

SCHEDULE 1

MODEL SUPPLEMENTAL AGREEMENT

THIS AGREEMENT made 201[●]

BETWEEN

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

(2) [_____]

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

1 **DEFINITIONS AND INTERPRETATION**

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

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

“the Academy” means the [●] Academy [to be] established at [●].

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

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

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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 Agreement¹.

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

2.3 The requirements for the admission of pupils to the Academy are set out at Annex 1.

ACADEMY OPENING DATE

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

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.

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

² 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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4 **GAG AND EAG**

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

4A **COMPLAINTS**³

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

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

4A.2 If at the time of the opening of the Academy the investigation of a complaint made to the governing body of the school the Academy replaced (as referred to in clause 2.4 above) has not yet been completed, the Company shall continue to investigate that complaint in accordance with the complaints procedures established by that governing body.

4A.3 If a complaint is made to the Company about matters arising in whole or in part during the 12 months prior to the opening of the Academy, the

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

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Company agrees to investigate that complaint as if the matter complained of had taken place after the opening of the Academy.

4A.4) If the Secretary of State could have given an order and/or a direction under section 496 and/or section 497 of the Education Act 1996 to the governing body of the school the Academy replaced (as referred to in clause 2.4 above) and that order and/or direction related to matters occurring within the 12 months immediately prior to conversion, the Company agrees:

- a) the Secretary of State may give orders and/or directions to the Company as though the Academy were a maintained school and sections 496 and 497 applied to the governing body of that maintained school;
- b) to act in accordance with any such order and/or direction from the Secretary of State.

5 **TERMINATION**

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

Termination Warning Notice

5.2 The Secretary of State shall be entitled to issue to the Company a written notice of his intention to terminate this Agreement ("Termination Warning Notice") where he considers that:

- a) the Academy is no longer meeting the requirements referred to in clause 12 of the Master Agreement (subject to clause 5.9 of this Agreement);
- b) the conditions and requirements set out in clauses 13-34B of the Master Agreement are no longer being met;
- c) the standards of performance of pupils at the Academy are unacceptably low;

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

5.3 A Termination Warning Notice issued by the Secretary of State in accordance with clause 5.2 shall specify:

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

5.4 The Secretary of State shall consider any response and representations from the Company which are received by the date specified in accordance with clause 5.3(c) and shall confirm whether he considers that:

- a) in the light of the Company's representations in response to the Termination Warning Notice, some or all of the Specified Remedial Measures are not required to be implemented (and if so which) and/or the Specified Remedial Measures are being or will be implemented within the specified timeframe; or
- b) subject to any further measures he reasonably requires ("Further Remedial Measures") being implemented by a specified date or any evidence he requires being provided, the implementation of such

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measures has been or will be successfully completed within the specified timeframes; or

c) he is not satisfied that the Company will rectify the defaults identified in the Termination Warning Notice within the specified timeframes. (In such circumstances, the Secretary of State may notify the Company of his intention to terminate the Agreement on a specified date.)

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

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

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

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

Notice of Intention to Terminate

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

(a) special measures are required to be taken in relation to the Academy; or

(b) the Academy requires significant improvement.

5.7 Any notice issued by the Secretary of State in accordance with clause

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5.6 shall invite the Company to respond with any representations within a specified timeframe.

5.8 Where the Secretary of State has given notice of his intention to terminate this Agreement in accordance with clauses 5.6 and 5.7 and –

- (a) he has not received any representations from the Company within the timeframe specified in clause 5.7; or
- (b) having considered the representations made by the Company pursuant to clause 5.7, the Secretary of State remains satisfied that it is appropriate to terminate this Agreement

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

Termination with Immediate Effect

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

Notice of Intention to Terminate by Company

5.10 The Secretary of State shall, at a date preceding the start of each Academy Financial Year, provide to the Company an indication of the level of funding to be provided by the Secretary of State to the Company by way of GAG and EAG in the next following Academy Financial Year (the “**Indicative Funding**”). If the Company is of the opinion that, after receipt of the Indicative Funding for the next following Academy Financial Year (the “**Critical Year**”) and of the taking into account all other resources available and likely to be available to the Academy, including such funds as are set

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out in clause 73 of the Master Agreement and such other funds as are and likely to be available to the Academy from other academies operated by the Company (“**All Other Resources**”), it is likely that the cost of running the Academy during the Critical Year would cause the Company, on the basis of the Indicative Funding, to become insolvent (and for this reason only) then the Company may give notice of its intention to terminate this Agreement at the end of the then current Academy Financial Year.

5.11 Any notice given by the Company under clause 5.10 shall be in writing and shall be served on the Secretary of State not later than 28 February preceding the Critical Year or, if the Secretary of State shall not have given notice of the Indicative Funding to the Company on or before the date specified in clause 5.10 above, within six weeks after the Secretary of State shall have done so. The notice must specify:

5.11.1.the grounds upon which the Company’s opinion is based and include the evidence of those grounds and any professional accounting advice the Company has received and including a detailed statement of steps which the Company proposes to take with a view to ensuring that as soon as reasonably practicable the costs of running the Academy are reduced sufficiently to ensure that such costs are less than the Indicative Funding and All Other Resources and the period of time within which such steps will be taken; and

5.11.2.the shortfall in the Critical Year between the Indicative Funding and All Other Resources expected to be available to the Company to run the Academy and the projected expenditure on the Academy; and

5.11.3.a detailed budget of income and expenditure for the Academy during the Critical Year (the “**Projected Budget**”).

5.12 Both parties undertake to use their best endeavours to agree whether or not the cost of running the Academy during the Critical Year would cause

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the Company, on the basis of the Indicative Funding and All Other Resources, to become insolvent. Both parties recognise that they will need to engage in a constructive dialogue at the time about how best to provide education for the pupils at the Academy and undertake to use their best endeavours to agree a practical solution to the problem.

5.13 If no agreement is reached by 30 April (or such other date as may be agreed between the parties) as to whether the cost of running the Academy during the Critical Year on the basis of the Indicative Funding and All Other Resources would cause the Company to become insolvent, then that question shall be referred to an independent expert (the “**Expert**”) for resolution. The Expert’s determination shall be final and binding on both parties. The Expert shall be requested to specify in his determination the amount of the shortfall in funding (the “**Shortfall**”). The Expert shall be an insolvency practitioner with significant professional experience of educational institutions or academies. If the parties fail to agree upon the appointment of the Expert then the Expert shall be appointed by the President for the time being of the Institute of Chartered Accountants in England and Wales. The Expert’s fees shall be borne equally between the parties.

5.14 The Expert shall be required in reaching his determination to take account of advice from an educational specialist who is professionally familiar with the issues arising from the budget management of schools. If the parties fail to agree upon the appointment of the educational specialist then the educational specialist shall be appointed by the Chairman for the time being of the Specialist Schools and Academies Trust. The educational specialist’s fees shall be borne equally between the parties.

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

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Agreement, by notice expiring on 31 August prior to the Critical Year. Any such notice shall be given within 21 days after (a) the Expert's determination shall have been given to the parties or (b), if later, the Secretary of State shall have given written notice of his refusal to provide sufficient additional funding for the Academy to cover the Shortfall.

6 EFFECT OF TERMINATION

6.1 In the event of termination of this Agreement however occurring, the school shall cease to be an Academy within the meaning of Sections 1 and 1A of the Academies Act 2010.

6.2 Subject to clauses 6.3 and 6.4, if the Secretary of State terminates this Agreement pursuant to clause 5.1 of this Agreement, the Secretary of State shall indemnify the Company. If the Secretary of State terminates this Agreement otherwise than pursuant to clause 5.1 of this Agreement, the Secretary of State may in his absolute discretion indemnify or (to such extent if any as he may in his absolute discretion consider appropriate) compensate the Company.

6.3 The amount of any such indemnity or compensation shall be determined by the Secretary of State having regard to any representations made to him by the Company, and shall be paid at such times and in such manner as the Secretary of State may reasonably think fit.

6.4 The categories of expenditure incurred by the Company in consequence of the termination of the Agreement in respect of which the Secretary of State shall (where the Secretary of State terminates this Agreement pursuant to clause 5.1) indemnify the Company and may (where the Secretary of State terminates this Agreement otherwise than pursuant to clause 5.1) in his absolute discretion indemnify or compensate the Company include (but not by way of limitation), staff compensation and redundancy payments, compensation payments in respect of broken contracts, expenses of disposing of assets or adapting them for other purposes, legal and other professional fees, and dissolution expenses.

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

(a) promptly transfer a proportion of the assets to a person nominated by the Secretary of State, if the Secretary of State considers that all or some of those assets need to be used for any educational purposes by that nominee. The proportion of the assets to be transferred shall be the same as the proportion of the capital contribution made by the Secretary of State to the original value of those assets, whether that contribution was made on the establishment of the Academy or at a later date; or

(b) if the Secretary of State confirms that a transfer under clause 6.5(a) is not required, promptly repay to the Secretary of State a sum equivalent to the percentage of the value of the assets at the date of termination, or, by agreement with the Secretary of State, at the date of subsequent disposal of those assets. Such percentage to be the same as the percentage of the capital contribution made by the Secretary of State to the original value of those assets, whether that contribution was made on the establishment of the Academy or later.

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

a) the Company obtains his permission to invest the proceeds of sale for its charitable objects; or

b) the Secretary of State directs all or part of the repayment to be paid to the LA.

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

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7 **ANNEX**

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

8 **THE MASTER AGREEMENT**

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

8.2 Clauses [insert clause number(s)] of the Master Agreement do not apply to the Academy⁴.

9 **GENERAL**

9.1 This Agreement shall not be assignable by the Company.

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

9.3 Termination of this agreement, for any reason, shall not affect the

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

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accrued rights, remedies, obligations or liabilities of the parties existing at termination.

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

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

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

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

Executed on behalf of by:

[Either

.....

Director

In the presence of:

Witness.....

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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

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

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

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

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

[TEACHERS AND OTHER STAFF]

2.6 The Company shall in relation to:

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

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

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

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

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were references to collective worship in accordance with the tenets and practices of the specified religion or religious denomination of the Academy;

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

- c) the Company shall ensure that the quality of the Academy’s collective worship given in accordance with the tenets and practice of the specific religion or religious denomination is inspected. Such inspection shall be conducted by a person chosen by the Company and the Academy shall secure that such inspection shall comply with the requirements set out in any statutory provision and regulations as if the Academy were a foundation or voluntary controlled school which has been designated under section 69(3) of the School Standards and Framework Act 1998 as having a religious character.

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

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

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

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

Where a leasehold interest in publicly funded land for use by the Academy is to be transferred to the Company using one of the DfE’s

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model leases, insert only clauses 6A and the definition of “land” at clause 1.2 (the other land clauses can be left out as these overlap with what is covered by the lease).

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

The following definitions are to be inserted into clause 1.2:

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

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

AND

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

LAND

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Restrictions on Land transfer

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

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

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

b) shall take any further steps required to ensure that the restriction referred to in clause 6A(a) is entered on the proprietorship register,

c) shall provide the Secretary of State with confirmation of the entry of the restriction referred to in clause 6A(a) as soon as practicable after it receives notification from the Land Registry,

d) in the event that it has not registered the restriction referred to in clause 6A(a), hereby consents to the entering of the restriction referred to in 6A(a) in the register by the Secretary of State (under s. 43(1)(b) of the Land Registration Act 2002),

e) shall not, without the consent of the Secretary of State, apply to dis-apply, modify or remove (by cancellation or otherwise) a restriction entered in accordance with clause 6A(a) or 6A(d) above, whether by

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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

6D) In recognition by the Company that they are or will be taking a transfer of publicly-funded land for nil consideration (which for the purposes of this transaction shall include leases granted at a peppercorn rent), the Company hereby grants and the Secretary of State hereby accepts an option, exercisable by the Secretary of State or his nominee, to transfer the said land pursuant to Schedule 1 to the Academies Act 2010. The option hereby granted shall be exercisable (by notice in writing by or on behalf of the Secretary of State) on the termination of this Funding Agreement for whatever cause. On the exercise of this option, the Law Society's Standard Conditions of Sale for Commercial Property in force at the date of such exercise shall apply to the transaction and completion shall take place 28 days after such exercise.

6E) In further recognition by the Company that they are or will be taking a transfer of publicly-funded land for nil consideration, (which for the purposes of this transaction shall include leases granted at a peppercorn rent), to protect the option granted under clause 6D, the Company:

- a) shall, within 14 days from the transfer to it of the Land, apply to the Land Registry in Form AN1 as prescribed by Rule 81 of the Land Registration Rules 2003 for a notice to be entered in the register (under section 34(3)(a) of the Land Registration Act 2002) to protect the option granted under clause 6D and including a copy of this Agreement as evidence of that option,
- b) shall take any further steps required to ensure that the notice referred to in clause 6E(a) is entered on the proprietorship register,

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c) shall provide the Secretary of State with confirmation of the entry of the notice referred to in clause 6E(a) as soon as practicable after it receives notification from the Land Registry,

d) in the event that it has not registered the notice referred to in clause 6E(a), hereby consents to the entering of the notice referred to in 6E(a) in the register by the Secretary of State (by application in Form UN1 under s. 34(3)(b) of the Land Registration Act 2002),

e) shall not, without the consent of the Secretary of State, apply to dis-apply, modify or remove (by cancellation or otherwise) a notice entered in accordance with clause 6E(a) or 6E(d) above, whether by itself, a holding company, a subsidiary company, or a receiver, administrator or liquidator acting in the name of the Company,

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:

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

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

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

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

Insert the following words at the end of clause 2.1:

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

D. ACADEMIES WITH PFI ARRANGEMENTS

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

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

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

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

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2.3A) Subject to Clause 2.3B), the academy will operate designated places reserved for pupils with special educational needs (SEN Unit and or Resourced Provision) with up to [Insert] planned places for pupils [with insert SEN category] in the age range [insert].

2.3B) The Secretary of State may at any time determine that the [SEN Unit/Resourced Provision] should cease to operate.

2.3C) In making any determination under clause 2.3B) the Secretary of State shall:

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

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

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

F. FOR ACADEMIES WITH 16-19 PROVISION

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

2A 16 – 19 FUNDING GUIDANCE

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Mainstream

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

Annex 1

REQUIREMENTS FOR THE ADMISSION OF PUPILS TO THE [] ACADEMY

GENERAL

1. This annex may be amended in writing at any time by agreement between the Secretary of State and the Company.
2. Except as provided in paragraphs 2A to 2B below the Company will act in accordance with, and will ensure that an Independent Appeal Panel is trained to act in accordance with, all relevant provisions of the School Admissions Code, and the School Admission Appeals Code published by the Department for Education (“the Codes”) as they apply at any given time to maintained schools and with equalities law and the law on admissions as they apply to maintained schools. For this purpose, reference in the Codes or legislation to “admission authorities” shall be deemed to be references to the Directors of the Company.
 - 2A The Company is permitted to determine admission arrangements (subject to consultation in accordance with the School Admissions Code) that give priority for admission (but not above looked after children and previously looked after children¹) to other children attracting the pupil premium, including the service premium (‘the pupil premium admission criterion’). Where a Company exercises this freedom it will provide information in its admission arrangements of eligibility for the premiums.
 - 2B For the purposes of applying the pupil premium admission criterion only, sections 1.9(f) and 2.4(a) of the School Admissions Code do not apply insofar as they prevent admission authorities from giving priority to children according to the financial or occupational status of parents or using supplementary forms that ask for:
 - any personal details about their financial status; or
 - whether parents are serving in the armed forces (of any nation), stationed in England, and exercising parental care and responsibility for the child in question.
3. Notwithstanding the generality of paragraph 2 of this Annex, the Company will participate in the co-ordinated admission arrangements operated by the Local Authority (LA) and the local Fair Access Protocol.
4. Notwithstanding any provision in this Annex, the Secretary of State may:
 - (a) direct the Company to admit a named pupil to the [] Academy on application from an LA. This will include complying with a School

¹ As defined in the School Admissions Code.

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Attendance Order². Before doing so the Secretary of State will consult the Company;

- (b) direct the Company to admit a named pupil to the [] Academy if the Company has failed to act in accordance with this Annex or has otherwise failed to comply with applicable admissions and equalities legislation or the provisions of the Codes;
- (c) direct the Company to amend its admission arrangements where they fail to comply with the School Admissions Code or the School Admission Appeals Code.

4A [INSERT If the Academy is a faith academy]

X' Academy is a [faith] Academy [in the diocese of]. Or The relevant faith body [i.e. the faith body involved in sponsoring the Academy or represented on the board of Directors] is [Y].

Note: This is the body which (a) has to be consulted on admission arrangements (b) has the right to issue guidance on the adoption of faith criteria and (c) has the right of objection to admission arrangements. CE Dioceses also have to approve the disposal of land or premises of CE Academies.

4A or 4B (as appropriate) [INSERT If the Academy is a former maintained grammar school]

X Academy is a former maintained grammar school designated as such under section 104 of the School Standards and Framework Act 1998 and the Education (Grammar School Designation) Order 1998. As such it is permitted to continue to select its intake by reference to ability.

Annex E to the relevant supplemental funding agreement will set out the procedures for removing selective arrangements.

4A or 4B (as appropriate) [INSERT If the Academy is a former partially selective maintained school]

X Academy is a former maintained school with pre-existing partially selective admissions permitted by section 100 of the School Standards and Framework Act 1998. As such it is permitted to maintain such admissions so long as the proportion of selective admissions remains at the level they were set in 1998 and the basis of selection is unchanged (unless it wishes to remove selection entirely). The Academy's partially selective proportions are [then set this out³].

² Local authorities are able to issue school attendance orders if a child is not attending school. These are legally binding upon parents. Such an order might, for instance, be appropriate where a child has a place at an Academy but his/her parents are refusing to send him/her to school. The order will require a parent to ensure his/her child attends a specified school.

³ e.g This should set out how many non-selective places there are under the admission number and how many selective places – so it could look something like '200 non selective places and 20 places by general ability and 20 places according to aptitude for modern foreign languages' etc.

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5. The Company shall ensure that parents and ‘relevant children⁴’ will have the right of appeal to an Independent Appeal Panel if they are dissatisfied with an admission decision of the Company. The Independent Appeal Panel will be independent of the Company. The arrangements for appeals will comply with the School Admission Appeals Code published by the Department for Education as it applies to Foundation and Voluntary Aided schools. The determination of the appeal panel is binding on all parties.

Relevant Area

6. Subject to paragraph 7, the meaning of “Relevant Area” for the purposes of consultation requirements in relation to admission arrangements is that determined by the local authority for maintained schools in the area in accordance with the Education (Relevant Areas for Consultation on Admission Arrangements) Regulations 1999.

7. If the Company does not consider the relevant area determined by the local authority for the maintained schools in the area to be appropriate, it must apply to the Secretary of State by 1 August for a determination of the appropriate relevant area for the Academy, setting out the reasons for this view. The Secretary of State will consult the Company and the LA in which the Academy is situated in reaching a decision.

Requirement to admit pupils

8. Pupils on roll in any predecessor maintained or independent school will transfer automatically to the Academy on opening. All children already offered a place at any predecessor school will be admitted.

9. The Company will:

- a. subject to its right of appeal to the Secretary of State in relation to a named pupil, admit all pupils with a statement of special educational needs naming the Academy;
- b. determine admission oversubscription criteria for the Academy that give highest priority to looked after children and previously looked after children, in accordance with the relevant provisions of the School Admissions Code.
- c. *[only relevant if the academy is a faith Academy with no predecessor maintained school – delete otherwise]* determine admission criteria that provide that, if oversubscribed, at least 50% of its places available each year will be allocated without

⁴ relevant children’ means:

- a) in the case of appeals for entry to a sixth form, the child, and;
- b) in any other case, children who are above compulsory school age, or will be above compulsory school age by the time they start to receive education at the school.

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reference to any faith-based admission criteria.

Oversubscription criteria, admission number, consultation, determination and objections.

10. The Academy admission arrangements will include oversubscription criteria, and an admission number for each relevant age group⁵. The Company will consult on the Academy's admission arrangements and determine them in line with the requirements within the School Admissions Code.

11. The Office of the School's Adjudicator (OSA) will consider objections to the Academy's admission arrangements⁶. The Company should therefore make it clear, when determining the Academy's admission arrangements, that objections should be submitted to the OSA.

12. A determination of an objection by the OSA will be binding upon the Academy and the Company will make appropriate changes as quickly as possible.

⁵ 'Relevant age group' means 'normal point of admission to the school, for example, year R, Year7 and Year 12.

⁶ The OSA has no jurisdiction to consider objections against the agreed variation from the Codes set out in paragraphs 2A and 2B.

SCHEDULE 1

MODEL SUPPLEMENTAL FUNDING AGREEMENT

THIS AGREEMENT made

20[●]

BETWEEN

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

(2) [_____]

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

1 **DEFINITIONS AND INTERPRETATION**

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

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

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

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

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

2 **THE ACADEMY**

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

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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]¹

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 2010²].

4 **PUPILS**

4.1 The planned number of places at the Special Academy is [insert] in the age range [insert],[including residential places], [including a sixth form of [insert] places] [and a nursery unit of [insert] places]. The number of funded places and the [age ranges] is/are not determinative of GAG. GAG for each Academy Funding Year will be determined by the Secretary of State in accordance with clauses 54C and 54D of the Master Agreement.

4.2 Where the Company considers that there is a need to increase the planned number of places stated in clause 4.1, the Company must seek the

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

² 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.

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

4A COMPLAINTS³

4A.1 If a complaint is made about matters arising in whole or in part prior to the opening of the Academy, as referred to in clause 3.1 above, and all or part of that complaint was being or had been investigated by the Local Government Ombudsman under Part III of the Local Government Act 1974 ('Part III') or that complaint in whole or in part could have been investigated under Part III had the school the Academy replaced remained a maintained school, the Company:

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

4A.2 If at the time of the opening of the Academy the investigation of a complaint made to the governing body of the school the Academy replaced (as referred to in clause 3.1 above) has not yet been completed, the Company shall continue to investigate that complaint in accordance with the complaints procedures established by that governing body.

4A.3 If a complaint is made to the Company about matters arising in whole or in part during the 12 months prior to the opening of the Academy, the Company agrees to investigate that complaint as if the matter complained of

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

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had taken place after the opening of the Academy.

4A.4 If the Secretary of State could have given an order and/or a direction under section 496 and/or section 497 of the Education Act 1996 to the governing body of the school the Academy replaced (as referred to in clause 3.1 above) and that order and/or direction related to matters occurring within the 12 months immediately prior to conversion, the Company agrees:

- a) the Secretary of State may give orders and/or directions to the Company as though the Academy were a maintained school and sections 496 and 497 applied to the governing body of that maintained school;
- b) to act in accordance with any such order and/or direction from the Secretary of State.

5 **CAPITAL GRANT**

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

6 **GAG AND EAG**

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

7 **TERMINATION**

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

Termination Warning Notice

7.2 The Secretary of State shall be entitled to issue to the Company a written notice of his intention to terminate this Agreement ("Termination Warning Notice") where he considers that:

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- a) the Academy is no longer meeting the requirements referred to in clause 12A of the Master Agreement;
- b) the conditions and requirements set out in clauses 2.2 and 2.3 of this Agreement and clauses 13-34B of the Master Agreement are no longer being met;
- c) the standards of performance of pupils at the Academy are unacceptably low;
- d) there has been a serious breakdown in the way the Academy is managed or governed;
- e) the safety of pupils or staff is threatened (whether by breakdown of discipline or otherwise); or
- f) the Company is otherwise in material breach of the provisions of this Agreement or the Master Agreement.

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

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

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

- a) in the light of the Company's representations in response to the Termination Warning Notice, some or all of the Specified Remedial Measures are not required to be implemented (and if so which) and/or

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the Specified Remedial Measures are being or will be implemented within the specified timeframe; or

b) subject to any further measures he reasonably requires (“Further Remedial Measures”) being implemented by a specified date or any evidence he requires being provided, the implementation of such measures has been or will be successfully completed within the specified timeframes; or

c) he is not satisfied that the Company will rectify the defaults identified in the Termination Warning Notice within the specified timeframes. (In such circumstances, the Secretary of State may notify the Company of his intention to terminate the Agreement on a specified date.)

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

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

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

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

Notice of Intention to Terminate

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

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

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

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

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

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

Termination with Immediate Effect

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

Notice of Intention to Terminate by Company

7.10 The Secretary of State shall, at a date preceding the start of each Academy Financial Year, provide to the Company an indication of the level of funding to be provided by the Secretary of State to the Company by way of

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GAG and EAG in the next following Academy Financial Year (the “**Indicative Funding**”). If the Company is of the opinion that, after receipt of the Indicative Funding for the next following Academy Financial Year (the “**Critical Year**”) and of the taking into account all other resources available and likely to be available to the Academy, including such funds as are set out in clause 73 of the Master Agreement and such other funds as are and likely to be available to the Academy from other academies operated by the Company (“**All Other Resources**”), it is likely that the cost of running the Academy during the Critical Year would cause the Company, on the basis of the Indicative Funding, to become insolvent (and for this reason only) then the Company may give notice of its intention to terminate this Agreement at the end of the then current Academy Financial Year.

7.11 Any notice given by the Company under clause 7.10 shall be in writing and shall be served on the Secretary of State not later than 28 February preceding the Critical Year or, if the Secretary of State shall not have given notice of the Indicative Funding to the Company on or before the date specified in clause 7.10 above, within six weeks after the Secretary of State shall have done so. The notice must specify:

7.11.1.the grounds upon which the Company’s opinion is based and include the evidence of those grounds and any professional accounting advice the Company has received and including a detailed statement of steps which the Company proposes to take with a view to ensuring that as soon as reasonably practicable the costs of running the Academy are reduced sufficiently to ensure that such costs are less than the Indicative Funding and All Other Resources and the period of time within which such steps will be taken; and

7.11.2.the shortfall in the Critical Year between the Indicative Funding and All Other Resources expected to be available to the Company to run the Academy and the projected expenditure on the Academy; and

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7.11.3.a detailed budget of income and expenditure for the Academy during the Critical Year (the “**Projected Budget**”).

7.12 Both parties undertake to use their best endeavours to agree whether or not the cost of running the Academy during the Critical Year would cause the Company, on the basis of the Indicative Funding and All Other Resources, to become insolvent. Both parties recognise that they will need to engage in a constructive dialogue at the time about how best to provide education for the pupils at the Academy and undertake to use their best endeavours to agree a practical solution to the problem.

7.13 If no agreement is reached by 30 April (or such other date as may be agreed between the parties) as to whether the cost of running the Academy during the Critical Year on the basis of the Indicative Funding and All Other Resources would cause the Company to become insolvent, then that question shall be referred to an independent expert (the “**Expert**”) for resolution. The Expert’s determination shall be final and binding on both parties. The Expert shall be requested to specify in his determination the amount of the shortfall in funding (the “**Shortfall**”). The Expert shall be an insolvency practitioner with significant professional experience of educational institutions or academies. If the parties fail to agree upon the appointment of the Expert then the Expert shall be appointed by the President for the time being of the Institute of Chartered Accountants in England and Wales. The Expert’s fees shall be borne equally between the parties.

7.14 The Expert shall be required in reaching his determination to take account of advice from an educational specialist who is professionally familiar with the issues arising from the budget management of large schools. If the parties fail to agree upon the appointment of the educational specialist then the educational specialist shall be appointed by the Chairman for the time being of the Specialist Schools and Academies Trust. The educational specialist’s fees shall be borne equally between the parties.

If the Expert determines that the cost of running the Academy during the Critical Year would cause the Company, on the basis of the Indicative

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

8 **EFFECT OF TERMINATION**

8.1 In the event of termination of this Agreement however occurring, the school shall cease to be an Academy within the meaning of Section 1 of the Academies Act 2010.

8.2 Subject to clauses 8.3 and 8.4, if the Secretary of State terminates this Agreement pursuant to clause 7.1 of this Agreement, the Secretary of State shall indemnify the Company. If the Secretary of State terminates this Agreement otherwise than pursuant to clause 7.1 of this Agreement, the Secretary of State may in his absolute discretion indemnify or (to such extent if any as he may in his absolute discretion consider appropriate) compensate the Company.

8.3 The amount of any such indemnity or compensation shall be determined by the Secretary of State having regard to any representations made to him by the Company, and shall be paid at such times and in such manner as the Secretary of State may reasonably think fit.

8.4 The categories of expenditure incurred by the Company in consequence of the termination of the Agreement in respect of which the Secretary of State shall (where the Secretary of State terminates this Agreement pursuant to clause 7.1) indemnify the Company and may (where the Secretary of State terminates this Agreement otherwise than pursuant to clause 7.1) in his absolute discretion indemnify or compensate the Company include (but not by way of limitation), staff compensation and redundancy payments, compensation payments in respect of broken contracts, expenses

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of disposing of assets or adapting them for other purposes, legal and other professional fees, and dissolution expenses.

8.5 Subject to clause 8.6, on the termination of this Agreement however occurring, the Company shall in respect of any of its capital assets at the date of termination:

(a) promptly transfer a proportion of the assets to a person nominated by the Secretary of State, if the Secretary of State considers that all or some of those assets need to be used for any educational purposes by that nominee. The proportion of the assets to be transferred shall be the same as the proportion of the capital contribution made by the Secretary of State to the original value of those assets, whether that contribution was made on the establishment of the Academy or at a later date; or

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

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

a) the Company obtains his permission to invest the proceeds of sale for its charitable objects; or

b) the Secretary of State directs all or part of the repayment to be paid to the LA.

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

9 **ANNEX**

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

10 **THE MASTER AGREEMENT**

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

11 **ENGLISH LAW**

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

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

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

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

11.5 This Agreement and any dispute or claim arising out of or in connection with it or its subject matter or formation (including non-contractual disputes or

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claims) shall be governed by and construed in accordance with the law of England and Wales.

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

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

Executed on behalf of by:

[Either

.....

Director

In the presence of:

Witness.....

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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.....

Duly Authorised

APPENDIX OF

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

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

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

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

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

The following definitions are to be inserted into clause 1.2:

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

“the Land” means the publicly funded land (including for the avoidance of doubt all buildings, structures landscaping and other erections)

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

AND

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

LAND

Restrictions on Land transfer

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

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

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

b) shall take any further steps required to ensure that the restriction referred to in clause 8A(a) is entered on the proprietorship register,

c) shall provide the Secretary of State with confirmation of the entry of the restriction referred to in clause 8A(a) as soon as practicable after it receives notification from the Land Registry,

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d) in the event that it has not registered the restriction referred to in clause 8A(a), hereby consents to the entering of the restriction referred to in 8A(a) in the register by the Secretary of State (under s. 43(1)(b) of the Land Registration Act 2002),

e) shall not, without the consent of the Secretary of State, apply to dis-apply, modify or remove (by cancellation or otherwise) a restriction entered in accordance with clause 8A(a) or 8A(d) above, whether by itself, a holding company, a subsidiary company, or a receiver, administrator or liquidator acting in the name of the Company.

Repair and Upkeep

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

Insurance

8C) The Company shall:-

- a) keep the Land insured with a reputable insurance office against loss or damage by the Insured Risks in the sum the Company is advised represents the reinstatement value of the Land from time to time;
- b) pay the premiums for insurance promptly as they become due and maintain in force the policies of insurance on the Land;
- c) following the incidence of damage to or destruction of the Land and subject to receipt of all necessary consents licences permissions and the like apply the proceeds of the policy of the insurance received for those purposes in rebuilding and reinstating the Land (provided that this clause should be satisfied if the Company provides premises not necessarily identical to the Land as the same existing prior to such damage or destruction occurring) as soon as may be reasonably practicable;
- d) produce to the Secretary of State a copy of the insurance policy whenever reasonably requested and the receipt for the last or other evidence

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of renewal and up to date details of the amount of cover (but no more often than once in any period of 12 months in both cases);

e) not knowingly do anything whereby any policy of insurance relating to the Land may become void or voidable.

f) insure against liability in respect of property owners' and third party risks including occupiers liability.

Transfer of Land on Termination of Agreement

8D) In recognition by the Company that they are or will be taking a transfer of publicly-funded land for nil consideration (which for the purposes of this transaction shall include leases granted at a peppercorn rent), the Company hereby grants and the Secretary of State hereby accepts an option, exercisable by the Secretary of State or his nominee, to transfer the said land pursuant to Schedule 1 to the Academies Act 2010. The option hereby granted shall be exercisable (by notice in writing by or on behalf of the Secretary of State) on the termination of this Funding Agreement for whatever cause. On the exercise of this option, the Law Society's Standard Conditions of Sale for Commercial Property in force at the date of such exercise shall apply to the transaction and completion shall take place 28 days after such exercise.

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

a) shall, within 14 days from the transfer to it of the Land, apply to the Land Registry in Form AN1 as prescribed by Rule 81 of the Land Registration Rules 2003 for a notice to be entered in the register (under section 34(3)(a) of the Land Registration Act 2002) to protect the option granted under clause 8D and including a copy of this Agreement as evidence of that option.

Special Academies Multi Model

- b) shall take any further steps required to ensure that the notice referred to in clause 8E(a) is entered on the proprietorship register,
- c) shall provide the Secretary of State with confirmation of the entry of the notice referred to in clause 8E(a) as soon as practicable after it receives notification from the Land Registry,
- d) in the event that it has not registered the notice referred to in clause 8E(a), hereby consents to the entering of the notice referred to in 8E(a) in the register by the Secretary of State (by application in Form UN1 under s. 34(3)(b) of the Land Registration Act 2002),
- e) shall not, without the consent of the Secretary of State, apply to dis-apply, modify or remove (by cancellation or otherwise) a notice entered in accordance with clause 8E(a) or 8E(d) above, whether by itself, a holding company, a subsidiary company, or a receiver, administrator or liquidator acting in the name of the Company.
- f) in the case of previously unregistered land, for the further protection of the option granted in Clause 8D the Company shall within 14 days of the signing of this Agreement make application to register a Class C (iv) land charge in the Land Charges Registry and a Caution against First Registration in the Land Registry and shall provide the Secretary of State with copies of the entries secured thereby within 7 days of completing each registration, respectively. If the Secretary of State is of the view that the Company has failed to perform the registration obligations in this sub-clause he shall be at liberty to make his own applications to secure these registrations.

B. ACADEMIES WITH PFI ARRANGEMENTS

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

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

C. FOR ACADEMIES WITH 16-19 PROVISION

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

2A 16 – 19 FUNDING GUIDANCE

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

ANNEX TO THIS SUPPLEMENTAL AGREEMENT

Requirements for the Admission for pupils at the
Academy Annex 1

Annex 1

REQUIREMENTS FOR THE ADMISSION OF PUPILS TO THE [] ACADEMY

GENERAL

1. This annex may be amended in writing at any time by agreement between the Secretary of State and the Company.
2. Except where paragraph 3 applies, the Company may not admit a child to the school unless a statement of SEN is maintained for that child and the [] Academy (or [insert name of predecessor school]) is named in the child's statement
3. The Company may admit a child without a statement to the [] Academy if:
 - (i) he is admitted for the purposes of an assessment of his educational needs under section 323 of the Education Act 1996 and his admission to the Academy is with the agreement of the local authority, the Company, the child's parent and any person whose advice is to be sought in accordance with regulation 7 of the Education (Special Educational Needs) (England) (Consolidation) Regulations 2001;
 - (ii) he remains admitted following an assessment under section 323 of the Education Act 1996; or
 - (iii) he is admitted following a change in his circumstances, with the agreement of the local authority, the Company and the child's parents.
4. If a child without a statement has been admitted to the [] Academy for the purpose of an assessment, in accordance with paragraph 3(i), the Company may allow the child to remain at that Academy:
 - (i) until the expiry of ten school days after the local authority serve a notice under section 325 of the Education Act 1996 that they do not propose to make a statement, or
 - (ii) until a statement is made.
5. Where the local authority intend to name the [] Academy in a statement, and have served a copy of the proposed statement (or amended statement) on the Company, the Company must respond to the local authority's proposal within 15 days.
6. The Company must consent to being named, except where admitting the child would be incompatible with the provision of efficient education for other children; and where no reasonable steps may be made to

secure compatibility. In deciding whether a child's inclusion would be incompatible with the efficient education of other children, the Company must have regard to the relevant guidance issued by the Secretary of State to maintained schools.

7. If the Company determines that admitting the child would be incompatible with the provision of efficient education, it must, within 15 days of receipt of the local authority's notice, notify the local authority in writing that it does not agree that the Academy should be named in the pupil's statement. Such notice must set out all the facts and matters the Academy relies upon in support of its contention that: (a) admitting the child would be incompatible with efficiently educating other children; and (b) the Company cannot take reasonable steps to secure this compatibility.
8. Where a local authority maintains a statement for a child under section 324 of the Education Act 1996 and the name of the [] Academy (or [insert name of predecessor school]) is specified in that statement, the Company must admit that child to the Academy even if they consider that the Academy should not have been named in the child's statement.
9. Where the Company considers that the Academy should not have been named in a child's statement, they may ask the Secretary of State to determine that the local authority has acted unreasonably in naming the Academy and to make an order directing the authority to amend the child's statement by removing the name of the Academy. Where the Secretary of State makes an order to this effect, the Company will cease to be under an obligation to admit the child from the date of the Secretary of State's Order, or from such date as the Secretary of State specifies. In specifying a date, the Secretary of State must take into account both the welfare of the child in question and the degree of difficulty caused to the Academy by the child's continued admission.
10. Where the Secretary of State determines that a local authority has acted reasonably in naming [] Academy in a child's statement, the Company must continue to admit the child until the Academy ceases to be named in the statement.

THE FIRST-TIER TRIBUNAL (SPECIAL EDUCATIONAL NEEDS AND DISABILITY)

11. If a parent or guardian of a child in respect of whom a statement is maintained by a local authority appeals to the First-tier Tribunal (Special Educational Needs and Disability) either against the naming of the Academy in the child's statement or asking the Tribunal to name the Academy, the Company agrees to be bound by the decision of the Tribunal on any such appeal even if the decision is different to that of the Secretary of State under paragraph 9 or 10 above.
12. Where the Academy, the Secretary of State or the First-tier Tribunal

(Special Educational Needs and Disability) have determined that it should be named in a child's statement, the Company must admit the child to the Academy notwithstanding any provision of this Annex.

SCHEDULE 1

MODEL SUPPLEMENTAL FUNDING AGREEMENT

THIS AGREEMENT made

20[●]

BETWEEN

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

(2) [_____]

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

1 **DEFINITIONS AND INTERPRETATION**

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

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

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

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

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

2 **THE ALTERNATIVE PROVISION ACADEMY**

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

2.2 The curriculum provided by the Alternative Provision Academy to pupils up to the age of 16 shall be broad and balanced.

2.3 The Company shall ensure that the broad and balanced curriculum includes English and mathematics.

2.4 The Company must ensure that the Alternative Provision Academy meets the requirements set out in section 1C of the Academies Act 2010, and that educational provision is made at the Alternative Provision Academy for children of compulsory school age who, by reason of illness, exclusion from school or otherwise, may not for any period receive suitable education unless alternative provision is made for them.

2.5 The requirements for the admission of pupils to the Alternative Provision Academy are set out at Annex 1.

3 **ALTERNATIVE PROVISION ACADEMY OPENING DATE**

3.1 The Alternative Provision Academy shall open as a school on [INSERT] [replacing [INSERT NAME OF THE PREDECESSOR PUPIL REFERRAL UNIT] which shall cease to be maintained by the Local Authority on that date, which date shall be the conversion date within the meaning of the Academies Act 2010¹].

4 **PUPILS**

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

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

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students of a sixth form of age], [including up to [INSERT] hospital education provision places²], [including [INSERT] places for pupils with a statement of special education needs naming the [INSERT NAME] Alternative Provision Academy³], [and a nursery unit of [INSERT] places]. The planned number of places [and the age ranges] is/are not determinative of GAG. GAG for each Academy Financial Year will be determined by the Secretary of State in accordance with clauses 54L and 54M of the Master Agreement.

4.2 Where the Company considers that there is a need to increase the planned number of places stated in clause 4.1, the Company must seek the approval of the Secretary of State and the requirements of this Agreement may be amended accordingly by agreement between the Secretary of State and the Company.

4A **COMPLAINTS**⁴

4A.1 If a complaint is made about matters arising in whole or in part prior to the opening of the Alternative Provision Academy, as referred to in clause 3.1 above, and all or part of that complaint was being or had been investigated by the Local Government Ombudsman under Part III or the Local Government Act 1974 ("Part III") of that complaint in whole or in part could have been investigated under Part III had the Pupil Referral Unit the Alternative Provision Academy replaced remained a Pupil Referral Unit, the Company:

- a) will abide by the provisions of Part III as though the Alternative Provision Academy were a Pupil Referral Unit;
- b) agrees that the Secretary of State shall have the power to investigate the matter complained of as if it had taken place after conversion;

² See footnote to paragraph 7a) of the Admissions Annex 1.

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

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

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c) agrees to act in accordance with any recommendation from the Secretary of State as though that recommendation had been made under Part III and the Alternative Provision Academy were a Pupil Referral Unit.

4A.2 If at the time of the opening of the Alternative Provision Academy the investigation of a complaint made to the governing body of the school the Alternative Provision Academy replaced (as referred to in clause 3.1 above) has not yet been completed, the Company shall continue to investigate that complaint in accordance with the complaints procedures established by that governing body.

4A.3 If a complaint is made to the Company about matters arising in whole or in part during the 12 months prior to the opening of the Alternative Provision Academy, the Company agrees to investigate that complaint as if the matter complained of had taken place after the opening of the Alternative Provision Academy.

4A.4 If the Secretary of State could have given an order and/or a direction under section 496 and/or section 497 of the Education Act 1996 to the management committee of the Pupil Referral Unit the Alternative Provision Academy replaced (as referred to in clause 3.1 above) and that order and/or direction related to matters occurring within the 12 months immediately prior to conversion, the Company agrees:

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

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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.

6 **GAG AND EAG**

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

7 **TERMINATION**

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

Termination Warning Notice

7.2 The Secretary of State shall be entitled to issue to the Company a written notice of his intention to terminate this Agreement ("**Termination Warning Notice**") where he considers that:

- a) the Alternative Provision Academy is no longer meeting the requirements as set out in clause 2.2 and 2.3 of this Agreement (subject to clause 7.9 of this Agreement);
- b) the conditions and requirements set out in clauses 12B-34C of the Master Agreement are no longer being met;
- c) the standards of performance of pupils at the Alternative Provision Academy are unacceptably low;
- d) there has been a serious breakdown in the way the Alternative Provision Academy is managed or governed;

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- e) the safety of pupils or staff is threatened (whether by breakdown of discipline or otherwise); or
- f) the Company is otherwise in material breach of the provisions of this Agreement or the Master Agreement.

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

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

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

- a) in the light of the Company's representations in response to the Termination Warning Notice, some or all of the Specified Remedial Measures are not required to be implemented (and if so which) and/or the Specified Remedial Measures are being or will be implemented within the specified timeframe; or
- b) subject to any further measures he reasonably requires ("**Further Remedial Measures**") being implemented by a specified date or any evidence he requires being provided, the implementation of such measures has been or will be successfully completed within the

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specified timeframes; or

c) he is not satisfied that the Company will rectify the defaults identified in the Termination Warning Notice within the specified timeframes. (In such circumstances, the Secretary of State may notify the Company of his intention to terminate the Agreement on a specified date.)

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

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

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

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

Notice of Intention to Terminate

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

a) special measures are required to be taken in relation to the Academy; or

b) the Academy requires significant improvement.

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

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

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

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

Termination with Immediate Effect

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

Notice of Intention to Terminate by Company

7.10 The Secretary of State shall, at a date preceding the start of each Academy Financial Year, provide to the Company an indication of the level of funding to be provided by the Secretary of State to the Company by way of GAG and EAG in the next following Academy Financial Year (the “**Indicative Funding**”). If the Company is of the opinion that, after receipt of the Indicative Funding for the next following Academy Financial Year (the “**Critical Year**”) and of the taking into account all other resources available and likely to be available to the Alternative Provision Academy, including such funds as are

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set out in clause 73 of the Master Agreement and such other funds as are and likely to be available to the Academy from other academies operated by the Company (“**All Other Resources**”), it is likely that the cost of running the Alternative Provision Academy during the Critical Year would cause the Company, on the basis of the Indicative Funding, to become insolvent (and for this reason only) then the Company may give notice of its intention to terminate this Agreement at the end of the then current Academy Financial Year.

7.11 Any notice given by the Company under clause 7.10 shall be in writing and shall be served on the Secretary of State not later than 28 February preceding the Critical Year or, if the Secretary of State shall not have given notice of the Indicative Funding to the Company on or before the date specified in clause 7.10 above, within six weeks after the Secretary of State shall have done so. The notice must specify:

7.11.1. the grounds upon which the Company’s opinion is based and include the evidence of those grounds and any professional accounting advice the Company has received and including a detailed statement of steps which the Company proposes to take with a view to ensuring that as soon as reasonably practicable the costs of running the Alternative Provision Academy are reduced sufficiently to ensure that such costs are less than the Indicative Funding and All Other Resources and the period of time within which such steps will be taken; and

7.11.2. the shortfall in the Critical Year between the Indicative Funding and All Other Resources expected to be available to the Company to run the Academy and the projected expenditure on the Alternative Provision Academy; and

7.11.3. a detailed budget of income and expenditure for the Alternative Provision Academy during the Critical Year (the “**Projected Budget**”).

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7.12 Both parties undertake to use their best endeavours to agree whether or not the cost of running the Alternative Provision Academy during the Critical Year would cause the Company, on the basis of the Indicative Funding and All Other Resources, to become insolvent. Both parties recognise that they will need to engage in a constructive dialogue at the time about how best to provide education for the pupils at the Alternative Provision Academy and undertake to use their best endeavours to agree a practical solution to the problem.

7.13 If no agreement is reached by 30 April (or such other date as may be agreed between the parties) as to whether the cost of running the Alternative Provision Academy during the Critical Year on the basis of the Indicative Funding and All Other Resources would cause the Company to become insolvent, then that question shall be referred to an independent expert (the “**Expert**”) for resolution. The Expert’s determination shall be final and binding on both parties. The Expert shall be requested to specify in his determination the amount of the shortfall in funding (the “**Shortfall**”). The Expert shall be an insolvency practitioner with significant professional experience of educational institutions or academies. If the parties fail to agree upon the appointment of the Expert then the Expert shall be appointed by the President for the time being of the Institute of Chartered Accountants in England and Wales. The Expert’s fees shall be borne equally between the parties.

7.14 The Expert shall be required in reaching his determination to take account of advice from an educational specialist who is professionally familiar with the issues arising from the budget management of schools. If the parties fail to agree upon the appointment of the educational specialist then the educational specialist shall be appointed by the Chairman for the time being of the Specialist Schools and Academies Trust. The educational specialist’s fees shall be borne equally between the parties.

7.15 If the Expert determines that the cost of running the Alternative Provision Academy during the Critical Year would cause the Company, on the basis of the Indicative Funding and All Other Resources, to become insolvent,

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and the Secretary of State shall not have agreed to provide sufficient additional funding to cover the Shortfall, then the Company shall be entitled to terminate this Agreement, by notice expiring on 31 August prior to the Critical Year. Any such notice shall be given within 21 days after (a) the Expert's determination shall have been given to the parties or (b), if later, the Secretary of State shall have given written notice of his refusal to provide sufficient additional funding for the Alternative Provision Academy to cover the Shortfall.

8 EFFECT OF TERMINATION

8.1 In the event of termination of this Agreement however occurring, the school shall cease to be an Alternative Provision Academy within the meaning of Section 1C of the Academies Act 2010.

8.2 Subject to clause 8.3 and 8.4, if the Secretary of State terminates this Agreement pursuant to clause 7.1 of this Agreement, the Secretary of State shall indemnify the Company. If the Secretary of State terminates this Agreement otherwise than pursuant to clause 7.1 of this Agreement, the Secretary of State may in his absolute discretion indemnify or (to such extent if any as he may in his absolute discretion consider appropriate) compensate the Company.

8.3 The amount of any such indemnity or compensation shall be determined by the Secretary of State having regard to any representations made to him by the Company, and shall be paid at such times and in such manner as the Secretary of State may reasonably think fit.

8.4 The categories of expenditure incurred by the Company in consequence of the termination of the Agreement in respect of which the Secretary of State shall (where the Secretary of State terminates this Agreement pursuant to clause 7.1) indemnify the Company and may (where the Secretary of State terminates this Agreement otherwise than pursuant to clause 7.1) in his absolute discretion indemnify or compensate the Company include (but not by way of limitation), staff compensation and redundancy payments, compensation payments in respect of broken contracts, expenses

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of disposing of assets or adapting them for other purposes, legal and other professional fees, and dissolution expenses.

8.5 Subject to clause 8.6, on the termination of this Agreement however occurring, the Company shall in respect of any of its capital assets at the date of termination:

(a) promptly transfer a proportion of the assets to a person nominated by the Secretary of State, if the Secretary of State considers that all or some of those assets need to be used for any educational purposes by that nominee. The proportion of the assets to be transferred shall be the same as the proportion of the capital contribution made by the Secretary of State to the original value of those assets, whether that contribution was made on the establishment of the Alternative Provision Academy or at a later date; or

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

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

a) the Company obtains his permission to invest the proceeds of sale for its charitable objects; or

b) the Secretary of State directs all or part of the repayment to be paid to the LA.

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

9 **ANNEX**

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

10 **THE MASTER AGREEMENT**

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

10.2 Clauses [insert clause number(s)] of the Master Agreement do not apply to the Academy⁵.

11 **ENGLISH LAW GENERAL**

11.1 This Agreement shall not be assignable by the Company.

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

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

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remedy shall preclude or restrict the further exercise of that or any other right or remedy.

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

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

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

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

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

Executed on behalf of by:

[Either

.....

Director

In the presence of:

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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
Alternative Provision Academy

Annex 1

APPENDIX OF

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

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

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

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

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

The following definitions are to be inserted into clause 1.2:

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

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exclusions or limitations as may from time to time be imposed by the insurers or underwriters.

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

AND

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

LAND

Restrictions on Land transfer

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

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

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

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

Repair and Upkeep

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

Insurance

8C) The Company shall:-

- a) keep the Land insured with a reputable insurance office against loss or damage by the Insured Risks in the sum the Company is advised represents the reinstatement value of the Land from time to time;
- b) pay the premiums for insurance promptly as they become due and maintain in force the policies of insurance on the Land;
- c) following the incidence of damage to or destruction of the Land and subject to receipt of all necessary consents licences permissions

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and the like apply the proceeds of the policy of the insurance received for those purposes in rebuilding and reinstating the Land (provided that this clause should be satisfied if the Company provides premises not necessarily identical to the Land as the same existing prior to such damage or destruction occurring) as soon as may be reasonably practicable;

d) produce to the Secretary of State a copy of the insurance policy whenever reasonably requested and the receipt for the last or other evidence of renewal and up to date details of the amount of cover (but no more often than once in any period of 12 months in both cases);

e) not knowingly do anything whereby any policy of insurance relating to the Land may become void or voidable.

f) insure against liability in respect of property owners' and third party risks including occupiers liability.

Transfer of Land on Termination of Agreement

8D) In recognition by the Company that they are or will be taking a transfer of publicly-funded land for nil consideration (which for the purposes of this transaction shall include leases granted at a peppercorn rent), the Company hereby grants and the Secretary of State hereby accepts an option, exercisable by the Secretary of State or his nominee, to transfer the said land pursuant to Schedule 1 to the Academies Act 2010. The option hereby granted shall be exercisable (by notice in writing by or on behalf of the Secretary of State) on the termination of this Funding Agreement for whatever cause. On the exercise of this option, the Law Society's Standard Conditions of Sale for Commercial Property in force at the date of such exercise shall apply to the transaction and completion shall take place 28 days after such exercise.

8E) In further recognition by the Company that they are or will be taking a transfer of publicly-funded land for nil consideration, (which for the purposes

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of this transaction shall include leases granted at a peppercorn rent), to protect the option granted under clause 8D, the Company:

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

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

B. ALTERNATIVE PROVISION ACADEMIES WITH PFI ARRANGEMENTS

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

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

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

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

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

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

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

- (i) have regard to the views of the Alternative Provision Academy and local authorities in the area (in their strategic role in the commissioning of SEN provision); and

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- (ii) consider the impact of such a determination on the local authorities' ability to secure suitable SEN provision for all children within the area.

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

4.1) The planned number of places at the Alternative Provision Academy is [INSERT] places in the age range [INSERT], [including [INSERT] places for students of a sixth form of age], [including up to [INSERT] hospital education provision places⁶], [including [INSERT] places for pupils with a statement of special education needs naming the [INSERT NAME] Alternative Provision Academy⁷], [and a nursery unit of [INSERT] places] and will subject to Clause 2.5B) operate designated reserved provision for pupils with special educational needs (SEN Unit or Resourced Provision) for up to [insert] planned places for pupils with [insert SEN category] in the age range [insert].. The planned number of places [and the age ranges] is/are not determinative of GAG. GAG for each Academy Financial Year will be determined by the Secretary of State in accordance with clauses 54L and 54M of the Master Agreement.

D. FOR ALTERNATIVE PROVISION ACADEMIES WITH 16-19 PROVISION

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

2A 16 – 19 FUNDING GUIDANCE

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

⁶ See footnote to paragraph 7a) of the Admissions Annex 1.

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

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

Annex 1

Requirements for the admission of pupils to the [] Alternative Provision Academy

GENERAL

1. This Annex may be amended in writing at any time by agreement between the Secretary of State and the Company.
2. The Company will act in accordance with equalities law.
3. Except where paragraphs 4, 5 or 6 apply, the Company may not admit a child of compulsory school age unless it is by way of a referral from a Commissioner through one of the referral routes set out in paragraph 7 below.
4. Notwithstanding any provision in this Annex, the Secretary of State may:
 - (a) direct the Company to admit a named pupil to the [] Alternative Provision Academy on application from a local authority. This will include complying with a School Attendance Order¹. Before doing so the Secretary of State will consult the Company.
 - (b) direct the Company to admit a named pupil to the [] Alternative Provision Academy if the Company has failed to act in accordance with this Annex or has otherwise failed to comply with applicable equalities legislation.
 - (c) direct the Company to amend its admission arrangements where the Company fails to comply with relevant legislation or where the Secretary of State is concerned that because of its admissions arrangements the Company is no longer meeting the requirements at 1C of the Academies Act.
5. Pupils on roll in any predecessor provider will transfer automatically to the Alternative Provision Academy on opening. All children already offered a place at any predecessor Maintained Pupil Referral Unit will be admitted.
6. The Company will:
 - a) Subject to its right of appeal to the Secretary of State in relation to a named pupil, admit all pupils with a statement of special educational needs naming the Alternative Provision Academy; and

¹ Local authorities are able to issue school attendance orders if a child is not attending school. These are legally binding upon parents. Such an order might, for instance, be appropriate where a child has a place at an Alternative Provision Academy but his/her parents are refusing to send him/her to school. The order will require a parent to ensure his/her child attends a specified school.

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b) Adopt admission oversubscription criteria² that give highest priority to looked after children.

ADMISSION ARRANGEMENTS

7. The Company may only admit a child of compulsory school age:

a) referred by a local authority where the local authority has a duty to that child under section 19 of the Education Act 1996.³

b) referred by a maintained school or Academy where the maintained school or Academy has a duty under Section 100 of the Education and Inspections Act 2006.⁴

c) referred by a maintained school under powers set out in section 29(A) of the Education Act 2002⁵.

d) referred by an Academy which, under general powers in the Articles of the Company may send pupils off-site to an Alternative Provision Academy as part of early intervention measures to address behaviour. Academies have the power to do this within their general powers under the Articles of an Company to advance education. However, as with a maintained school there is an expectation in law that a pupil will be educated at the school where he is registered, so placements would generally be relatively short and subject to review⁶.

8. The Company shall have admission arrangements agreed with the Department which will include oversubscription criteria, a fair, transparent and objective process for considering whether the education provided will be appropriate for prospective pupils and an admission number for each relevant key stage. The Company will consult on its admission arrangements with relevant parties.

² Over subscription criteria means how the Company will distinguish/prioritise between pupils where it has more referrals than places currently available.

³ Section 19 of the Education Act 1996, and regulations made under that section, requires a local authority to make arrangements (from the sixth day of exclusion where a pupil has been permanently excluded) for the provision of suitable, full time (unless there are medical reasons as to why this would not be appropriate) education at school or otherwise who, for a range of reasons, would otherwise be without such education. Referrals under section 19 would include for hospital education provision for example where the AT obtains a report from an educational psychologist, or from a medical expert or specialist, recommending that the child be admitted to the alternative provision Academy.

⁴ Section 100 of the Education and Inspections Act 2006 requires maintained schools and Academies to arrange full-time education for pupils on a fixed period exclusion of more than five days from the sixth day of the exclusion

⁵ Section 29A of the Education Act 2002 provides that governing bodies of maintained schools may direct a pupil off-site “for the purpose of receiving educational provision which is intended to improve the behaviour of the pupil,

⁶ It is possible that some off-site directions may become longer term placements in cases where the referring school and local authority agree that the provision in an Alternative Provision Academy is meeting the pupil’s needs, and that a mainstream school place cannot meet that pupil’s needs. These pupils could fall within the terms of section 19 of the Education Act.

9. Any changes to admission arrangements proposed by the Company should be discussed with Commissioners and must be agreed with the Secretary of State.

Pupil registration and information sharing

10. The pupil numbers of an Alternative Provision Academy will fluctuate throughout the academic year.

11. The Company must ensure that pupils are appropriately registered⁷. In the case of a fixed period exclusion or an off site direction, the excluded pupil should remain on the register of the excluding school as they are expected to return when the exclusion period is completed and should also be registered with the Alternative Provision Academy (dual registered). In the case of a permanent exclusion, the excluded pupil should be removed from the excluding school's register and be registered with the Alternative Provision Academy.

12. In the case of a permanent exclusion, for schools situated in local authorities that are taking part in the exclusion trial area, the expectation is that pupils will be dual registered until such time as the trial has concluded.

13. As far as reasonably practicable, in agreeing contractual arrangements with Commissioners the Company shall request appropriate information on the needs and prior attainment of pupils who will attend the Alternative Provision Academy.

14. The Company will provide regular feedback to Commissioners (and in any event when requested by the Commissioner to do so) on progress made by the pupil, the pupil's needs and attainment.

Objections and determinations

15. The Company must make clear when determining the Alternative Provision Academy's admission arrangements, that objections should be submitted to the EFA or any successor to it.

16. A determination of an objection, by the EFA or any successor to it on behalf of the Secretary of State, or by the Secretary of State, will be binding upon the Alternative Provision Academy.

⁷ The requirements of section 434 of the Education Act 1996 (registration of pupils) and regulations made under that section apply to schools (which includes Academy schools and alternative provision Academies)