

Multi Academy Model
Mainstream

MODEL SUPPLEMENTAL AGREEMENT

THIS AGREEMENT made *20 December* 2012

BETWEEN

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

(2) **UNITED LEARNING TRUST**

IS SUPPLEMENTAL TO THE MASTER FUNDING AGREEMENT made between the same parties and dated 19 October 2005 (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 Paulsgrove Primary School to be established at Cheltenham Road, Paulsgrove, Portsmouth, PO6 3PL;

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

"Early Years Provision" has the same meaning as that given in section 20 of the Childcare Act 2006, provided that, for the avoidance of doubt, pupils who:

(a) attend the Academy;

(b) have not yet reached the age of five and are in a reception class; and

(c) in respect of whom the Academy Trust may otherwise charge a fee under clause 29E of the Master Funding Agreement

shall be excluded from the definition.

"Insured Risks" means fire lightning explosion earthquake storm tempest flood subsidence landslip heave impact terrorism bursting or overflowing of water tanks and pipes earthquake damage by aircraft and other aerial devices or articles dropped there from riot and civil commotion labour disturbance and

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malicious damage and such other risks as the Company insures against from time to time subject in all cases to any exclusions or limitations as may from time to time be imposed by the insurers or underwriters;

"the Land" means the land to be leased to the Company (including for the avoidance of doubt all buildings, structures landscaping and other erections) situated at and known as Paulsgrove Primary School, Cheltenham Road, Paulsgrove, Portsmouth, PO6 3PL

- 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 (as amended by this 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 1 January 2013 replacing Paulsgrove Primary School 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.
- 2.5 The planned capacity of the Academy is 420 in the age range 3 to 11 and a nursery unit of 39 places.

¹ If the Academy is to be a "selective school" then insert the following wording at the end of paragraph 2.1 – "...save that clause 12(c) of the Master Agreement does not apply as the Academy is a "selective school" within the meaning of Section 6(4) of the Academies Act 2010 and additionally clause 19 does not apply in so far as it provides for the Academy to be an all ability inclusive school".

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3 CAPITAL GRANT

- 3.1 Pursuant to clause 40 of the Master Funding Agreement (as amended by this Agreement), the Secretary of State may, in his absolute discretion provide Capital Expenditure funding in accordance with any arrangements he considers appropriate.

4 GAG AND EAG

- 4.1 The Secretary of State agrees to pay GAG and EAG to the Company in relation to the Academy in accordance with the Master Agreement (as amended by this Agreement).

4A COMPLAINTS²

- 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 of this Agreement, and all or part of that complaint was being or had been investigated by the Local Government Ombudsman under Part III or the Local Government Act 1974 ('Part III') or that complaint in whole or in part could have been investigated under Part III had the school the Academy replaced remained a maintained school, the Company:

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

4A.2) 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 of this Agreement) and

² Only include this clause if it is not already contained in the Master Funding Agreement. Otherwise mark as 'Not used'.

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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 2020 or any subsequent anniversary of that date.

5.2 If the Secretary of State is of the opinion that the Academy no longer meets the requirements set out in clause 11 of the Master Agreement (as amended by this Agreement) or that the conditions and requirements set out in clauses 12–34C of the Master Agreement (as amended by this Agreement) are not being met, or that the Company is otherwise in material breach of the provisions of this Agreement or the Master Agreement, the Secretary of State may give notice of his provisional intention to terminate this Agreement.

5.3 Any such notice shall be in writing and shall:

5.3.1. state the grounds on which the Secretary of State considers the Academy no longer meets the requirements set out in clause 11 of the Master Agreement (as amended by this Agreement) or is not meeting the conditions and requirements of clauses 12-34C of the Master Agreement (as amended by this Agreement) or the Company is otherwise in material breach of the provisions of this Agreement or the Master Agreement (as amended by this Agreement);

5.3.2. specify the measures needed to remedy the situation or breach;

5.3.3. specify a reasonable date by which these measures are to be implemented; and

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- 5.3.4. state the form in which the Company is to provide its response and a reasonable date by which it must be provided.
- 5.4 If no response is received by the date specified in accordance with clause 5.3.4, the Secretary of State may give the Company 12 months, or such lesser period as he considers appropriate in the circumstances, written notice to terminate this Agreement.
- 5.5 If a response is received by the date specified in accordance with clause 5.3.4, the Secretary of State shall consider it, and any representations made by the Company, and shall, within three months of its receipt, indicate that:
- 5.5.1. he is content with the response and/or that the measures which he specified are being implemented; or
- 5.5.2. he is content, subject to any further measures he reasonably specifies being implemented by a specified date or any evidence he requires that implementation of such measures have been successfully completed; or
- 5.5.3. he is not satisfied, that he does not believe that he can be reasonably satisfied, and that he will proceed to terminate the Agreement.
- 5.6 In the circumstances of clause 5.5.3 the Secretary of State shall notify the Company why he believes that he cannot be reasonably satisfied and, if so requested by the Company within thirty days from such notification, he shall meet a deputation including representatives from directors of the Company and the Local Governing Body of the Academy to discuss his concerns. If following such meeting he has good reasons for remaining satisfied that the Academy does not and will not meet the requirements set out in clause 11 of the Master Agreement (as amended by this Agreement) or does not and will not meet the conditions and requirements set out in clauses 12-34C of the Master Agreement (as amended by this Agreement) or the Company is in material breach of the provisions of this Agreement or the Master Agreement (as amended by this Agreement) and such breach will not be remedied to his reasonable satisfaction, he shall give the Company twelve months written notice to terminate this Agreement.

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- 5.7 If the Secretary of State has cause to serve a notice on the Company under section 165 of the Education Act 2002 and a determination (from which all rights of appeal have been exhausted) has been made that the Academy shall be struck off the Register of Independent Schools, the period of twelve months notice referred to in clause 5.6 may be shortened to a period deemed appropriate by the Secretary of State.
- 5.8 The Secretary of State shall use his reasonable endeavours to notify the Company by the end of December preceding the start of each Academy Financial Year of the GAG and EAG figures in respect of each Academy which, subject to Parliamentary approval, the Secretary of State plans for that Academy Financial Year and of the assumptions and figures on which these are based (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 (as amended by this 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.
- 5.9 Any notice given by the Company under clause 5.8 shall be in writing and shall be served on the Secretary of State not later than 28 February preceding the Critical Year or, if the Secretary of State shall not have given notice of the Indicative Funding to the Company on or before the date specified in clause 5.8 above, within six weeks after the Secretary of State shall have done so. The notice must specify:
- 5.9.1. the grounds upon which the Company's opinion is based and include the evidence of those grounds and any professional accounting advice the Company has received and including a detailed statement of steps which the Company proposes to take with a view to ensuring that as soon as reasonably practicable the costs of running the Academy are

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

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

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of the Specialist Schools and Academies Trust. The educational specialist's fees shall be borne equally between the parties.

- 5.13 If the Expert determines that the cost of running the Academy during the Critical Year would cause the Company, on the basis of the Indicative Funding and All Other Resources, to become insolvent, and the Secretary of State shall not have agreed to provide sufficient additional funding to cover the Shortfall, then the Company shall be entitled to terminate this Agreement, by notice expiring on 31 August prior to the Critical Year. Any such notice shall be given within 21 days after (a) the Expert's determination shall have been given to the parties or (b), if later, the Secretary of State shall have given written notice of his refusal to provide sufficient additional funding for the Academy to cover the Shortfall.
- 5.14 If the Company shall have given notice to terminate the Agreement under 5.13, the Secretary of State may by notice in writing to the Company require the Company to appoint up to two persons as directors of the Company in accordance with the Articles.
- 5.15 The Secretary of State may at any time by notice in writing terminate this Agreement forthwith if the Academy has ceased (except where such cessation occurs temporarily by reason of an event beyond the reasonable control of the Company) to operate as an Academy within the meaning of Section 1 of the Academies Act 2010.
- 5.16 A "Special Measures Termination Event Occurs" when:
- 5.16.1.the Chief Inspector gives a notice to the Company in accordance with section 13(3) of the Education Act 2005 (the "Special Measures Notice") stating that in his opinion special measures are required to be taken in relation to the Academy; and
- 5.16.2.the Chief Inspector carries out a subsequent inspection of the Academy in accordance with the Education Act 2005 and makes a report in accordance with the Education Act 2005 stating that the Academy has made inadequate progress since the date of the Special Measures Notice; and
- 5.16.3.the Secretary of State shall have requested the Company to deliver within 10 Business Days a written statement (a "Further Action Statement") of the action the Company proposes to take, and the

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period within which it proposes to take such action, or, if it does not propose to take any action, the reasons for not doing so; and

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

5.17 If a Special Measures Termination Event occurs, the Secretary of State may: by notice in writing to the Company terminate this Agreement forthwith.

6 EFFECT OF TERMINATION

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

6.2 Subject to clause 6.3, if the Secretary of State terminates this Agreement for reasons other than that a Special Measure Termination Event occurs, the Academy no longer meets the requirements set out in clause 11 of the Master Agreement (as amended by this Agreement), or is no longer meeting the conditions and requirements set out in clauses 12-34C of the Master Agreement (as amended by this Agreement) or that the Company is otherwise in material breach of the provisions of this Agreement or the Master Agreement (as amended by this Agreement), the Secretary of State shall indemnify the Company.

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

6.4 The categories of expenditure incurred by the Company in consequence of the termination of the Agreement in respect of which the Secretary of State shall indemnify the Company include (but not by way of limitation), staff compensation and redundancy payments, compensation payments in respect of broken contracts, expenses of disposing of assets or adapting them for other purposes, legal and other professional fees, and dissolution expenses.

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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 educational purposes by that nominee. The proportion of the assets to be transferred shall be the same as the proportion of the capital contribution made by the Secretary of State to the original value of those assets, whether that contribution was made on the establishment of the Academy or later; or

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

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

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

b) The Secretary of State directs all or part of the repayment to be paid to the L A.

6.7 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.

LAND

Restrictions on Land transfer

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

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- a) shall, within 28 days from the grant of a lease of the Land to the Company, apply to the Land Registry for a restriction in the proprietorship register of the Company's leasehold title (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 6(a) or 6A(d) above, whether by itself, a holding company, a subsidiary company, or a receiver, administrator or liquidator acting in the name of the Company.

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 The following words and expressions are inserted in to Clause 7 of the Master Agreement for the purpose of this Agreement:.

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“Academy Financial Year” means the year from 1st September to 31st August or such other period as the Secretary of State may from time to time specify by notice in writing to the Company;

“Additional Directors” means Directors who may be appointed by the Secretary of State under the Articles of Association;

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

- (a) either by means of the holding of shares in that Entity or having an interest conferring voting rights at general meetings of the membership of the Entity or of any other body corporate;
- (b) by virtue or any powers conferred by the articles of association or other document regulating that Entity or any other Entity or partnership including, without limitation, the power to appoint or remove a majority of the governing body thereof, or
- (c) by virtue of any agreement, understanding or arrangement between any person or persons,
- (d) that the affairs of the first-mentioned Entity are conducted in accordance with the wishes of A and ‘Controls’ shall be construed accordingly;

“SEN” means special educational needs, and the expressions “special educational needs” and “special educational provision” have the meaning set out in section 312 of the Education Act 1996.”

8.3 New Clauses 7A and 7B consisting of the following wording is inserted into the Master Agreement for the purpose of this Agreement:

“7A) All references in this Agreement to DfES shall mean a reference to DfE.

7B) All references in this Agreement to the Department for Education and Skills shall mean a reference to the Department for Education.”

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8.4 The wording in Clause 9 of the Master Agreement is deleted and replaced with the following for the purposes of this Agreement;

"9) Section 1 (3) of the Academies Act 2010 states that -

(3) An Academy agreement is an agreement between the Secretary of State and the other party under which:

(a) the other party gives the undertakings in subsection (5), and

(b) the Secretary of State agrees to make payments to the other party in consideration of those undertakings."

8.5 The wording in Clause 10 of the Master Agreement is deleted and replaced with the following new wording for the purposes of this Agreement;

"LEGAL AGREEMENT

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

8.6 The wording in Clause 11 of the Master Agreement is deleted and replaced with the following new wording for the purposes of this Agreement;

"**REQUIREMENTS OF A MAINSTREAM ACADEMY**

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- 11) The requirements of a **Mainstream Academy** are as set down in Section 1A(1) of the Academies Act 2010:
- a) It is an independent school,
 - b) it has a curriculum satisfying the requirements of section 78 of the Education Act 2002 (balanced and broadly based curriculum),
 - c) it provides education for pupils of different abilities³
 - d) it provides education for pupils who are wholly or mainly drawn from the area in which the school is situated, and
 - e) it is not an Alternative Provision Academy.”
- 8.7 The wording in Clause 12 of the Master Agreement is deleted and replaced with the following new wording for the purposes of this Agreement;

“CONDITIONS OF GRANT

General

- 12) Other conditions and requirements in respect of an Academy, unless specified otherwise in a Supplemental Agreement, are that:
- a) the school will be at the heart of its community, promoting community cohesion and sharing facilities with other schools and the wider community;
 - b) there will be assessments of pupils performance as they apply to maintained schools and the opportunity to study for relevant qualifications in accordance with clause 30 (d) (as amended by this Agreement);
 - c) in respect of **Mainstream Academies**, the admissions policy and arrangements for the school will be in accordance with admissions

³ This clause will not apply to any Supplemental Funding Agreement entered into in relation to an Academy which is a “selective school” within the meaning of Section 6[4] of the Academies Act 2010

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law, and the DfE Codes of Practice, as they apply to maintained schools;

- d) teachers' levels of pay and conditions of service for all employees will be the responsibility of the Company;
- e) there will be an emphasis on the needs of the individual pupils including pupils with SEN, both those with and without statements of SEN;
- f) there will be no charge to pupils (or their parents or guardians) in respect of admission to, or attendance at, the school and the school will only charge pupils where the law allows maintained schools to charge.
- g) the Company shall as soon as reasonably practicable establish an appropriate mechanism for the receipt and management of donations and shall use reasonable endeavours to procure donations through that mechanism for the purpose of the objects specified in the Articles.

12A Clause 12f) (as amended by this Agreement) does not prevent the Company receiving funds from a local authority or a charity in respect of the admission of a pupil with special educational needs to an Academy.

8.8 The wording in Clause 13 and 14 in the Master Agreement is deleted and replaced with the following new wording for the purposes of this Agreement;

"Governance

- 13) Each Academy will be governed by the Company. The Company shall have regard to (but for the avoidance of doubt shall not be bound by) any guidance as to the governance of Academies that the Secretary of State may publish.
- 14) The Company shall establish, for each Academy, an Advisory Body, whose role shall be to provide advice to the Company in relation to the functioning of that Academy. The role of the Advisory Body and the

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membership of it shall be for the Company to decide, but the Company will, as a minimum, ensure that:

- a) a minimum of two parents of a pupil at the Academy (to be elected by the parents of registered pupils of the Academy) shall be a member of the Advisory Body;
- c) any advice of the Advisory Body is brought to the attention of the Directors of the Company;
- d) to the extent that the Company may, in accordance with the Articles, choose to establish a Local Governing Body, then the Company may additionally constitute the Advisory Body as the Academy's Local Governing Body."

8.9 The wording in Clause 15 of the Master Agreement is deleted and replaced with the following new wording for the purposes of this Agreement;

"Conduct

- 15) Each Academy shall be conducted in accordance with:
 - a) the Articles, which shall not be amended by the Company without the written consent of the Secretary of State, such consent not to be unreasonably withheld;
 - b) all provisions by or under statute which confer rights or impose obligations on Academies including, without limitation, the independent schools standards prescribed under section 157 of the Education Act 2002 to the extent they apply to the Academy
 - c) the terms of this Agreement and the relevant Supplemental Agreement."

8.10 The wording in Clauses 16 to 18 of the Master Agreement is deleted and are replaced with the following new Clauses 16 to 18 for the purposes of this Agreement;

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

“Pupils

17. Each **Mainstream Academy** will be an all ability inclusive⁴ school whose requirements for:
- a) the admission of pupils to the Academy are set out in the relevant annex to the Supplemental Agreement;
 - b) the admission to the Academy of and support for pupils with SEN and with disabilities (for pupils who have and who do not have statements of SEN) are set out in the relevant annex to the Supplemental Agreement;
 - c) pupil exclusions are set out in regulations made by virtue of section 51A of the Education Act 2002 (as may be amended or modified from time to time, and includes any successor provisions).

Designated Teacher for Looked after Children

- 18) The Company will in respect of each Academy act in accordance with, and be bound by, all relevant statutory and regulatory provisions and have regard to any guidance and codes of practice issued pursuant to such provisions, as they apply at any time to a maintained school, relating to the designation of a person to manage the teaching and learning programme for children who are looked after by an LA and

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

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are registered pupils at the school. For the purpose of this clause, any reference to the governing body of a maintained school in such statutory and regulatory provisions, or in any guidance and code of practice issued pursuant to such provisions, shall be deemed to be references to the Directors of the Company."

- 8.12 The wording in Clauses 20 to 23 of the Master Agreement is deleted and replaced with the following new wording for the purposes of this Agreement:

"Teachers and other staff

- 20) In respect of **Mainstream and Alternative Provision Academies**:
- a) subject to clause 20(b) the Company shall, in accordance with any guidance which the Secretary of State may issue on the qualifications of teaching and other staff in Academies, employ anyone it deems is suitably qualified or is otherwise eligible under a contract of employment or for services to carry out planning and preparing lessons and courses for pupils, delivering lessons to pupils, assessing the development, progress and attainment of pupils, and reporting on the development, progress and attainment of pupils.
- b) clause 20(a) does not apply to anyone who:
- i) is appointed as the SENCO by the Company under section 317(3A) of the Education Act 1996, who must meet the requirements set out in Regulation 3 of the Education (Special Educational Needs Co-ordinators) (England) Regulations 2008 (SI 2008/2945); or
- ii) is appointed as a designated teacher for looked after children further to clause 17A

Local Government Pension scheme

- 20A) The Company shall ensure that all employees at the Academy other than teachers ("Non-teaching Staff") have access to either the Local Government Pension Scheme in accordance with the Local Government Pension Scheme (Administration) Regulations 2008

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[SI2008/239] ("the Regulations"), where the Regulations require this, or such other pension benefits as those Regulations, or any legislation which may in the future replace the Regulations, require for Non-teaching Staff. "

- 8.13 The wording in Clauses 24-29 of the Master Agreement is deleted and replaced with the following new Clauses 24 to 29E for the purposes of this Agreement;

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

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

24A) The Company shall publish information in relation to the current curriculum provision at each Academy. Such information shall include details relating to:

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

24B) Subject to the requirements of clauses 24 to 29D the curriculum will be the responsibility of the Company.

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

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- 25A) Sections 42A (provision of careers guidance) and 45A (guidance as to discharge of duties) of the Education Act 1997 shall be deemed to apply to each Academy with the following modifications:
- a) each Academy shall be treated as falling within the meaning of "a school" under section 42A (2);
 - b) the Company shall be deemed to be the "responsible authorities" for the purposes of subsection 42A(3); and
 - c) references to registered pupils shall be treated as references to registered pupils at each Academy
- 26) The Company shall make provision for the teaching of religious education and for a daily act of collective worship at each **Mainstream** Academy.
- 27) Where a **Mainstream Academy** is designated with a religious character⁵ in accordance with section 124B of the School Standards and Framework Act 1998 or further to section 6(8) of the Academies Act 2010:
- a) subject to clause 29, and paragraph 4 of Schedule 19 to the School Standards and Framework Act 1998 which shall apply as if the Academy were a voluntary aided school with a religious character, the Company shall ensure that provision is made for religious education to be given to all pupils at the Academy in accordance with the tenets of the specified religion or religious denomination of the Academy;
 - b) subject to clause 29 the Company shall comply with the requirements of section 70(1) of, and Schedule 20 to, the School Standards and Framework Act 1998 as if the Academy were a foundation school with a religious character or a voluntary school, and as if references to 'the required collective worship' were references to collective worship in accordance with the tenets and practices of the

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

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- specified religion or religious denomination of the Academy;
- c) the Company shall ensure that the quality of religious education given to pupils at the Academy and the contents of the Academy's collective worship given in accordance with the tenets and practice of the specific religion or religious denomination are inspected. Such inspection shall be conducted by a person chosen by the Company and the Academy shall secure that such inspection shall comply with the requirements set out in any statutory provision and regulations as if the Academy were a foundation or voluntary school which has been designated under section 69(3) of the School Standards and Framework Act 1998 as having a religious character.
- 28) Where a **Mainstream Academy** has not been designated with a religious character in accordance with section 124B of the School Standards and Framework Act 1998 or further to Section 6(8) of the Academies Act 2010:
- a) subject to clause 29 the Company shall ensure that provision shall be made for religious education to be given to all pupils at the Academy in accordance with the requirements for agreed syllabuses in section 375(3) of the Education Act 1996 and paragraph 2(5) of Schedule 19 to the School Standards and Framework Act 1998;
- b) subject to clause 29 the Company shall ensure that the Academy complies with the requirements of section 70(1) of, and Schedule 20 to, the School Standards and Framework Act 1998 as if it were a community, foundation or voluntary school which does not have a religious character, except that the provisions of paragraph 4 of that Schedule do not apply. The Academy may apply to the Secretary of State for consent to be relieved of the requirement imposed by paragraph 3(2) of that Schedule, the Secretary of State's consent to such an application not to be unreasonably withheld or delayed.

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c) the Company⁶:

(1) agrees that before making an application pursuant to the Religious Character of Schools (Designation Procedure) (Independent Schools) (England) Regulations 2003 for each Academy to be designated as a school with religious character it shall seek the prior written consent of the Secretary of State;

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

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

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

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

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

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

Early Years Provision

- 29E) There will be no charge in respect of admission to the school and the Company will only charge pupils where the law allows maintained schools to charge. The Company may nonetheless charge registered pupils at the Academy for Early Years Provision provided in excess of the provision funded by the LA in accordance with its duty under section 7 of the Childcare Act 2006. Grants paid by the Secretary of State (be they GAG, EAG or Capital Grant) shall not be used by the Company for Early Years Provision for which the Company is entitled to make a charge without the prior written consent of the Secretary of State except where the use of such funds is merely incidental to their use for establishment and maintenance, carrying on or providing for the carrying on of the Academy."

- 8.14 The wording in Clauses 30-31 of the Master Agreement is deleted and replaced with the following new wording for the purposes of this Agreement;

"Assessment

- 30) The Secretary of State will notify the appropriate body for assessment purposes about each Academy.
- a) The Company shall ensure that each **Mainstream Academy** and each **Special Academy** complies with any guidance issued by the Secretary of State from time to time to ensure that pupils take part in assessments and in teacher assessments of pupil's performance as they apply to maintained schools; and the Company shall also do so for each **Alternative Provision Academy** unless there are exceptional reasons to do otherwise.
- b) The Company shall report to any body on assessments under clause 30 (as amended by this Agreement) as the Secretary of State shall

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prescribe and shall provide such information as may be required by that body as applies to maintained schools.

- c) In respect of all Key Stages, the Company will submit each Academy to monitoring and moderation of its assessment arrangements as prescribed by the Secretary of State.

d) The Company may not offer courses at any Academy which lead to relevant qualifications, as defined in section 96 of the Learning and Skills Act 2000, unless the Secretary of State gives specific approval for such courses.

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

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

- (i) "% achieving Level 4 or above in English and Maths";
- (ii) "% making expected progress";
- (iii) in relation to English, "% achieving Level 5 or above"; and
- (iv) in relation to Maths, "%achieving Level 5 or above".

- b) The school's most recent key stage 4 results as published by the Secretary of State under the following column headings in the School Performance Tables published on the Department for Education's website:

- (i) "% achieving 5 + A* - C GCSEs (or equivalent) including English or Maths GCSEs";
- (ii) "% achieving the English Baccalaureate"; and

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- (iii) “% of pupils making expected progress”.
 - c) Information as to where and by what means the most recent report about the school published by her Majesty's Chief Inspector of Education, Children's Services and Skills may be accessed.
 - d) Information as to where and by what means the School Performance Tables published by the Secretary of State on the Department for Education's website may be accessed.
- 30B) There is no requirement to publish information under clause 30A if to do so would be in breach of the Company's obligations under the Data Protection Act 1998.”

Exclusions Agreement

- “31) I In respect of **Mainstream Academies**, the Company shall, if invited to do so by an LA, enter into an agreement in respect of an Academy with that LA, which has the effect that where:
- a) the Company admits a pupil to the Academy who has been permanently excluded from a maintained school, the Academy itself or another Academy with whom the LA has a similar agreement; or
 - b) the Company permanently excludes a pupil from the Academy payment will flow between the Company and the LA in the same direction and for the same amount that it would, were the Academy a maintained school, under Regulations made under section 47 of the School Standards and Framework Act 1998 relating to the addition or deduction of a maintained school's budget following a permanent exclusion or the admission of a permanently excluded pupil. At the date of this Agreement, the applicable Regulation is Regulation 23 of the School Finance (England) Regulations 2011.”

8.15 The wording in Clauses 32-33 of the Master Agreement is deleted and replaced with the following for the purposes of this Agreement;

“School Meals

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- 32) The Company shall, if requested to do so by or on behalf of any pupils at any Academy, provide school lunches for those pupils unless it would be unreasonable for it to do so. Subject to the provisions of clause 33 charges may be levied for lunches, but the Company shall otherwise fund the cost of such school lunches from its GAG for **Mainstream Academies**, or from its resources for **Special Academies** and for **Alternative Provision Academies**.
- 33) In relation to a pupil who is himself or whose parents are in receipt of benefits mentioned in section 512ZB of the Education Act 1996 (or equivalent provision governing the entitlement to free school lunches of pupils at maintained schools), the Company shall ensure that a school lunch is provided for such a pupil free of charge to be funded by the Company."

8.16 New Clauses 34A, 34B and 34C consisting of the following wording is inserted into the Master Agreement for the purpose of this Agreement;

8.17 "**International Education Surveys**

- 34A The Secretary of State may, by notice in writing to the Company, require the Company to participate in an international education survey and the Company shall, upon receipt of such notice, participate in that survey and provide to the Secretary of State or to those carrying out the survey all such assistance and information as may reasonably be required for the purposes of the Academy's participation in that survey.

Pupil Premium

- 34B) For **Mainstream Academies**, and those **Special Academies** that receive Pupil Premium Funding⁷, the Company shall publish in each Academy Financial Year information in relation to:

⁷The Pupil Premium is additional funding for schools to support pupils from low-income families. In instances when those pupils are in special settings, the funding can either be allocated to the setting where they are being educated, or held by the local authority to spend specifically on additional educational support to raise the standard of attainment for these

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

Duration of the School Day and Year

34C) In respect of **Mainstream Academies and Alternative Provision Academies**, the duration of the school day and year will be the responsibility of the Company."

8.18 The wording in Clauses 35-36 of the Master Agreement is deleted and shall not apply for the purposes of this Agreement.

8.19 The wording in Clause 37 of the Master Agreement is deleted and replaced with the following for the purposes of this Agreement;

"GRANTS TO BE PAID BY THE SECRETARY OF STATE

General

"37) The Secretary of State shall pay grants towards Capital and Recurrent Expenditure for each Academy. Except with the Secretary of State's prior agreement, the Company shall not budget for its expenditure in any Academy Financial Year in excess of expected income. The Company shall not enter into commitments which are likely to have substantial implications for future levels of grant, or for the period for which grant may be required. No decision by the Company shall

pupils. The authority must consult non-mainstream settings about how the Premium for these pupils should be used. Where Pupil Premium is allocated to the Special Academy by the Local Authority, the company must publish information as set out in clause 34B. There is no requirement for Alternative Provision settings to publish such information.

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commit the Secretary of State to paying any particular amount of grant."

8.20 The wording in Clauses 39-111 of the Master Agreement is deleted and replaced with the following new Clauses 39 to 104 for the purposes of this Agreement;

"Capital Grant

39) "Capital Expenditure" means expenditure on:

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

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- i) any major repairs or replacements which are specified as constituting capital expenditure in any grant letter relating to them;
- j) such other items (whether of a like or dissimilar nature to any of the foregoing) of a substantial or enduring nature as the Secretary of State may agree shall constitute capital expenditure for the purposes of this Agreement;
- k) all professional fees properly and reasonably incurred in connection with the provision of any of the above;
- l) VAT and other taxes payable on any of the above.

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

- 40) Where an Academy is to open in new premises, or where existing premises are to be substantially refurbished or remodelled to enable the Academy to open in such premises, the Secretary of State, may, in his absolute discretion be responsible for meeting the incurred Capital Expenditure for that Academy. To that end, the Secretary of State will consider providing funding in accordance with any arrangements as he considers appropriate.
- 41) Any Capital Expenditure incurred in respect of each Academy on which Capital Grant payments are sought from the Secretary of State will require the specific prior written agreement of the Secretary of State, which agreement shall not be unreasonably withheld or delayed.
- 42) Any payment of Capital Grant to the Company under this Agreement is subject to the fulfilment of the following conditions:
 - a) such grants are used solely to defray expenditure approved by the Secretary of State;

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- 65) The Company may also receive funding from an LA in respect of the provision detailed in statements of SEN for pupils attending an Academy in accordance with the provisions of Section 483A of the Education Act 1996 and regulations made under that section. The Company shall ensure that all provision detailed in statements of SEN is provided for such pupils.
- 66) Not used

FINANCIAL AND ACCOUNTING REQUIREMENTS

General

- 67) The Company shall appoint an Accounting Officer and shall notify the Secretary of State of that appointment.
- 68) In relation to the use of grant paid to the Company by the Secretary of State, the Company shall abide by the requirements of and have regard to the guidance in the Academies Financial Handbook published by the DfE and amended from time to time and as modified to take account of the fact that the Company manages more than one Academy, which sets out in detail provisions for the financial management of each Academy including guidance on financial systems and controls and accounting and reporting requirements, in so far as these are not inconsistent with any accounting and reporting requirements and guidance that it may be subject to by virtue of its being a charity.
- 69) The formal budget plan must be approved each Academy Financial Year by the Directors of the Company.
- 70) Any payment of grant by the Secretary of State in respect of each Academy is subject to his being satisfied as to the fulfilment by the Company of the following conditions:
- a) in its conduct and operation it shall apply financial and other controls which conform to the requirements both of propriety and of good financial management;

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- b) arrangements have been made to maintain proper accounting records and that statements of income and expenditure and balance sheets may be produced in such form and frequency as the Secretary of State may from time to time reasonably direct;
- c) in addition to the obligation to fulfil the statutory requirements referred to in sub-clause f) below, the Company shall prepare its financial statements, Directors' report, Annual Accounts and its Annual Return for each Academy Financial Year in accordance with the Statement of Recommended Practice as if the Company was a non-exempt Charity and/or in such form or manner and by such date as the Secretary of State may reasonably direct and shall file these with the Secretary of State and the Principal Regulator each Academy Financial Year;
- d) a statement of the accounting policies used should be sent to the Secretary of State with the financial statements and should carry an audit report stating that, in the opinion of the auditors, the statements show a true and fair view of the Company's affairs and that the grants were used for the purposes intended;
- e) the Company shall ensure that its accounts are audited annually by independent auditors appointed under arrangements approved by the Secretary of State;
- f) the Company prepares and files with the Companies Registry such annual accounts as are required by the Companies Act 2006;
- g) the Company shall publish on its website its Annual Accounts, Annual Report, Memorandum and Articles of Association, Funding Agreement and a list of the names of the Directors of the Company;
- h) the Company insures or procures insurance by another person of its assets in accordance with normal commercial practice or under the terms of any subsisting leases in respect of the leasehold interest of the site upon which each Academy is situated;
- 71) In addition, and at his expense, the Secretary of State may instruct auditors to report to him on the adequacy and effectiveness of the

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accounting systems and internal controls maintained by the Company to standards determined by the Secretary of State and to make recommendations for improving the financial management of the Company.

- 72) The books of accounts and all relevant records, files and reports of the Company including those relating to financial controls, shall be open at all reasonable times to officials of the DfE and the National Audit Office and to contractors retained by the DfE or the National Audit Office for inspection or the carrying out of value for money studies; and the Company shall secure that those officials and contractors are given reasonable assistance with their enquiries. For the purposes of this clause 'relevant' means in any way relevant to the provision and use of grants provided by the Secretary of State under this Agreement.
- 73) The Company shall submit indicative budgets relating to each Academy to the Secretary of State by not later than 15 February before the start of each Academy Financial Year. Such budgets shall set out clearly the prospective income and expenditure of the relevant Academy and shall differentiate, and give adequate details of:
- a) a statement of expected income for that Academy Financial Year including cash donations and gifts in kind from sources other than GAG, EAG and grants from the Secretary of State towards capital and revenue expenditure, distinguishing between income from public funds including the national lottery and income from other sources. Income from cash donations and gifts in kind from sources other than GAG, EAG and grants from the Secretary of State towards capital expenditure will not be taken into account by the Secretary of State in the calculation of GAG;
 - b) a statement of proposed recurrent expenditure for that Academy Financial Year;
 - c) a statement of proposed capital expenditure for that Academy Financial Year.

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- 74) The Company will be permitted to carry forward savings from GAG in relation to each Academy from one year:
- a) to the next year, equivalent to the relevant amount which may be used by the Company for any of the purposes for which GAG is paid including all expenditure permitted under sub-clause (b) below and whether for the purposes of the relevant Academy or for the purposes of any other Academy;
 - b) to subsequent years, equivalent to a further 10% of the total GAG received in the year in question or such higher figure as may from time to time be agreed, which it may use on the upkeep and improvement of premises including the costs of equipment and routine repairs and maintenance of the relevant Academy and on capital expenditure relating to the relevant Academy.

For the purpose of clause 74(a) the relevant amount is 2% of (A+B) where:-

A is the GAG for the year in question; and; B is the relevant amount (if any) carried forward from the preceding year under clause 74(a)."

- 75) Notwithstanding clause 74 any additional grant provided over and above that is:
- a) set out in clauses 44-50 (as amended by this Agreement) in relation to **Mainstream Academies** and made in accordance with clauses 51-53 may be carried forward without limitation or deduction until the Start-up Period or the circumstances set out in clause 53 (as amended by this Agreement) come to an end.
- 76) Any savings of GAG not allowed to be carried forward under clauses 74-75 will be taken into account in the payment of subsequent grant.
- 77) The Company may also accumulate funds from private sources or public sources other than grants from the Secretary of State for application to the benefit of an Academy as it sees fit. Any surplus arising from private sources or public sources other than grants from the Secretary of State shall be separately identified in the Company's balance sheet.

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- 78) The Company shall not, in relation to assets or property funded (whether in whole or in part) by the Secretary of State, without the prior written consent of the Secretary of State which shall not be unreasonably withheld or delayed:
- a) except such as are given in normal contractual relations, give any guarantees, indemnities or letters of comfort;
 - b) write off any debts or liabilities owed to it above a value for the time being specified by the Secretary of State nor offer to make any ex gratia payments;
 - c) make any sale or purchase of freehold property; or
 - d) grant or take up any leasehold or tenancy agreement for a term exceeding three years.
- 79) The Company shall provide 30 days notice to the Secretary of State, whether or not the circumstances require the Secretary of State's consent, of its intention to:
- a) give any guarantees, indemnities or letters of comfort;
 - b) write off any debts owed to it or offer to make any ex gratia payments;
 - c) make any sale or purchase of freehold property; or
 - d) grant or take up any leasehold or tenancy agreement for a term exceeding three years.
- 80) Each discovered loss of an amount exceeding the amount for the time being specified by the Secretary of State and arising from suspected theft or fraud, shall be reported by the Company to the Secretary of State at the earliest opportunity.
- 81) It is the responsibility of the Company to ensure that each Academy balances its budget from Academy Financial Year to Academy Financial Year. For the avoidance of doubt, this does not prevent the Company from:

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- a) carrying a surplus from one Academy Financial Year to the next; or
 - b) carrying forward from a previous Academy Financial Year or Academy Financial Years a sufficient surplus or sufficient cumulative surpluses on grants from the Secretary of State to meet an in-year deficit on such grants in a subsequent financial year; or
 - c) incurring an in-year deficit on funds from sources other than grants from the Secretary of State in any Academy Financial Year, provided it does not affect the Company's responsibility to ensure that the Company balances its overall budget from Academy Financial Year to Academy Financial Year.
- 81A) The Company shall abide by the requirements of and have regard to the Charity Commission's guidance to charities and charity trustees and in particular the Charity Commission's guidance in the Protecting Charities from Harm ('the compliance toolkit'). Any references in this document which require charity trustees to report to the Charity Commission should instead be interpreted as references to report to the Principal Regulator.

Borrowing Powers

- 82) The Company shall not borrow against or so as to put at risk property or assets funded (whether in whole or in part) by the Secretary of State without specific approval of the Secretary of State, such approval may only be granted in limited circumstances. The Company shall not operate an overdraft except to cover irregularities in cash flow. Such an overdraft, and the maximum amount to be borrowed, shall require approval by the Company in General Meeting and in writing by the Secretary of State, and shall be subject to any conditions which the Secretary of State may reasonably impose.
- 83) The Company shall provide 30 days notice to the Secretary of State of its intention to borrow, whether or not such borrowing requires the Secretary of State's approval under clause 81 above.

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Disposal of Assets

- 84) Where the Company acquires assets for a nil consideration or at an under value it shall be treated for the purpose of this Agreement as having incurred expenditure equal to the market value of those assets at the time that they were acquired. This provision shall not apply to assets transferred to the Company at nil or nominal consideration and which were previously used for the purposes of an Academy and/or were transferred from an LA, the value of which assets shall be disregarded.
- 85) The sale or disposal by other means, or reinvestment of proceeds from the disposal, of a capital asset by the Company shall require the consent of the Secretary of State, such consent not to be unreasonably withheld or delayed, where:
- a) the Secretary of State paid capital grant in excess of the value for the time being specified by the Secretary of State for the asset; or
 - b) the asset was transferred to the Company from an LA for no or nominal consideration.
- 86) Furthermore, reinvestment of a percentage of the proceeds of disposal of a capital asset paid for with a capital grant from the Secretary of State shall require the Secretary of State's consent in the circumstances set out above and reinvestment exceeding the value for the time being specified by the Secretary of State or with other special features will be subject to Parliamentary approval. The percentage of the proceeds for which consent is needed is the percentage of the initial price of the asset which was paid by capital grant from the Secretary of State.
- 87) This clause applies in the event, during the lifetime of this Agreement, of the disposal of a capital asset for which capital grant of any amount was paid by the Secretary of State, where the asset was acquired by the Company. In this event, the Company shall repay to the Secretary of State the same proportion of the proceeds of the disposal as equates with the proportion of the original cost met by the Secretary of

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State, unless the Secretary of State agrees to some or all of the proceeds being retained by the Company for its charitable purposes.

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

TERMINATION

- 91) This Agreement shall commence on the date hereof and continue until terminated in accordance with clause 92 or until all Supplemental Agreements have terminated.
- 92) The Secretary of State may at any time by notice in writing terminate this Agreement and each of the Supplemental Agreements forthwith on the occurrence of any of the following events:-

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- a) the Company calls a meeting of its creditors (whether formal or informal) or enters into any composition or arrangement (whether formal or informal) with its creditors; or
- b) the Company proposes a voluntary arrangement within Section 1 of the Insolvency Act 1986 (as amended); or
- c) the Company is unable to pay its debts within the meaning of Section 123 of the Insolvency Act 1986 provided that, for the purposes of this Clause, Section 123 (1)(a) of the Insolvency Act 1986 shall have effect as if the amount of £10,000 was substituted for £750. The Company shall not be deemed unable to pay its debts for the purposes of this clause if any such demand as is mentioned in the said Section is being contested in good faith by the Company; or
- d) the Company has a receiver and manager (with the exception of Receivers and Managers or Interim Managers appointed by the Charity Commission under the Charities Act 2011 or any subsequent re-enactment of that Act), administrator or administrative receiver appointed over all or any part of its undertakings, assets or income; or
- e) any distraint, execution or other process is levied or enforced on any of the Company's property and is not paid out, withdrawn or discharged within fifteen Business Days; or
- f) the Company has passed a resolution for its winding up; or
- g) an order is made for the winding up or administration of the Company.

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

- 93) If, following the exercise of the Secretary of State's powers to appoint Additional Directors pursuant to the Articles of Association the Members pass an ordinary or special resolution to remove one or more of those Additional appointed by the Secretary of State, the

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Secretary of State may give the Company 12 months, or such lesser period as he considers appropriate in the circumstances, written notice to terminate this Agreement or, as the Secretary of State may in his absolute discretion decide any of the Supplemental Funding Agreements.

- 94) The Secretary of State's right to terminate this Agreement under clause 93 shall cease if he removes any of the Additional Directors which he has appointed pursuant to the Articles of Association.

Change of Control of the Company

94A) The Secretary of State may at any time by notice in writing, subject to clause 94C) below, terminate this Agreement forthwith (or on such other date as he may in his absolute discretion determine) in the event that there is a change:

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

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

94B) The Company shall, as soon as it is reasonably practicable to do so after it has become aware of any change or proposed change of Control within the meaning of clause 94A) give written notice to the Secretary of State of such change or proposed change of Control.

94C) When notifying the Secretary of State further to clause 93B) the Company may seek the Secretary of State's agreement that, if he is satisfied that the person assuming Control is suitable, he will not in those circumstances exercise his right to terminate this Agreement further to clause 94A)

Effect of Termination

95) In the event of the termination of this Agreement however occurring the Secretary of State shall procure that his nominee (if any) shall resign

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as a member of the Company and shall co-operate in making any associated amendments to the Articles of Association.”

GENERAL

Information

- 96) Without prejudice to any other provision of this Agreement, the Secretary of State acting reasonably may from time to time call for information on, inter alia, any **Mainstream Academy's or Special Academy's**:
- a) curriculum;
 - b) arrangements for the assessment of pupils;
 - c) teaching staff including numbers, qualifications, experience, salaries, and teaching loads;
 - d) class sizes;
 - e) outreach work with other schools and the local community;
 - f) operation of the admission criteria and over subscription arrangements for the Academy including numbers of applications for places and the number and characteristics of pupils accepted for admission – for Mainstream Academies only;
 - g) numbers of pupils excluded (including permanent and fixed term exclusions);
 - h) levels of authorised and unauthorised attendance;
 - i) charging and remissions policies and the operation of those policies;
 - j) organisation, operation and building management;
 - k) financial controls; and
 - l) membership and proceedings of the Company and the Local Governing Body.

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- 96A) Without prejudice to any other provision of this Agreement, the Secretary of State acting reasonably may from time to time call for information on, inter alia, **any Alternative Provision Academy's**:
- a) curriculum and the provision generally (including specifically for SEN pupils);
 - b) arrangements for the assessment of pupils and any information about pupil progress, achievement and attainment;
 - c) staff including numbers, qualifications, experience, salaries, and teaching loads;
 - d) class sizes and pupil organisation;
 - e) outreach work with other schools and the local community;
 - f) operation of the referral and reintegration processes for the Alternative Provision Academy including numbers of requested referrals, the number of referrals that have been refused and the reasons for the refusal in each case and the number and characteristics of pupils accepted for admission and destinations/outcomes of pupils/former pupils;
 - g) numbers of pupils excluded (including permanent and fixed term exclusions), characteristics of pupils excluded, reasons for exclusions, outcomes of any independent review panels;
 - h) levels of authorised and unauthorised absence;
 - i) charging and remissions policies and the operation of those policies;
 - j) organisation, operation and building management;
 - k) financial controls; and
 - l) membership and proceedings of the Company and Local Governing Body.
- 97) The Company shall make such information available to the Secretary of State, in such form and manner and at such times as may reasonably be required. The Secretary of State shall provide the Company with such information as it may reasonably require of him for the running of an Academy.

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Access by the Secretary of State's Officers

- 98) The Company shall allow access to the premises of any Academy at any reasonable time to DfE officials. All records, files and reports relating to the running of the Company and each Academy shall be available to them at any reasonable time. The Company shall provide the Secretary of State in advance with papers relating to each Academy prepared for meetings of the Local Governing Body, of the Company's directors and of the members of the Company. Two DfE officials shall be entitled to attend and to speak at all such meetings, but shall withdraw from any discussion of an Academy's or the Company's relationship with the Secretary of State or any discussion of bids for funding to the Secretary of State. The Company shall take any steps which are required to secure its compliance with the obligations imposed by this clause of this Agreement.
- 99) The Company shall ensure that:
- a) the agenda for every meeting of the relevant Local Governing Body and the Company's directors;
 - b) the draft minutes of every such meeting, if they have been approved by the person acting as chairman of that meeting;
 - c) the signed minutes of every such meeting; and
 - d) any report, document or other paper considered at any such meeting, are made available for inspection by any interested party at the relevant Academy and, as soon as is reasonably practicable, sent to the Secretary of State.
- 99A) There may be excluded from any item required to be made available for inspection by any interested party and to be sent to the Secretary of State by virtue of clause 98, any material relating to:
- a) a named teacher or other person employed, or proposed to be employed, at any Academy;
 - b) a named pupil at, or candidate for admission to, any Academy; and

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- c) any matter which, by reason of its nature, the Company is satisfied should remain confidential.

Notices

- 100) Any notice or other communication concerning this Agreement or a Supplemental Agreement shall be sent, in the case of a notice or communication from the Secretary of State to the Company at its registered office or such other addressee/address as may be notified in writing from time to time by the Company and, in the case of a notice or communication from the Company to the Secretary of State to Head of Academies Division, Department for Education, Sanctuary Buildings, Great Smith Street, London SW1P 3BT; or such other address as may be notified from time to time by the Secretary of State and where any such notice or communication is sent by post, unless the contrary is proved, it shall be deemed, subject to satisfactory proof of posting, to be effected at the time at which the letter would be received in the ordinary course of post.
- 101) The service by the Secretary of State of a notice of termination of a Supplemental Agreement shall not prejudice the ability of the Company (if it wishes to do so) during the notice period to admit pupils to the relevant Academy in accordance with the provisions of this Agreement and the relevant Supplemental Agreement and to receive GAG and EAG in respect of them.

Appointment of Additional Directors by the Secretary of State

- 102) The Secretary of State undertakes to the Company not to exercise the powers under the Articles to appoint Additional Directors in the following circumstances:-
- a) if the matters giving rise to the appointment of the Additional Directors relate, in the reasonable opinion of the Secretary of State, to the affairs of only one Academy; and

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

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Complaints

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

- d) will abide by the provisions of Part III as though the Academy were a maintained school;
- e) agrees that the Secretary of State shall have the power to investigate the matter complained of as if it had taken place after conversion;
- f) 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.

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

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

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under Part III and the Alternative Provision Academy were a Pupil Referral Unit.

102B) With regards to a **Mainstream Academy or a Special Academy**, if the Secretary of State could have given an order and/or a direction under section 496 and/or section 497 of the Education Act 1996 to the governing body of the school the Academy replaced (as referred to in clause 2.4 for **Mainstream Academies** and clause 3.1 for **Special Academies** of the relevant supplemental agreement) and that order and/or direction related to matters occurring within the 12 months immediately prior to conversion, the Company agrees:

- c) 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;
- d) to act in accordance with any such order and/or direction from the Secretary of State.

102C) With regards to an **Alternative Provision Academy** if the Secretary of State could have given an order and/or a direction under section 496 and/or section 497 of the Education Act 1996¹⁰ to the management committee of the Pupil Referral Unit the Alternative Provision Academy replaced (as referred to in clause 3.1 of the relevant supplemental agreement) and that order and/or direction related to 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

¹⁰ Section 496/7 of the Education Act 1996 applies to Pupil Referral Units by virtue of the Education (PRU)(Application of Enactments)(England) Regulations 2007

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the Secretary of State.

General

- 103) This Agreement shall not be assignable by the Company.
- 104) The Secretary of State and the Company recognise the difficulties in catering in this Agreement and the Supplemental Agreements for all the circumstances which may arise in relation to the Academies and undertake in good faith to conduct such consultations as may from time to time be desirable in order to promote the interests of the Academies throughout the currency of this Agreement.

9 ENGLISH LAW

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

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This Agreement was executed as a Deed on 20 December 2012

Executed on behalf of the Company by:

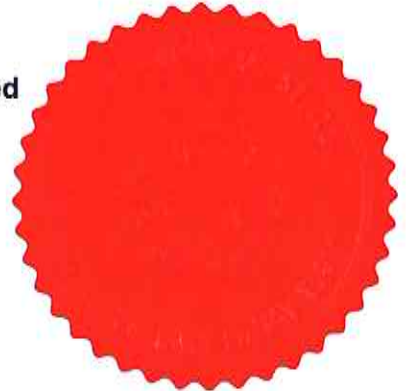
David Lomas
.....
Director

Bill
.....
Director Company Secretary

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

Susan Pickell
.....

Duly Authorised



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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 PAULSGROVE PRIMARY SCHOOL

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 governing body 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 the 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 Paulsgrove Primary School on application from an LA. This will include complying with a

¹ As defined in the School Admissions Code.

9. The Academy 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 that give highest priority to looked after children and previously looked after children, in accordance with the relevant provisions of the School Admissions Code.

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 group⁴. The Academy will consult on its 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 arrangements⁵. 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.

⁴ 'Relevant age group' means 'normal point of admission to the school, for example, year R, Year7 and Year 12.

⁵ The OSA has no jurisdiction to consider objections against the agreed variation from the Codes set out in paragraphs 2A and 2B.