

**FREEDOM OF INFORMATION REDACTION SHEET**

**LEIGH ACADEMIES TRUST**

**FUNDING AGREEMENT**

<p><b>Exemptions in full</b></p> <p>n/a</p>	
<p><b>Partial exemptions</b></p> <p>Personal Information has been redacted from this document under Section 40 of the Freedom of Information (FOI) Act.</p> <p>Section 40 of the FOI Act concerns personal data within the meaning of the Data Protection Act 1998.</p>	
<p>Factors for disclosure</p>	<p>Factors for Withholding</p>
<ul style="list-style-type: none"><li>▪ further to the understanding of and increase participation in the public debate of issues concerning Academies.</li><li>▪ to ensure transparency in the accountability of public funds</li></ul>	<ul style="list-style-type: none"><li>▪ To comply with obligations under the Data Protection Act</li></ul>
<p><u>Reasons why public interest favours withholding information</u></p> <p>Whilst releasing the majority of The Leigh Academies Trust's Funding Agreement will further the public understanding of Academies. The whole of The Leigh Academies Trust's Funding Agreement cannot be revealed. If the personal information redacted was to be revealed under the FOI Act, Personal Data and Commercial interests would be prejudiced.</p>	



## DEED OF VARIATION

The parties to this Deed are:

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

- and -

(2) Leigh Academies Trust a charitable company incorporated in England and Wales with registered company number 02336587 ("**the Company**"),

together referred to as the "**Parties**".

### INTRODUCTION

- A. The Company currently maintains and operates the Leigh Technology Academy, the Longfield Academy and the Wilmington Academy (the "**Existing Academies**").
- B. The Parties have entered into funding agreements in relation to the Existing Academies, copies of which are contained in Schedule 2 ("**the Existing Funding Agreements**").
- C. The Parties now wish to vary and amend the terms of the Existing Funding Agreements and wish to record their agreement as to such variations/amendments by this Deed.

### LEGAL AGREEMENT

- 1. Any word or phrase used in this Deed shall, if that word or phrase is defined in the New Master Funding Agreement and Supplemental Funding Agreements, bear the meaning given to it in the New Master Funding Agreement and Supplemental Funding Agreements.
- 2. The Secretary of State and the Company agree that with effect from the date of this Deed the Existing Funding Agreements shall be replaced in their entirety by the Master Funding Agreement and the Supplemental Funding Agreements which are contained in Schedule 1 ("**the New Master Funding Agreement and Supplemental Funding Agreements**").

FINAL



EXECUTED AND DELIVERED AS A DEED by the Parties on the / day  
of February 2012

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

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



Leigh Academies Trust

.....  
Director  
Print name R J FINOLAY

Witnessed by .....  
Full name STEPHEN HOWARD RAVENSURFT  
Address .....  
Occupation... Seminar.....



**Multi Academy Model**



**LEIGH ACADEMIES TRUST  
MASTER FUNDING AGREEMENT**

*1 February 2012*

FINAL

**LEIGH ACADEMIES TRUST**  
**MASTER FUNDING AGREEMENT**

**CONTENTS:**

<b>SECTION</b>	<b>CLAUSE NO</b>
<b>INTRODUCTION</b>	1 – 10
<b>LEGAL AGREEMENT</b>	11
<b>CHARACTERISTICS OF A MAINSTREAM ACADEMY</b>	12
<b>THE SEN OBLIGATIONS</b>	12A
<b>CONDITIONS OF GRANT</b>	
General	13
Governance	14-15
Conduct	16
Criminal Records Bureau Checks	17
Pupils	18
Designated Teacher for Children in Care	18A
Teachers and other staff	19-22
Curriculum, curriculum development and delivery and RE and collective worship	23-29
Assessment	30
Exclusions Agreement	31
School meals	32-33
Charging	34
<b>GRANTS TO BE PAID BY THE SECRETARY OF STATE</b>	
General	35-36
Capital Grant	37-40
Arrangements for Payment of Capital Grant	41
Implementation Grant	42-47



General Annual Grant	48-60
Earmarked Annual Grant	61-62
Arrangements for payment of GAG and EAG	63-67
Other relevant funding	68-71
<b>FINANCIAL AND ACCOUNTING REQUIREMENTS</b>	
General	72-86
Borrowing Powers	87-88
Disposal of Assets	89-95
<b>TERMINATION</b>	
General	96-99
Change of Control	99A-99C
Effect of Termination	100
<b>GENERAL</b>	
Information	101-102
Access by Secretary of State's Officers	103-105
Notices	106-107
Appointment of Additional and Further	
Directors by the Secretary of State	108
General	109
<b>SCHEDULE 1</b>	
Model Supplemental Funding Agreement for a Mainstream Academy	
Model Supplemental Funding Agreement for a Special Academy	
<b>ANNEXES TO THE MASTER FUNDING AGREEMENT</b>	
Memorandum and Articles of the Company	Annex A
Arrangements for pupils with SEN and disabilities at each Academy – for Mainstream Academies only	Annex B
Serious incidents of misbehaviour leading to fixed period or permanent exclusion.	Annex C

## 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 Leigh Academies Trust (the "Company").
- 2) The Company is a company incorporated in England and Wales, limited by guarantee with registered company number 02336587.
- 3) The Company currently maintains and operates the Leigh Technology Academy, the Longfield Academy and the Wilmington Academy and further intends to establish and maintain, and to carry on or provide for the carrying on of other 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. In the case of the Leigh Technology Academy, the Longfield Academy and the Wilmington Academy, the Supplemental Agreements in respect of those Academies will be entered into upon the date of the Deed of Variation.
- 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 73;
  - b) "Academy Financial Year" - means the year from 1<sup>st</sup> September to 31<sup>st</sup> August;
  - c) "Accounting Officer" – clause 72;
  - d) "Annual Letter of Funding" - clause 66;
  - e) "GAG" – clause 36;
  - f) "Capital Expenditure" - clause 37;
  - g) "Capital Grant" – clause 37;
  - h) "EAG" - clause 36;
  - i) "Local Governing Body" – clause 15;

j) "Recurrent Expenditure" – clause 36;

k) "Start-up Period" – clause 56;

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

"Additional Directors" means Directors who may be appointed by the Secretary of State following a warning notice in accordance with the Articles of Association;

"Academy" – an 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;

"admission requirements" – are annexed to the relevant Supplemental Agreement;

"this Agreement" 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;

"Business Day" means any day other than a Saturday, Sunday, Christmas Day, Good Friday or a day which is a bank holiday with the meaning given to that expression in the Banking and Financial Dealings Act 1971;

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

(a) 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;

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

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

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

"DfE" means Department for Education;

"Deed of Variation" means the deed entered into between the Company and the Secretary of State on or about January 2012 to effect certain changes to the arrangements between them and to agree this Agreement;

"Further Directors" means Directors who may be appointed by the Secretary of State under the Articles of Association if a Special Measures Termination Event, as defined in the relevant Supplemental Agreement, occurs;

"Principal" means the head teacher of an Academy;

"Principal Regulator" means the body or person appointed as the Principal Regulator under the Charities Act 2006.

"LA" means the Local Authority in the area in which the relevant Academy is situated;

"Mainstream Academy" means an Academy having the characteristics referred to in clause 12;

"Memorandum" and "Articles" means the Memorandum and Articles of Association of the Company for the time being in force, a copy of the current version of which is annexed to this Agreement as Annex A;

"parents" means parents or guardians;

"persons" includes a body of persons, corporate or incorporate;

references to "school" shall where the context so admits be references to an Academy;

"SEN" means Special Educational Needs;

"Special Academy" means an Academy specially organised to make special educational provision for pupils with SEN;

"Supplemental Agreement" 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, of a number of independent schools in England organised to make special educational provision for pupils with SEN ("the **Special Academies**") or having such characteristics as are referred to in clause 12 ("the **Mainstream 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.

#### **CHARACTERISTICS OF A MAINSTREAM ACADEMY**

12) The characteristics of a **Mainstream Academy** set down in Section 1(6) of the Academies Act 2010, are that:

- a) The school has a curriculum satisfying the requirements of section 78 of EA 2002 (balanced and broadly based curriculum)
- b) If the school provides secondary education, its curriculum for the secondary education has an emphasis on a particular subject area, or particular subject areas, specified in the Agreement;
- c) The school provides education for pupils of different abilities<sup>1</sup>
- d) the school provides education for pupils who are wholly or mainly drawn from the area in which the school is situated.

#### **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>).
- 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 Academy Trust under paragraph 3 of Schedule 10 to the Equality Act 2010.

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<sup>1</sup> This clause will not apply to 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  
<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 paragraph 12 of this agreement are in addition to any obligations imposed upon Academy proprietors directly in legislation or regulations.

Disabled pupils in this paragraph mean pupils who are disabled for the purposes of the Equality Act 2010<sup>3</sup>.

## **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 and the opportunity to study for external 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;
- d) teachers' levels of pay and conditions of service for all employees will be the responsibility of the Company;
- e) there will be an emphasis on the needs of the individual pupils including pupils with special education needs (SEN), both those with and without statements of SEN;
- f) there will be no charge in respect of admission to the school and the school will only charge pupils where the law allows maintained schools to charge.
- 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.

### **Governance**

14) Each Academy will be governed by the Company. The Company shall have regard to

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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 paragraph 12 has the effect of imposing.

(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) up to two employees at the Academy (to be elected by employees of the Academy) shall be a member of the Advisory Body<sup>4</sup>;
- d) any advice of the Advisory Body is brought to the attention of the Directors of the Company;
- e) to the extent that the Company may, in accordance with the Articles, choose to establish a Local Board, then the Company may additionally constitute the Advisory Body as the Academy's Local Board.

15A 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 the 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.

### **Conduct**

16) Each Academy shall be conducted in accordance with:

- a) the Memorandum and Articles, which shall not be amended by the Company without the written consent of the Secretary of State, such consent not to be unreasonably withheld;
- e) b) all provisions by or under statute which confer rights or impose obligations on Academies including, without limitation, the independent schools standards

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<sup>4</sup> Delete if not required.



prescribed under section 157 of the Education Act 2002 to the extent they apply to the Academies;

c) the terms of this Agreement and the relevant Supplemental Agreement.

#### **Criminal Records Bureau 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 Board.

#### **Pupils**

18) Unless otherwise stipulated in the relevant Supplemental Agreement, each **Mainstream Academy** will be an all ability inclusive<sup>5</sup> school whose requirements for:

- a) the admission of pupils to an 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 Annex C to this Agreement.

18A) 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 Annex C to this Agreement.

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<sup>5</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.

#### **Designated Teacher for Children in Care**

18AB) 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) Subject to clause 20, 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 and Registration) (England) Regulations 2003 (SI 2003/1663), which for the purpose of this clause shall be construed as if the relevant Academy were a maintained school.

20) Clause 19 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 and Registration) (England) Regulations 2003 (SI 2003/1663),<sup>0</sup>

(being 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.

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

23) The curriculum provided by each **Mainstream Academy** to pupils up to the age of 16 shall be broad and balanced. The specialism for each Academy in relation to its secondary curriculum will be set out in the relevant Supplemental Agreement.

24) The Company shall ensure that the broad and balanced curriculum includes English, Mathematics and Science.

25) The Company shall make provision for the teaching of religious education and for a daily act of collective worship at each Academy.

26) Where a **Mainstream Academy** is designated with a religious character<sup>6</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, 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

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<sup>6</sup> Alternative provisions are available and would be potentially appropriate for non-denominational faith schools.

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 of voluntary school which has been designated under section 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:

- (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;

(2) hereby acknowledges that the Secretary of State may in his absolute discretion refuse or consent to the Company making such an application.

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) In respect of RE and collective worship at **Special Academies**:

- a) subject to c), the Company shall ensure that provision shall be made for religious education to be given to all pupils at each 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 c), the Company shall ensure that each 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.

29) The Company shall have regard to any guidance issued by the Secretary of State 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.

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.

#### **Assessment**

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

- a) The Company shall ensure that the 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 pupil's performance as they apply to maintained schools.
- b) The Company shall report to any body on assessments under clause 30 as the Secretary of State shall prescribe 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 prescribed by the Secretary of State.
- d) The Company may not offer courses at any Academy which lead to relevant qualifications, as defined in section 96 of the Learning and Skills Act 2000, unless the Secretary of State gives specific approval for such courses, not to be unreasonably withheld or delayed.

#### **Exclusions Agreement**

31) The Company shall, if invited to do so by an LA, enter into an agreement in respect of a **Mainstream 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 2008.

#### **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.

33) In relation to a pupil who is himself or whose parents are in receipt of benefits mentioned in section 512ZB 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 out of the Company's GAG.

#### **Charging**

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

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

##### **General**

35) The Secretary of State shall pay grants towards capital and Recurrent 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. 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) Save as may otherwise be agreed in a Supplemental Funding Agreement, "Capital Expenditure" means expenditure on:

- a) the acquisition of land and buildings;
- b) the erection, enlargement, improvement or demolition of any building including fixed plant, installation, wall, fence or other structure, or any playground or hard standing;
- c) the installation of electrical, mechanical or other services;
- d) the purchase of vehicles and other self-propelled mechanical equipment;



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e) the installation and equipping of premises with furnishings and equipment, other than necessary replacements, repairs and maintenance due to normal wear and tear;

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

g) the provision and equipping of premises, including playing fields and other facilities for social activities and physical recreation;

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

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

j) such other items (whether of a like or dissimilar nature to any of the foregoing) of a substantial or enduring nature as the Secretary of State may agree shall constitute capital expenditure for the purposes of 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. Save as may otherwise be agreed in a Supplemental Funding Agreement, Capital Grant will be paid within 21 days from the day on which a claim for grant is received if the claim is in the proper format, supported by the appropriate documentation and the conditions on its payment set out at clause 40 are complied with. 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.

**Implementation Grant<sup>7</sup>**

42) Not used.

43) Not used.

44) Not used.

45) Not used.

46) Not used.

**General Annual Grant**

47) Clauses 48 to 60H inclusive only apply where alternative arrangements in respect of the payment of GAG to an Academy are not contained within an Academy's Supplemental

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<sup>7</sup> Note that the Secretary of State will not pay Implementation Grant pursuant to these clauses in relation to schools applying to convert further to the Academies Act 2010.

Agreement. In the event that there is a conflict between the provisions regarding the payment of GAG to an Academy in this Agreement and in an Academy's Supplemental Agreement, the provisions of the Supplemental Agreement shall prevail.

48) GAG will be paid by the Secretary of State to the Company in order to cover the normal running costs of each 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;

m) establishment expenses and other institutional costs.

48A) Clauses 49 to 60 apply in respect of **Mainstream Academies** only.

49) Subject to clauses to 57-58, 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 local authority if each Academy was a maintained school.

50) 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.

51) Subject to clause 52, the basis of the pupil number count for the purposes of determining GAG for an Academy Financial Year for a **Mainstream Academy** will be in the first year of conversion, the same basis as that used by the Local Authority for determining the budget share of the predecessor maintained school as adjusted by numbers counted in any subsequent Schools Census, as determined by the Secretary of State. In subsequent years the basis of the pupil count will be as determined by the Secretary of State.

52) Once the conditions specified in clause 53 have been satisfied with respect to a **Mainstream Academy** for the Academy Financial Year for which funding is being

calculated, the basis of the pupil number count for the purpose of determining GAG for that Academy will be:

- a) for the pupil number count for pupils in Year 11 and below, the Schools Census for the January preceding 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.

53) For the purpose of clause 52, the conditions are:

- a) all planned Year-groups will be present at the Academy (that is, all the pupil cohorts relevant to the age-range of the Academy will have some pupils present); and
- b) the total number of pupils as measured in the Schools Census for the preceding January is 90% or more of the planned final size of the Academy, as specified in the Academy's Supplemental Agreement.
- c) The Secretary of State had determined that the basis shall be as provided for in Clause 52.

54) For any Academy Financial Year in which GAG for a **Mainstream Academy** has been calculated in accordance with clause 51, no adjustment shall be made to the following Academy Financial Year's formula funding element of GAG for that Academy to recognise variation from the pupil count basis used.

55) For any Academy Financial Year in which GAG for a **Mainstream Academy** is calculated in accordance with clause 52, 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 costs, such as an extra class. 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.

56) 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 49-55, in order to enable the Academy to operate effectively<sup>8</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.

57) 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 49-55 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.

58) 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 undertakes 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 49-55, in

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<sup>8</sup> Note that a larger GAG for the Start-Up Period is only applicable to Academies with approved Expressions of Interest (or a future equivalent application).

order to enable the Academy to operate effectively.

59) 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 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.

60) Subject to clause 78A, GAG paid by the Secretary of State in respect of a **Mainstream Academy** shall only be spent by the Company towards the normal running costs of that Academy.

60AA) Clauses 60A to 60H apply in respect of **Special Academies** only.

60A) Subject to clauses 60E – 60F, GAG for the 2011-12 Financial Year for each **Special Academy** will be the total of the following areas of funding; (see clause 60D)

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 local authority if each Academy was a maintained school.

60B) The GAG for each Academy Financial Year for each **Special 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.

60C) GAG will be based on a number of places and/or pupils, as appropriate to the funding formula of the local authority, determined annually by the Secretary of State, who shall consult the Company and the local authority before finally determining the number(s) to be used.

60D) Arrangements for the provision of GAG in subsequent funding years will be notified to each **Special Academy** by letter before 1 April. The Secretary of State may make provision 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.

60E) 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.

60F) 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 undertakes 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 60A-60C, in order to enable the Academy to operate effectively.

60G) 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 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.

60H) Subject to Clause 78A, GAG paid by the Secretary of State in respect of a **Special Academy** shall only be spent by the Company towards the normal running costs of that Academy.

#### **Earmarked Annual Grant**

61) Earmarked Annual Grant ("EAG") shall be paid by the Secretary of State to the Company in respect of either recurrent or Capital Expenditure for such specific purposes as may from time to time be agreed between the Secretary of State and the Company and as described in the relevant funding letter. The Company is free to determine how best to use each of its EAGs within the scope, terms and conditions of the grant set out in the relevant funding letter.



62) Where the 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 Academies Division, Sanctuary Buildings, Great Smith Street, London SW1P 3BT.

**Arrangements for Payment of GAG and EAG**

63) 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.

64) 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.

65) 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.

66) 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 not later than 1 April 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 as soon as practicable thereafter.

67) For the purposes of this Agreement, an Academy Financial Year shall be deemed to run from September to August. The Secretary of State undertakes to pay GAG in monthly instalments on or before the twenty fifth day of each month, each such instalment to fund the salaries and other payroll costs for the relevant month of all monthly paid employees and all other costs payable during the next following month. The detailed arrangements for payment will be set out in the Annual Letter of Funding.

**Other relevant funding**

68) Not used.

69) 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.

70) The Company may also receive funding from an LA in respect of the provision detailed in statements of SEN for pupils attending an Academies 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.

71) Not used.

**FINANCIAL AND ACCOUNTING REQUIREMENTS**

**General**

72) The Company shall appoint an Accounting Officer and shall notify the Secretary of State of that appointment.

73) Subject to clause 78A, 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.

74) The formal budget plan must be approved each Academy Financial Year by the Directors of the Company.

75) 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 in accordance with the Statement of Recommended Practice as if the Company was a non-exempt Charity and/or in such form or manner as the Secretary of State may reasonably direct and shall file these with the Secretary of State and the Principal Regulator by 31 December each Academy Financial Year;
- d) a statement of the accounting policies used should be sent to the Secretary of State with the financial statements and should carry an audit report stating that, in the opinion of the auditors, the statements show a true and fair view of the 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 and Articles of Association, Funding Agreement and a list of the names of the Directors of the Company;

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;

76) 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.

77) 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.

78) The Company shall submit indicative budgets relating to each Academy to the Secretary of State by not later than 15 February before the start of each Academy Financial Year. Such budgets shall set out clearly the prospective income and expenditure of the relevant Academy and shall differentiate, and give adequate details of:

a) a statement of expected income for that Academy Financial Year including cash donations and gifts in kind from sources other than GAG, EAG and grants from the Secretary of State towards capital and revenue expenditure, distinguishing between income from public funds including the national lottery and income from other sources. Income from cash donations and gifts in kind from sources other than GAG, EAG and grants from the Secretary of State towards capital expenditure will not be taken into account by the Secretary of State in the calculation of GAG;

b) a statement of proposed recurrent expenditure for that Academy Financial Year;

c) a statement of proposed capital expenditure for that Academy Financial Year.

78A) During any Academy Financial Year the Company may use GAG paid by the Secretary

of State in respect of any Academy (except any Special Academy) for the purposes of meeting the normal running costs of any other Academy operated by the Company ("Group Academy"). Any GAG used in this way will be known as "Transferred GAG". The Company must show all Transferred GAG in the statements required by clauses 75 and 78 of this Agreement.

79) At the beginning of any Academy Financial Year the Company may hold unspent GAG for any Academy from previous Academy Financial Years amounting to 12% 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. This carried forward amount may be used as follows:

- a) equivalent to 2% of the total GAG payable in the Academy Financial Year just ended may be used by the Company for any of the purposes for which GAG is paid, whether for the purposes of the relevant Academy or for the purposes of any other Academy;
- b) equivalent to 12% of the total GAG payable in the Academy Financial Year just ended, or such higher figure as may from time to time be agreed, minus any amount used under sub-clause (a) above, may be used on the upkeep and improvement of premises, including the costs of equipment and routine repairs and maintenance of the relevant Academy, and on capital expenditure relating to the relevant Academy.

80) Notwithstanding clause 79, any additional grant provided over and above that set out in clauses 49-55 and made in accordance with clauses 56-58 may be carried forward without limitation or deduction until the Start-up Period or the circumstances set out in clause 58 come to an end.

81) Any savings of GAG not allowed to be carried forward under clauses 79-80 will be taken into account in the payment of subsequent grant.

82) The Company may also 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.

82A) Grants paid by the Secretary of State shall only be used by the Company for purposes listed in Article 4(a) of the Articles. Such funds shall not be used by the Company for

purposes listed in Article 4(b) of the Articles without the prior written consent of the Secretary of State except where the use of such funds for a charitable purpose set out in Article 4(b) is merely incidental to their use for a main or predominant charitable purpose set out in Article 4(a) of the Articles.

83) The Company shall not, in relation to assets or property funded (whether in whole or in part) by the Secretary of State, 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;
- b) write off any debts or liabilities owed to it above a value to be set out in the annual letter of funding, nor offer to make any ex gratia payments;
- c) make any sale or purchase of freehold property; or
- d) grant or take up any leasehold or tenancy agreement for a term exceeding three years.

84) The Company shall provide 30 days' 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 freehold property; or
- d) grant or take up any leasehold or tenancy agreement for a term exceeding three years.

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

86) 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) 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.

#### **Borrowing Powers**

87) 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. Subject to clause 88A, 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.

88) Subject to clause 88A, the Company shall provide 30 days 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.

88A) Nothing in clauses 87 and 88 shall prevent the Company from borrowing (whether by way of overdraft or otherwise) in relation to Leigh Technology Academy where such borrowing is made necessary by the failure of the Secretary of State to make in a timely fashion payments (whether of GAG or EAG or otherwise) agreed to be made by him in relation to Leigh Technology Academy under this Agreement and the relevant Supplemental Agreement.

#### **Disposal of Assets**

89) 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.

90) 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.

91) 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.

92) 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.

93) 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.

94) 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.



95) The Company shall provide 30 days' notice to the Secretary of State of its intention to dispose of assets for a consideration less than the best price that can reasonably be obtained, whether or not such disposal requires the Secretary of State's consent under clause 94 above.

#### **TERMINATION**

96) This Agreement shall continue until terminated in accordance with clause 97 or until all Supplemental Agreements have terminated.

97) The Secretary of State may at any time by notice in writing terminate this Agreement and each of the Supplemental Agreements forthwith on the 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 1993 or any subsequent re-enactment of that Act), administrator or administrative receiver appointed over all or any part of its undertakings, assets or income; or
- e) any 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.

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.

98) If, following the exercise of the Secretary of State's powers to appoint Additional Directors or Further Directors, pursuant to the Articles of Association the Members pass an ordinary or special resolution to remove one or more of those Additional or Further Directors appointed by the Secretary of State, the Secretary of State may give the Company 12 months', or such lesser period as he considers appropriate in the circumstances, written notice to terminate this Agreement or, as the Secretary of State may in his absolute discretion decide any of the Supplemental Funding Agreements.

99) The Secretary of State's right to terminate this Agreement under clause 98 shall cease if he removes any of the Additional Directors or Further Directors which he has appointed pursuant to the Articles of Association.

**Change of Control of the Company**

99A) The Secretary of State may at any time by notice in writing, subject to clause 99C) below, terminate this Agreement forthwith (or on such other date as he may in his absolute discretion determine) 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.

99B) The Company shall, as soon as it is reasonably practicable to do so after it has become aware of any change or proposed change of Control within the meaning of clause 99A), give written notice to the Secretary of State of such change or proposed change of Control.

99C) When notifying the Secretary of State further to clause 99B), 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 99A).

#### **Effect of Termination**

100) In the event of the termination of this Agreement however occurring the Secretary of State shall procure that his nominee (if any) shall resign as a member of the Company and shall co-operate in making any associated amendments to the Articles of Association.

#### **GENERAL**

##### **Information**

101) Without prejudice to any other provision of this Agreement, the Secretary of State acting reasonably may from time to time call for information on, inter alia, any Academy's:

- 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;
- 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; and
- l) membership and proceedings of the Company and the Local Board.

102) 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**

103) 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 Board, 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.

104) The Company shall ensure that:

- a) the agenda for every meeting of the relevant Local Board 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.

105) 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 104, 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**

106) Any notice or other communication concerning this Agreement or a Supplemental Agreement shall be sent, in the case of a notice or communication from the Secretary of State to the Company at its registered office or such other addressee/address as may be notified in writing from time to time by the Company and, in the case of a notice or communication from the Company to the Secretary of State to Head of Academies Division, Department for Education, Sanctuary Buildings, Great Smith Street, London SW1P 3BT; or such other address as may be notified from time to time by the Secretary of State and where any such notice or communication is sent by post, unless the contrary is proved, it shall be deemed, subject to satisfactory proof of posting, to be effected at the time at which the letter would be received in the ordinary course of post.

107) 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.

#### **Appointment of Additional or Further Directors by the Secretary of State**

108) The Secretary of State undertakes to the Company not to exercise the powers under the Articles to appoint Additional Directors or Further Directors in the following circumstances:-

- a) if the matters giving rise to the appointment of the Additional or Further Directors relate, in the reasonable opinion of the Secretary of State, to the affairs of only one Academy; and
- b) if the Company has delegated, and continues to delegate, to a Local Board of such Academy all decisions and powers that the Secretary of State reasonably considers are necessary to enable such Local Board to address the matters that gave rise to the appointment of the Additional or Further Directors and to ensure that the relevant Local Board is capable of properly conducting the affairs of the relevant Academy on the Company's behalf; and
- c) if the Company replaces such members of the Local Board and/or appoints additional members of that Local Governing Body as, in either case, the Secretary of State may by notice in writing to the Company specify; and
- d) provided that such delegation is not subsequently revoked or, without the prior written consent of the Secretary of State, varied in any material respect.

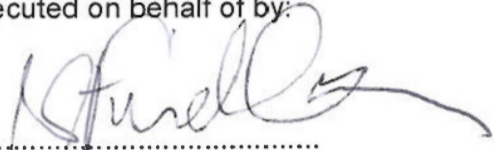
#### **General**

108) This Agreement shall not be assignable by the Company.

109) 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.


This Agreement was executed as a Deed on 1 February 2012  
(ELVA ACADEMIES TRUST)

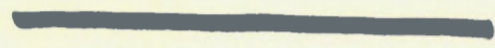
Executed on behalf of by:




Director

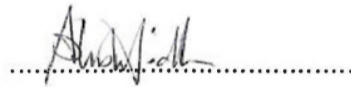
In the presence of:

Witness  STEPHEN HOWARD RAVENSCROFT

Address..| 

Occupatio 

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



Duly Authorised







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**SCHEDULE 1**

Model Supplemental Funding Agreement for a Mainstream Academy

Model Supplemental Funding Agreement for a Special Academy



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**SCHEDULE 1**

Model Supplemental Funding Agreement for a Mainstream Academy

Model Supplemental Funding Agreement for a Special Academy



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**SCHEDULE 1**

**MODEL SUPPLEMENTAL AGREEMENT**

**THIS AGREEMENT** made on 1 February 201[●] 2012

**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> If the Academy is to be a "selective school" then insert the following wording at the end of paragraph 2.1 - "...save that clause 12(c) of the Master Agreement does not apply as the Academy is a "selective school" within the meaning of Section 6(4) of the Academies Act 2010 and additionally clause 19 does not apply in so far as it provides for the Academy to be an all ability inclusive school".

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 [with an emphasis in its secondary education on [insert a particular subject area or particular subject areas]<sup>2</sup>
- 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>3</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.
- 3.2 In relation to the Academy, "Capital Expenditure" means:
- 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;

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<sup>2</sup> Insert specialism if the school provides secondary education

<sup>3</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.

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

- 3.3 In relation to the Academy, 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.

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**3A. Curriculum, curriculum development and delivery and RE and collective worship**

- 3A. 1 The Academy Trust shall publish information in relation to its current curriculum provision at the 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) offered by the Academy; and
  - d) how parents (including prospective parents) can obtain further information in relation to the Academy's curriculum.

**3B. International Education Surveys**

- 3B.1 The Secretary of State may, by notice in writing to the Academy Trust, require the Academy Trust to participate in an international education survey in relation to the Academy and the Academy Trust shall, upon receipt of such notice, participate in that survey and provide to the Secretary of State or to those carrying out the survey all such assistance and information as may reasonably be required for the purposes of the Academy's participation in that survey.

**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.

**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.
- 5.2 If the Secretary of State is of the opinion that the Academy no longer has the characteristics set out in clause 12 of the Master Agreement or that the conditions and requirements set out in clauses 14-35 of the Master Agreement are not being met, or that the Company is otherwise in material

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breach of the provisions of this Agreement or the Master Agreement, the Secretary of State may give notice of his provisional intention to terminate this Agreement.

- 5.3 Any such notice shall be in writing and shall:
- 5.3.1. state the grounds on which the Secretary of State considers the Academy no longer has the characteristics set out in clause 12 of the Master Agreement or is not meeting the conditions and requirements of clauses 13-34 of the Master Agreement or the Company is otherwise in material breach of the provisions of this Agreement or the Master Agreement;
  - 5.3.2. specify the measures needed to remedy the situation or breach;
  - 5.3.3. specify a reasonable date by which these measures are to be implemented; and
  - 5.3.4. state the form in which the Company is to provide its response and a reasonable date by which it must be provided.
- 5.4 If no response is received by the date specified in accordance with clause 5.3.4, the Secretary of State may give the Company 12 months, or such lesser period as he considers appropriate in the circumstances, written notice to terminate this Agreement.
- 5.5 If a response is received by the date specified in accordance with clause 5.3.4, the Secretary of State shall consider it, and any representations made by the Company, and shall, within three months of its receipt, indicate that:
- 5.5.1. he is content with the response and/or that the measures which he specified are being implemented; or
  - 5.5.2. he is content, subject to any further measures he reasonably specifies being implemented by a specified date or any evidence he requires that implementation of such measures have been successfully completed; or

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5.5.3. he is not satisfied, that he does not believe that he can be reasonably satisfied, and that he will proceed to terminate the Agreement.

- 5.6 In the circumstances of clause 5.5.3 the Secretary of State shall notify the Company why he believes that he cannot be reasonably satisfied and, if so requested by the Company within thirty days from such notification, he shall meet a deputation including representatives from directors of the Company and the Local Governing Body of the Academy to discuss his concerns. If following such meeting he has good reasons for remaining satisfied that the Academy does not and will not have the characteristics set out in clause 12 of the Master Agreement or does not and will not meet the conditions and requirements set out in clauses 13-34 of the Master Agreement or the Company is in material breach of the provisions of this Agreement or the Master Agreement and such breach will not be remedied to his reasonable satisfaction, he shall give the Company twelve months written notice to terminate this Agreement.
- 5.7 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, the period of twelve months notice referred to in clause 5.6 may be shortened to a period deemed appropriate by the Secretary of State.
- 5.8 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

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may give notice of its intention to terminate this Agreement at the end of the then current Academy Financial Year.

- 5.9 Any notice given by the Company under clause 5.8 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 5.8 above, within six weeks after the Secretary of State shall have done so. The notice must specify:
- 5.9.1. 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
  - 5.9.2. 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
  - 5.9.3. a detailed budget of income and expenditure for the Academy during the Critical Year (the "**Projected Budget**").
- 5.10 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.
- 5.11 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

FINAL

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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.

- 5.12 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.
- 5.13 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.
- 5.14 If the Company shall have given notice to terminate the Agreement under 5.13, the Secretary of State may by notice in writing to the Company require the Company to appoint up to two persons as directors of the Company in accordance with the Articles.
- 5.15 The Secretary of State may at any time by notice in writing terminate this Agreement forthwith if the Academy has ceased (except where such cessation occurs temporarily by reason of an event beyond the reasonable

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control of the Company) to operate as an Academy within the meaning of Section 1 of the Academies Act 2010.

- 5.16 A "Special Measures Termination Event Occurs" when:
- 5.16.1. the Chief Inspector gives a notice to the Company in accordance with section 13(3) of the Education Act 2005 (the "Special Measures Notice") stating that in his opinion special measures are required to be taken in relation to the Academy; and
  - 5.16.2. the Chief Inspector carries out a subsequent inspection of the Academy in accordance with the Education Act 2005 and makes a report in accordance with the Education Act 2005 stating that the Academy has made inadequate progress since the date of the Special Measures Notice; and
  - 5.16.3. the Secretary of State shall have requested the Company to deliver within 10 Business Days a written statement (a "Further Action Statement") of the action the Company proposes to take, and the period within which it proposes to take such action, or, if it does not propose to take any action, the reasons for not doing so; and
  - 5.16.4. the Secretary of State, having considered the Further Action Statement, is not satisfied that any action proposed to be taken by the Company is sufficient in all the circumstances, or, if no Further Action Statement shall have been given to the Secretary of State within the requested timeframe or otherwise.
- 5.17 If a Special Measures Termination Event occurs, the Secretary of State may:
- 5.17.1. by notice in writing to the Company terminate this Agreement forthwith; or
  - 5.17.2. subject to clause 109 of the Master Agreement, appoint such Further Directors to the Company as he thinks fit in accordance with the Articles and/or may provide up to 12 months' notice in writing to terminate this Agreement.
- 5.18 In the event that the Secretary of State appoints Further Directors in accordance with clause 5.17.2, the Company must, upon the request of the Secretary of State, procure the resignation of the Directors appointed in accordance with Article 50 of the Articles of Association.

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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 Section 1 of the Academies Act 2010.
- 6.2 Subject to clause 6.3, if the Secretary of State terminates this Agreement for reasons other than that a Special Measure Termination Event occurs, the Academy no longer has the characteristics set out in clause 12 of the Master Agreement, or is no longer meeting the conditions and requirements set out in clauses 13-34 of the Master Agreement or that the Company is otherwise in material breach of the provisions of this Agreement or the Master Agreement, the Secretary of State shall indemnify the Company.
- 6.3 The amount of any such indemnity 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 indemnify 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 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 later; 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

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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 L A.
- 6.7 If any land or premises of the Academy were acquired by the Company from an LA by a scheme under Paragraph 1 of Schedule 1 of the Academies Act 2010 or otherwise at less than the market value of the land at the date of acquisition, and the Secretary of State does not make a scheme as provided for in Paragraph 6 of Schedule 1 of the Academies Act 2010, the Company may dispose of its interest in that land or premises but only with the consent of the Secretary of State, who shall have regard to any representations from the Company and the LA from which the land was transferred before giving or withholding that consent.

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.

9 **ENGLISH LAW**

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

This Agreement was executed as a Deed on

201[•]

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Executed on behalf of by:

[Either

.....  
**Director**

In the presence of:

Witness.....

Address.....

Occupation.....]

[Or

.....  
**Director**

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

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

.....

**Duly Authorised**



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**ANNEX TO THIS SUPPLEMENTAL AGREEMENT**

Requirements for the Admission for pupils at the  
Academy Annex 1

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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 clause as additional clauses 2.6-2.8 of the relevant Funding Agreement.*

*Note that these clauses are for use if the Company 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"

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Mainstream

- b) In subsection (5) & (6) for "foundation governors" read "Foundation Governors" as defined in the Articles of Association;
  - 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

FINAL

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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. ]

**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 earthquake 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].

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**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),

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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 acquire the said Land at nil consideration. The option hereby granted shall be exercisable (by notice in writing by or on behalf of the Secretary of State) on the termination of this Funding Agreement for whatever cause. 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),

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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.

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

**D. ACADEMIES WITH PFI ARRANGEMENTS**

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

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

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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;

**[Where the freehold and/or leasehold of land for use by the Academy is to be transferred to the Company insert and complete the following paragraphs:**

"Insured Risks" means fire lightning explosion earthquake storm tempest flood subsidence landslip heave impact terrorism bursting or overflowing of water tanks and pipes earthquake 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 land (including for the avoidance of doubt all buildings, structures landscaping and other erections) situated at and known as [insert

FINAL

## Special Academies Multi Model

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

- 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]
- 2.3 The Company may not refuse to admit a child to the school whose statement names the Academy on the sole the 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 1.

### **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.

### **4 PUPILS**

- 4.1 The number of pupil places for which the Academy is to be funded is [insert] in the age range [insert], [including a sixth form of [insert] places] [and a nursery unit of [insert] places]. This funding will cover a range in the number of pupils on roll at the Academy so that no change will be made to the funding if the number of pupils on roll falls lower than [insert] or rises higher than [insert]. This range may be varied by the Secretary of State by letter in subsequent funding years on the basis of demand for places.

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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.

5.2   In relation to the Academy, "Capital Expenditure" means:

- a) the acquisition of land and buildings;
- b) the erection, enlargement, improvement or demolition of any building including fixed plant, installation, wall, fence or other structure, or any playground or hard standing;
- c) the installation of electrical, mechanical or other services other than necessary replacements, repairs and maintenance due to normal wear and tear;
- d) the purchase of vehicles and other self-propelled mechanical equipment;
- e) the installation and equipping of premises with furnishings and equipment, other than necessary replacements, repairs and maintenance due to normal wear and tear;
- f) the installation and equipping of premises with computers, networking for computers, operating software and information and communication technology equipment, other than necessary updates or necessary replacements, repairs and maintenance due to normal wear and tear;
- g) the provision and equipping of premises, including playing fields and other facilities for social activities and physical recreation other than necessary replacements, repairs and maintenance due to normal wear and tear;
- h) works of a permanent character other than the purchase or replacement of minor day-to-day items;
- i) any major repairs or replacements which are specified as constituting capital expenditure in any grant letter relating to them;

### Special Academies Multi Model

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.

5.3 In relation to the Academy, 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.

#### **5A. Curriculum, curriculum development and delivery and RE and collective worship**

5A. 1 The Academy Trust shall publish information in relation to its current curriculum provision at the 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) offered by the Academy; and

d) how parents (including prospective parents) can obtain further information in relation to the Academy's curriculum.

#### **5B. International Education Surveys**

5B.1 The Secretary of State may, by notice in writing to the Academy Trust, require the Academy Trust to participate in an international education survey in relation to the Academy and the Academy Trust shall, upon receipt of such notice, participate in that survey and provide to the Secretary of State or to those carrying out the survey all such assistance and information as may reasonably be required for the purposes of the Academy's participation in that survey.

## Special Academies Multi Model

### 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.
- 7.2 If the Secretary of State is of the opinion that the Academy no longer has the characteristics set out in clause 2.2 and 2.3 of this Agreement or that the conditions and requirements set out in clauses 12A-34 of the Master Agreement are not being met, or that the Company is otherwise in material breach of the provisions of this Agreement or the Master Agreement, the Secretary of State may give notice of his provisional intention to terminate this Agreement.
- 7.3 Any such notice shall be in writing and shall:
- 7.3.1. state the grounds on which the Secretary of State considers the Academy no longer has the characteristics set out in clause 2.2 and 2.3 of this Agreement or is not meeting the conditions and requirements of clauses 12A-34 of the Master Agreement or the Company is otherwise in material breach of the provisions of this Agreement or the Master Agreement;
  - 7.3.2. specify the measures needed to remedy the situation or breach;
  - 7.3.3. specify a reasonable date by which these measures are to be implemented; and
  - 7.3.4. state the form in which the Company is to provide its response and a reasonable date by which it must be provided.
- 7.4 If no response is received by the date specified in accordance with clause 7.3.4, the Secretary of State may give the Company 12 months, or such

FINAL

### Special Academies Multi Model

lesser period as he considers appropriate in the circumstances, written notice to terminate this Agreement.

- 7.5 If a response is received by the date specified in accordance with clause 7.3.4, the Secretary of State shall consider it, and any representations made by the Company, and shall, within three months of its receipt, indicate that:
- 7.5.1. he is content with the response and/or that the measures which he specified are being implemented; or
- 7.5.2. he is content, subject to any further measures he reasonably specifies being implemented by a specified date or any evidence he requires that implementation of such measures have been successfully completed; or
- 7.5.3. he is not satisfied, that he does not believe that he can be reasonably satisfied, and that he will proceed to terminate the Agreement.
- 7.6 In the circumstances of clause 7.5.3 the Secretary of State shall notify the Company why he believes that he cannot be reasonably satisfied and, if so requested by the Company within thirty days from such notification, he shall meet a deputation including representatives from directors of the Company and the Local Governing Body of the Academy to discuss his concerns. If following such meeting he has good reasons for remaining satisfied that the Academy does not and will not have the characteristics set out in clause 2.2 and 2.3 of this Agreement or does not and will not meet the conditions and requirements set out in clauses 12A-34 of the Master Agreement or the Company is in material breach of the provisions of this Agreement or the Master Agreement and such breach will not be remedied to his reasonable satisfaction, he shall give the Company twelve months written notice to terminate this Agreement.
- 7.7 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, the period of twelve months notice referred to in clause 7.6 may be shortened to a period deemed appropriate by the Secretary of State.



## Special Academies Multi Model

- 7.8 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 79 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.
- 7.9 Any notice given by the Company under clause 7.8 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 7.8 above, within six weeks after the Secretary of State shall have done so. The notice must specify:
- 7.9.1. 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
  - 7.9.2. 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
  - 7.9.3. a detailed budget of income and expenditure for the Academy during the Critical Year (the "**Projected Budget**").

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## Special Academies Multi Model

- 7.10 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.
- 7.11 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.
- 7.12 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.
- 7.13 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

## Special Academies Multi Model

given written notice of his refusal to provide sufficient additional funding for the Academy to cover the Shortfall.

7.14 If the Company shall have given notice to terminate the Agreement under 7.13, the Secretary of State may by notice in writing to the Company require the Company to appoint up to two persons as directors of the Company in accordance with the Articles.

7.15 The Secretary of State may at any time by notice in writing terminate this Agreement forthwith if the Academy has ceased (except where such cessation occurs temporarily by reason of an event beyond the reasonable control of the Company) to operate as an Academy within the meaning of Section 1 of the Academies Act 2010.

7.16 A "Special Measures Termination Event Occurs" when:

7.16.1. the Chief Inspector gives a notice to the Company in accordance with section 13(3) of the Education Act 2005 (the "Special Measures Notice") stating that in his opinion special measures are required to be taken in relation to the Academy; and

7.16.2. the Chief Inspector carries out a subsequent inspection of the Academy in accordance with the Education Act 2005 and makes a report in accordance with the Education Act 2005 stating that the Academy has made inadequate progress since the date of the Special Measures Notice; and

7.16.3. the Secretary of State shall have requested the Company to deliver within 10 Business Days a written statement (a "Further Action Statement") of the action the Company proposes to take, and the period within which it proposes to take such action, or, if it does not propose to take any action, the reasons for not doing so; and

7.16.4. the Secretary of State, having considered the Further Action Statement, is not satisfied that any action proposed to be taken by the Company is sufficient in all the circumstances, or, if no Further Action Statement shall have been given to the Secretary of State within the requested timeframe or otherwise.

7.17 If a Special Measures Termination Event occurs, the Secretary of State may:

FINAL

## Special Academies Multi Model

7.17.1. by notice in writing to the Company terminate this Agreement forthwith; or

7.17.2. subject to clause 109 of the Master Agreement, appoint such Further Directors to the Company as he thinks fit in accordance with the Articles and/or may provide up to 12 months' notice in writing to terminate this Agreement.

7.18 In the event that the Secretary of State appoints Further Directors in accordance with clause 7.17.2, the Company must, upon the request of the Secretary of State, procure the resignation of the Directors appointed in accordance with Article 50 of the Articles of Association.

## **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 clause 8.3, if the Secretary of State terminates this Agreement for reasons other than that a Special Measure Termination Event occurs, the Academy no longer has the characteristics set out in clause 2.2 and 2.3 of this Agreement, or is no longer meeting the conditions and requirements set out in clauses 12A-34 of the Master Agreement or that the Company is otherwise in material breach of the provisions of this Agreement or the Master Agreement, the Secretary of State shall indemnify the Company.

8.3 The amount of any such indemnity 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 indemnify 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.

FINAL

### Special Academies Multi Model

- 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 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 later; 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 L A.
- 8.7 If any land or premises of the Academy were acquired by the Company from an LA by a scheme under Paragraph 1 of Schedule 1 of the Academies Act 2010 or otherwise at less than the market value of the land at the date of acquisition, and the Secretary of State does not make a scheme as provided for in Paragraph 6 of Schedule 1 of the Academies Act 2010, the Company may dispose of its interest in that land or premises but only with the consent

FINAL

## Special Academies Multi Model

of the Secretary of State, who shall have regard to any representations from the Company and the LA from which the land was transferred before giving or withholding that consent.

**[ Where the freehold and/or leasehold of land for use by the Academy is to be transferred to the Company, insert the following headings and paragraphs (6 A – D):**

### **8A LAND: Restrictions on Land transfer**

8A.1 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 N 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, or by the proprietor of any registered charge, not being a charge registered before the entry of this restriction 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.1(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.1(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.1(a), hereby consents to the entering of the restriction referred to in 8A.1(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.1(a) or 8A.1(d) above.

### **6B Repair and Upkeep**

FINAL

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8B.1 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.

### **8C Insurance**

8C.1 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.

### **8D Transfer of Land on Termination of this Agreement**

8D.1 On termination of this Agreement the Company shall, if the Secretary of State so requires by notice in writing to the Company, immediately transfer its interest in the Land to the Secretary of State or such other person as the Secretary of State may nominate. ]

**[ End of land transfer paragraphs ]**

FINAL

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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 governed by and interpreted in accordance with English law.

This Agreement was executed as a Deed on 2010

Executed on behalf of by:

[Either

.....  
**Director**

In the presence of:

Witness.....

Address.....

Occupation.....]

[Or

.....  
**Director**

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

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

.....

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