit or Resourced Provision) for up to [insert] planned places for pupils with [insert SEN category] in the age range [insert].

**F. FOR ACADEMIES WITH 16-19 PROVISION**

***For Academies with 16-19 provision the following clause should be inserted where it is not already included in the Master Funding Agreement:***

**2A. 16 – 19 FUNDING GUIDANCE**

- 2A.1 The Company shall abide by the requirements of the current 16 to 19 Funding Guidance published by the Secretary of State and as amended from time to time, or such other guidance on 16 to 19 funding issued by the Secretary of State as

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may from time to time be applicable, in respect of any of its provision at the Academy for persons who are above compulsory school age until the academic year in which they reach the age of 19.

**SCHEDULE 1**

**MODEL SUPPLEMENTAL FUNDING AGREEMENT**

**THIS AGREEMENT** made

20[●]

**BETWEEN**

(1) **THE SECRETARY OF STATE FOR EDUCATION**; and

(2) [ ]

**IS SUPPLEMENTAL TO THE MASTER FUNDING AGREEMENT** made between the same parties and dated ● 20 (the "**Master Agreement**").

**1. DEFINITIONS AND INTERPRETATION**

1.1. Except as expressly provided in this Agreement words and expressions defined in the Master Agreement shall have the same meanings in this Agreement as were ascribed to them in the Master Agreement.

1.2. The following words and expressions shall have the following meanings:

"the Academy" means the [●] **Special Academy** [to be] established at [●].

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

1.3. Reference in this Agreement to clauses and Annexes shall, unless otherwise stated, be to clauses and annexes of this Agreement.

**2. THE ACADEMY**

2.1. The Company will establish and maintain, and carry on or provide for the carrying on of the Academy in accordance with the Master Agreement and this Agreement.



- 2.2. The Company must ensure special educational provision is made at the Academy for one or more categories of SEN. These categories may include, but are not limited to [list as appropriate]<sup>1</sup>
- 2.3. The Company may not refuse to admit a child to the school whose statement names the Academy on the sole basis that some, or all, of the child's SEN do not feature in the categories referred to in clause 2.2 of this agreement.
- 2.4. The requirements for the admission of pupils to the Academy are set out at Annex

3. **ACADEMY OPENING DATE**

- 3.1. The Academy shall open as a school on [insert] replacing [insert name of predecessor school if applicable] [which shall cease to be maintained by the Local Authority on that date, which date shall be the conversion date within the meaning of the Academies Act 2010<sup>2</sup>].

4. **PUPILS**

- 4.1. The planned number of places at the Special Academy is [insert] in the age range [insert],[including residential places], [including a sixth form of [insert] places] [and a nursery unit of [insert] places]. The number of funded places and the [age ranges] is/are not determinative of GAG. GAG for each Academy Funding Year will be determined by the Secretary of State in accordance with clauses 54C and 54D of the Master Agreement.
- 4.2. Where the Company considers that there is a need to increase the planned number of places stated in clause 4.1, the Company must seek the approval of the Secretary of State and the requirements of this Agreement may be amended accordingly by agreement between the Secretary of State and the Company.

4A. **COMPLAINTS<sup>3</sup>**

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<sup>1</sup> List the categories of SEN that the Special Academy will be designated for. For Academies that convert further to the Academies Act 2010, they must be the same as the predecessor school's designation immediately prior to conversion. The categories of SEN are SpLD, MLD, SLD, PMLD, BESD, SLCN, ASD, VI, HI, MSI, PD.

<sup>2</sup> Delete words in square brackets if the SFA is being used for an Academy that is replacing a maintained school following school closure under the Education and Inspections Act 1996.

<sup>3</sup> Only include this clause if it is not already contained in the Master Funding Agreement. Otherwise mark as 'Not used'.

- 4A.1. If a complaint is made about matters arising in whole or in part prior to the opening of the Academy as referred to in clause 3.1 above, and all or part of that complaint was being or had been investigated by the Local Government Ombudsman under Part III of the Local Government Act 1974 ('Part III') or that complaint in whole or in part could have been investigated under Part III had the school the Academy replaced remained a maintained school, the Company:
- (a) will abide by the provisions of Part III as though the Academy were a maintained school;
  - (b) agrees that the Secretary of State shall have the power to investigate the matter complained of as if it had taken place after conversion;
  - (c) agrees to act in accordance with any recommendation from the Secretary of State as though that recommendation had been made under Part III and the Academy were a maintained school.
- 4A.2. If at the time of the opening of the Academy the investigation of a complaint made to the governing body of the school the Academy replaced (as referred to in clause 3.1 above) has not yet been completed, the Company shall continue to investigate that complaint in accordance with the complaints procedures established by that governing body.
- 4A.3. If a complaint is made to the Company about matters arising in whole or in part during the 12 months prior to the opening of the Academy, the Company agrees to investigate that complaint as if the matter complained of had taken place after the opening of the Academy.
- 4A.4. If the Secretary of State could have given an order and/or a direction under section 496 and/or section 497 of the Education Act 1996 to the governing body of the school the Academy replaced (as referred to in clause 3.1 above) and that order and/or direction related to matters occurring within the 12 months immediately prior to conversion, the Company agrees:
- (a) the Secretary of State may give orders and/or directions to the Company as though the Academy were a maintained school and sections 496 and 497 applied to the governing body of that maintained school;
  - (b) to act in accordance with any such order and/or direction from the Secretary of State.

5. **CAPITAL GRANT**

- 5.1. Pursuant to clause 38 of the Master Funding Agreement, the Secretary of State may, in his absolute discretion provide Capital Expenditure funding in accordance with any arrangements he considers appropriate.

6. **GAG AND EAG**

- 6.1. The Secretary of State agrees to pay GAG and EAG to the Company in relation to the Academy in accordance with the Master Agreement.

7. **TERMINATION**

- 7.1. Either party may give not less than seven Academy Financial Years' written notice to terminate this Agreement, such notice to expire on 31 August [ ] or any subsequent anniversary of that date.

**Termination Warning Notice**

- 7.2. The Secretary of State shall be entitled to issue to the Company a written notice of his intention to terminate this Agreement ("Termination Warning Notice") where he considers that:
- (a) the Academy is no longer meeting the requirements referred to in clause 12A of the Master Agreement;
  - (b) the conditions and requirements set out in clauses 2.2 and 2.3 of this Agreement and clauses 13-34B of the Master Agreement are no longer being met;
  - (c) the standards of performance of pupils at the Academy are unacceptably low;
  - (d) there has been a serious breakdown in the way the Academy is managed or governed;
  - (e) the safety of pupils or staff is threatened (whether by breakdown of discipline or otherwise); or
  - (f) the Company is otherwise in material breach of the provisions of this Agreement or the Master Agreement.

- 7.3. A Termination Warning Notice issued by the Secretary of State in accordance with clause 7.2 shall specify:
- (a) reasons for the Secretary of State's issue of the Termination Warning Notice;
  - (b) the remedial measures which the Secretary of State requires the Company to carry out, with associated deadlines, in order to rectify the defaults identified ("Specified Remedial Measures"); and
  - (c) the date by which the Company must respond to the Termination Warning Notice providing its representations with regard thereto or confirm that it accepts and agrees to undertake the Specified Remedial Measures.
- 7.4. The Secretary of State shall consider any response and representations from the Company which are received by the date specified in accordance with clause 7.3(c) and shall confirm whether he considers that:
- (a) in the light of the Company's representations in response to the Termination Warning Notice, some or all of the Specified Remedial Measures are not required to be implemented (and if so which) and/or the Specified Remedial Measures are being or will be implemented within the specified timeframe; or
  - (b) subject to any further measures he reasonably requires ("Further Remedial Measures") being implemented by a specified date or any evidence he requires being provided, the implementation of such measures has been or will be successfully completed within the specified timeframes; or
  - (c) he is not satisfied that the Company will rectify the defaults identified in the Termination Warning Notice within the specified timeframes. (In such circumstances, the Secretary of State may notify the Company of his intention to terminate the Agreement on a specified date.)
- 7.5. The Secretary of State may by notice in writing terminate this Agreement with effect from a specified date in the event that:
- (a) the Company has not, by the date specified in clause 7.3(c), responded to the Termination Warning Notice either confirming that it accepts and

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agrees to undertake the Specified Remedial Measures or providing its representations with regard to the Specified Remedial Measures; or

- (b) the Company has not carried out the Specified Remedial Measures and/or Further Remedial Measures within the specified timeframes;

provided that having considered any representations made by the Company pursuant to clause 7.3(c), the Secretary of State remains satisfied that it is appropriate to terminate the Agreement.

#### **Notice of Intention to Terminate**

7.6. The Secretary of State may at any time give written notice of his intention to terminate this Agreement where the Chief Inspector gives notice to the Company in accordance with section 13(3) of the Education Act 2005 stating that in the Chief Inspector's opinion –

- (a) special measures are required to be taken in relation to the Academy; or
- (b) the Academy requires significant improvement.

7.7. Any notice issued by the Secretary of State in accordance with clause 7.6 shall invite the Company to respond with any representations within a specified timeframe.

7.8. Where the Secretary of State has given notice of his intention to terminate this Agreement in accordance with clauses 7.6 and 7.7 and –

- (a) he has not received any representations from the Company within the timeframe specified in clause 7.7; or
- (b) having considered the representations made by the Company pursuant to clause 7.7, the Secretary of State remains satisfied that it is appropriate to terminate this Agreement

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

#### **Termination with Immediate Effect**

- 7.9. If the Secretary of State has cause to serve a notice on the Company under section 165 of the Education Act 2002 and a determination (from which all rights of appeal have been exhausted) has been made that the Academy shall be struck off the Register of Independent Schools, he may terminate this Agreement by notice in writing to the Company such termination to take effect on the date of the notice.

#### **Notice of Intention to Terminate by Company**

- 7.10. The Secretary of State shall, at a date preceding the start of each Academy Financial Year, provide to the Company an indication of the level of funding to be provided by the Secretary of State to the Company by way of GAG and EAG in the next following Academy Financial Year (the "**Indicative Funding**"). If the Company is of the opinion that, after receipt of the Indicative Funding for the next following Academy Financial Year (the "**Critical Year**") and of the taking into account all other resources available and likely to be available to the Academy, including such funds as are set out in clause 7.3 of the Master Agreement and such other funds as are and likely to be available to the Academy from other academies operated by the Company ("**All Other Resources**"), it is likely that the cost of running the Academy during the Critical Year would cause the Company, on the basis of the Indicative Funding, to become insolvent (and for this reason only) then the Company may give notice of its intention to terminate this Agreement at the end of the then current Academy Financial Year.
- 7.11. Any notice given by the Company under clause 7.10 shall be in writing and shall be served on the Secretary of State not later than 28 February preceding the Critical Year or, if the Secretary of State shall not have given notice of the Indicative Funding to the Company on or before the date specified in clause 7.10 above, within six weeks after the Secretary of State shall have done so. The notice must specify:
- 7.11.1. the grounds upon which the Company's opinion is based and include the evidence of those grounds and any professional accounting advice the Company has received and including a detailed statement of steps which the Company proposes to take with a view to ensuring that as soon as reasonably practicable the costs of running the Academy are reduced sufficiently to ensure that such costs are less than the Indicative Funding and All Other Resources and the period of time within which such steps will be taken; and



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- 7.11.2. the shortfall in the Critical Year between the Indicative Funding and All Other Resources expected to be available to the Company to run the Academy and the projected expenditure on the Academy; and
  - 7.11.3. a detailed budget of income and expenditure for the Academy during the Critical Year (the **"Projected Budget"**).
- 7.12. Both parties undertake to use their best endeavours to agree whether or not the cost of running the Academy during the Critical Year would cause the Company, on the basis of the Indicative Funding and All Other Resources, to become insolvent. Both parties recognise that they will need to engage in a constructive dialogue at the time about how best to provide education for the pupils at the Academy and undertake to use their best endeavours to agree a practical solution to the problem.
- 7.13. If no agreement is reached by 30 April (or such other date as may be agreed between the parties) as to whether the cost of running the Academy during the Critical Year on the basis of the Indicative Funding and All Other Resources would cause the Company to become insolvent, then that question shall be referred to an independent expert (the **"Expert"**) for resolution. The Expert's determination shall be final and binding on both parties. The Expert shall be requested to specify in his determination the amount of the shortfall in funding (the **"Shortfall"**). The Expert shall be an insolvency practitioner with significant professional experience of educational institutions or academies. If the parties fail to agree upon the appointment of the Expert then the Expert shall be appointed by the President for the time being of the Institute of Chartered Accountants in England and Wales. The Expert's fees shall be borne equally between the parties.
- 7.14. The Expert shall be required in reaching his determination to take account of advice from an educational specialist who is professionally familiar with the issues arising from the budget management of large schools. If the parties fail to agree upon the appointment of the educational specialist then the educational specialist shall be appointed by the Chairman for the time being of the Specialist Schools and Academies Trust. The educational specialist's fees shall be borne equally between the parties.

If the Expert determines that the cost of running the Academy during the Critical Year would cause the Company, on the basis of the Indicative Funding and All Other Resources, to become insolvent, and the Secretary of State shall not have agreed to provide sufficient additional funding to cover the Shortfall, then the Company shall be entitled to terminate this Agreement, by notice expiring on 31

August prior to the Critical Year. Any such notice shall be given within 21 days after (a) the Expert's determination shall have been given to the parties or (b), if later, the Secretary of State shall have given written notice of his refusal to provide sufficient additional funding for the Academy to cover the Shortfall.

**8. EFFECT OF TERMINATION**

- 8.1. In the event of termination of this Agreement however occurring, the school shall cease to be an Academy within the meaning of Section 1 of the Academies Act 2010.
- 8.2. Subject to clauses 8.3 and 8.4, if the Secretary of State terminates this Agreement pursuant to clause 7.1 of this Agreement, the Secretary of State shall indemnify the Company. If the Secretary of State terminates this Agreement otherwise than pursuant to clause 7.1 of this Agreement, the Secretary of State may in his absolute discretion indemnify or (to such extent if any as he may in his absolute discretion consider appropriate) compensate the Company.
- 8.3. The amount of any such indemnity or compensation shall be determined by the Secretary of State having regard to any representations made to him by the Company, and shall be paid at such times and in such manner as the Secretary of State may reasonably think fit.
- 8.4. The categories of expenditure incurred by the Company in consequence of the termination of the Agreement in respect of which the Secretary of State shall (where the Secretary of State terminates this Agreement pursuant to clause 7.1) indemnify the Company and may (where the Secretary of State terminates this Agreement otherwise than pursuant to clause 7.1) in his absolute discretion indemnify or compensate the Company 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.
- 8.5. Subject to clause 8.6, on the termination of this Agreement however occurring, the Company shall in respect of any of its capital assets at the date of termination:
- (a) promptly transfer a proportion of the assets to a person nominated by the Secretary of State, if the Secretary of State considers that all or some of those assets need to be used for any educational purposes by that nominee. The proportion of the assets to be transferred shall be the same as the proportion of the capital contribution made by the Secretary of State

to the original value of those assets, whether that contribution was made on the establishment of the Academy or at a later date; or

- (b) if the Secretary of State confirms that a transfer under clause 8.5(a) is not required, promptly repay to the Secretary of State a sum equivalent to the percentage of the value of the assets at the date of termination, or, by agreement with the Secretary of State, at the date of subsequent disposal of those assets. Such percentage to be the same as the percentage of the capital contribution made by the Secretary of State to the original value of those assets, whether that contribution was made on the establishment of the Academy or later.

8.6. The Secretary of State may waive in whole or in part the repayment due under clause 8.5(b) if:

- (a) the Company obtains his permission to invest the proceeds of sale for its charitable objects; or
- (b) the Secretary of State directs all or part of the repayment to be paid to the LA.

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

## 9. **ANNEX**

9.1. The Annex to this Agreement forms part of and is incorporated into this Agreement.

## 10. **THE MASTER AGREEMENT**

10.1. Except as expressly provided in this Agreement the Master Agreement shall continue in full force and effect.

## 11. **ENGLISH LAW**

11.1. This Agreement shall be not be assignable by the Company.

11.2. No delay, neglect or forbearance on the part of the Secretary of State in enforcing (in whole or in part) any provision of this Agreement or in exercising (in whole or in

part) any right or remedy conferred on him by this Agreement shall be or be deemed to be a waiver of such provision or right or remedy or a waiver of any other provision or right or remedy or shall in any way prejudice any right or remedy of the Secretary of State under this Agreement or shall amount to an election not to enforce such provision or exercise such right or remedy (including, for the avoidance of doubt, any right to terminate this Agreement). No single or partial exercise of such right or remedy shall preclude or restrict the further exercise of that or any other right or remedy.

- 11.3. Termination of this agreement, for any reason, shall not affect the accrued rights, remedies, obligations or liabilities of the parties existing at termination.
- 11.4. This deed may be executed in any number of counterparts, each of which when executed and delivered shall constitute a duplicate original, but all the counterparts shall together constitute the one agreement.
- 11.5. This Agreement and any dispute or claim arising out of or in connection with it or its subject matter or formation (including non-contractual disputes or claims) shall be governed by and construed in accordance with the law of England and Wales.
- 11.6. The parties irrevocably agree that the courts of England and Wales shall have exclusive jurisdiction to settle any dispute or claim that arises out of or in connection with this agreement or its subject matter or formation (including non-contractual disputes or claims).

This Agreement was executed as a Deed on

201[•]

Executed on behalf of by:

[Either

.....  
Director

In the presence of:

Witness.....

Special Academies Multi Model

Address.....

Occupation.....]

[Or

.....  
Director

.....]  
Director/Secretary

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

.....  
Duly Authorised

**APPENDIX OF**

**ADDITIONAL OR ALTERNATIVE CLAUSES THAT MAY BE NEEDED DEPENDING ON THE TYPE OF ACADEMY**

**A. LAND CLAUSES – FOR INSERTION WHERE FREEHOLD OR LEASEHOLD LAND WILL BE HELD BY THE COMPANY**

*Where a freehold interest in publicly funded land for use by the Academy is to be transferred to the Company insert all of the following clauses (8A-8D and the definitions of "land" and "insured risks" at clause 1.2)*

*Where a leasehold interest in publicly funded land for use by the Academy is to be transferred to the Company using one of the DfE's model leases, insert only clauses 8A and the definition of "land" at clause 1.2 (the other land clauses can be left out as these overlap with what is covered by the lease)*

*Where the Company will have both freehold and leasehold interests in publicly funded land, (because it has been transferred more than one piece of land), then insert all the land clauses but the Company may include a clause saying that clauses 8B-8D do not apply to land in which the Company holds a leasehold interest only.*

*The following definitions are to be inserted into clause 1.2:*

"Insured Risks" means fire, lightning, explosion, earthquake, storm, tempest, flood, subsidence, landslip, heave impact, terrorism, bursting or overflowing of water tanks and pipes, damage by aircraft and other aerial devices, or articles dropped there from, riot and civil commotion, labour disturbance, and malicious damage and such other risks as the Company insures against from time to time subject in all cases to any exclusions or limitations as may from time to time be imposed by the insurers or underwriters.

"the Land" means the publicly funded land (including for the avoidance of doubt all buildings, structures landscaping and other erections) situated at and known as [insert address(es) of the land that is to be transferred to the Academy] [and [if applicable] registered under [enter Title number of Land]].

**AND**



***Insert the following headings and paragraphs after clause 8.7 to become 8A):***

## **LAND**

### **Restrictions on Land transfer**

8A. Recognising that they are or will be receiving publicly funded land at nil consideration (which for the purposes of this transaction shall include leases granted at a peppercorn rent) the Company:

- (a) shall, within 28 days from the transfer to it of the Land, apply to the Land Registry for a restriction in the proprietorship register (under section 43(1)(a) of the Land Registration Act 2002 in Form RX1 as prescribed by Rule 91 and Schedule 4 of the Land Registration Rules 2003) in the following terms:

*No disposition of the registered estate by the proprietor of the registered estate is to be registered without a written consent signed by the Secretary of State for Education, of Sanctuary Buildings, Great Smith Street, London SW1P 3BT*

- (b) shall take any further steps required to ensure that the restriction referred to in clause 8A(a) is entered on the proprietorship register,
- (c) shall provide the Secretary of State with confirmation of the entry of the restriction referred to in clause 8A(a) as soon as practicable after it receives notification from the Land Registry,
- (d) in the event that it has not registered the restriction referred to in clause 8A(a), hereby consents to the entering of the restriction referred to in 8A(a) in the register by the Secretary of State (under s. 43(1)(b) of the Land Registration Act 2002),
- (e) shall not, without the consent of the Secretary of State, apply to dis-apply, modify or remove (by cancellation or otherwise) a restriction entered in accordance with clause 8A(a) or 8A(d) above, whether by itself, a holding company, a subsidiary company, or a receiver, administrator or liquidator acting in the name of the Company.

### **Repair and Upkeep**

- 8B. The Company shall keep the Land clean and tidy and make good any damage it causes to the Land and / or any deterioration to the condition of the Land that may arise from the date of this Agreement.

**Insurance**

- 8C. The Company shall:-

- (a) keep the Land insured with a reputable insurance office against loss or damage by the Insured Risks in the sum the Company is advised represents the reinstatement value of the Land from time to time;
- (b) pay the premiums for insurance promptly as they become due and maintain in force the policies of insurance on the Land;
- (c) following the incidence of damage to or destruction of the Land and subject to receipt of all necessary consents licences permissions and the like apply the proceeds of the policy of the insurance received for those purposes in rebuilding and reinstating the Land (provided that this clause should be satisfied if the Company provides premises not necessarily identical to the Land as the same existing prior to such damage or destruction occurring) as soon as may be reasonably practicable;
- (d) produce to the Secretary of State a copy of the insurance policy whenever reasonably requested and the receipt for the last or other evidence of renewal and up to date details of the amount of cover (but no more often than once in any period of 12 months in both cases);
- (e) not knowingly do anything whereby any policy of insurance relating to the Land may become void or voidable.
- (f) insure against liability in respect of property owners' and third party risks including occupiers liability.

**Transfer of Land on Termination of Agreement**

- 8D. In recognition by the Company that they are or will be taking a transfer of publicly-funded land for nil consideration (which for the purposes of this transaction shall include leases granted at a peppercorn rent), the Company hereby grants and the Secretary of State hereby accepts an option, exercisable by the Secretary of State or his nominee, to transfer the said land pursuant to Schedule 1 to the Academies

Act 2010. The option hereby granted shall be exercisable (by notice in writing by or on behalf of the Secretary of State) on the termination of this Funding Agreement for whatever cause. On the exercise of this option, the Law Society's Standard Conditions of Sale for Commercial Property in force at the date of such exercise shall apply to the transaction and completion shall take place 28 days after such exercise.

8E. In further recognition by the Company that they are or will be taking a transfer of publicly-funded land for nil consideration, (which for the purposes of this transaction shall include leases granted at a peppercorn rent), to protect the option granted under clause 8D, the Company:

- (a) shall, within 14 days from the transfer to it of the Land, apply to the Land Registry in Form AN1 as prescribed by Rule 81 of the Land Registration Rules 2003 for a notice to be entered in the register (under section 34(3)(a) of the Land Registration Act 2002) to protect the option granted under clause 8D and including a copy of this Agreement as evidence of that option.
- (b) shall take any further steps required to ensure that the notice referred to in clause 8E(a) is entered on the proprietorship register,
- (c) shall provide the Secretary of State with confirmation of the entry of the notice referred to in clause 8E(a) as soon as practicable after it receives notification from the Land Registry,
- (d) in the event that it has not registered the notice referred to in clause 8E(a), hereby consents to the entering of the notice referred to in 8E(a) in the register by the Secretary of State (by application in Form UN1 under s. 34(3)(b) of the Land Registration Act 2002),
- (e) shall not, without the consent of the Secretary of State, apply to dis-apply, modify or remove (by cancellation or otherwise) a notice entered in accordance with clause 8E(a) or 8E(d) above, whether by itself, a holding company, a subsidiary company, or a receiver, administrator or liquidator acting in the name of the Company.
- (f) in the case of previously unregistered land, for the further protection of the option granted in Clause 8D the Company shall within 14 days of the signing of this Agreement make application to register a Class C (iv) land charge in the Land Charges Registry and a Caution against First

Registration in the Land Registry and shall provide the Secretary of State with copies of the entries secured thereby within 7 days of completing each registration, respectively. If the Secretary of State is of the view that the Company has failed to perform the registration obligations in this sub-clause he shall be at liberty to make his own applications to secure these registrations.

**B. ACADEMIES WITH PFI ARRANGEMENTS**

*There are a number of PFI specific clauses that need to be inserted into Funding Agreements where there are PFI arrangements in existence relating to the land/property of the Academy.*

*Your Project Lead will provide you with the additional clauses that will be needed.*

**C. FOR ACADEMIES WITH 16-19 PROVISION**

*For Academies with 16-19 provision the following clause should be inserted where it is not already included in the Master Funding Agreement:*

**2A. 16 – 19 FUNDING GUIDANCE**

- 2A.1. The Company shall abide by the requirements of the current 16 to 19 Funding Guidance published by the Secretary of State and as amended from time to time, or such other guidance on 16 to 19 funding issued by the Secretary of State as may from time to time be applicable, in respect of any of its provision at the Academy for persons who are above compulsory school age until the academic year in which they reach the age of 19.

**ANNEX TO THIS SUPPLEMENTAL AGREEMENT**

Requirements for the Admission for pupils at the  
Academy      Annex 1

**SCHEDULE 1**

**MODEL SUPPLEMENTAL FUNDING AGREEMENT**

**THIS AGREEMENT** made

20[●]

**BETWEEN**

(1) **THE SECRETARY OF STATE FOR EDUCATION**; and

(2) [ ]

IS SUPPLEMENTAL TO THE MASTER FUNDING AGREEMENT made between the same parties and dated 20[●] (the "Master Agreement").

**1. DEFINITIONS AND INTERPRETATION**

1.1. Except as expressly provided in this Agreement words and expressions defined in the Master Agreement shall have the same meanings in this Agreement as were ascribed to them in the Master Agreement.

1.2. The following words and expressions shall have the following meanings:

"the Alternative Provision Academy" means the [●] **Alternative Provision Academy** [to be] established at [●].

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

1.3. Reference in this Agreement to clauses and Annexes shall, unless otherwise stated, be to clauses and annexes of this Agreement.

**2. THE ALTERNATIVE PROVISION ACADEMY**

2.1. The Company will establish and maintain, and carry on or provide for the carrying on of the Alternative Provision Academy in accordance with the Master Agreement and this Agreement.



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Alternative Provision

- 2.2. The curriculum provided by the Alternative Provision Academy to pupils up to the age of 16 shall be broad and balanced.
- 2.3. The Company shall ensure that the broad and balanced curriculum includes English and mathematics.
- 2.4. The Company must ensure that the Alternative Provision Academy meets the requirements set out in section 1C of the Academies Act 2010, and that educational provision is made at the Alternative Provision Academy for children of compulsory school age who, by reason of illness, exclusion from school or otherwise, may not for any period receive suitable education unless alternative provision is made for them.
- 2.5. The requirements for the admission of pupils to the Alternative Provision Academy are set out at Annex 1.

3. **ALTERNATIVE PROVISION ACADEMY OPENING DATE**

- 3.1. The Alternative Provision Academy shall open as a school on [INSERT] [replacing [INSERT NAME OF THE PREDECESSOR PUPIL REFERRAL UNIT] which shall cease to be maintained by the Local Authority on that date, which date shall be the conversion date within the meaning of the Academies Act 2010<sup>1</sup>].

4. **PUPILS**

- 4.1. The planned number of places at the Alternative Provision Academy is [INSERT] places in the age range [INSERT], [including [INSERT] places for students of a sixth form of age], [including up to [INSERT] hospital education provision places<sup>2</sup>], [including [INSERT] places for pupils with a statement of special education needs naming the [INSERT NAME] Alternative Provision Academy<sup>3</sup>], [and a nursery unit of [INSERT] places]. The planned number of places [and the age ranges] is/are not determinative of GAG. GAG for each Academy Financial Year will be determined by the Secretary of State in accordance with clauses 54L and 54M of the Master Agreement.
- 4.2. Where the Company considers that there is a need to increase the planned number of places stated in clause 4.1, the Company must seek the approval of the

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<sup>1</sup> Delete words in square brackets if the SFA is being used for an Alternative Provision Academy that is not replacing a Pupil Referral Unit.

<sup>2</sup> See footnote to paragraph 7a) of the Admissions Annex 1.

<sup>3</sup> This is the expected number of places where the Alternative Provision Academy is named in a statement. See paragraph 6 of the Admissions Annex 1.

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### Alternative Provision

Secretary of State and the requirements of this Agreement may be amended accordingly by agreement between the Secretary of State and the Company.

#### **4A COMPLAINTS<sup>4</sup>**

- 4A.1 If a complaint is made about matters arising in whole or in part prior to the opening of the Alternative Provision Academy, as referred to in clause 3.1 above, and all or part of that complaint was being or had been investigated by the Local Government Ombudsman under Part III or the Local Government Act 1974 ("Part III") of that complaint in whole or in part could have been investigated under Part III had the Pupil Referral Unit the Alternative Provision Academy replaced remained a Pupil Referral Unit, the Company:
- (a) will abide by the provisions of Part III as though the Alternative Provision Academy were a Pupil Referral Unit;
  - (b) agrees that the Secretary of State shall have the power to investigate the matter complained of as if it had taken place after conversion;
  - (c) agrees to act in accordance with any recommendation from the Secretary of State as though that recommendation had been made under Part III and the Alternative Provision Academy were a Pupil Referral Unit.
- 4A.2 If at the time of the opening of the Alternative Provision Academy the investigation of a complaint made to the governing body of the school the Alternative Provision Academy replaced (as referred to in clause 3.1 above) has not yet been completed, the Company shall continue to investigate that complaint in accordance with the complaints procedures established by that governing body.
- 4A.3 If a complaint is made to the Company about matters arising in whole or in part during the 12 months prior to the opening of the Alternative Provision Academy, the Company agrees to investigate that complaint as if the matter complained of had taken place after the opening of the Alternative Provision Academy.
- 4A.4 If the Secretary of State could have given an order and/or a direction under section 496 and/or section 497 of the Education Act 1996 to the management committee of the Pupil Referral Unit the Alternative Provision Academy replaced (as referred to in clause 3.1 above) and that order and/or direction related to matters occurring within the 12 months immediately prior to conversion, the Company agrees.

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<sup>4</sup> Only include this clause if it is not already contained in the Master Funding Agreement. Otherwise mark as 'Not used'

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- (a) the Secretary of State may give orders and/or directions to the Company as though the Alternative Provision Academy were a Pupil Referral Unit and sections 496 and 497 applied to the management committee of that Pupil Referral Unit;
- (b) to act in accordance with any such order and/or direction from the Secretary of State.

5. **CAPITAL GRANT**

- 5.1. Pursuant to clause 38 of the Master Funding Agreement, the Secretary of State may, in his absolute discretion provide Capital Expenditure funding in accordance with any arrangements he considers appropriate.

6. **GAG AND EAG**

- 6.1. The Secretary of State agrees to pay GAG and EAG to the Company in relation to the Alternative Provision Academy in accordance with the Master Agreement.

7. **TERMINATION**

- 7.1. Either party may give not less than seven Academy Financial Years' written notice to terminate this Agreement, such notice to expire on 31 August [ ] or any subsequent anniversary of that date.

**Termination Warning Notice**

- 7.2. The Secretary of State shall be entitled to issue to the Company a written notice of his intention to terminate this Agreement ("**Termination Warning Notice**") where he considers that:
  - (a) the Alternative Provision Academy is no longer meeting the requirements as set out in clause 2.2 and 2.3 of this Agreement (subject to clause 7.9 of this Agreement);
  - (b) the conditions and requirements set out in clauses 12B-34C of the Master Agreement are no longer being met;
  - (c) the standards of performance of pupils at the Alternative Provision Academy are unacceptably low;

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- (d) there has been a serious breakdown in the way the Alternative Provision Academy is managed or governed;
- (e) the safety of pupils or staff is threatened (whether by breakdown of discipline or otherwise); or
- (f) the Company is otherwise in material breach of the provisions of this Agreement or the Master Agreement.

7.3. A Termination Warning Notice issued by the Secretary of State in accordance with clause 7.2 shall specify:

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

7.4. The Secretary of State shall consider any response and representations from the Company which are received by the date specified in accordance with clause 7.3(c) and shall confirm whether he considers that:

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

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

- (a) the Company has not, by the date specified in clause 7.3(c), responded to the Termination Warning Notice either confirming that it accepts and agrees to undertake the Specified Remedial Measures or providing its representations with regard to the Specified Remedial Measures; or
- (b) the Company has not carried out the Specified Remedial Measures and/or Further Remedial Measures within the specified timeframes;

provided that having considered any representations made by the Academy Trust pursuant to clause 7.3(c), the Secretary of State remains satisfied that it is appropriate to terminate the Agreement.

**Notice of Intention to Terminate**

7.6. The Secretary of State may at any time give written notice of his intention to terminate this Agreement where the Chief Inspector gives notice to the Company in accordance with section 13(3) of the Education Act 2005 stating that in the Chief Inspector's opinion –

- (a) special measures are required to be taken in relation to the Academy; or
- (b) the Academy requires significant improvement.

7.7. Any notice issued by the Secretary of State in accordance with clause 7.6 shall invite the Company to respond with any representations within a specified timeframe.

7.8. Where the Secretary of State has given notice of his intention to terminate this Agreement in accordance with clauses 7.6 and 7.7 and –

- (a) he has not received any representations from the Company within the timeframe specified in clause 7.7; or
- (b) having considered the representations made by the Company pursuant to clause 7.7, the Secretary of State remains satisfied that it is appropriate to terminate this Agreement



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

**Termination with Immediate Effect**

- 7.9. If the Secretary of State has cause to serve a notice on the Company under section 165 of the Education Act 2002 and a determination (from which all rights of appeal have been exhausted) has been made that the Alternative Provision Academy shall be struck off the Register of Independent Schools, he may terminate this Agreement by notice in writing to the Company such termination to take effect on the date of the notice.

**Notice of Intention to Terminate by Company**

- 7.10. The Secretary of State shall, at a date preceding the start of each Academy Financial Year, provide to the Company an indication of the level of funding to be provided by the Secretary of State to the Company by way of GAG and EAG in the next following Academy Financial Year (the "**Indicative Funding**"). If the Company is of the opinion that, after receipt of the Indicative Funding for the next following Academy Financial Year (the "**Critical Year**") and of the taking into account all other resources available and likely to be available to the Alternative Provision Academy, including such funds as are set out in clause 73 of the Master Agreement and such other funds as are and likely to be available to the Academy from other academies operated by the Company ("**All Other Resources**"), it is likely that the cost of running the Alternative Provision Academy during the Critical Year would cause the Company, on the basis of the Indicative Funding, to become insolvent (and for this reason only) then the Company may give notice of its intention to terminate this Agreement at the end of the then current Academy Financial Year.
- 7.11. Any notice given by the Company under clause 7.10 shall be in writing and shall be served on the Secretary of State not later than 28 February preceding the Critical Year or, if the Secretary of State shall not have given notice of the Indicative Funding to the Company on or before the date specified in clause 7.10 above, within six weeks after the Secretary of State shall have done so. The notice must specify:
- 7.11.1. the grounds upon which the Company's opinion is based and include the evidence of those grounds and any professional accounting advice the Company has received and including a detailed statement of steps which the Company proposes to take with a view to ensuring that as soon as reasonably practicable the costs of running the



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Alternative Provision Academy are reduced sufficiently to ensure that such costs are less than the Indicative Funding and All Other Resources and the period of time within which such steps will be taken; and

- 7.11.2. the shortfall in the Critical Year between the Indicative Funding and All Other Resources expected to be available to the Company to run the Academy and the projected expenditure on the Alternative Provision Academy; and
  - 7.11.3. a detailed budget of income and expenditure for the Alternative Provision Academy during the Critical Year (the "**Projected Budget**").
- 7.12. Both parties undertake to use their best endeavours to agree whether or not the cost of running the Alternative Provision Academy during the Critical Year would cause the Company, on the basis of the Indicative Funding and All Other Resources, to become insolvent. Both parties recognise that they will need to engage in a constructive dialogue at the time about how best to provide education for the pupils at the Alternative Provision Academy and undertake to use their best endeavours to agree a practical solution to the problem.
- 7.13. If no agreement is reached by 30 April (or such other date as may be agreed between the parties) as to whether the cost of running the Alternative Provision Academy during the Critical Year on the basis of the Indicative Funding and All Other Resources would cause the Company to become insolvent, then that question shall be referred to an independent expert (the "**Expert**") for resolution. The Expert's determination shall be final and binding on both parties. The Expert shall be requested to specify in his determination the amount of the shortfall in funding (the "**Shortfall**"). The Expert shall be an insolvency practitioner with significant professional experience of educational institutions or academies. If the parties fail to agree upon the appointment of the Expert then the Expert shall be appointed by the President for the time being of the Institute of Chartered Accountants in England and Wales. The Expert's fees shall be borne equally between the parties.
- 7.14. The Expert shall be required in reaching his determination to take account of advice from an educational specialist who is professionally familiar with the issues arising from the budget management of schools. If the parties fail to agree upon the appointment of the educational specialist then the educational specialist shall be appointed by the Chairman for the time being of the Specialist Schools and Academies Trust. The educational specialist's fees shall be borne equally between the parties.

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- 7.15. If the Expert determines that the cost of running the Alternative Provision Academy during the Critical Year would cause the Company, on the basis of the Indicative Funding and All Other Resources, to become insolvent, and the Secretary of State shall not have agreed to provide sufficient additional funding to cover the Shortfall, then the Company shall be entitled to terminate this Agreement, by notice expiring on 31 August prior to the Critical Year. Any such notice shall be given within 21 days after (a) the Expert's determination shall have been given to the parties or (b), if later, the Secretary of State shall have given written notice of his refusal to provide sufficient additional funding for the Alternative Provision Academy to cover the Shortfall.

**8. EFFECT OF TERMINATION**

- 8.1. In the event of termination of this Agreement however occurring, the school shall cease to be an Alternative Provision Academy within the meaning of Section 1C of the Academies Act 2010.
- 8.2. Subject to clause 8.3 and 8.4, if the Secretary of State terminates this Agreement pursuant to clause 7.1 of this Agreement, the Secretary of State shall indemnify the Company. If the Secretary of State terminates this Agreement otherwise than pursuant to clause 7.1 of this Agreement, the Secretary of State may in his absolute discretion indemnify or (to such extent if any as he may in his absolute discretion consider appropriate) compensate the Company.
- 8.3. The amount of any such indemnity or compensation shall be determined by the Secretary of State having regard to any representations made to him by the Company, and shall be paid at such times and in such manner as the Secretary of State may reasonably think fit.
- 8.4. The categories of expenditure incurred by the Company in consequence of the termination of the Agreement in respect of which the Secretary of State shall (where the Secretary of State terminates this Agreement pursuant to clause 7.1) indemnify the Company and may (where the Secretary of State terminates this Agreement otherwise than pursuant to clause 7.1) in his absolute discretion indemnify or compensate the Company 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.
- 8.5. Subject to clause 8.6, on the termination of this Agreement however occurring, the Company shall in respect of any of its capital assets at the date of termination:

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- (a) promptly transfer a proportion of the assets to a person nominated by the Secretary of State, if the Secretary of State considers that all or some of those assets need to be used for any educational purposes by that nominee. The proportion of the assets to be transferred shall be the same as the proportion of the capital contribution made by the Secretary of State to the original value of those assets, whether that contribution was made on the establishment of the Alternative Provision Academy or at a later date; or
  - (b) if the Secretary of State confirms that a transfer under clause 8.5(a) is not required, promptly repay to the Secretary of State a sum equivalent to the percentage of the value of the assets at the date of termination, or, by agreement with the Secretary of State, at the date of subsequent disposal of those assets. Such percentage to be the same as the percentage of the capital contribution made by the Secretary of State to the original value of those assets, whether that contribution was made on the establishment of the Alternative Provision Academy or later.
- 8.6. The Secretary of State may waive in whole or in part the repayment due under clause 8.5(b) if:
  - (a) the Company obtains his permission to invest the proceeds of sale for its charitable objects; or
  - (b) the Secretary of State directs all or part of the repayment to be paid to the LA.
- 8.7. The sale or disposal by other means of publicly funded land held for the purposes of an Academy is now governed by Part 3 of Schedule 1 to the Academies Act 2010.

9. **ANNEX**

- 9.1. The Annex to this Agreement forms part of and is incorporated into this Agreement.

10. **THE MASTER AGREEMENT**

- 10.1. Except as expressly provided in this Agreement the Master Agreement shall continue in full force and effect.

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- 10.2. Clauses [insert clause number(s)] of the Master Agreement do not apply to the Academy<sup>5</sup>.

11. **ENGLISH LAW GENERAL**

- 11.1. This Agreement shall not be assignable by the Company.
- 11.2. No delay, neglect or forbearance on the part of the Secretary of State in enforcing (in whole or in part) any provision of this Agreement or in exercising (in whole or in part) any right or remedy conferred on him by this Agreement shall be or be deemed to be a waiver of such provision or right or remedy or a waiver of any other provision or right or remedy or shall in any way prejudice any right or remedy of the Secretary of State under this Agreement or shall amount to an election not to enforce such provision or exercise such right or remedy (including, for the avoidance of doubt, any right to terminate this Agreement). No single or partial exercise of such right or remedy shall preclude or restrict the further exercise of that or any other right or remedy.
- 11.3. Termination of this agreement, for any reason, shall not affect the accrued rights, remedies, obligations or liabilities of the parties existing at termination.
- 11.4. This deed may be executed in any number of counterparts, each of which when executed and delivered shall constitute a duplicate original, but all the counterparts shall together constitute the one agreement.
- 11.5. This Agreement and any dispute or claim arising out of or in connection with it or its subject matter or formation (including non-contractual disputes or claims) shall be governed by and construed in accordance with the law of England and Wales.
- 11.6. The parties irrevocably agree that the courts of England and Wales shall have exclusive jurisdiction to settle any dispute or claim that arises out of or in connection with this agreement or its subject matter or formation (including non-contractual disputes or claims).

This Agreement was executed as a Deed on

201[●]

Executed on behalf of by:

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<sup>5</sup> This clause should be included where the Master Agreement contains a requirement for Academies to employ teachers with QTS. If the Master Agreement does not contain this requirement, clause 10.2 should be removed from this supplemental funding agreement and marked 'not used'. Provisions in the Master Agreement requiring the academy trust to employ only qualified teachers as the SENCO and as the designated teacher for looked after children should remain.

**ANNEX TO THIS SUPPLEMENTAL AGREEMENT**

Requirements for the Admission for pupils at the  
Alternative Provision Academy

Annex 1

**APPENDIX OF**

**ADDITIONAL OR ALTERNATIVE CLAUSES THAT MAY BE NEEDED DEPENDING ON  
THE TYPE OF ACADEMY**

**A. LAND CLAUSES – FOR INSERTION WHERE FREEHOLD OR LEASEHOLD  
LAND WILL BE HELD BY THE COMPANY**

*Where a freehold interest in publicly funded land for use by the Alternative Provision Academy is to be transferred to the Company insert all of the following clauses (8A-8D and the definitions of "land" and "insured risks" at clause 1.2)*

*Where a leasehold interest in publicly funded land for use by the Alternative Provision Academy is to be transferred to the Company using one of the DfE's model leases, insert only clauses 8A and the definition of "land" at clause 1.2 (the other land clauses can be left out as these overlap with what is covered by the lease)*

*Where the Company will have both freehold and leasehold interests in publicly funded land, (because it has been transferred more than one piece of land), then insert all the land clauses but the Company may include a clause saying that clauses 8B-8D do not apply to land in which the Company holds a leasehold interest only.*

*The following definitions are to be inserted into clause 1.2*

*"Insured Risks" means fire, lightning, explosion, earthquake, storm, tempest, flood, subsidence, landslip, heave, impact, terrorism, bursting or overflowing of water tanks and pipes, damage by aircraft and other aerial devices or articles dropped there from riot and civil commotion, labour disturbance and malicious damage and such other risks as the Company insures against from time to time subject in all cases to any exclusions or limitations as may from time to time be imposed by the insurers or underwriters.*

*"the Land" means the publicly funded land (including for the avoidance of doubt all buildings, structures landscaping and other erections) situated at and known as [insert address(es) of the land that is to be transferred to the Alternative Provision Academy] [and [if applicable] registered under [enter Title number of Land].*

**AND**



***Insert the following headings and paragraphs after clause 8.7 to become 8A):***

## **LAND**

### **Restrictions on Land transfer**

8A Recognising that they are or will be receiving publicly funded land at nil consideration (which for the purposes of this transaction shall include leases granted at a peppercorn rent) the Company:

- (a) shall, within 28 days from the transfer to it of the Land, apply to the Land Registry for a restriction in the proprietorship register (under section 43(1)(a) of the Land Registration Act 2002 in Form RX1 as prescribed by Rule 91 and Schedule 4 of the Land Registration Rules 2003) in the following terms:

*No disposition of the registered estate by the proprietor of the registered estate is to be registered without a written consent signed by the Secretary of State for Education, of Sanctuary Buildings, Great Smith Street, London SW1P 3BT*

- (b) shall take any further steps required to ensure that the restriction referred to in clause 8A(a) is entered on the proprietorship register,
- (c) shall provide the Secretary of State with confirmation of the entry of the restriction referred to in clause 8A(a) as soon as practicable after it receives notification from the Land Registry,
- (d) in the event that it has not registered the restriction referred to in clause 8A(a), hereby consents to the entering of the restriction referred to in 8A(a) in the register by the Secretary of State (under s. 43(1)(b) of the Land Registration Act 2002),
- (e) shall not, without the consent of the Secretary of State, apply to dis-apply, modify or remove (by cancellation or otherwise) a restriction entered in accordance with clause 8A(a) or 8A(d) above, whether by itself, a holding company, a subsidiary company, or a receiver, administrator or liquidator acting in the name of the Company.

### **Repair and Upkeep**

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- 8B) The Company shall keep the Land clean and tidy and make good any damage it causes to the Land and / or any deterioration to the condition of the Land that may arise from the date of this Agreement.

**Insurance**

- 8C) The Company shall:-
- (a) keep the Land insured with a reputable insurance office against loss or damage by the Insured Risks in the sum the Company is advised represents the reinstatement value of the Land from time to time;
  - (b) pay the premiums for insurance promptly as they become due and maintain in force the policies of insurance on the Land;
  - (c) following the incidence of damage to or destruction of the Land and subject to receipt of all necessary consents licences permissions and the like apply the proceeds of the policy of the insurance received for those purposes in rebuilding and reinstating the Land (provided that this clause should be satisfied if the Company provides premises not necessarily identical to the Land as the same existing prior to such damage or destruction occurring) as soon as may be reasonably practicable;
  - (d) produce to the Secretary of State a copy of the insurance policy whenever reasonably requested and the receipt for the last or other evidence of renewal and up to date details of the amount of cover (but no more often than once in any period of 12 months in both cases);
  - (e) not knowingly do anything whereby any policy of insurance relating to the Land may become void or voidable.
  - (f) insure against liability in respect of property owners' and third party risks including occupiers liability.

**Transfer of Land on Termination of Agreement**

- 8D) In recognition by the Company that they are or will be taking a transfer of publicly-funded land for nil consideration (which for the purposes of this transaction shall include leases granted at a peppercorn rent), the Company hereby grants and the Secretary of State hereby accepts an option, exercisable by the Secretary of State or his nominee, to transfer the said land pursuant to Schedule 1 to the Academies Act 2010. The option hereby granted shall be exercisable (by notice in writing by or

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on behalf of the Secretary of State) on the termination of this Funding Agreement for whatever cause. On the exercise of this option, the Law Society's Standard Conditions of Sale for Commercial Property in force at the date of such exercise shall apply to the transaction and completion shall take place 28 days after such exercise.

- 8E) In further recognition by the Company that they are or will be taking a transfer of publicly-funded land for nil consideration, (which for the purposes of this transaction shall include leases granted at a peppercorn rent), to protect the option granted under clause 8D, the Company:
- (a) shall, within 14 days from the transfer to it of the Land, apply to the Land Registry in Form AN1 as prescribed by Rule 81 of the Land Registration Rules 2003 for a notice to be entered in the register (under section 34(3)(a) of the Land Registration Act 2002) to protect the option granted under clause 8D and including a copy of this Agreement as evidence of that option.
  - (b) shall take any further steps required to ensure that the notice referred to in clause 8E(a) is entered on the proprietorship register,
  - (c) shall provide the Secretary of State with confirmation of the entry of the notice referred to in clause 8E(a) as soon as practicable after it receives notification from the Land Registry,
  - (d) in the event that it has not registered the notice referred to in clause 8E(a), hereby consents to the entering of the notice referred to in 8E(a) in the register by the Secretary of State (by application in Form UN1 under s. 34(3)(b) of the Land Registration Act 2002),
  - (e) shall not, without the consent of the Secretary of State, apply to dis-apply, modify or remove (by cancellation or otherwise) a notice entered in accordance with clause 8E(a) or 8E(d) above, whether by itself, a holding company, a subsidiary company, or a receiver, administrator or liquidator acting in the name of the Company.
  - (f) in the case of previously unregistered land, for the further protection of the option granted in Clause 8D the Company shall within 14 days of the signing of this Agreement make application to register a Class C (iv) land charge in the Land Charges Registry and a Caution against First Registration in the Land Registry and shall provide the Secretary of State with copies of the entries secured thereby within 7 days of completing each

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registration, respectively. If the Secretary of State is of the view that the Company has failed to perform the registration obligations in this sub-clause he shall be at liberty to make his own applications to secure these registrations.

**B. ALTERNATIVE PROVISION ACADEMIES WITH PFI ARRANGEMENTS**

*There are a number of PFI specific clauses that need to be inserted into Funding Agreements where there are PFI arrangements in existence relating to the land/property of the Academy.*

*Your Project Lead will provide you with the additional clauses that will be needed.*

**C. FOR ALTERNATIVE PROVISION ACADEMIES WITH SEN UNITS/PROVISION RESERVED FOR PUPILS WITH SEN**

*For Academies with SEN Units and/or Resourced Provision the following additional clauses should be inserted:*

2.5A) Subject to Clause 2.5B), the Alternative Provision Academy will operate designated places reserved for pupils with special educational needs (SEN Unit and or Resourced Provision) with up to [Insert] planned places for pupils [with Insert SEN category] in the age range [insert].

2.5B) The Secretary of State may at any time determine that the [SEN Unit/Resourced Provision] should cease to operate.

2.5C) In making any determination under clause 2.5B) the Secretary of State shall:

- (i) have regard to the views of the Alternative Provision Academy and local authorities in the area (in their strategic role in the commissioning of SEN provision); and
- (ii) consider the impact of such a determination on the local authorities' ability to secure suitable SEN provision for all children within the area.

*For Alternative Provision Academies with SEN Units and/or Resourced Provision clause 4.1 should be replaced with the following clause:*

4.1) The planned number of places at the Alternative Provision Academy is [INSERT] places in the age range [INSERT]. [including [INSERT] places for students of a

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sixth form of age], [including up to [INSERT] hospital education provision places<sup>6</sup>], [including [INSERT] places for pupils with a statement of special education needs naming the [INSERT NAME] Alternative Provision Academy<sup>7</sup>], [and a nursery unit of [INSERT] places] and will subject to Clause 2.5B) operate designated reserved provision for pupils with special educational needs (SEN Unit or Resourced Provision) for up to [insert] planned places for pupils with [insert SEN category] in the age range [insert]. The planned number of places [and the age ranges] is/are not determinative of GAG. GAG for each Academy Financial Year will be determined by the Secretary of State in accordance with clauses 54L and 54M of the Master Agreement.

**D. FOR ALTERNATIVE PROVISION ACADEMIES WITH 16-19 PROVISION**

***For Academies with 16-19 provision the following clause should be inserted where it is not already included in the Master Funding Agreement:***

**2A 16 – 19 FUNDING GUIDANCE**

- 2A.1 The Company shall abide by the requirements of the current 16 to 19 Funding Guidance published by the Secretary of State and as amended from time to time, or such other guidance on 16 to 19 funding issued by the Secretary of State as may from time to time be applicable, in respect of any of its provision at the Alternative Provision Academy for persons who are above compulsory school age until the academic year in which they reach the age of 19.

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<sup>6</sup> See footnote to paragraph 7a) of the Admissions Annex 1.

<sup>7</sup> This is the expected number of places where the Alternative Provision Academy is named in a statement. See paragraph 6 of the Admissions Annex 1.

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[Either

.....  
**Director**

In the presence of:

Witness.....

Address.....

Occupation.....]

[Or

.....  
**Director**

.....]  
**Director/Secretary**

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

.....

**Duly Authorised**