

SUPPLEMENTAL FUNDING AGREEMENT

THIS AGREEMENT made

01 November 2012

BETWEEN

(1) THE SECRETARY OF STATE FOR EDUCATION; and

(2) DIVERSE ACADEMIES TRUST

IS SUPPLEMENTAL TO THE MASTER FUNDING AGREEMENT made between the same parties and dated 1st August 2011 (the "Master Agreement").

1 DEFINITIONS AND INTERPRETATION

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

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

"Academy" means the East Leake Academy established at Lantern Lane Loughborough, East Leake, Loughborough, Leicestershire LE12 6QN;

"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 the Directors who may be appointed by the Secretary of State in accordance with the Articles;

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

"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;

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

"Insolvency" has the meaning given to it in section 123 of the Insolvency Act 1986;

"Land" means the publicly funded land (including for the avoidance of doubt all buildings, structures landscaping and other erections) situated at and known as Lantern Lane Loughborough, East Leake, Loughborough, Leicestershire LE12 6QN and registered under title numbers NT373439 and NT434356 ;

"Lease" means the lease granted on or around the date hereof by the LA to the Company in relation to the Academy;

"Normal Payment Matter" has the meaning given to it in the Principal Agreement;

"Principal Agreement" means the agreement entered into on or about the date hereof by the Secretary of State, the Company and the LA;

"PFI Contractor" means East Leake Schools Limited (CRN:4261326) whose registered office is at C/O NIBC Infrastructure Partners, 11th Floor, 125 Old Broad Street, London, EC2N 1AR, the counterparty of the LA to the Project Agreement;

"Principal Agreement" means the agreement entered into on or about the date hereof by the Secretary of State, the Company and the LA;

"Project Agreement" means the agreement between the LA and PFI Contractor for the design, build, finance and operation of Harry Carlton Comprehensive School (including the Company's facilities) dated 30th March 2002 and amended on 28th October 2002 and 29th June 2011;

"School Agreement" means the agreement entered into on or around the date hereof between the LA and the Company relating to the provision of facilities and services to the Company;

"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.

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

1.4 The Annexes to this Agreement form part of and are incorporated into 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 Agreement .

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.

2.3A The Academy shall be conducted in accordance with the Principal Agreement, the School Agreement and the Lease.

2.3B. The requirements for the arrangements for pupils with SEN and disabilities are set out at Annex 2.

ACADEMY OPENING DATE

2.4 The Academy shall open as a school on ^{1 November 2012 on behalf of SoS.} ~~1st October 2012~~ replacing Harry Carlton Comprehensive School which shall cease to be maintained by the LA 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 1,350 in the age range 11-18, including a sixth form of 416 places.

3 CAPITAL GRANT

- 3.1 Pursuant to clause 38 of the Master 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).
- 4.2 The Company shall use the GAG funding it receives prudently in order to cover the normal reasonable running costs of the Academy including, but not limited to, payments which fall due pursuant to the School Agreement and/or the Principal Agreement.
- 4.3 In the event that the Secretary of State pays the LA any sums in connection with a Normal Payment Matter pursuant to the Principal Agreement the Secretary of State may, subject to clause 4.4, set off or abate an amount equal to such sums from any GAG payable to the Company in respect of the Academy pursuant to this Agreement in the following financial year.
- 4.4 Before exercising its right of set off or abatement pursuant to clause 4.3 above, the Secretary of State shall:
- 4.4.1. notify the Company that such sums have been paid by the Secretary of State to the LA;
 - 4.4.2. take into account (acting reasonably) any representations made by the Company providing reasons why the relevant Normal Payment Matters liabilities were not settled;
 - 4.4.3. take into account (acting reasonably) any representations made by the Company as to the nature of the Normal Payment Matters under consideration and whether they properly fall within the definition of Normal Payment Matters having regard to the costs that other academies may normally be expected to bear from GAG funding.

4.5 In the event that the Secretary of State pays the LA any sums in connection with a Normal Payment Matter pursuant to the Principal Agreement the Secretary of State may, subject to clause 4.6, set off or abate an amount equal to such sums from any GAG payable to the Company in respect of the Academy pursuant to this Agreement in the following financial year.

4.6 Before exercising its right of set off or abatement pursuant to clause 4.5 above, the Secretary of State shall:-

4.6.1. notify the Company that such sums have been paid by the Secretary of State to the LA;

4.6.2. take into account (acting reasonably) any representations made by the Company providing reasons why the relevant Normal Payment Matters liabilities were not settled;

4.6.3. take into account (acting reasonably) any representations made by the Company as to the nature of the Normal Payment Matters under consideration and whether they properly fall within the definition of Normal Payment Matters having regard to the costs that other academies may normally be expected to bear from GAG funding.

4A COMPLAINTS

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 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 2019 or any subsequent anniversary of that date.
- 5.2 If the Secretary of State is of the opinion that the Academy no longer has the characteristics set out in clause 12 of the Master Agreement (as amended by this Agreement) or that the conditions and requirements set out in clauses 13-34B 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, the Master Agreement (as amended by this Agreement), the School Agreement and/or the Principal Agreement, the Secretary of State may give notice of his provisional intention to terminate this Agreement.
- 5.3 Any such notice shall be in writing and shall:
 - 5.3.1. state the grounds on which the Secretary of State considers the Academy no longer has the characteristics set out in clause 12 of the Master Agreement (as amended by this Agreement) or is not meeting the conditions and requirements of clauses 13-34B of the Master Agreement (as amended by this Agreement) or the Company is otherwise in material breach of the provisions of this Agreement, the Master Agreement (as amended by this Agreement), the School Agreement and/or the Principal Agreement;
 - 5.3.2. specify the measures needed to remedy the situation or breach;
 - 5.3.3. specify a reasonable date by which these measures are to be implemented; and
 - 5.3.4. state the form in which the Company is to provide its response and a reasonable date by which it must be provided.

- 5.4 If no response is received by the date specified in accordance with clause 5.3.4, the Secretary of State may give the Company 12 months, or such lesser period as he considers appropriate in the circumstances, written notice to terminate this Agreement.
- 5.5 If a response is received by the date specified in accordance with clause 5.3.4, the Secretary of State shall consider it, and any representations made by the Company, and shall, within three months of its receipt, indicate that:
- 5.5.1. he is content with the response and/or that the measures which he specified are being implemented; or
- 5.5.2. he is content, subject to any further measures he reasonably specifies being implemented by a specified date or any evidence he requires that implementation of such measures have been successfully completed; or
- 5.5.3. he is not satisfied, that he does not believe that he can be reasonably satisfied, and that he will proceed to terminate the Agreement.
- 5.6 In the circumstances of clause 5.5.3 the Secretary of State shall notify the Company why he believes that he cannot be reasonably satisfied and, if so requested by the Company within thirty days from such notification, he shall meet a deputation including representatives from directors of the Company and the Local Governing Body of the Academy to discuss his concerns. If following such meeting he has good reasons for remaining satisfied that the Academy does not and will not have the characteristics set out in clause 12 of the Master Agreement (as amended by this Agreement) or does not and will not meet the conditions and requirements set out in clauses 13-34B of the Master Agreement (as amended by this Agreement) or the Company is in material breach of the provisions of this Agreement, the Master Agreement (as amended by this Agreement), the School Agreement and/or the Principal Agreement, and such breach will not be remedied to his reasonable satisfaction, he shall give the Company twelve months, or such lesser period as he considers appropriate in the circumstances, written notice to terminate this Agreement.
- 5.7 If the Secretary of State has cause to serve a notice on the Company under section 165 of the Education Act 2002 and a determination (from which all rights of appeal have been exhausted) has been made that the Academy shall be struck off the Register of Independent Schools, the period of twelve months notice referred to in clause 5.5 may be shortened to a period deemed appropriate by the Secretary of State.

- 5.8 The provisions of this clause 5.8 and of clauses 5.9 to 5.15 (inclusive) shall apply when the Project Agreement has expired or been terminated (for so long as the Project Agreement is extant the provisions of clauses 5.16 to 5.28 below shall apply in place of clauses 5.8 to 5.15). The Secretary of State shall, at a date preceding the start of each Academy Financial Year, provide to the Company an indication of the level of funding to be provided by the Secretary of State to the Company by way of GAG and EAG in the next following Academy Financial Year (the "**Indicative Funding**"). If the Company is of the opinion that, after receipt of the Indicative Funding for the next following Academy Financial Year (the "**Critical Year**") and of the taking into account all other resources available and likely to be available to the Academy, including such funds as are set out in clause 73 of the Master Agreement (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 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 of The Schools Network. 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 The provisions of this clause 5.16 and of clauses 5.17 to 5.28 (inclusive) shall apply when the Project Agreement is subsisting (when the Project Agreement has expired or been terminated the provisions of clauses 5.8 to 5.15 above shall apply in place of clauses 5.16 to 5.28). The Secretary of State will, 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").
- 5.17 For the purpose of clauses 5.16 to 5.28:

"Critical Years" means the then current financial year and, if an annual letter of funding has been received for the following financial year, that following financial year;

"Current Funding" means the funding specified in the annual letters of funding for the Critical Years and all other resources available and likely to be available to the Company, including such funds as are set out in the Master Agreement (as amended by this Agreement);

A "PFI EAG Refusal" occurs where:

- (a) the Company has made a request for EAG funding to cover any costs that the Company has incurred or reasonably considers is likely to incur as a result of meeting its obligations and/or discharging its liabilities under the School Agreement or the Principal Agreement; and
- (b) the Secretary of State has not agreed, in accordance with clauses 55 and 56 of the Master Agreement (as amended by this Agreement), to provide such EAG funding to the Company.

- 5.18 Within 30 days of being notified by the Secretary of State of a PFI EAG Refusal, the Company may provide written notice that it considers that, after taking into account its Current Funding, it is likely that the running costs during the Critical Years would cause the Company to go into Insolvency ("Company Insolvency Notice").
- 5.19 Any Company Insolvency Notice must specify:
- 5.19.1. the grounds and evidence, including any professional accounting advice, upon which the Company's opinion is based;
 - 5.19.2. a detailed statement of steps which the Company proposes to take with a view to ensuring that as soon as reasonably practicable the running costs are reduced sufficiently in the Critical Years to ensure that such costs are less than its Current Funding and the period of time within which such steps will be taken;
 - 5.19.3. the shortfall in the Critical Years between the Current Funding expected to be available to the Company to cover the running costs and the projected expenditure of the Company; and
 - 5.19.4. detailed budget of income and expenditure for the Academy during the Critical Years.
- 5.20 Within 15 days of the provision of the Company Insolvency Notice, both parties shall discuss and if possible (using reasonable endeavours) agree whether or not on the basis of the Current Funding, it is likely that the running costs during the Critical Years would cause the Company to go into Insolvency and such Insolvency could not be avoided through prudent financial management (including, but not limited to, using GAG funding prudently in order to cover the normal reasonable funding costs of the Academy). 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 reasonable endeavours to agree a practical solution to the problem.
- 5.21 If the parties are unable to reach an agreement in accordance with clause 5.20 within 15 days of the Company Insolvency Notice being served, then the following questions shall be referred to an independent expert (the "Expert") for determination:
- 5.21.1. whether, on the basis of the Current Funding, it is likely that the running costs during the Critical Years would cause the Company to go into Insolvency;
 - 5.21.2. whether the Company is using the funds provided under this Agreement and the Master Agreement (as amended by this Agreement) prudently; and

5.21.3. whether the Company is using the funds provided under this Agreement and the Master Agreement (as amended by this Agreement) in accordance with the requirements of this Agreement and the Master Agreement (as amended by this Agreement).

The Expert's determination shall be final and binding on both parties. The Expert shall be requested to specify in his determination:

- (a) the amount of the shortfall (if any) in funding between the running costs and the Current Funding during the Critical Years (the "Shortfall"); and
- (b) (if appropriate) recommendations as to future spending and the running costs.

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.

5.22 The parties shall procure that the Expert (together with any educational specialist appointed pursuant to this clause) will act promptly in determining the matters referred to him. The Expert shall be required in performing his role 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.

5.23 The Expert's and the educational specialist's fees shall be borne equally between the parties.

5.24 For the purpose of clauses 5.25 and 5.28, "Insolvency Decision" means either:

- (a) in accordance with clause 5.20, the Secretary of State agrees with the Company that on the basis of the Current Funding it is likely that the running costs during the Critical Years would cause the Company to go into Insolvency which could not be avoided through prudent financial management (including, but not limited to, using GAG funding prudently in order to cover the normal reasonable funding costs of the Academy); or
- (b) an Expert determines in accordance with clause 5.21 that on the basis of the Current Funding it is likely that the running costs during the Critical Years would cause the Company to go into Insolvency or that the Company is not using the funds provided under this Agreement and the Master Agreement (as amended by this Agreement) prudently

and in accordance with the requirements of this Agreement and the Master Agreement (as amended by this Agreement).

- 5.25 Within 10 Business Days of an Insolvency Decision, the Secretary of State may either at its option:
- 5.25.1. withdraw the PFI EAG Refusal and promptly pay to the Company the amount of requested EAG funding or such other sum as shall be appropriate; or
 - 5.25.2. terminate this Agreement on not less than 20 Business Days notice to the Company.
- 5.26 In the event that the Secretary of State provides additional EAG funding in accordance with clause 5.25, the Secretary of State may:
- 5.26.1. appoint Additional Directors sufficient to enable him to appoint a majority of the board of directors in accordance with the Company's articles and implement the recommendations of the Expert; and
 - 5.26.2. within 12 months of paying the additional EAG funding, terminate this Agreement at any time.
- 5.27 In the event that the Secretary of State appoints Additional Directors in accordance with clause 5.26.1, the Company must, upon the request of the Secretary of State, procure the resignation of the Directors who are not Additional Directors in accordance with the Company's articles.
- 5.28 In the event that there is no Insolvency Decision, this Agreement shall continue and the Secretary of State shall not be obliged to pay to the Company the requested EAG funding.
- 5.29 A "Special Measures Termination Event Occurs" when:
- 5.29.1. 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
 - 5.29.2. 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
 - 5.29.3. the Secretary of State shall have requested the Company to deliver within 10 Business Days a written statement (a "Further Action Statement") of the action the Company proposes to take, and the period within which it proposes to take such action, or, if it does not propose to take any action, the reasons for not doing so; and
 - 5.29.4. 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.

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

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

5.30.2. subject to clause 102 of the Master Agreement (as amended by this Agreement), appoint such Further Directors to the Company as he thinks fit in accordance with the Articles and/or may provide up to 12 months' notice in writing to terminate this Agreement.

5.31 In the event that the Secretary of State appoints Further Directors in accordance with clause 5.30.2, the Company must, upon the request of the Secretary of State, procure the resignation of the Directors appointed in accordance with Article 50 of the Articles of Association.

5.32 The parties acknowledge that the Secretary of State may appoint Additional Directors to the Company in accordance with the Articles.

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

CHANGE OF CONTROL OF THE COMPANY

5.34 The Secretary of State may at any time by notice in writing, subject to clause 5.36 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:

5.34.1 in the Control of the Company;

5.34.2 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.

5.35 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 5.34, give written notice to the Secretary of State of such change or proposed change of Control.

5.36 When notifying the Secretary of State further to clause 5.35, 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 5.34.

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:

6.2.1. that a Special Measure Termination Event occurs;

6.2.2. the Academy no longer has the characteristics set out in clause 12 of the Master Agreement (as amended by this Agreement), or is no longer meeting the conditions and requirements set out in clauses 13-34B of the Master Agreement (as amended by this Agreement);

6.2.3. under clause 5.25 or 5.26;

6.2.4. that 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;

6.2.5. that the Company is otherwise in material breach of the provisions of this Agreement or the Master Agreement (as amended by this Agreement); or

6.2.6. that the Company is in material breach of the provisions of the School Agreement and/or the Principal Agreement

the Secretary of State shall indemnify the Company.

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

6.4 The categories of expenditure incurred by the Company in consequence of the termination of the Agreement in respect of which the Secretary of State shall indemnify the Company include (but not by way of limitation), staff compensation and redundancy payments, compensation

payments in respect of broken contracts, expenses of disposing of assets or adapting them for other purposes, legal and other professional fees, and dissolution expenses.

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

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

(b) if the Secretary of State confirms that a transfer under clause 6.5(a) is not required, promptly repay to the Secretary of State a sum 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:

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

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

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

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 Clauses 12 to 34 of the Master Agreement (as amended by this Agreement) are deleted replaced with the following clauses 12 to 34C for the purpose of this Agreement:

"CHARACTERISTICS OF THE ACADEMY

- a. The characteristics of the **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 abilities,
- 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 provisions Academy.

CONDITIONS OF GRANT

General

13) Other conditions and requirements in respect of the Academy 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);
- c) the admissions policy and arrangements for the school will be in accordance with admissions law, and the DfE Codes of Practice, as they apply to maintained schools;
- d) teachers' levels of pay and conditions of service for all employees will be the responsibility of the Company;
- e) there will be an emphasis on the needs of the individual pupils including pupils with SEN, both those with and without statements of SEN;
- f) there will be no charge in respect of admission to the school and the school will only charge pupils where the law allows maintained schools to charge.
- g) the Company shall as soon as reasonably practicable establish an appropriate mechanism for the receipt and management of donations and shall use reasonable endeavours to procure donations through that mechanism for the purpose of the objects specified in the Articles.

13A Clause 13f) does not prevent the Company receiving funds from a local authority or a charity in respect of the admission of a pupil with special educational needs to an Academy.

Governance

14) The Academy will be governed by the Company. The Company shall have regard to (but for the avoidance of doubt shall not be bound by) any guidance as to the governance of Academies that the Secretary of State may publish.

15) NOT USED.

Conduct

16) The 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 Supplemental Agreement for the Academy.

Criminal Records Bureau Checks

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

Pupils

18) The Academy will be an all ability inclusive school whose requirements for:

- a) the admission of pupils to the Academy are set out in the Annex 1 to the Supplemental Agreement;

- b) the admission to the Academy of and support for pupils with SEN and with disabilities (for pupils who have and who do not have statements of SEN) are set out in Annex 2 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

18A) The Company will in respect of the Academy act in accordance with, and be bound by, all relevant statutory and regulatory provisions and have regard to any guidance and codes of practice issued pursuant to such provisions, as they apply at any time to a maintained school, relating to the designation of a person to manage the teaching and learning programme for children who are looked after by an LA and are registered pupils at the school. For the purpose of this clause, any reference to the governing body of a maintained school in such statutory and regulatory provisions, or in any guidance and code of practice issued pursuant to such provisions, shall be deemed to be references to the Directors of the Company.

Teachers and other staff

19) Subject to clause 20, the Company shall not employ anyone under a contract of employment or for services to carry out planning and preparing lessons and courses for pupils, delivering lessons to pupils, assessing the development, progress and attainment of pupils, and reporting on the development, progress and attainment of pupils ("specified work") who is not either:-

- a) a qualified teacher within the meaning of regulations made under section 132 of the Education Act 2002; or
- b) otherwise eligible to do specified work under the Education (Specified Work and Registration) (England) Regulations 2003 (SI 2003/1663), which for the purpose of this clause shall be construed as if the relevant Academy were a maintained school.

20) Clause 19 does not apply to anyone who:

- a) was transferred to the employment of the Company by virtue of the Transfer of Undertakings (Protection of Employment) Regulations 2006; and
- b) immediately prior to the transfer, was employed to do specified work; and

c) immediately prior to the transfer, was not:

- i) a qualified teacher within the meaning of regulations made under section 132 of the Education Act 2002 and registered with full registration with the appropriate body, or
- ii) eligible to do specified work under the Education (Specified Work and Registration) (England) Regulations 2003 (SI 2003/1663)

("transferred staff member"). The Company shall use its best endeavours to ensure that any transferred staff member who undertakes specified work and does not meet the requirements of either clause 19(a) or clause 19(b) meets such requirements as soon as possible.

21) The Company shall ensure that all teachers employed at each Academy have access to the Teachers Pension Scheme and, in so doing, will comply with the statutory provisions underlying the scheme.

22) The Company shall ensure that all employees at each Academy other than teachers have access to the Local Government Pension Scheme.

Curriculum, curriculum development and delivery and RE and collective worship

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

23A) NOT USED.

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

- a) the content of the curriculum;
- b) its approach to the curriculum;
- c) the GCSE option (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.

23C) Subject to the requirements of clauses 23 to 29A, the curriculum will be the responsibility of the Academy Trust.

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

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

- a) the 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 the Academy

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

26) Where the Academy is designated with a religious character in accordance with section 124B of the School Standards and Framework Act 1998 or further to section 6(8) of the Academies Act 2010:

- a) subject to clause 28, and paragraph 4 of Schedule 19 to the School Standards and Framework Act 1998 which shall apply as if the Academy were a voluntary aided school with a religious character, the Company shall ensure that provision is made for religious education to be given to all pupils at the Academy in accordance with the tenets of the specified religion or religious denomination of the Academy;
- b) subject to clause 28, the Company shall comply with the requirements of section 70(1) of, and Schedule 20 to, the School Standards and Framework Act 1998 as if the Academy were a foundation school with a religious character or a voluntary school, and as if references to 'the required collective worship' were references to collective worship in accordance with the tenets and practices of the specified religion or religious denomination of the Academy;
- c) the Company shall ensure that the quality of religious education given to pupils at the Academy and the contents of the Academy's collective worship given in accordance with the tenets and practice of the specific religion or religious denomination are inspected. Such inspection shall be conducted by a person chosen by the Company and the Academy shall secure that such inspection shall comply with the requirements set out in any statutory provision and regulations as if the Academy were a foundation or voluntary school which has been designated under section 69(3) of the School Standards and Framework Act 1998 as having a religious character.

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

a) subject to clause 28, the Company shall ensure that provision shall be made for religious education to be given to all pupils at the Academy in accordance with the requirements for agreed syllabuses in section 375(3) of the Education Act 1996 and paragraph 2(5) of Schedule 19 to the School Standards and Framework Act 1998;

b) subject to clause 28, the Company shall ensure that the Academy complies with the requirements of section 70(1) of, and Schedule 20 to, the School Standards and Framework Act 1998 as if it were a community, foundation or voluntary school which does not have a religious character, except that the provisions of paragraph 4 of that Schedule do not apply. The Academy may apply to the Secretary of State for consent to be relieved of the requirement imposed by paragraph 3(2) of that Schedule, the Secretary of State's consent to such an application not to be unreasonably withheld or delayed.

c) the Company:

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

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

28) Section 71(1) – (6) and (8) of the School Standards and Framework Act 1998 shall apply as if each Academy were a community, foundation or voluntary school, and as if references to "religious education" and to "religious worship" in that section were references to the religious education and religious worship provided by each Academy in accordance with clauses 26 or 27 as appropriate.

29) The Company shall have regard to any guidance issued by the Secretary of State, further to section 403 of the Education Act 1996, on sex and relationship education to ensure that children at the 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 the Academy as if it were a maintained school.

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

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

Assessment

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

- a) The Company shall ensure that the Academy complies with any guidance issued by the Secretary of State from time to time to ensure that pupils take part in assessments and in teacher assessments of pupil's performance as they apply to maintained schools.
- b) The Company shall report to any body on assessments under clause 30 as the Secretary of State shall prescribe and shall provide such information as may be required by that body as applies to maintained schools.
- c) In respect of all Key Stages, the Company will submit each Academy to monitoring and moderation of its assessment arrangements as prescribed by the Secretary of State.
- d) The Company may not offer courses at any Academy which lead to relevant qualifications, as defined in section 96 of the Learning and Skills Act 2000, unless the Secretary of State gives specific approval for such courses.

30A) The Company shall ensure that the following information is published on the website for the **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
 - (iii) "% of pupils making expected progress".
- c) Information as to where and by what means parents (including prospective parents) may access the most recent report about the school published by her Majesty's Chief Inspector of Education, Children's Services and Skills.
- d) Information as to where and by what means parents (including prospective parents) may access the School Performance Tables published by the Secretary of State on the Department for Education's website.

Exclusions Agreement

- 31) The Company shall, if invited to do so by an LA, enter into an agreement in respect of the Academy with that LA, which has the effect that where:
- a) the Company admits a pupil to the Academy who has been permanently excluded from a maintained school, the Academy itself or another Academy with whom the LA has a similar agreement; or
 - b) the Company permanently excludes a pupil from the Academy payment will flow between the Company and the LA in the same direction and for the same amount that it would, were the Academy a maintained school, under Regulations made under section 47 of the School Standards and Framework Act 1998 relating to the addition or deduction of a maintained school's

budget following a permanent exclusion or the admission of a permanently excluded pupil. At the date of this Agreement, the applicable Regulation is Regulation 23 of the School Finance (England) Regulations 2011.

School Meals

32) The Company shall, if requested to do so by or on behalf of any pupils at the Academy, provide school lunches for those pupils unless it would be unreasonable for it to do so. Subject to the provisions of clause 33 charges may be levied for lunches, but the Company shall otherwise fund the cost of such school lunches from its GAG.

33) In relation to a pupil who is himself or whose parents are in receipt of benefits mentioned in section 512ZB of the Education Act 1996 (or equivalent provision governing the entitlement to free school lunches of pupils at maintained schools), the Company shall ensure that a school lunch is provided for such a pupil free of charge to be funded out of the Company's GAG.

Charging

34) Sections 402 (Obligation to enter pupils for public examinations), 450 - 457 (charges), 459 (regulations about information about charges and school hours) and 460 (voluntary contributions), 461 (recovery of sums as civil debt) - 462 (Interpretation re charges) of the Education Act 1996 (including, for the avoidance of doubt, any secondary legislation made further to those provisions) shall be deemed to apply to the Academy with the following modifications:

- a) references to any maintained school shall be treated as references to an Academy;
- b) references to registered pupils shall be treated as references to registered pupils at an Academy;
- c) references to the governing body or the local education authority shall, in each case, be treated as references to the Company;
- d) the charging and remissions policies required to be determined under section 457, and any amendment thereto, shall require the approval of the Secretary of State; and
- e) the Company may charge persons who are not registered pupils at an Academy for education provided or for facilities used by them at that Academy.

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 The Company shall publish in each Academy Financial Year information in relation to:

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

DURATION OF SCHOOL DAY AND YEAR

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

8.3 The wording in clause 41 in the Master Agreement (as amended by this Agreement) is deleted and replaced with the following wording for the purpose of this Agreement;

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

8.4 Clauses 42 to 47 of the Master Agreement (as amended by this Agreement) do not apply for the purpose of this Agreement.

8.5 The wording in sub clause 48(g) in the Master Agreement (as amended by this Agreement) is deleted and replaced with the following wording for the purpose of this Agreement;

“g) insurance, provided that the Secretary of State shall not be obliged to pay GAG in relation to insurance to the extent that insurance and/or comparable arrangements are made available to the Company (whether at a cost to the Company or otherwise and whether made available by and/or on behalf of the Secretary of State or otherwise) save that, to the extent that such insurance and/or comparable arrangements as may be made available constitute a cost for the Company, the Secretary of State shall provide a contribution through GAG in relation to such cost;”

8.6 Clauses 49 to 67 in the Master Agreement (as amended by this Agreement) do not apply for the purposes of this Agreement and are replaced with the following new clauses 49 to 67B for the purpose of this Agreement:

“49. Subject to clauses 57 to 58, GAG for each Academy Financial Year for the Academy will include;

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

50. The GAG for each Academy Financial Year for the Academy will also include, payable on a basis equivalent to that applied to maintained schools:

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

51. Subject to clause 53, the basis of the pupil number count for the purposes of determining GAG for the Academy Financial Year in which the Academy opens shall be the same basis as that used by the Local Authority for determining the budget share of the predecessor maintained school as adjusted by numbers counted in any subsequent Schools Census, as

determined by the Secretary of State. In subsequent years the basis of the pupil count will be as determined by the Secretary of State.

52. Subject to clause 53, the basis of the pupil number count for the purpose of determining GAG for the Academy for Academy Financial Years after the Academy Financial Year in which the Academy opens will be:
- a) for the pupil number count for pupils in Year 11 and below, the Schools Census which is used to fund maintained schools for the financial year overlapping with the Academy Financial Year in question; and
 - b) for the pupil number count for pupils in Year 12 and above, the formula which for the time being is in use for maintained schools for the calculation of pupil numbers for pupils in Year 12 and above for the purpose of calculating their level of funding.
53. Where either of the following conditions applies in respect of an Academy Financial Year, the basis of the pupil count shall be determined by the Secretary of State, taking account of any diseconomies of scale that the Academy will be under as a result of such condition(s) applying. The conditions are:
- a) not all planned Year-groups will be present at the Academy (that is, not all the pupil cohorts relevant to the age-range of the Academy will have some pupils present); or
 - b) the total number of pupils as measured in the Schools Census which is used to fund maintained schools for the financial year overlapping with the Academy Financial Year in question is less than 90% of the planned final size of the Academy, as specified in the Academy's Supplemental Agreement, and has not at any previous time been greater than 90% of that number.
54. For any Academy Financial Year in which GAG for the Academy has been calculated in accordance with clause 51, no adjustment shall be made to the following Academy Financial Year's formula funding element of GAG for that Academy to recognise variation from the pupil count basis used.
55. For any Academy Financial Year in which GAG for the Academy is calculated in accordance with clause 52, no adjustment will be made to the formula funding element in the following Academy Financial Year's formula funding element of GAG unless the Company demonstrates to the satisfaction of the Secretary of State that there has been a

significant impact on costs, such as an extra class. For any other element of GAG the Secretary of State may make adjustments to recognise a variation in pupil numbers from that used to calculate the element of grant in question; the basis of these will be set out in the annual letter of funding.

56. The Secretary of State recognises that:

- a) If the Academy opens with an intake representing only a proportion of the final planned size of the Academy, payments based simply upon the number of pupils present are unlikely to be sufficient to meet the Academy's needs in the Academy Financial Years before all age groups are present at their planned size (the "Start-up Period") because of a lack of economies of scale. The Secretary of State may pay an appropriately larger GAG in the Start-up Period than would be justified solely on the basis of the methods set out in clauses 49 to 55, in order to enable the Academy to operate effectively¹;
- b) If the Academy opens with pupils transferred from one or more maintained schools which have closed, additional GAG resources may be required to take account of transitional costs including any costs associated with supporting the integration of pupils from the closed schools and, where necessary, to offer a dual curriculum. If the Secretary of State has indicated that such additional GAG will be payable, the Company will make a bid for this addition to GAG based upon need and providing appropriate supporting evidence.

57. During the Start-up Period or during the period when year groups are present who have transferred from a predecessor school or schools, the Secretary of State will pay a further element of GAG additional to that calculated in accordance with the methods set out in clauses 49 to 55 to allow the Academy to:

- a) purchase a basic stock of teaching and learning materials (including library books, text books, software, stationery, science equipment and equipment for physical education) and other consumable materials;
- b) meet the costs associated with the recruitment and induction of additional teaching and other staff.

¹ Note that a larger GAG for the Start-Up Period is only applicable to Academies with approved Expressions of Interest.

After the Start-up Period these costs will be met through the ordinary GAG.

58. The Secretary of State recognises that if he serves notice of intention to terminate a Supplemental Agreement under that agreement the intake of new pupils during the notice period is likely to decline and that in such circumstances payments based simply upon the number of pupils attending the Academy are unlikely to be sufficient to meet the Academy's needs during the notice period. The Secretary of State undertakes to pay a reasonable and appropriately larger GAG with respect to that Academy in the notice period than would be justified solely on the basis of the methods set out in clauses 89 to 95, in order to enable the Academy to operate effectively.
59. The Secretary of State also recognises that if this Agreement or a Supplemental Agreement is terminated for any reason by either party the number of pupils at the Academy is likely to decline. In these circumstances both parties undertake to attempt to resolve issues arising from such termination in good faith and with the aim of protecting the interests and the education of the pupils at the Academy.
60. Subject to clause 79, GAG paid by the Secretary of State in respect of the Academy shall only be spent by the Company towards the normal running costs of that Academy.

Earmarked Annual Grant

61. Earmarked Annual Grant ("EAG") shall be paid by the Secretary of State to the Company in respect of either recurrent or Capital Expenditure for such specific purposes as may from time to time be agreed between the Secretary of State and the Company and as described in the relevant funding letter. The Company shall only spend EAG in accordance with the scope, terms and conditions of the grant set out in the relevant funding letter.
62. Where the Company is seeking a specific EAG in relation to any Academy Financial Year, it shall submit a letter outlining its proposals and the reasons for its request to Academies Division, Sanctuary Buildings, Great Smith Street, London SW1P 3BT.

Arrangements for Payment of GAG and EAG

63. The Secretary of State shall notify the Company at a date preceding the start of each Academy Financial Year of the GAG and EAG figures in respect of the Academy which, subject to Parliamentary approval, the Secretary of State plans for that Academy Financial Year and of the assumptions and figures on which these are based.

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

Other relevant funding

67A. The Secretary of State may meet costs incurred by the Company in connection with the transfer of employees from any predecessor school under the Transfer of Undertakings (Protection of Employment) Regulations 2006. Payment of grant in respect of such costs is to be agreed between the parties on a case by case basis and the Company shall not budget on the basis that it will receive any grant in respect of such costs unless it is specifically notified that such grant will be paid.

67B. 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.”

8.7 The wording in Clause 79 of the Master Agreement (as amended by this Agreement) is deleted and replaced with the following wording for the purpose of this Agreement:

“At the beginning of any Academy Financial Year the Company may hold unspent GAG for the Academy from previous Academy Financial Years amounting to such percentage (if any) as the Secretary of State may specify by notice in writing to the Company prior to the beginning of that Academy Financial Year of the total GAG payable for the Academy in the Academy Financial Year just ended or such higher amount as may from time to time be agreed. The Company shall use such carried forward amount for such purpose, or subject to such restriction on its use, as the Secretary of State may specify by notice in writing to the Company.”

8.8 New clause 86A consisting of the following wording is inserted into the Master Agreement (as amended by this Agreement) for the purpose of this Agreement:

“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.”

8.9 The wording in Clause 90 in the Master Agreement (as amended by this Agreement) is deleted and replaced with the following wording for the purpose of this Agreement;

"The sale or disposal by other means, or reinvestment of proceeds from the disposal, of a capital asset held for the purposes of the Academy 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."

9 **ENGLISH LAW**

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

This Agreement was executed as a Deed on

01 November 2012

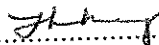
Executed on behalf of **DIVERSE ACADEMIES TRUST** by:

[Either



.....
Director

In the presence of:

Witness.....

Address.....216 CHARLBURY RD, WOLLATON, NOTTINGHAM, NG8 1NJ

Occupation.....SOLICITOR

[Or

.....
Director

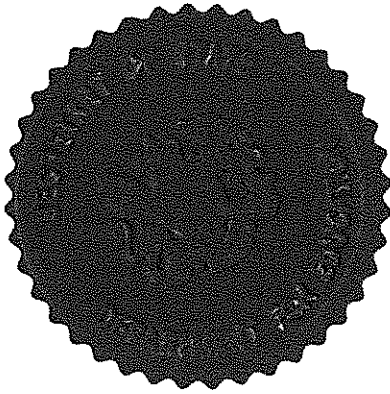
.....]
Director/Secretary

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

Bridget

.....

Duly Authorised



ANNEX TO THIS SUPPLEMENTAL FUNDING AGREEMENT

Requirements for the Admission for pupils at East Leake Academy - Annex 1

SEN Annex

- Annex 2

Annex 1

REQUIREMENTS FOR THE ADMISSION OF PUPILS TO THE EAST LEAKE 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 legislation 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.

Multi Academy Model

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.

5. The Company shall ensure that parents and 'relevant children'³ 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:

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 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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- 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.

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 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 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.

Annex 2

Arrangements for pupils with Special Educational Needs ('SEN') and disabilities at Mainstream Academies

Duties in relation to pupils with SEN¹

1. The Directors of the Company must, in respect of each **Mainstream Academy**, comply with all of the duties imposed upon the governing bodies of maintained schools in;
 - Part 4 of the Education Act 1996 as amended from time to time²;
 - The Education (Special Educational Needs) (Information) Regulations 1999 as amended from time to time;
 - The Education (Special Educational Needs Co-ordinators) (England) (Amendment) Regulations 2008 as amended from time to time³.
2. Notwithstanding any provision in this Agreement, the Secretary of State may (whether following a complaint made to him or otherwise) direct the Company to comply with an obligation described in this Annex where the Company has failed to comply with any such obligation.
3. Where a child who has SEN is being educated in a **Mainstream Academy**, those concerned with making special educational provision for the child must secure that the child engages in the activities of the school together with children who do not have SEN, so far as is reasonably practicable and is compatible with:
 - (a) the child receiving the special educational provision which his learning difficulty calls for,
 - (b) the provision of efficient education for the children with whom he will be educated, and
 - (c) the efficient use of resources.
4. In addition to complying with the duties imposed upon the governing bodies of maintained schools set out in The Education (Special Educational Needs) (Information) Regulations 1999 (as amended from time to time) the Company must ensure that the website for each Academy includes details of the implementation of its policy for pupils with special educational needs; the arrangements for the admission of disabled pupils; the steps taken to prevent disabled pupils from being treated less favourably than other pupils; and the facilities provided to

¹ Duties in relation to pupils with SEN at Special Academies are at clause 12A of the Master Funding Agreement.

² Currently these duties are in sections 313 (Duty to have regard to the Special Educational Needs Code of Practice 2001); 317 (Duties in relation to pupils with special educational needs), 317A (Duty to advise parents that special educational provision is being made); and 324(5)(b) (Duty to admit the child where a school is named in the statement).

³ These Regulations are amended by The Education (Special Educational Needs Co-ordinators) (England) (Amendment) Regulations 2009 (SI 2009 No 1387).

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assist access to the Academy by disabled pupils (disabled pupils meaning pupils who are disabled for the purposes of the Equality Act

2010¹).

Admissions²

5. The Company must ensure that for each **Mainstream Academy** pupils with SEN are admitted on an equal basis with others in accordance with the Academy's admissions policy.
6. Where a local authority ("LA") proposes to name a **Mainstream Academy** in a statement of SEN made in accordance with section 324 of the Education Act 1996, it must give the Company written notice that it so proposes. Within 15 days of receipt of the LA's notice that it proposes to name the Academy in a statement, 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 LA's notice, notify the LA 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 Company 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. After service by the Company on the LA of any notice (further to paragraph 7 above) stating that it does not agree with the LA's proposal that the Academy be named, the Company must seek to establish from the LA, as soon as is reasonably practicable, whether or not the LA agrees with the Company. If the LA notifies the Company that it does not agree with the Company's response, and names the Academy in the child's statement, then the Company must admit the child to the school on the date specified in the statement or on the date specified by the LA.
9. Where the Company consider that the Academy should not have been named in a child's statement, they may ask the Secretary of State to determine that the LA has acted unreasonably in naming the Academy and to make an order directing the LA to reconsider.
10. The Secretary of State's determination shall, subject only to any right of

¹ For the meaning of 'disabled', see section 6 of the Equality Act 2010.

² SEN Admissions requirements for special academies are set out in the Special Academy Supplemental Funding Agreement Annex 1.

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appeal which any parent or guardian of the child may have to the First-tier Tribunal (Special Educational Needs and Disability), be final.

11. If a parent or guardian of a child in respect of whom a statement is maintained by the local authority appeals to the First-tier Tribunal (Special Educational Needs and Disability) either against the naming of an Academy in the child's SEN statement or asking the Tribunal to name an Academy, then the decision of the Tribunal on any such appeal shall be binding and shall, if different from that of the Secretary of State under paragraph 9 above, be substituted for the Secretary of State's decision.
12. Where the Company, the Secretary of State or the First-tier Tribunal (Special Educational Needs and Disability) have determined that it should be named, the Company shall admit the child to the Academy notwithstanding any provision of Annex 1 of the Supplemental Agreement of that Academy.