

Multi Model  
(Mainstream Free Schools, Special Free Schools, alternative provision Free Schools, 16 to 19 Free Schools, and Studio Schools)

**AUTISM SCHOOLS TRUST**  
**FREE SCHOOLS**

**MASTER FUNDING AGREEMENT**

*30<sup>th</sup> June 2014*

# **AUTISM SCHOOLS TRUST**

## **FREE SCHOOLS**

### **MASTER FUNDING AGREEMENT**

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## **ANNEXES TO THE MASTER FUNDING AGREEMENT**

**Memorandum and Articles of the Company** **Annex A**

Arrangements for pupils with SEN and disabilities at each Free School – for Mainstream Free Schools, alternative provision Free Schools and Studio Schools only

## INTRODUCTION

- 1) This Agreement is made under Section 1 of the Academies Act 2010, between the Secretary of State for Education ("the Secretary of State") and Autism Schools Trust (the "Company").
- 2) The Company is a company incorporated in England and Wales, limited by guarantee with registered Company number 08335297.
- 3) The Company intends to establish and maintain, and to carry on or provide for the carrying on of a number of Academies in accordance with this Agreement and the Supplemental Agreements.
- 4) This Agreement and the Supplemental Agreements will apply in respect of an Academy from such time as a Supplemental Agreement relating to that Academy shall have been entered into between the Secretary of State and the Company.
- 5) The following expressions used in this Agreement have the respective meanings assigned to them by the numbered clauses of this Agreement referred to immediately after the reference to the expressions -
  - a) "Academies Financial Handbook" - clause 67;
  - b) "Accounting Officer" – clause 66;
  - c) "Annual Letter of Funding" - clause 60;
  - d) "GAG" – clause 36;
  - e) "Capital Expenditure" - clause 37;
  - f) "Capital Grant" – clause 37;
  - g) "EAG" - clause 36;
  - h) "Local Governing Body" – clause 15;
  - i) "Non-Statemented Pupils" – clause 18B and paragraph 3(iv) of Annex 1 to

- the Supplemental Agreement<sup>1</sup>;
- j) "Recurrent Expenditure" – clause 36;
  - k) "Statemented Pupils" – clause 18A and paragraphs 2 and 3(i), (ii) and (iii) of Annex 1 to a relevant Supplemental Agreement.
  - l) In this Agreement the following words and expressions shall have the following meanings:-

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

"Academy" means a Mainstream Free School, an alternative provision Free School, a Special Free School or a 16 to 19 Free School, in respect of which a Supplemental Agreement has been entered into between the Secretary of State and the Company and the expression "Academies" shall refer to all or any of such Free Schools;

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

"alternative provision Free School" means an Academy which meets the requirements set out in section 1C of the Academies Act 2010;

the "Articles" means the Articles of Association of the Company for the time being in force;

"this Agreement" means this agreement and its annexes and a reference in this Agreement to a numbered clause or annex is a reference to the clause or annex of this Agreement bearing that number or letter as the same may be amended or supplemented from time to time;

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<sup>1</sup> Use only where clause 18B is included.

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

"Commissioner" means local authorities and/or schools referring children/pupils to the alternative provision Free School for admission under the legal powers set out in the relevant annex to the Supplemental Agreement;

"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 or other document regulating that Entity or any other Entity or partnership including, without limitation, the power to appoint or remove a majority of the directors thereof, or
- (c) by virtue of any agreement, understanding or arrangement between any person or persons,

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

"DfE" means Department for Education and any successor;

"Free Schools" means all the types of Free Schools referred to in the definition of an "Academy";

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

"Mainstream Free School" means an Academy meeting the requirements referred to in clause 12;

"Memorandum" means the memorandum of association of the Company for the time being in force;

"parents" means parents or guardians;

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

"Principal" means the head teacher of an Academy;

"Principal Regulator" means the body or person appointed as the Principal Regulator under the Charities Act 2011;

"Pupil Referral Unit" means any school established in England and maintained by a local authority which is specially organised to provide education for children falling within section 19(1) of the Education Act 1996;

references to "school" shall where the context so admits be references to an Academy (except a 16 to 19 Free School);

references to "educational institution" shall where the context so admits be references to a 16 to 19 Free School;

references to "Secretary of State" shall where the context so admits be references to the EFA acting on the Secretary of State's behalf; and

"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;

"SENCO" means Special Educational Needs Co-ordinator;

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

"Statement of SEN" means a statement made under section 324 of the Education Act 1996;

"Studio School" means a type of Mainstream Free School, principally for pupils and students aged between 14 and 19, which places an emphasis on

such pupils and students obtaining employability skills through project based learning;

“Supplemental Agreement” means an agreement supplemental to this Agreement, substantially in the form of the relevant model supplemental funding agreement as published by the DfE at the time of entering into the Supplemental Agreement, to be entered into by the Secretary of State and the Company pursuant to which the Company agrees to establish and maintain, and to carry on or provide for the carrying on, and the Secretary of State agrees to fund, an Academy in accordance with the terms and conditions of that Supplemental Agreement and this Agreement; and

“16 to 19 Free School” means an Academy which meets the requirements set out in section 1B of the Academies Act 2010.

7) The Interpretation Act 1978 shall apply for the interpretation of this Agreement and any Supplemental Agreement as it applies for the interpretation of an Act of Parliament.

8) Expressions defined in this Agreement shall have the same meaning where used in any Annex to this Agreement or Supplemental Agreement.

9) Questions arising on the interpretation of the arrangements in this Agreement shall be resolved by the Secretary of State after consultation with the Company.

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

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

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

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

## **LEGAL AGREEMENT**

11) In consideration of the Company undertaking to establish and maintain, and to carry on or provide for the carrying on of a number of independent schools in England specially organised to make special educational provision for pupils with SEN ("the Special Free Schools") or meeting the requirements referred to in clause 12 ("the Mainstream Free Schools"), or meeting such requirements as referred to in clause 12D ("the alternative provision Free Schools") or meeting such requirements as referred to in clause 12E ("the 16 to 19 Free Schools"), the Secretary of State agrees to make payments to the Company in accordance with the conditions and requirements set out in this Agreement and Supplemental Agreements. If it is agreed between the Secretary of State and the Company that the Company will establish and maintain, and to carry on or provide for the carrying on of an Academy, the parties will enter into a Supplemental Agreement in relation to that Academy. For the avoidance of doubt, any obligations imposed upon or powers given to an Academy by this Agreement or any Supplemental Agreement are also imposed upon the Company.

## **REQUIREMENTS OF A MAINSTREAM FREE SCHOOL**

12) The requirements of a Mainstream Free School are those set down in Section 1A of the Academies Act 2010.

## **THE SEN OBLIGATIONS**

12A) In respect of Special Free Schools:

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

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<sup>2</sup> Currently these duties are in section 313 (Duty to have regard to the Special Educational Needs Code of Practice 2001); section 317(5), (6) and (6A) (Duties in relation to the publication of information relating to arrangements and facilities for disabled pupils at the school); and 324(5)(b) (Duty to admit the child where a school is named in the statement); and the Education (Special

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

## **ALTERNATIVE PROVISION FREE SCHOOL REQUIREMENTS**

12B) The alternative provision Free School requirements are those set down in Section 1C of the Academies Act 2010.

## **16 to 19 Free School REQUIREMENTS**

12C) The 16 to 19 Free School requirements are those set down in Section 1B of the Academies Act 2010.

## **CONDITIONS OF GRANT**

### **General**

13) Other conditions and requirements in respect of an Academy, unless specified otherwise in a Supplemental Agreement, are that:

- a) the Free School will be at the heart of its community, promoting community cohesion and sharing facilities with other schools and the wider community;

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Educational Needs)(Information)(England) Regulations 1999 (S.I. 1999/2506). For the avoidance of doubt, the obligations in clause 12A of this agreement are in addition to any obligations imposed upon Academy proprietors directly in legislation or regulations.

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

- b) at each Mainstream Free School and each Special Free School there will be assessments of pupils' performance as they apply to maintained schools (this will also apply to **alternative provision Free Schools** unless there are exceptional reasons to do otherwise), and the opportunity to study for qualifications in accordance with clause 30 (d); at each 16 to 19 Free School there will be assessment of students' performance appropriate to the qualifications offered and the opportunity to study for qualifications in accordance with clause 30 (d);
- c) in respect of **Mainstream Free Schools**, and **Special Free Schools** (only in relation to Non-Statemented Pupils and subject to exceptions in Annex 1 to the relevant Supplemental Agreement), 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; in respect of **alternative provision Free Schools** the admissions policy and arrangements for the school will be set out in the relevant annex to the Supplemental Agreement; and in respect of 16 to 19 Free Schools the admissions policy and arrangements for the educational institution will be fair, objective and transparent, in accordance with legal powers and duties in relation to 16 to 19 provision and with the requirements in clause 18F;
- d) teachers' levels of pay and conditions of service at the Academies will be the responsibility of the Company;
- e) there will be an emphasis on the needs of the individual pupils and students (and where relevant personal coaches will contribute to the needs of the individual pupils and students) including pupils with SEN, both those with and without Statements of SEN, and students with learning difficulties and disabilities;
- f) there will be no charge to pupils (or their parents or guardians) or students (or their parents or guardians) in respect of admission to, or attendance at, the school or educational institution. Mainstream, Special and alternative provision Free Schools will only charge where the law allows maintained schools to

charge and 16 to 19 Free Schools will only charge where the law allows institutions within the further education sector to charge.;

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

13B) Clause 13f) does not prevent the Company receiving funds/income from Commissioners in respect of the admission and attendance of a pupil at the alternative provision Free School.

### **Governance**

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

15) The Company shall establish, for each Academy, an Advisory Body, whose role shall be to provide advice to the Company in relation to the functioning of that Academy. The role of the Advisory Body and the membership of it shall be for the Company to decide, but the Company will, as a minimum, ensure that:

- a) a minimum of two parents of a pupil or a student at the Academy (to be appointed or elected by the parents of registered pupils or students of the Academy) shall be a member of the Advisory Body;
- b) up to two employees at the Academy (to be elected by employees of the Academy) shall be a member of the Advisory Body;
- c) not used;
- d) any advice of the Advisory Body is brought to the attention of the Directors of the Company;
- e) to the extent that the Company may, in accordance with the Articles, choose to establish a Local Governing Body, then the Company may additionally constitute the Advisory Body as the Academy's Local Governing Body.

## **Conduct**

16) Each Academy shall be conducted in accordance with:

- a) the Articles;
- b) all provisions by or under statute which confer rights or impose obligations on Academies including, without limitation, the independent schools standards prescribed under section 157 of the Education Act 2002 to the extent they apply to the Academies, except that such independent school standards do not apply to any 16-19 Academies;
- c) the terms of this Agreement and the relevant Supplemental Agreement.

## **Disclosure and Barring Service Checks**

17) In respect of each Mainstream Free School, alternative provision Free School, and Special Free School, 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 disclosure and barring service checks, obtaining disclosure and barring service certificates and making any further checks, as required and appropriate for members of staff, supply staff, individual Directors and the Chair of the Local Governing Body.

17A) In respect of each 16 to 19 Free School, the Company agrees to comply with any obligations that apply to it by virtue of provisions in the Safeguarding and Vulnerable Groups Act 2006 as may be amended from time to time in respect of, but not limited to, the performance of barred list checks.

17B) Further, in respect of each 16 to 19 Free School, the Company agrees to act in accordance with the Further Education (Providers of Education) (England) Regulations 2006 (SI 2006/3199) as may be amended or replaced from time to time as if the 16 to 19 Free School were a further education institution and subject to the following modifications:

- a) references to "the governing body of a further education institution" or to "the governing body" shall be treated as references to the Company;

- b) references to "a further education institution" or "the institution" shall be treated as references to the 16 to 19 Free School, except in regulations 9(1)(b) and 19(2)(a)(ii) where they shall have their normal meaning;
- c) the Company shall not have to comply with any of the requirements in relation to relevant staff qualifications specified in regulation 3(2), namely: regulations 5(3); regulation 17(1) only in so far as it relates to regulation 18(3); regulation 22 only in so far as it relates to paragraph 4 of Part 1 of the Schedule; and regulation 23 only in so far as it relates to paragraph 2(3) of Part 2 of the Schedule. For the avoidance of doubt, the relevant staff qualification requirements do not need to be met by members of staff at the 16 to 19 Free School; and
- d) references to "new member of staff" shall include individual Directors and the Chair of the Directors and in respect of them:
  - (i) the obligation to carry out an enhanced disclosure and barring services check as provided for at regulation 5(5) will apply whether or not their position will involve a relevant activity;
  - (ii) the reference in regulation 6 to "considering his suitability for a position that will involve a relevant activity" will be treated as a reference to considering his suitability for a position as a Director or Chair of the Directors as appropriate;
  - (iii) references to "beginning work at the further education institution" shall be treated as references to beginning work as a Director or Chair of the Directors as appropriate.

17C) The Company shall, on receipt of a copy of a disclosure and barring service certificate, on request from the Secretary of State or his agents, as soon as possible thereafter submit information contained in the certificate to the Secretary of State in accordance with section 124 of the Police Act 1997.

## **Secondary education provided to persons of compulsory school age**

17D) Where secondary education is provided to persons of compulsory school age by an Academy, the Company shall secure that, except in such circumstances described in clause 17E, no education is provided to a person who has attained the age of nineteen years in a room in which any persons of compulsory school age are for the time being receiving secondary education.

17E) (a) The circumstances referred to in clause 17D shall be that a teacher is present in the room.

(b) For the purposes of paragraph (a) a teacher shall be considered to be present in the room at a particular time even though no teacher is present if—

- (i) it would be impracticable to secure the presence of a teacher in a room at that time, and
- (ii) the absence of a teacher at that time has not lasted more than five minutes.

## **Pupils and Students**

18) Each Mainstream Free School will be an all ability inclusive 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 Annex B to this Agreement;
- c) pupil exclusions are set out in regulations made by virtue of section 51A of the Education Act 2002 (as may be amended or modified from time to time, and includes any successor provisions).

18A) The planned number of Statemented Pupil places and the age ranges at each

Special Free School (as set out in the Supplemental Agreement for each Special Free School (if applicable)) is/are not determinative of GAG. GAG at each Special Free School for each Academy Financial Year in respect of Statemented Pupils will be determined by the Secretary of State in accordance with clauses 53A and 54.

18B) The maximum number of Non-Statemented Pupils at each Special Free School and as set out in the Supplemental Agreement for each Special Free School (if applicable) is not determinative of GAG. GAG at each Special Free School for each Academy Year in respect of Non-Statemented Pupils will be determined by the Secretary of State in accordance with clauses 53A to 54E.

18C) Each Special Free School will be a special school whose requirements for:

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

18D) Where the Company considers that there is a need to increase the planned number of places (as referred to in clause 18A of this Agreement and as set out in the Supplemental Agreement for the relevant Special Free School (if applicable) or the maximum number of pupils referred to in clause 18B and as set out in the Supplemental Agreement for the relevant Special Free School (if applicable)<sup>4</sup>), the Company must seek the approval of the Secretary of State and the requirements of this Agreement and the Supplemental Agreement for the relevant Special Free School may be amended accordingly by agreement between the Secretary of State and the Company.

18E) The planned number of places and the age ranges at each alternative provision Free School (as set out in the Supplemental Agreement for each alternative provision Free School) is /are not determinative of GAG. GAG at each alternative provision Free School for each Academy Financial Year will be

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<sup>4</sup> Use only where clause 18B is included

determined by the Secretary of State in accordance with clauses 54K and 54L. Each alternative provision Free School will provide education for the cohort of pupils whose characteristics are set out in the requirements at section 1C of the Academies Act and whose requirements for:

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

18F) Each 16 to 19 Free School will be an educational institution principally concerned with providing full-time or part-time education suitable to the requirements of persons over compulsory school age but under 19 whose requirements for:

- a) the admission of students to the 16 to 19 Free School;
- b) the admission to the 16 to 19 Free School of and support for students with learning difficulties and with disabilities; and
- c) student exclusions;

are set out in written policies. Such policies will be fair, objective and transparent, and will be formulated in accordance with the Company's legal powers and duties in relation to 16 to 19 provision and for the avoidance of doubt adherence to those policies forms part of this Agreement.

18G) In respect of any policies agreed in accordance with clause 18F:

- (i) The Secretary of State agrees that the Company may vary the policies subject to the Company informing the Secretary of State of any variation to the policies in writing as soon as reasonably practicable.
- (ii) The Company agrees to vary the policies as may become necessary to comply with changes to future legislation and/or as the Secretary of State may require.

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

18H) The Company will where applicable in respect of each of its Academies (except for 16 to 19 Free Schools) act in accordance with, and be bound by, all relevant statutory and regulatory provisions and have regard to any guidance and codes of practice issued pursuant to such provisions, as they apply at any time to a maintained school, relating to the designation of a person to manage the teaching and learning programme for children who are looked after by an LA and are registered pupils at the school. For the purpose of this clause, any reference to the governing body of a maintained school in such statutory and regulatory provisions, or in any guidance and code of practice issued pursuant to such provisions, shall be deemed to be references to the Directors of the Company.

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

19) In respect of Mainstream and alternative provision Free Schools:

- a) subject to clause 19(b), the Company shall, in accordance with any guidance which the Secretary of State may issue on the qualifications of teaching and other staff in Academies, employ anyone it deems is suitably qualified or is otherwise eligible under a contract of employment or for services to carry out planning and preparing lessons and courses for pupils, delivering lessons to pupils, assessing the development, progress and attainment of pupils, and reporting on the development, progress and attainment of pupils.
- b) clause 19(a) does not apply to anyone who:

- i) is appointed as the SENCO by the Company under section 317(3A) of the Education Act 1996, who must meet the requirements set out in Regulation 3 of the Education (Special Educational Needs Co-ordinators) (England) Regulations 2008 (SI 2008/2945); or
- ii) is appointed as a designated teacher for looked after children further to clause 18I.

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

- a) a qualified teacher within the meaning of regulations made under section 132 of the Education Act 2002; or
- b) otherwise eligible to do specified work under the Education (Specified Work) (England) Regulations 2012 (SI 2012/762), which for the purpose of this clause shall be construed as if the relevant Academy were a maintained school.

20 A.1) Clause 20 does not apply to anyone who:

- a) was transferred to the employment of the Company by virtue of the Transfer of Undertakings (Protection of Employment) Regulations 2006;
- b) immediately prior to the transfer, was employed to do specified work; and
- c) immediately prior to the transfer, was not: 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 eligible to do specified work under the Education (Specified

Work) (England) Regulations 2012 (SI 2012/762) ("transferred staff member").

20 A. 2) 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 clause 20 A 1(a) or clause 20A1(b) meets such requirements as soon as possible.

20B) In respect of 16 to 19 Free Schools, 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 generally and 16 to 19 Academies or 16 to 19 Free Schools, in particular, 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 students, delivering lessons to students, assessing the development, progress and attainment of students, and reporting on the development, progress and attainment of students.

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

22) The Company shall ensure that all employees at each Academy other than teachers have access to the Local Government Pension Scheme in accordance with the Local Government Pension Scheme (Administration) Regulations 2008 (SI 2008/239) (or such other regulations as may for the time being be applicable).

22A) Where a teacher employed at an Academy applies for a teaching post at another Academy, maintained school, school maintained by a local authority or institution within the further education sector, the Company must at the request of the governing body or Company of that other educational institution:

- a) advise in writing whether or not, in the preceding two years, there has been any formal consideration of that teacher's capability to perform their role at the Academy; and

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

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

23) Except at 16 to 19 Free Schools, the curriculum provided by each Academy to pupils up to the age of 16 shall be broad and balanced.

23A) Not used.

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

- a) the content of the curriculum;
- b) its approach to the curriculum;
- c) the GCSE options (and other Key Stage 4 qualifications) offered by each Academy if applicable and the qualifications offered by each 16 to 19 Free School if applicable;
- d) the names of any phonics or reading schemes in operation for Key Stage 1 if applicable;
- e) how parents (including prospective parents) and Commissioners can obtain further information in relation to the curriculum at each Academy; and
- f) in respect of 16 to 19 Free Schools, how students and parents (including prospective students and parents) can obtain further information in relation to the 16 to 19 Academy's curriculum.

23C) Subject to the requirements of clauses 23, 23B and 24 to 29B (as those clauses apply to the particular type or types of Academy), the curriculum will be the responsibility of the Company.

24) In respect of Mainstream and Special Free Schools, the Company shall ensure that the broad and balanced curriculum includes English, mathematics and

science, and in respect of alternative provision Free Schools shall ensure that the broad and balanced curriculum includes English and mathematics.

24A) Sections 42A (provision of careers guidance) and 45A (guidance as to discharge of duties) of the Education Act 1997 shall be deemed to apply to each Academy except any 16 to 19 Free Schools with the following modifications:

- a) each Academy shall be treated as falling within the meaning of "a school" under section 42A (2);
- b) the Company shall be deemed to be the "responsible authorities" for the purposes of subsection 42A(3); and
- c) references to registered pupils shall be treated as references to registered pupils at each Academy.

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

26) Where a Mainstream Free School 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 a Mainstream Free School 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 Company may apply to the Secretary of State for consent to be relieved of the requirement imposed by paragraph 3(2) of that Schedule, the Secretary of State's consent to such an application not to be unreasonably withheld or delayed;

c) the Company<sup>5</sup>:

(1) agrees that before making an application pursuant to the Religious Character of Schools (Designation Procedure) (Independent Schools)

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<sup>5</sup> This is required in order to ensure that the process by which an Academy becomes designated as a school with a religious character is comparable to that which applies for maintained schools.

(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.

27A) Where a Mainstream Free School is listed in the Register of Independent Schools as having a religious ethos, but has not been designated with a religious character in accordance with section 124B of the School Standards and Framework Act 1998 or further to Section 6(8) of the Academies Act 2010, the Company agrees that paragraph 5(b) of Schedule 11 of the Equality Act 2010 shall not apply to the Academy.

27B) The Company may make provision for the teaching of religious education and for a daily act of collective worship at each alternative provision Free School.

27C) Where an alternative provision Free School does (at its discretion in accordance with clause 27B) make provision for the teaching of religious education and/or for a daily act of collective worship at the alternative provision Free School then:

- a) subject to clause 28, the Company shall ensure that any such provision shall be made for religious education to be given to all pupils at the alternative provision Free School in accordance with the requirements for agreed syllabuses in section 375(3) of the Education Act 1996 and paragraph 2(5) of Schedule 19 to the School Standards and Framework Act 1998;
- b) subject to clause 28, the Company shall ensure that the alternative provision Free School 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 Company may apply to the Secretary of State for consent to be relieved of the requirement imposed by paragraph 3(2) of that Schedule, the

Secretary of State's consent to such an application not to be unreasonably withheld or delayed.

28) In respect of Mainstream Free Schools and alternative provision Free Schools section 71(1) – (6) and (8) of the School Standards and Framework Act 1998 shall apply as if each such 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 such Academy in accordance with clauses 26 or 27 as appropriate.

28A) The Company shall make provision for the teaching of religious education and for acts of collective worship at each Special Free School.

28B) In respect of RE and collective worship at Special Free Schools:

a) subject to clause 28Bc), the Company shall ensure that provision shall be made for religious education to be given to all pupils at each Special Free School 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 28Bc), the Company shall ensure that each Special Free School complies with the requirements of Regulation 5A of the Education (Special Educational Needs) (England) (Consolidation) Regulations 2001 as if it were a maintained special school.

c) Regulation 5A of the Education (Special Educational Needs) (England) (Consolidation) Regulations 2001 shall apply as if the Special Free School were a community or foundation special school, and as if references to "Religious Education" and to "Religious Worship" in that section were references to the religious education and religious worship provided by the Academy in accordance with this clause.

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

28D) The Company shall make provision for: (i) the teaching of religious education at the 16 to 19 Free School for any student attending the 16 to 19 Free School wishing to receive it; and (ii) ensure that at an appropriate time on at least one day in each week during which the 16 to 19 Free School is open an act of collective worship is held at the 16 to 19 Free School which students receiving education at the 16 to 19 Free School may attend.

28E) The Company shall not, in respect of any Academy, make provision in the context of any subject for the teaching, as an evidence-based view or theory, of any view or theory that is contrary to established scientific and/or historical evidence and explanations.

28F) The Company shall, in respect of each Academy except any alternative provision Academies or 16-19 Academies, make provision for the teaching of evolution as a comprehensive, coherent and extensively evidenced theory. In respect of any alternative provision Academies and 16-19 Academies, the Company shall, where relevant to the curriculum, make provision for the teaching of evolution as a comprehensive, coherent and extensively evidenced theory.

29) Except in 16 to 19 Free Schools, the Company shall have regard to any guidance issued by the Secretary of State, further to section 403 of the Education Act 1996, on sex and relationship education to ensure that children at each Academy are protected from inappropriate teaching materials and they learn the nature of marriage and its importance for family life and for bringing up children. The Company shall also have regard to the requirements set out in section 405 of the Education Act 1996 which shall apply to each Academy as if it were a maintained school.

29A) Except in 16 to 19 Free School, the Company agrees to act in accordance with Sections 406 (Political Indoctrination) and 407 (Duty to secure balance

treatment of political issues) of the Education Act 1996 as if it were a maintained school, subject to the following modifications:

- a) references to any maintained school shall be treated as references to each Academy;
- b) references to registered pupils shall be treated as references to registered pupils at each Academy;
- c) references to the governing body or the local authority shall, in each case, be treated as references to the Company; and
- d) references to the head teacher shall, in each case, be treated as references to the Principal of each Academy<sup>6</sup>.

29B) The Company shall ensure that principles are promoted which support fundamental British values, including: respect for the basis on which the law is made and applied in England; respect for democracy and support for participation in the democratic processes; support for equality of opportunity for all; support and respect for the liberties of all within the law; and respect for and tolerance of different faiths and religious and other beliefs.

### **Assessment**

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

- a) (i) The Company shall ensure that each Mainstream Free School and each Special Free School complies with any guidance issued by the Secretary of State from time to time to ensure that pupils take part in assessments and in teacher assessments of pupils' performance as they apply to maintained schools; and the Company shall also do so for each alternative provision Free School unless there are exceptional reasons to do otherwise.

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<sup>6</sup> Please also see the Charity Commission guidance (CC9): "Speaking out: Guidance on Campaigning and Political Activities by Charities" <http://www.charity-commission.gov.uk/Publications/cc9.aspx>

- (ii) The Company shall ensure that students at the 16 to 19 Free School take part in assessments of students' performance appropriate to the qualifications offered by the 16 to 19 Free School.
- b) The Company shall report to any body on assessments under clause 30 as the Secretary of State shall require and shall provide such information as may be required by that body as applies to maintained schools.
- c) In respect of all Key Stages, the Company will submit each Academy to monitoring and moderation of its assessment arrangements as prescribed by the Secretary of State.
- d) The Company may offer:
  - (i) any course of education or training at an Academy which leads to a qualification that is approved by the Secretary of State for the purposes of section 96 of the Learning and Skills Act 2000; and
  - (ii) any course of education or training not falling within paragraph (i) if the Secretary of State gives his specific written approval for it.

30A(i) Subject to clause 30B, the Company shall ensure that the following information is published on the website for each Mainstream Free School, for each alternative provision Free School and, where appropriate, for each Special Free School:

- a) **If Applicable** 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) **If Applicable** The school's most recent Key Stage 4 results as published by

the Secretary of State under the following column headings in the School Performance Tables published on the Department for Education's website:

- (i) "% achieving 5 + A\* - C GCSEs (or equivalent) including English and maths GCSEs";
  - (ii) "% achieving the English Baccalaureate"; and
  - (iii) "% of pupils making expected progress".
- c) Information as to where and by what means the most recent report about the school published by 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.

30A)(ii) Subject to clause 30B, the Company shall ensure it publishes on its website such information in relation to each 16 to 19 Free School's performance as the Secretary of State may request in writing from time to time.

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

### **Exclusions Agreement**

31) In respect of Mainstream Free Schools, and in respect of Special Free Schools that admit Non-Statemented Pupils, 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 the applicable Regulations (as amended from time to time) 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) Except in 16 to 19 Free Schools, 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 Free Schools, or from its resources for Special Free Schools and for alternative provision Free Schools.
- 33) Except in 16 to 19 Free Schools, 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.

### **Charging**

34) Sections 402 (obligation to enter pupils for public examinations), 450 - 457 (charges), 459 (regulations about information about charges and school hours), 460 (voluntary contributions), 461 (recovery of sums as civil debt) and 462 (interpretation re charges) of the Education Act 1996 (including, for the avoidance of doubt, any secondary legislation made further to those provisions) shall be deemed to apply to each Academy except 16 to 19 Free Schools 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 Company may charge persons who are not registered pupils at an Academy for education provided or for facilities used by them at that Academy.<sup>7</sup>
- e) Not used.

34A) Each 16 to 19 Free School shall:

- a) only be permitted to make charges in the circumstances that institutions within the further education sector are permitted to as set in the current 16 to 19 Funding Guidance published by the Secretary of State, as amended from time to time, or such other guidance on 16 to 19 funding issued by the Secretary of State as may from time to time be applicable; and
- b) charge fees for the full cost of the education provided at the 16 to 19 Free School to non-European Economic Area students who:-
  - i) have a valid United Kingdom visa the terms of which state that the relevant student cannot access non-fee paying education; or
  - ii) no longer have a valid United Kingdom visa allowing them to enter or remain in the United Kingdom but are applying to renew such a visa; and in each case
  - iii) transferred to the 16 to 19 Free School from [insert name of predecessor institution].

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<sup>7</sup> For clarification, such charging is separate and distinct from any arrangement that the Company may make with Commissioners concerning the referral of pupils to the alternative provision Free School.

If the Academy fails to charge these students, or is unable to recover fees by the end of the term for which they are due, it shall report this to the Secretary of State who may inform the UK Border Agency.

### **International Education Surveys**

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

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

### **Pupil Premium**

34C) For Mainstream Free Schools, and those Special Free Schools that receive Pupil Premium Funding<sup>8</sup>, the Company shall publish in each Academy Financial Year information in relation to:

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

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

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<sup>8</sup> The Pupil Premium is additional funding for schools to support pupils from low-income families. In instances when those pupils are in special settings, the Education Funding Authority allocates the funding to the setting where they are being educated. There is no requirement for alternative provision settings to publish information as set out in clause 34C.

34D) In respect of Mainstream Free Schools, alternative provision Free Schools and 16 to 19 Free Schools, the duration of the school day and year will be the responsibility of the Company and for the purpose of this paragraph "school" also means the 16 to 19 Free School.<sup>9</sup>

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

### **General**

35) The Secretary of State shall pay grants towards Recurrent Expenditure and may pay grants towards Capital Expenditure for each Academy. Except with the Secretary of State's prior agreement, the Company shall not budget for its expenditure in any Academy Financial Year in excess of expected income (subject to clause 80). The Company shall not enter into commitments which are likely to have substantial implications for future levels of grant, or for the period for which grant may be required. No decision by the Company shall commit the Secretary of State to paying any particular amount of grant.

36) "Recurrent Expenditure" means any expenditure on the establishment, conduct, administration and maintenance of the Academy which does not fall within the categories of capital expenditure set out at clause 37. The Secretary of State shall pay two separate and distinct grants in respect of recurrent expenditure: General Annual Grant ("GAG") and Earmarked Annual Grant ("EAG").

### **Capital Grant**

37) "Capital Expenditure" means expenditure on:

- a) the acquisition of land and buildings;
- b) the erection, enlargement, improvement or demolition of any building including fixed plant, installation, wall, fence or other structure, or any playground or hard standing;

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<sup>9</sup> In respect of Special Free Schools, regulations made under section 551 of the Education Act 1996 apply (currently the Education (School Day and School Year) (England) Regulations 1999).

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

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

- 38) Where an Academy is to open in new premises, or where existing premises are to be substantially refurbished or remodelled to enable the Academy to open

in such premises, the Secretary of State, may, in his absolute discretion be responsible for meeting the incurred Capital Expenditure for that Academy. To that end, the Secretary of State will consider providing funding in accordance with any arrangements as he considers appropriate.

39) Any Capital Expenditure incurred in respect of each Academy on which Capital Grant payments are sought from the Secretary of State will require the specific prior written agreement of the Secretary of State, which agreement shall not be unreasonably withheld or delayed.

40) Any payment of Capital Grant to the Company under this Agreement is subject to the fulfilment of the following conditions:

a) such grants are used solely to defray expenditure approved by the Secretary of State;

b) the Company certifying and providing evidence that all planning and other consents necessary for the development and all related infrastructure to be completed have been obtained or put in place;

c) Any other conditions that the Secretary of State may specify.

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

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

### **General Annual Grant**

41A) GAG paid by the Secretary of State in respect of an Academy shall only be spent by the Company towards the normal running costs of the Academies.

42) Clauses 42A to 51 apply in respect of Mainstream Free Schools only.

42A) GAG will be paid by the Secretary of State to the Company in order to cover the normal running costs of each Mainstream Free School. These will include, but are not limited to:

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

- k) the costs of providing school meals for pupils (including the cost of providing free school meals to pupils who are eligible to receive them), and discretionary grants to pupils to meet the cost of pupil support, including support for pupils with special educational needs or disabilities (taking account of the fact that separate additional money will be available for pupils with statements of special educational needs);
  - l) administration; and
- m) establishment expenses and other institutional costs.

43) Subject to clause 50 of this Agreement and clause 4A.2 of the Supplemental Agreement for the relevant Mainstream Free School, GAG for each Academy Financial Year for each Mainstream Free School 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 Mainstream Free School;
- b) funding for the cost of functions which would be carried out by the local authority if each Mainstream Free School were a maintained school, such funding to be determined at the discretion of the Secretary of State;
- c) funding for matters for which it is necessary for the relevant Mainstream Free School to incur extra costs, to the extent that those costs are deemed in the discretion of the Secretary of State to be necessary; and
- d) payments equivalent to further, specific grants made available to maintained schools, where the relevant Mainstream Free School meets the requisite conditions and criteria\_necessary for a maintained school to receive these grants, such payments to be at the discretion of the Secretary of State.

44) Subject to clause 46, the basis of the pupil number count for the purposes of determining GAG at each Mainstream Free School for an Academy Financial Year will be the Company's most recent estimate in respect of such Mainstream Free Schools provided in accordance with clause 45.

45) The Secretary of State shall in advance of each Academy Financial Year for each Mainstream Free School, at such time or times as he shall determine, request that the Company provides an estimate of the number of pupils on roll in the following September at each Mainstream Free School for the purposes of determining GAG for an Academy Financial Year at each Mainstream Free School, and the Company shall provide the requested estimate (such estimate to be based on an objective assessment of numbers) in respect of each Mainstream Free School to the Secretary of State as soon as reasonably practicable..

46) Once the condition specified in clause 47) has been satisfied with respect to the relevant Mainstream Free School for the Academy Financial Year for which funding is being calculated, the basis of the pupil number count for the purpose of determining GAG for the relevant Mainstream Free School will be:

- a) for the pupil number count for pupils in Year 11 and below, the Schools Census for the relevant month (determined at the discretion of the Secretary of State) preceding the Academy Financial Year in question; and
- b) for the pupil number count for pupils in Year 12 and above, the formula which for the time being is in use for maintained schools for the calculation of pupil numbers for pupils in Year 12 and above for the purpose of calculating their level of funding.

47) For the purpose of clause 46), the condition is satisfied in the Academy Financial Year which immediately follows the Academy Financial Year in which all planned Year-groups will be present at the relevant Mainstream Free School (that is, all the pupil cohorts relevant to the age-range of the relevant Mainstream Free School will have some pupils present).

48) For any Academy Financial Year in which GAG for the relevant Mainstream Free School has been calculated in accordance with clauses 44) and 45), an adjustment may be made to the following Academy Financial Year's formula funding element of GAG for the relevant Mainstream Free School to recognise any variation from that estimate. The Secretary of State may for the purpose of calculating any adjustment to the formula funding element of GAG under this

clause, use the Census for the relevant month (determined at the discretion of the Secretary of State) for the Academy Financial Year in question as a means of determining pupil numbers in an Academy Financial Year. The additional or clawed-back grant will be only that amount relevant to the number of pupils above or below that estimate.

49) For any Academy Financial Year in which GAG for the relevant Mainstream Free School is calculated in accordance with clause 46), no adjustment will be made to the equivalence funding element in the following Academy Financial Year's equivalence funding element of GAG for the relevant Mainstream Free School 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 for the relevant Mainstream Free School 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 or its equivalent.

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

51) The Secretary of State also recognises that if this Agreement or a Supplemental Agreement is terminated for any reason by either party the number of pupils at the relevant Mainstream Free School or Mainstream Free Schools 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 relevant Mainstream Free School or Mainstream Free Schools.

52) Clauses 52A to 54G apply in respect of Special Free Schools only.

52A) GAG will be paid by the Secretary of State to the Company as a contribution towards the normal running costs of each Special Free School. These will include, but are not limited to:

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

- i. staff development (including in-service training);
- j. curriculum development;
- k. the costs of providing school meals for pupils (including the cost of providing free school meals to pupils who are eligible to receive them), and discretionary grants to pupils to meet the cost of pupil support, including support for pupils with special educational needs or disabilities (taking account of the fact that separate additional money will be available for pupils with statements of special educational needs);
- l. administration;
- m. establishment expenses and other institutional costs.

53) Subject to clause 54F of this Agreement and clause 4A.2 of the Supplemental Agreement for the relevant Special Free School, GAG for each Financial Year for each Special Free School will include:

- a) funding determined by the Secretary of State and notified in the Annual Letter of Funding or its equivalent, taking account of the number of pupils/and or places at the Special Free School;
- b) funding for the cost of functions which would be carried out by the local authority if the Special Free School were a maintained school, such funding to be determined at the discretion of the Secretary of State .
- c) funding for matters for which it is necessary for the Special Free School to incur extra costs, to the extent that those costs are deemed in the discretion of the Secretary of State to be necessary; and
- d) Payments equivalent to further, specific grants made available to maintained schools, where the Special Free School meets the requisite conditions and criteria necessary for a maintained school to receive these grants, such payments to be at the discretion of the Secretary of State;

53A) The Secretary of State will determine GAG for each Special Free School for each Academy Financial Year. The determination will be made taking into account

relevant factors. Arrangements for this will be set out in the Annual Letter of Funding or its equivalent.

54) The Secretary of State may make provision, within his absolute discretion, for GAG to be adjusted in-year if the number of Statemented Pupils<sup>10</sup> attending one of the Special Free Schools at specified dates exceeds or falls below thresholds specified by letter. Arrangements for this will be set out in the Annual Letter of Funding.

54A) Subject to clause 54C, the basis of the number count for Non-Statemented Pupils for the purposes of determining GAG for an Academy Financial Year for each Special Free School will be the Company's most recent estimate for each Special Free School provided in accordance with clause 54B.

54B) The Secretary of State shall in advance of each Academy Financial Year for each Special Free School, at such time or times as he shall determine, request that the Company provides an estimate of the number of Non-Statemented pupils on roll in the following September for each Special Free School for the purposes of determining GAG for an Academy Financial Year, and the Company shall provide the requested estimate for each Special Free School (such estimates to be based on an objective assessment of numbers at each Special Free School) to the Secretary of State as soon as reasonably practicable.

54C) Once the condition specified in clause 54D has been satisfied with respect to the relevant Special Free School for the Academy Financial Year for which funding is being calculated, the basis of the number count for Non-Statemented Pupils for the purpose of determining GAG for the relevant Special Free School will be the actual number of Non-Statemented Pupils on roll in the relevant month of the previous Academy Financial Year. The relevant month shall be a month determined by the Secretary of State.

54D) For the purpose of clause 54C, the condition is satisfied when the number of Non-Statemented Pupils on roll is 90% or more of the number stated in clause 18B.

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<sup>10</sup> Use "Statemented Pupils" when clause 18B is included, otherwise use "pupils".

54E) For any Academy Financial Year in which GAG for Non-Statemented Pupils has been calculated in accordance with clause 54A for the relevant Special Free School, an adjustment will be made to the following Academy Financial Year's GAG for the relevant Special Free School to recognise any variation from that estimate. The additional or clawed-back grant will be only that amount relevant to the number of pupils above or below that estimate.<sup>11</sup>

54F) The Secretary of State recognises that if he serves notice of intention to terminate a Supplemental Agreement, the intake of new pupils during the notice period is likely to decline and that in such circumstances payments based on a number of places related to the number of pupils attending the relevant Special Free School are unlikely to be sufficient to meet the Special Free School's needs during the notice period. The Secretary of State may undertake to pay a reasonable and appropriately larger GAG with respect to that Special Free School in the notice period than would be justified solely on the basis of the methods set out in clauses 53-54, in order to enable the Special Free School to operate effectively.

54G) The Secretary of State also recognises that if this Agreement or a Supplemental Agreement is terminated for any reason by either party the number of pupils at the relevant Special Free School or Special Free Schools 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 Special Free School.

54H) Clauses 54I to 54N apply in respect of alternative provision Free Schools only.

54I) GAG will be paid by the Secretary of State to the Company as a contribution<sup>12</sup> to the normal running costs of the alternative provision Free School. These will include, but are not limited to:

- a) teachers' salaries and related costs (including full and part time teaching staff and seconded teachers);

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<sup>11</sup> Use clauses 54A to 54E only when clause 18B is included.

<sup>12</sup> The extent of any such contribution to be within the absolute discretion of the Secretary of State.

- b) non-teaching staff salaries and related costs (including pension contributions, educational support staff, administrative and clerical staff and manual and premises related staff);
- c) employees' expenses;
- d) the purchase, maintenance, repair and replacement:
  - (i) of teaching and learning materials and other educational equipment, including books, stationery and ICT equipment and software, sports equipment and laboratory equipment and materials;
  - (ii) of other supplies and services;
- e) examination fees;
- f) repairs, servicing and maintenance of buildings (including redecoration, heating, plumbing, lighting etc); maintenance of grounds (including boundary fences and walls); cleaning materials and contract cleaning; water and sewage; fuel and light (including fuel oil, solid and other fuel, electricity and gas); rents; rates; purchase, maintenance, repairs and replacement of furniture and fittings;
- g) insurance;
- h) medical equipment and supplies;
- i) staff development (including in-service training);
- j) curriculum development;
- k) the costs of providing school meals for pupils (including the cost of providing free school meals to pupils who are eligible to receive them), and discretionary grants to pupils to meet the cost of pupil support, including support for pupils with special educational needs or disabilities (taking account of the fact that separate additional money will be available for pupils with statements of special educational needs);
- l) administration;

m) establishment expenses and other institutional costs.

54J) Subject to clause 54M of this Agreement and clause 4A.2 of the Supplemental Agreement for the relevant alternative provision Free School, GAG for each Academy Financial Year for each alternative provision Free School will include:

- a) funding determined by the Secretary of State and notified in the Annual Letter of Funding or its equivalent, taking account of the number of pupils and/or places at the alternative provision Free School;
- b) funding for the cost of functions which would be carried out by the local authority if the alternative provision Free School were a maintained school, such funding to be determined at the discretion of the Secretary of State.
- c) funding for matters for which it is necessary for the alternative provision Free School to incur extra costs, to the extent that those costs are deemed in the discretion of the Secretary of State to be necessary; and
- d) payments equivalent to further, specific grants made available to maintained schools, where the alternative provision Free School meets the requisite conditions and criteria necessary for a maintained school to receive these grants, such payments to be at the discretion of the Secretary of State.

54K) The Secretary of State will determine GAG for each alternative provision Free School for each Academy Financial Year. The determination will be made taking into account relevant factors. Arrangements for this will be set out in the Annual Letter of Funding or its equivalent.

54L) The Secretary of State may make provision, within his absolute discretion, for GAG to be adjusted in-year if the number of pupils attending one of the alternative provision Free Schools at specified dates exceeds or falls below thresholds specified by letter. Arrangements for this will be set out in the Annual Letter of Funding or its equivalent. .

54M) The Secretary of State recognises that if he serves notice of intention to terminate this Agreement, the intake of new pupils during the notice period is likely to decline and that in such circumstances payments based simply upon the number of pupils attending the alternative provision Free School are unlikely to be

sufficient to meet the alternative provision Free School's needs during the notice period. In those circumstances, the Secretary of State may undertake to pay a reasonable and appropriately larger GAG with respect to the alternative provision Free School in the notice period than would be justified solely on the basis of the methods set out in clauses 54J-54L, in order to enable the alternative provision Free School to operate effectively..

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

54O) Clauses 54P to 54Y apply in respect of 16 to 19 Free Schools only.

54P) GAG will be paid by the Secretary of State to the Company in order to cover the normal running costs of each 16 to 19 Free School. These will include, but are not limited to:

- a) teachers' salaries and related costs (including full and part time teaching staff and seconded teachers);
- b) non-teaching staff salaries and related costs (including pension contributions, educational support staff, administrative and clerical staff and manual and premises related staff);
- c) employees' expenses;
- d) the purchase, maintenance, repair and replacement:
  - (i) of teaching and learning materials and other educational equipment, including books, stationery and ICT equipment and software, sports equipment and laboratory equipment and materials;
  - (ii) of other supplies and services;
- e) examination fees;
- f) repairs, servicing and maintenance of buildings (including redecoration,

- heating, plumbing, lighting etc); maintenance of grounds (including boundary fences and walls); cleaning materials and contract cleaning; water and sewage; fuel and light (including fuel oil, solid and other fuel, electricity and gas); rents; rates; purchase, maintenance, repairs and replacement of furniture and fittings;
- g) insurance;
  - h) medical equipment and supplies;
  - i) staff development (including in-service training);
  - j) curriculum development;
  - k) discretionary grants to students to meet the cost of student support, including support for students with learning difficulties or disabilities (taking account of the fact that separate additional money will be available for students with learning difficulties or disabilities);
  - l) administration;
  - m) establishment expenses and other institutional costs.

54Q) Subject to clauses 54W to 54X of this Agreement and clause 4A.2 of the Supplemental Agreement for the relevant 16 to 19 Free School, GAG for each Academy Financial Year for each 16 to 19 Free School will include:

- a) funding in accordance with the national funding formula for the education and training of 16-19 year olds, determined by the Secretary of State and notified in the Annual Letter of Funding or its equivalent, taking account of the number of students at the 16 to 19 Free School;
- b) funding for matters for which it is necessary for the 16 to 19 Free School to incur extra costs, to the extent that those costs are deemed in the discretion of the Secretary of State to be necessary; and
- c) payments equivalent to further, specific grants made available to institutions within the further education sector, where the 16 to 19 Free School meets the requisite conditions and criteria\_necessary for an institution within the further education sector to receive these grants, such

payments to be at the discretion of the Secretary of State.

54R) During the "Start-up period" (as defined in the Supplemental Agreement for each 16 to 19 Free School) the basis of the student number count for the purposes of determining GAG for an Academy Financial Year for the 16 to 19 Free School will be the Company's estimate each year for numbers on roll in the following September for the 16 to 19 Free School, such estimate to be based on an objective assessment of student numbers and agreed with the Secretary of State.

54S) The Secretary of State shall in advance of each Academy Financial Year for the 16 to 19 Free School, at such time or times as he shall determine, request that the Company provides an estimate of the number of students on roll in the following September for the 16 to 19 Free School for the purposes of determining GAG for an Academy Financial Year, and the Company shall provide the requested estimate (such estimate to be based on an objective assessment of numbers) to the Secretary of State as soon as reasonably practicable.

54T) After the "Start-up period" (as defined the Supplemental Agreement for each 16 to 19 Free School) the arrangements for calculating the student number count for the purpose of determining GAG for the 16 to 19 Free School shall be those provided for in guidance on the national funding system published by the Secretary of State under section 15ZD of the Education Act 1996 for the relevant Academy Financial Year, in respect of persons who have reached the age of 16 but have not reached the age of 19, or are aged 19-24 and have a learning difficulty and/or disability and are the subject of a learning difficulty assessment.

54U) For any Academy Financial Year in which GAG for the 16 to 19 Free School has been calculated in accordance with clause 54R, an adjustment may be made to the following Academy Financial Year's formula funding element of GAG for the 16 to 19 Free School to recognise any variation from that estimate. The Secretary of State may for the purpose of calculating any adjustment to the formula funding element of GAG under this clause, use the Individualised Learner Record for the Academy Financial Year in question as a means of determining student numbers in

an Academy Financial Year. The additional or clawed-back grant will be only that amount relevant to the number of students above or below that estimate.

54V) For any Academy Financial Year in which GAG for the 16 to 19 Free School is calculated in accordance with clause 54T, no adjustment will be made to the equivalence funding element in the following Academy Financial Year's equivalence funding element of GAG. For any other element of GAG the Secretary of State may make adjustments to recognise a variation in student numbers from that used to calculate the element of grant in question; the basis of these will be set out in guidance on the national funding system published by the Secretary of State under section 15ZD of the Education Act 1996 for the relevant Academy Financial Year.

54W)) The Secretary of State may pay further grant in the Start-up period, as determined and specified by him, for costs which cannot otherwise be met from GAG.

54X) The Secretary of State recognises that if he serves notice of intention to terminate this Agreement, the intake of new students during the notice period is likely to decline and that in such circumstances payments based simply upon the number of students attending the relevant 16 to 19 Free School are unlikely to be sufficient to meet the Academy's needs during the notice period. In those circumstances, the Secretary of State may undertake to pay a reasonable and appropriately larger GAG with respect to the relevant 16 to 19 Free School in the notice period than would be justified solely on the basis of the methods set out in clauses 54Q-54U, in order to enable the relevant 16 to 19 Free School to operate effectively.

54Y) The Secretary of State also recognises that if this Agreement is terminated for any reason by either party the number of students at the relevant 16 to 19 Free School 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 students at the relevant 16 to 19 Free School.

### **Earmarked Annual Grant**

55) 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.

56) Where the Company is seeking a specific EAG in relation to any Academy Financial Year, it shall submit a letter outlining its proposals and the reasons for its request to the DfE.

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

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

58) If GAG or EAG is calculated incorrectly due to a mistake of the Secretary of State then:

- a) if this leads to an underpayment of GAG, the Secretary of State will correct the underpayment in subsequent Academy Financial Years;
- b) if this leads to an overpayment of GAG, the Secretary of State reserves the right to recover any overpaid grant in subsequent Academy Financial Years, as appropriate, having considered all the relevant circumstances and taking into account any representations from the Company.

59) If GAG or EAG is calculated incorrectly because the Company provides incorrect information to the Secretary of State then:

- a) if this leads to an underpayment of GAG, the Secretary of State may correct the underpayment in subsequent Academy Financial Years;

b) if this leads to an overpayment of GAG, the Secretary of State reserves the right to recover any overpaid grant in subsequent Academy Financial Years, as appropriate, having considered all the relevant circumstances and taking into account any representations from the Company.

60) The amounts of GAG for an Academy Financial Year will be determined annually by the Secretary of State. The amount of GAG for each Academy for the initial Academy Financial Year will be notified to the Company in a funding letter at a date preceding that year. For subsequent years the amount of GAG will be notified to the Company in a funding letter preceding that Academy Financial Year (the "Annual Letter of Funding"). The Annual Letter of Funding will not include the amount that the Company will receive in respect of grants for which information to enable timely calculation is not available or is incomplete, such grants will be notified as soon as practicable later in the year. Amounts of EAG will be notified to the Company wherever possible in the Annual Letter of Funding or its equivalent as soon as practicable thereafter.

61) The Secretary of State undertakes to pay GAG in monthly instalments on or before the twenty-fifth day of each month, each such instalment to fund the salaries and other payroll costs for the relevant month of all monthly paid employees and all other costs payable during the next following month. The detailed arrangements for payment will be set out in the Annual Letter of Funding or its equivalent.

### **Additional Funding**

62) Not used.

63) Not used

64) Except in 16 to 19 Free Schools, the Company may also receive funding from an LA in respect of the provision detailed in statements of SEN for pupils attending an Academy in accordance with the provisions of Section 483A of the Education Act 1996 and regulations made under that section. The Company shall ensure that all provision detailed in statements of SEN is provided for such pupils.

65) Not used.

## **FINANCIAL AND ACCOUNTING REQUIREMENTS**

### **General**

- 66) The Company shall appoint an Accounting Officer and shall notify the Secretary of State of that appointment.
- 67) In relation to the use of grant paid to the Company by the Secretary of State, the Company shall abide by the requirements of, and have regard to the guidance in, the Academies Financial Handbook published by the DfE and amended from time to time and as modified to take account of the fact that the Company manages more than one Academy, which sets out in detail provisions for the financial management of each Academy including guidance on financial systems and controls and accounting and reporting requirements, in so far as these are not inconsistent with any accounting and reporting requirements and guidance that it may be subject to by virtue of its being a charity.
- 67A) The Company shall abide by the requirements of the current 16 to 19 Funding Guidance published by the Secretary of State and as amended from time to time, or such other guidance on 16 to 19 funding issued by the Secretary of State as may from time to time be applicable, in respect of any its provision for persons who are above compulsory school age until the academic year in which they reach the age of 19.
- 68) The formal budget plan must be approved each Academy Financial Year by the Directors of the Company.
- 69) Any payment of grant by the Secretary of State in respect of each Academy is subject to his being satisfied as to the fulfilment by the Company of the following conditions:
- a) in its conduct and operation it shall apply financial and other controls which conform to the requirements both of propriety and of good financial management;
  - b) arrangements have been made to maintain proper accounting records and that statements of income and expenditure and balance sheets may be

produced in such form and frequency as the Secretary of State may from time to time reasonably direct;

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

- 70) In addition, and at his expense, the Secretary of State may instruct auditors to report to him on the adequacy and effectiveness of the accounting systems and internal controls maintained by the Company to standards determined by the Secretary of State and to make recommendations for improving the financial management of the Company.
- 71) The books of accounts and all relevant records, files and reports of the Company including those relating to financial controls, shall be open at all reasonable times to officials of the DfE and the National Audit Office and to contractors retained by the DfE or the National Audit Office for inspection or the carrying out of value for money studies; and the Company shall secure that those officials and contractors are given reasonable assistance with their enquiries. For the purposes of this clause 'relevant' means in any way relevant to the provision and use of grants provided by the Secretary of State under this Agreement.
- 72) The Company shall submit information in relation to the finances of each Academy to the Secretary of State in accordance with the requirements of the Academies Financial Handbook as amended from time to time or as otherwise specified from time to time by the Secretary of State.
- 73) At the beginning of any Academy Financial Year the Company may hold unspent GAG for any Academy from previous Academy Financial Years amounting to such percentage (if any) as for the time being specified in the Academies Financial Handbook or otherwise as the Secretary of State may specify by notice in writing to the Company prior to the beginning of that Academy Financial Year of the total GAG payable for the Academy in the Academy Financial Year just ended or such higher amount as may from time to time be agreed. The Company shall use such carried forward amount for such purpose, or subject to such restriction on its use, as for the time being specified in the Academies Financial Handbook or otherwise as the Secretary of State may specify by notice in writing to the Company.
- 74) Notwithstanding clause 73 any additional grant provided over and above that:

- a) set out in clauses 43-49 in relation to Mainstream Free Schools and made in accordance with clause 50 of this Agreement and clause 4A.2 of the

Supplemental Agreement for the relevant Mainstream Free School may be carried forward without limitation or deduction until the Start-up Period (as this period is defined in the Supplemental Agreement for the relevant Mainstream Free School) or the circumstances set out in clause 50 of this Agreement come to an end.

b) set out in clauses 53-54 in relation to Special Free Schools and made in accordance with clause 54F of this Agreement and clause 4A.2 of the Supplemental Agreement for the relevant Special Free School may be carried forward without limitation or deduction until the Start-up Period (as such period is defined in the Supplemental Agreement for the relevant Special Free School) or the circumstances set out in clause 54F come to an end.

c) set out in clause 54J in relation to alternative provision Free Schools and made in accordance with clause 54M of this Agreement and clause 4A.2 of the Supplemental Agreement for the relevant alternative provision Free School may be carried forward without limitation or deduction until the Start-up Period (as such period is defined in the Supplemental Agreement for the relevant alternative provision Free School) or the circumstances set out in clause 54M come to an end.

75) Any unspent GAG not allowed to be carried forward under clauses 73-74 may be taken into account in the payment of subsequent grant.

75A) If the Secretary of State pays grant not including GAG to the Company on condition either that such grant be used for a particular purpose or purposes or that such grant be used by a certain date, any failure on the part of the Company to use such grant for such a purpose or purposes or by such date may be taken into account by the Secretary of State either:

- (i) in the same Academy Financial Year that such grant is paid to the Company; or
- (ii) in the calculation and/or payment of any subsequent grant to the Company; or

- (iii) by an adjustment to the GAG paid by the Secretary of State to the Company in the following Academy Financial Year or Academy Financial Years.

75B) If the Secretary of State or his agents pay any grant to the Company which includes an amount to cover the VAT which will be payable by the Company in using any such grant for the purposes intended, the Company shall, having paid the VAT to a third party for any goods or services it has purchased from such a third party, where entitled, promptly and, in any event, as soon as is reasonably practicable, submit a VAT reclaim application to Her Majesty's Revenue and Customs (HMRC) in respect of such VAT payment. Any failure, on the part of the Company to submit a VAT reclaim application to HMRC or repay the amount recouped to the Secretary of State as soon as reasonably practicable following the receipt of any such payment from HMRC may be taken into account by the Secretary of State either:

- (a) in the same Academy Financial Year that any such grant is paid to the Company; or
- (b) in the calculation and/or payment of any subsequent grant to the Company; or
- (c) by an adjustment to the GAG paid by the Secretary of State to the Company in the following Academy Financial Year or Academy Financial Years.

75C) GAG paid by the Secretary of State shall only be used by the Company for the educational charitable purpose of advancing for the public benefit education in the United Kingdom, in particular but without prejudice to the generality of the foregoing by establishing, maintaining, carrying on, managing and developing Academies offering a broad and balanced curriculum. Such funds shall not be used by the Company for any other charitable purpose without the prior written consent of the Secretary of State, except where the use of such funds for that charitable purpose is merely incidental to their use for the educational charitable purpose of advancing for the public benefit education in the United Kingdom.

76) The Company may also spend or accumulate funds from private sources or public sources other than grants from the Secretary of State for application to the benefit of an Academy as it sees fit. Any surplus arising from private sources or public sources other than grants from the Secretary of State shall be separately identified in the Company's balance sheet.

77) The Company shall not, in relation to assets or property funded (whether in whole or in part) by the Secretary of State or otherwise coming within the meaning of publicly funded land as defined by paragraph 22(3) of Schedule 1 to the Academies Act 2010, without the prior written consent of the Secretary of State which shall not be unreasonably withheld or delayed:

- a) except such as are given in normal contractual relations, give any guarantees, indemnities or letters of comfort above a value as for the time being specified in the Academies Financial Handbook or otherwise as the Secretary of State may specify by notice in writing to the Company from time to time;
- b) write off any debts or liabilities owed to it, nor offer to make any ex gratia payments (such as staff severance or compensation payments), above a value as for the time being specified in the Academy Financial Handbook or otherwise as the Secretary of State may specify by notice in writing to the Company from time to time;
- c) except as may be permitted in the Academy Financial Handbook or otherwise as the Secretary of State may specify by notice in writing to the Company, make any sale or purchase of or otherwise dispose of freehold or leasehold property including entering into a contract to dispose of land or granting an option to acquire an interest in land; or
- d) take up any leasehold or tenancy agreement for a term exceeding three years.

78) The Company shall provide 30 days' prior written notice to the Secretary of State, whether or not the circumstances require the Secretary of State's consent, of its intention to:

- a) give any guarantees, indemnities or letters of comfort;
- b) write off any debts owed to it or offer to make any ex gratia payments;
- c) make any sale or purchase of or otherwise dispose of freehold or leasehold property including entering into a contract to dispose of land or granting an option to acquire an interest in land; or
- d) take up any leasehold or tenancy agreement for a term exceeding three years.

79) Each discovered loss of an amount exceeding the amount for the time being specified by the Secretary of State and arising from suspected theft or fraud, shall be reported by the Company to the Secretary of State at the earliest opportunity.

80) It is the responsibility of the Company to ensure that each Academy balances its budget from Academy Financial Year to Academy Financial Year. For the avoidance of doubt, this does not prevent the Company from:

- a) subject to clause 73, carrying a surplus from one Academy Financial Year to the next; or
- b) carrying forward from a previous Academy Financial Year or Academy Financial Years a sufficient surplus or sufficient cumulative surpluses on grants from the Secretary of State to meet an in-year deficit on such grants in a subsequent financial year; or
- c) incurring an in-year deficit on funds from sources other than grants from the Secretary of State in any Academy Financial Year, provided it does not affect the Company's responsibility to ensure that the Company balances its overall budget from Academy Financial Year to Academy Financial Year.

80A) The Company shall abide by the requirements of and have regard to the Charity Commission's guidance to charities and charity trustees and in particular the Charity Commission's guidance in the Protecting Charities from Harm ('the compliance toolkit') and in CC9: Speaking Out, Campaigning and Political Activities by Charities, as amended from time to time. Any references in such

guidance which require charity trustees to report to the Charity Commission should instead be interpreted as references to report to the Principal Regulator..

### **Borrowing Powers**

- 81) Except as may be permitted by the Academies Financial Handbook (and amended from time to time) or otherwise as the Secretary of State may specify by notice in writing to the Company, the Company shall not borrow against or so as to put at risk property or assets funded (whether in whole or in part) by the Secretary of State without specific approval of the Secretary of State, such approval at the absolute discretion of the Secretary of State . The Company shall not operate an overdraft except to cover irregularities in cash flow. Such an overdraft, and the maximum amount to be borrowed, must be approved by the Company in a General Meeting and in writing by the Secretary of State, and shall be subject to any conditions which the Secretary of State may reasonably impose.
- 82) The Company shall provide 30 days' written notice to the Secretary of State of its intention to borrow, whether or not such borrowing requires the Secretary of State's approval under clause 81 above.

### **Disposal of Assets**

- 83) Where the Company acquires assets for a nil consideration or at an undervalue it shall be treated for the purpose of this Agreement as having incurred expenditure equal to the market value of those assets at the time that they were acquired. This provision shall not apply to assets transferred to the Company at nil or nominal consideration and which were previously used for the purposes of an Academy and/or were transferred from an LA, the value of which assets shall be disregarded.
- 84) The sale or disposal by other means, or reinvestment of proceeds from the disposal, of a capital asset by the Company shall require the consent of the Secretary of State, such consent not to be unreasonably withheld or delayed, where:
  - a) the Secretary of State paid capital grant in excess of the value for the time being specified by the Secretary of State for the asset; or

b) the asset was transferred to the Company from an LA for no or nominal consideration.

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

86) This clause applies in the event, during the lifetime of this Agreement, of the disposal of a capital asset for which capital grant of any amount was paid by the Secretary of State, where the asset was acquired by the Company. In this event, the Company shall repay to the Secretary of State the same proportion of the proceeds of the disposal as equates with the proportion of the original cost met by the Secretary of State, unless the Secretary of State agrees to some or all of the proceeds being retained by the Company for its charitable purposes.

87) This clause applies in the event, during the lifetime of this Agreement, that the Secretary of State consents to the disposal of an asset which was transferred to the Company from an LA for no or nominal consideration. In this event the Secretary of State may give consent on the basis that all or part of the proceeds of the disposal should be made over to the LA from which the asset was transferred, taking into account the amount of the proceeds to be reinvested by the Company. The Secretary of State will have regard to any representations from the Company and the LA from which the asset was transferred before giving consent under this clause.

88) Except with the consent of the Secretary of State, the Company shall not dispose of assets funded (whether in whole or in part) by the Secretary of State for a consideration less than the best price that can reasonably be obtained, such consent not to be unreasonably withheld or delayed.

89) The Company shall provide 30 days' written notice to the Secretary of State of its intention to dispose of assets for a consideration less than the best price that can reasonably be obtained, whether or not such disposal requires the Secretary of State's consent under clause 88 above.

## TERMINATION

### General

90) This Agreement shall commence on the date hereof and continue until terminated in accordance with clauses 91, 93, 93A or until all Supplemental Agreements have terminated.

91) The Secretary of State may at any time by notice in writing terminate this Agreement and each of the Supplemental Agreements such termination to take effect on the date of the notice, on the occurrence, or where in his reasonable opinion there is a serious risk of occurrence, of any of the following events:-

- a) the Company calls a meeting of its creditors (whether formal or informal) or enters into any composition or arrangement (whether formal or informal) with its creditors; or
- b) the Company proposes a voluntary arrangement within Section 1 of the Insolvency Act 1986 (as amended); or
- c) the Company is unable to pay its debts within the meaning of Section 123 of the Insolvency Act 1986 provided that, for the purposes of this Clause, Section 123 (1)(a) of the Insolvency Act 1986 shall have effect as if the amount of £10,000 was substituted for £750. The Company shall not be deemed unable to pay its debts for the purposes of this clause if any such demand as is mentioned in the said Section is being contested in good faith by the Company; or
- d) the Company has a receiver and manager (with the exception of Receivers and Managers or Interim Managers appointed by the Charity Commission under the Charities Act 2011 or any subsequent re-enactment of that Act), administrator or administrative receiver appointed over all or any part of its undertakings, assets or income; or

- e) any distressment, execution or other process is levied or enforced on any of the Company's property and is not paid out, withdrawn or discharged within fifteen Business Days; or
- f) the Company has passed a resolution for its winding up; or
- g) an order is made for the winding up or administration of the Company.

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

93) If the Secretary of State is satisfied that any Director or Member of the Company is not a suitable person he may:

- (a) in relation to such a Director or Member serve notice in writing to the Company requiring the Company to procure the resignation or removal of the person(s) within 42 days of the date of the notice; and if the Company fails to procure the said resignation or removal within the time specified, the Secretary of State may terminate this Agreement by notice in writing to the Company such termination to take effect on the date of the notice; or
- (b) terminate this Agreement by notice in writing to the Company such termination to take effect on the date of the notice.

### **Change of Control of the Company**

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

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

Provided that where a person ('P') is a member or director of the body corporate

(as a corporation sole or otherwise) by virtue of an office, no change of Control arises merely by P's successor becoming a member or director in P's place.

93B) The Company shall, 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 93A), give written notice to the Secretary of State of such change or proposed change of control.

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

94) Not used.

## GENERAL

### Information

95) Without prejudice to any other provision of this Agreement, the Secretary of State acting reasonably may from time to time call for information on any Mainstream Free School or Special Free School relating to, but not restricted to, the following matters:

- a) curriculum;
- b) arrangements for the assessment of pupils;
- c) teaching staff including numbers, qualifications, experience, salaries, and teaching loads;
- d) class sizes;
- e) outreach work with other schools and the local community;
- f) operation of the admission criteria and over subscription arrangements for the Academy including numbers of applications for places and the number and characteristics of pupils accepted for admission – for Mainstream Academies only;

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

95A) Without prejudice to any other provision of this Agreement, the Secretary of State acting reasonably may from time to time call for information on any alternative provision Free School relating to, but not restricted to, the following matters:

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

- f) operation of the referral and reintegration processes for the alternative provision Free School including numbers of requested referrals, the number of referrals that have been refused and the reasons for the refusal in each case and the number and characteristics of pupils accepted for admission and destinations/outcomes of pupils/former pupils;
  - g) numbers of pupils excluded (including permanent and fixed term exclusions), characteristics of pupils excluded, reasons for exclusions, outcomes of any independent review panels;
  - h) levels of authorised and unauthorised absence;
  - i) charging and remissions policies and the operation of those policies;
  - j) organisation, operation and building management;
  - k) financial controls;
  - l) compliance with the requirements of the Charity Commission's guidance to charities and charity trustees and in particular the Charity Commission's guidance in the Protecting Charities from Harm ('the compliance toolkit') and in (CC9): "Speaking Out: Guidance on Campaigning and Political Activities by Charities", as amended from time to time; and
  - m) membership and proceedings of the Company and Local Governing Body together with any other relevant information concerning the management or governance of the Academy which, subject to clause 99), is reasonably necessary for the Secretary of State to carry out his functions generally and in relation to this Agreement or the relevant Supplemental Agreement.
- 95B) Without prejudice to any other provision of this Agreement, the Secretary of State acting reasonably may from time to time call for information on any 16 to 19 Free School relating to, but not restricted to, the following matters:

- a) curriculum;
- b) arrangements for the assessment of students;

- c) teaching staff including numbers, qualifications, experience, salaries, and teaching loads;
- d) class sizes;
- e) outreach work with other educational institutions 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 students accepted for admission;
- g) numbers of students excluded (including permanent and fixed term exclusions);
- h) levels of authorised and unauthorised absence;
- i) charging and remissions policies and the operation of those policies;
- j) organisation, operation and building management;
- k) financial controls;
- l) compliance with the requirements of the Charity Commission's guidance to charities and charity trustees and in particular the Charity Commission's guidance in the Protecting Charities from Harm ('the compliance toolkit') as amended from time to time;
- m) membership and proceedings of the Governing Body together with any other relevant information concerning the management or governance of the Academy which, subject to clause 99), is reasonably necessary for the Secretary of State to carry out his functions generally and in relation to this Agreement.

96) The Company shall make such information available to the Secretary of State, in such form and manner and at such times as may reasonably be required. The Secretary of State shall provide the Company with such information as it may reasonably require of him for the running of an Academy.

96A) (i) The Company shall provide to the Secretary of State the name of any new or replacement Member or Director of the Company, whether such a person has

been appointed or elected, together with the date of such an appointment or election and, where applicable, the name of the Member or Director such a person replaces as soon as is practicable and in any event within 14 days of the appointment or election of such a person.

96A) (ii) In this regard, the Company shall not appoint any new or replacement Members or Directors of the Company until it has first (a) notified such persons that their name shall be shared with the Secretary of State and (b) explained to the new or replacement Members or Directors of the Company that the reason their name is being shared with the Secretary of State is to enable the Secretary of State to assess their suitability.

96B) In relation to 16 to 19 Free Schools, the Company agrees to comply with the "Specification of the Individualised Learner Record for 2012/13" published by the Information Authority as may be amended or replaced from time to time.

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

97) The Company shall allow access to the premises of any Academy at any reasonable time to DfE officials and/or agents of the Secretary of State. All records, files and reports relating to the running of the Company and each Academy shall be available to them at any reasonable time. The Company shall provide the Secretary of State in advance with papers relating to each Academy prepared for meetings of the Local Governing Body, of the Company's directors and of the members of the Company. Two DfE officials shall be entitled to attend and to speak at all such meetings, but shall withdraw from any discussion of an Academy's or the Company's relationship with the Secretary of State or any discussion of bids for funding to the Secretary of State. The Company shall take any steps which are required to secure its compliance with the obligations imposed by this clause of this Agreement.

98) The Company shall ensure that:

- a) the agenda for every meeting of the relevant Local Governing Body and the Company's directors;

- b) the draft minutes of every such meeting, if they have been approved by the person acting as chairman of that meeting;
- c) the signed minutes of every such meeting; and
- d) any report, document or other paper considered at any such meeting,

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

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

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

### **Notices**

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

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

100A) The parties' addresses and contacts are:

Name of Party	Position of Contact	Address
Secretary of State	Head of Free Schools Division	Department for Education, Sanctuary Buildings, Great Smith Street, London SW1P 3BT
The Company	Chairman of Directors	Autism Schools Trust

100B) A party may change its details given in the table in clause 100A) by giving notice, the change taking effect for the party notified of the change at 9.00 am on the date five Business Days after deemed receipt of the notice.

100C) Any notice or other communication required to be given to a party under or in connection with this Agreement shall be delivered by hand or sent by pre-paid first-class post or other next working day delivery service. Any notice or communication shall be deemed to have been received if delivered by hand, on signature of a delivery receipt or at the time the notice is left at the address specified in Clause 100A), or otherwise at 9.00 am on the second Business Day after posting.

100D) This clause does not apply to the service of any proceedings or other documents in any legal action. For the purposes of clause 100), "writing" shall not include e-mail.

101) The service by the Secretary of State of a notice of termination of a Supplemental Agreement shall not prejudice the ability of the Company (if it wishes to do so) during the notice period to admit pupils or students 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.

102) Not used.

## **General**

- 103) This Agreement shall not be assignable by the Company.
- 103A) No delay, neglect or forbearance on the part of the Secretary of State in enforcing (in whole or in part) any provision of this Agreement or in exercising (in whole or in part) any right conferred on him by this Agreement shall be or be deemed to be a waiver of such provision or right or remedy or a waiver of any other provision or right or shall in any way prejudice any right of the Secretary of State under this Agreement or shall amount to an election not to enforce such provision or exercise such right (including, for the avoidance of doubt, any right to terminate this Agreement)..
- 104) The Secretary of State and the Company recognise the difficulties in catering in this Agreement and the Supplemental Agreements for all the circumstances which may arise in relation to the Academies and undertake in good faith to conduct such consultations as may from time to time be desirable in order to promote the interests of the Academies throughout the currency of this Agreement.
- 105) Termination of this agreement, for any reason, shall not affect the accrued rights, remedies, obligations or liabilities of the parties existing at termination.
- 106) This deed may be executed in any number of counterparts, each of which when executed and delivered shall constitute a duplicate original, but all the counterparts shall together constitute the one agreement.
- 107) This Agreement and any dispute or claim arising out of or in connection with it or its subject matter or formation (including non-contractual disputes or claims) shall be governed by and construed in accordance with the law of England and Wales.
- 108) The parties irrevocably agree that the courts of England and Wales shall have exclusive jurisdiction to settle any dispute or claim that arises out of or in connection with this agreement or its subject matter or formation (including non-contractual disputes or claims).

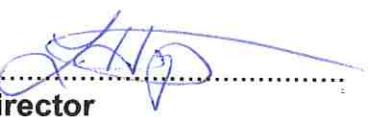
This Agreement was executed as a Deed on

30th June

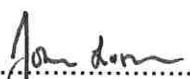
2014

Executed on behalf of Autism Schools Trust

by :

  
.....

Director

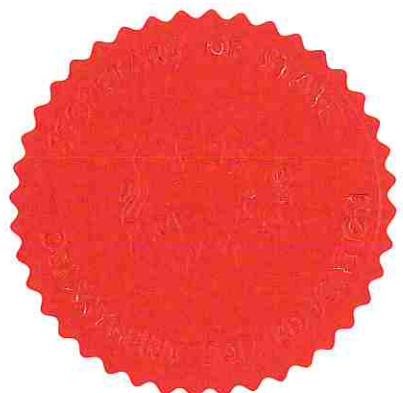
  
.....

Director/Secretary

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

  
.....

Duly Authorised



**SCHEDULE 1**  
**SUPPLEMENTAL AGREEMENT FOR A SPECIAL FREE SCHOOL**

THIS AGREEMENT made 30<sup>th</sup> June 2014

**BETWEEN**

(1) THE SECRETARY OF STATE FOR EDUCATION; and

(2) AUTISM SCHOOLS TRUST ("the Company")

IS SUPPLEMENTAL TO THE MASTER FUNDING AGREEMENT made between the same parties and dated 30<sup>th</sup> June 2014 (the "Master Agreement").

**1      DEFINITIONS AND INTERPRETATION**

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

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

"the Academy" means the Special Free School and is called The Rise School and is to be established at Browells Lane, Feltham TW13 7EF;

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

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

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

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Feltham Community College Browells Lane, Feltham TW13 7EF registered under title number AGL236071 and edged red on the plan attached at Annex 2 making up the permanent site of the Academy or the part of such land remaining in the ownership of the Company, following any disposal in accordance with clause 10I(c)ii or clause 10K;

“the Lease” means the leasehold agreement between the Company and any third party in respect of the site upon which the Academy is situated;

“Start-up period” means up to a maximum of 4 Academy Funding Years the period up to the first Academy Funding Year in which the Academy can offer its planned places (as set down in clause 2.5 of this Agreement), whichever is the shorter;

“School Premises” means the site upon which the Academy is situated upon from time to time which comprises either the Land or the Temporary Site.

“Temporary Site” means the land (including for the avoidance of doubt all buildings, structures landscaping and other erections) situated at and known as at Feltham Community College Browells Lane, Feltham TW13 7EF registered under title number AGL236071 and edged red on the plan attached at Annex 3 making up the temporary site of the Academy.

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

### **2 THE ACADEMY**

- 2.1 The Company will establish and maintain, and carry on or provide for the carrying on of the Academy in accordance with the Master Agreement and this Agreement.
- 2.2 The Company must ensure special educational provision is made at **the Academy** for one or more categories of SEN. These categories may include, but are not limited to, ASD.
- 2.3 The Company may not refuse to admit a child whose statement of SEN names one of the Special Free Schools on the sole basis that some, or all, of the child's SEN do not feature in the categories referred to in clause 2.2 of this agreement.

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

### **ACADEMY OPENING DATE**

2.5 The Academy shall open as a school on 8 September 2014.

### **PUPILS**

2.6 The planned number of places for pupils admitted under paragraphs 2 and 3(i), (ii) and (iii) of Annex 1 to this Agreement ("Statemented Pupils") is 96 in the age range 4-19, including a sixth form of 16.

2.7 NOT USED

### **3 CAPITAL GRANT**

3.1 Pursuant to clause 35 of the Master Funding Agreement, the Secretary of State may, in his absolute discretion provide Capital Expenditure funding in accordance with any arrangements he considers appropriate.

### **4 GAG AND EAG**

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

### **4A ADDITIONAL FUNDING**

4A.1 NOT USED

4A.2 The Secretary of State may pay further grant in the Start-up period, as determined and specified by him, for costs which cannot otherwise be met from GAG.

### **4B LEASE**

4B.1 If the Company is in material breach of the provisions of the Lease or if it is reasonably foreseeable that the Company will be in material breach of the Lease, the Company shall forthwith give written notice to the Secretary of State specifying the exact nature of the material breach or reasonably foreseeable material breach and such notice shall set out the steps taken or to be taken by the Company to remedy the material breach or reasonably

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foreseeable material breach and, where appropriate, shall include the timescales relating to any remedial action.

- 4B.2 The Company will at its own cost provide all information reasonably required by the Secretary of State in respect of any material breach or reasonably foreseeable material breach.
- 4B.3 Following the receipt by the Secretary of State of the written notice under clause 4B.1, the Company shall permit the Secretary of State to take all such steps in conjunction with or instead of the Company as may be necessary to remedy or prevent the material breach referred to in the said notice. The Company shall, in such circumstances, use its best endeavours to assist the Secretary of State to remedy or prevent such material breach.
- 4B.4 The Company shall, within 14 days of receiving any order, notice, proposal, demand or any other requirement materially affecting the ability of the Company to use the School Premises for the purposes of the Academy from any competent authority (including the Landlord), give full particulars by written notice to the Secretary of State and deliver to the Secretary of State copies of such documents as he may require. Such notice shall state what steps, if any actions are required, the Company intends to take in response to the order, notice, proposal, demand or other requirement affecting the School Premises.
- 4B.5 The Company will at its own cost provide all information reasonably required by the Secretary of State in respect of an order, notice, proposal, demand or any other requirement affecting the School Premises as referred to in clause 4B.4.
- 4B.6 Following the receipt by the Secretary of State of the written notice under clause 4B.4 the Company shall permit the Secretary of State to take all steps in conjunction with or instead of the Company as may be necessary to comply with any order, notice, proposal, demand or other requirement affecting the School Premises referred to in the said notice. The Company shall, in such circumstances, use all reasonable endeavours to assist the Secretary of State to take the appropriate required steps.

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 2021 or any subsequent anniversary of that date.

**Notice of Intention to Terminate by Company**

- 5.2 The Secretary of State shall, at a date preceding the start of each Academy Financial Year, provide to the Company an indication of the level of funding to be provided by the Secretary of State to the Company by way of GAG and EAG in the next following Academy Financial Year (the "Indicative Funding"). If the Company is of the opinion that, after receipt of the Indicative Funding for the next following Academy Financial Year (the "Critical Year") and of the taking into account all other resources available and likely to be available to the Academy, including such funds as are set out in clause 73 of the Master Agreement and such other funds as are and likely to be available to the Academy from other academies operated by the Company ("All Other Resources"), it is likely that the cost of running the Academy during the Critical Year would cause the Company, on the basis of the Indicative Funding, to become insolvent (and for this reason only) then the Company may give notice of its intention to terminate this Agreement at the end of the then current Academy Financial Year.
- 5.3 Any notice given by the Company under clause 5.2 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 5.2 above, within six weeks after the Secretary of State shall have done so. The notice must specify:
- 5.3.1 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

## Multi Special Free School Model

- 5.3.2 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
- 5.3.3 a detailed budget of income and expenditure for the Academy during the Critical Year (the "**Projected Budget**").
- 5.4 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.
- 5.5 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.
- 5.6 The Expert shall be required in reaching his determination to take account of advice from an educational specialist who is professionally familiar with the issues arising from the budget management of large schools. If the parties fail to agree upon the appointment of the educational specialist then the educational specialist shall be appointed by the Chairman for the time being of the Specialist Schools and Academies Trust. The educational specialist's fees shall be borne equally between the parties.

## Multi Special Free School Model

- 5.7 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.

### **Termination Warning Notice**

5.7A The Secretary of State shall be entitled to issue to the Company a written notice of his intention to terminate this Agreement ("Termination Warning Notice") where he considers that:

- a) the Academy is no longer meeting the requirements set out in clause 12A of the Master Agreement (subject to clause 5.11);
- b) the conditions and requirements set out in clauses 2.2, 2.3 and 2.4 of this Agreement and clauses 13-34C of the Master Agreement (where applicable to a Special Free School) are no longer being met;
- c) the standards of performance of pupils at the Academy are unacceptably low;
- d) there has been a serious breakdown in the way the Academy is managed or governed;
- e) the safety of pupils is threatened (whether by breakdown of discipline or otherwise); or
- f) the Company is otherwise in material breach of the provisions of this Agreement.

5.7B A Termination Warning Notice issued by the Secretary of State in accordance with clause 5.7A shall specify:

- a) reasons for the Secretary of State's issue of the Termination Warning Notice;
- b) the remedial measures which the Secretary of State requires the Company

## Multi Special Free School Model

- to carry out, with associated deadlines, in order to rectify the defaults identified ("Specified Remedial Measures"); and
- c) the date by which the Company must respond to the Termination Warning Notice providing its representations with regard thereto and/or confirm that it accepts and agrees to undertake the Specified Remedial Measures.
- 5.7C The Secretary of State shall consider any response and representations from the Company which are received by the date specified in accordance with clause 5.7Bc) and shall confirm whether he considers that:
- a) in light of the Company's representations in response to the Termination Warning Notice, some or all of the Specified Remedial Measures are not required to be implemented (and if so which) and/or the Specified Remedial Measures are being or will be implemented with the specified timeframe; or
  - b) subject to any further measures he reasonably requires ("Further Remedial Measures") being implemented by a specified date or any evidence he requires being provided, the implementation of such measures has been or will be successfully completed within the specified timeframes; or
  - c) he is not satisfied that the Company will rectify the defaults identified in the Termination Warning Notice within the specified timeframes. (In such circumstances, the Secretary of State may notify the Company of his intention to terminate the Agreement on a specified date.)
- 5.7D The Secretary of State may by notice in writing terminate this Agreement with effect from a specified date in the event that:
- a) the Company has not by the date specified in clause 5.7B(c) responded to the Termination Warning Notice either confirming that it accepts and agrees to undertake the Specified Remedial Measures or providing its representations with regard to the Specified Remedial Measures; or
  - b) the Company has not carried out the Specified Remedial Measures and/or Further Remedial Measures within the specified timeframes;
- provided that having considered any representations made by the Company pursuant to clause 5.7Bc), the Secretary of State remains satisfied that it is

## Multi Special Free School Model

appropriate to terminate the Agreement.

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

5.7E The Secretary of State may at any time give written notice of his intention to terminate the Agreement where the Chief Inspector gives notice to the Company in accordance with section 13(3) of the Education Act 2005 stating that in the Chief Inspector's opinion –

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

5.7F Any notice issued by the Secretary of State in accordance with clause 5.7E shall invite the Company to respond with any representations within a specified timeframe.

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

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

he may by notice in writing terminate this Agreement, such termination to take effect from the date of the notice.

### **Termination with Immediate Effect**

5.7H For the purposes of clauses 5.7I and 5.7J, "prospective pupils" means those pupils who have statements of SEN that name the Academy.

5.7 I If on or after September 2014 or at any time after signing this Agreement and before the Academy opens, the total number of prospective pupils is fewer than 28, the Secretary of State may by written notice to the Academy Trust:-

- (a) require the Academy Trust not to open the Academy until the number of prospective pupils has reached 28; or

## Multi Special Free School Model

- (b) terminate this Agreement such termination to take effect on the date specified in the notice.

5.7J If at any time after signing this Agreement and after the Academy has opened, the Secretary of State is of the opinion that, by virtue of low pupil numbers, the Academy is not financially viable, then the Secretary of State may:-

- (a) give a Warning Notice to the Academy Trust; or
- (b) by written notice terminate this Agreement forthwith; or
- (c) by written notice provide such notice as he deems appropriate in the circumstances to terminate this Agreement.

For the purposes of this clause a "Warning Notice" means a notice in writing by the Secretary of State to the Academy Trust requiring that the Academy Trust admits a sufficient number of pupils by such date as he deems appropriate in the circumstances and setting out the consequences if the Academy Trust has not admitted a sufficient number of pupils by the date specified in such Warning Notice.

5.7K If at any time after signing this Agreement, the Parties agree that by virtue of low pupil numbers the Academy is not financially viable, then the Parties jointly may terminate this Agreement having agreed first the precise terms of termination.

5.8 If the Company has not obtained full planning permission (including where relevant listed building consent), in respect of the Land by 01/05/2015 , the Secretary of State may terminate this Agreement by notice in writing to the Company such termination to take effect on the date of the notice.

5.9 If at any time after the signing of this Agreement but prior to the Academy opening date, the Secretary of State is of the view that:

1. the Academy would, on opening, provide an unacceptably low standard of education; or
2. the safety of pupils or staff at the Academy would, on opening, be threatened; or
3. the staff employed at the Academy are unsuitable;
4. there is a serious breakdown in the way the Company is being managed or governed; or

## Multi Special Free School Model

5. the buildings and other structures on the Temporary Site are unsuitable or the Company has not obtained Building Regulation approval.

he may in writing either:

- (a) require the Company (i) not to open the Academy; and/or (ii) not to admit pupils of a particular age range, to be determined by the Secretary of State; and/or (iii) not to use any building or other structure on the Temporary Site until such time as the relevant matter or matters listed in 1. to 5. above has or have been resolved to the Secretary of State's satisfaction; or
- (b) terminate this Agreement by notice in writing to the Company such termination to take effect on the date of the notice.

- 5.9A If at any time after the opening of the Academy but prior to the Academy allowing pupils of the Academy access to the Land, the Secretary of State is of the view that:

- 5.9A.1 the safety of pupils or staff at the Academy would, on use of the Land, be threatened; or
- 5.9A.2 the buildings and other structures the Land are unsuitable or the Company has not obtained Building Regulations approval;

he may in writing either:

- (a) require the Company not to use any building or other structure on the Land until such time as the relevant matter or matters listed in 5.9A.1 to 5.9A.2 above has or have been resolved to the Secretary of State's satisfaction; or
- (b) terminate this Agreement by notice in writing to the Company such termination to take effect on the date of the notice.

- 5.10 If the Company has not entered into the Lease for the Land by 01/08/2015, the Secretary of State may terminate this Agreement by notice in writing to the Company such termination to take effect on the date of the notice.

- 5.10A (i) If the Company has not entered into the Lease for the Temporary Site by 01/08/2014, the Secretary of State may direct the Company to enter into

negotiations in respect of securing an alternative temporary site which the Secretary of State considers suitable for the needs of the Academy.

(ii) If having been directed under 5.10A(i) to enter into negotiations, the Company has not secured an interest in that alternative temporary site to the satisfaction of the Secretary of State by 31/08/2014, the Secretary of State may by notice terminate this Agreement forthwith or may provide such notice as he deems appropriate in the circumstances in writing to terminate this Agreement.

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

## **6      EFFECT OF TERMINATION**

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

## Multi Special Free School Model

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

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

(a) promptly transfer a proportion of the assets to a person nominated by the Secretary of State, if the Secretary of State considers that all or some of those assets need to be used for any educational purpose 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 LA.

## Multi Special Free School Model

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

### 7 **ANNEX**

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

### 8 **GENERAL**

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

### 9. **THE MASTER AGREEMENT**

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

### 10 **ENGLISH LAW**

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

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

**Debt**

10A) Not Used.

**Restrictions on Land transfer**

- 10B) In consideration that it has or will be obtaining a legal interest in the Land, such acquisition being financed by the Secretary of State, the Company:
- a)) shall, within 28 days from the acquisition of the legal interest in the Land or the signing of this Agreement, whichever is the latter, apply to the Land Registry for restrictions 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) ('LRR 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.*

- b) shall take any further steps reasonably required to ensure that the restriction referred to in clause 10B(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 10B(a) as soon as reasonably practicable after it receives notification from the Land Registry,
- d) in the event that it has not registered the restriction referred to in clause 10B(a), hereby consents to the entering of the restriction referred to in 10B(a) in the register by the Secretary of State (under s. 43(1)(b) of the

## Multi Special Free School Model

Land Registration Act 2002); and

- e) shall not, without the consent of the Secretary of State, apply to disapply, modify or remove (by cancellation or otherwise) a restriction entered in accordance with clause 10B(a) or 10B(d) above, whether by itself, a holding company, a subsidiary company, or a receiver, administrator or liquidator acting in the name of the Company.

### **Obligations of the Company**

10C) (i) The Company shall keep the School Premises clean and tidy and make good any damage it causes to the School Premises and / or any deterioration to the condition of the School Premises that may arise from the date of this Agreement, save that the Company shall ensure that any actions undertaken in compliance with this clause shall be consistent with the terms of the Lease. In compliance with this clause, the Company shall not do or cause or permit to be done anything to lessen the value or marketability of the School Premises save with the express written consent of the Secretary of State.

10C)(ii) The Company shall observe and comply with its obligations under the Lease and shall promptly enforce its rights against the Landlord.

10C)(iii) The Company agrees it shall seek and obtain the prior written consent of the Secretary of State, not to be unreasonably withheld or delayed before taking any steps to:

- a) terminate, vary, surrender or dispose of the Lease; and / or
- b) grant any consent or licence in respect of the School Premises or any part of it; and / or
- c) create or permit to arise or continue any encumbrance affecting the School Premises or any part of it; and / or
- d) part with or share possession or occupation of the School Premises or any part of it; and / or
- e) enter into any onerous or restrictive obligations affecting the School Premises or any part of it.

10C) iv) The Company agrees that prior to taking any steps, including but not limited to the service of any notice or waiver of any condition, under any contractual arrangement entered into in respect of the acquisition of the legal interest in

## Multi Special Free School Model

the School Premises, it shall seek and obtain the written consent of the Secretary of State, not to be unreasonably withheld or delayed.

### **Insurance**

10D) The Company shall, save where the terms of the Lease provide for the Landlord to obtain insurance in respect of the School Premises:-

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

### **Transfer of Land**

10E) In consideration that it has or will be obtaining a legal interest in the School Premises, such acquisition being financed by the Secretary of State, the Company hereby grants and the Secretary of State hereby accepts an option,

## Multi Special Free School Model

exercisable by the Secretary of State or his nominee, to acquire the said School Premises or any part thereof at nil consideration. The option hereby granted shall be exercisable (by notice in writing by or on behalf of the Secretary of State) on the termination of this Funding Agreement for whatever cause or in circumstances where the Company is unable to use all or part of the School Premises as the permanent site of the Academy in accordance with clauses 10H or 10K. On the exercise of this option, the Law Society's Standard Conditions of Sale for Commercial Property in force at the date of such exercise shall apply to the transaction and completion shall take place 28 days after such exercise.

10F) In consideration that it has or will be obtaining a legal interest in the School Premises, such acquisition being financed by the Secretary of State, the Company:

- a) shall, within 14 days from the transfer to it of the School Premises or the signing of this Agreement, whichever is the latter, apply to the Land Registry in Form AN1 as prescribed by Rule 81 of the Land Registration Rules 2003 for a notice to be entered in the register (under section 34(3)(a) of the Land Registration Act 2002) to protect the option granted under clause 10E and including a copy of this Agreement as evidence of that option,
- b) shall take any further steps required to ensure that the notice referred to in clause 10F(a) is entered on the proprietorship register,
- c) shall provide the Secretary of State with confirmation of the entry of the notice referred to in clause 10F(a) as soon as practicable after it receives notification from the Land Registry,
- d) in the event that it has not registered the notice referred to in clause 10F(a), hereby consents to the entering of the notice referred to in 10F(a) in the register by the Secretary of State (by application in Form UN1 under s. 34(3)(b) of the Land Registration Act 2002),
- e) shall not, without the consent of the Secretary of State, apply to disapply, modify or remove (by cancellation or otherwise) a notice entered in

## Multi Special Free School Model

accordance with clause 10F(a) or 10F(d) above, whether by itself, a holding company, a subsidiary company, or a receiver, administrator or liquidator acting in the name of the Company, and

f) in the case of previously unregistered land, for the further protection of the option granted in Clause 10E the Company shall within 14 days of the acquisition of the legal interest in the School Premises or the signing of this Agreement, whichever is the latter, make application to register a Class C (iv) land charge in the Land Charges Registry and a Caution against First Registration in the Land Registry and shall provide the Secretary of State with copies of the entries secured thereby within 7 days of completing each registration, respectively. If the Secretary of State is of the view that the Company has failed to perform the registration obligations in this sub-clause he shall be at liberty to make his own applications to secure these registrations.

### **Legal Charge**

10G) Not Used.

### **Failure to use the Land for the purposes of the Academy**

10H) If the Company is unable to use the Land or any part thereof as the permanent site of the Academy but the Secretary of State agrees not to terminate this Agreement on that basis, the Secretary of State may give notice to the Company that:-

- a) he intends to exercise the option granted under clause 10E) to transfer the Land or the relevant part thereof for nil consideration to himself or his nominee;
- b) Not Used; and/or
- c) the Company shall dispose of the Land or the relevant part thereof and that, pursuant to clause 86 of the Master Agreement, the Company may retain some or all of the proceeds of sale of the Land or the relevant part thereof in order to fulfil its charitable purposes by funding the purchase of an alternative permanent site for the Academy, save that any proceeds not used to fund the purchase of an

## Multi Special Free School Model

alternative permanent site shall be accounted for to the Secretary of State or his nominee.

Providing that the Company may not be required to act in breach of the terms of the Lease for the Land.

### Sharing of the Land

10I) The Company agrees that if:

- a) the Academy does not reach its planned number of places (as set down in clause 2.6) over a period of 4 Academy Funding Years; or
- b) notice of termination is served by either the Company or the Secretary of State in accordance with clause 5.1 of this Agreement; or
  - in the reasonable opinion of the Secretary of State the operation of the Academy at planned capacity does not require the use of the full extent of the Land it will share occupation of the Land with such other Academies as the Secretary of State deems appropriate in the circumstances and enter into such legal arrangements in respect of the same as are required by the Secretary of State
- i. . providing that the Company may not be required to act in breach of the terms of the Lease of the Land.

### Exercise of Rights

10J-10O) Not Used.

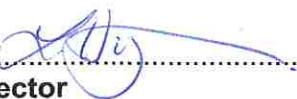
This Agreement was executed as a Deed on

*30<sup>th</sup> June*

2014

Executed on behalf of Autism Schools Trust

by :

  
.....  
Director

  
.....  
Director/Secretary

Multi Special Free School Model

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



*Andy Hargreaves*

**Duly Authorised**

## Multi Special Free School Model

### **ANNEX TO THIS SUPPLEMENTAL AGREEMENT**

Requirements for the Admission for pupils at the  
Academy Annex 1

Plan of the Land Annex 2

Plan of the Temporary Site Annex 3

## Annex 1

### **Requirements for the Admission for pupils at The Rise School ("the Academy")**

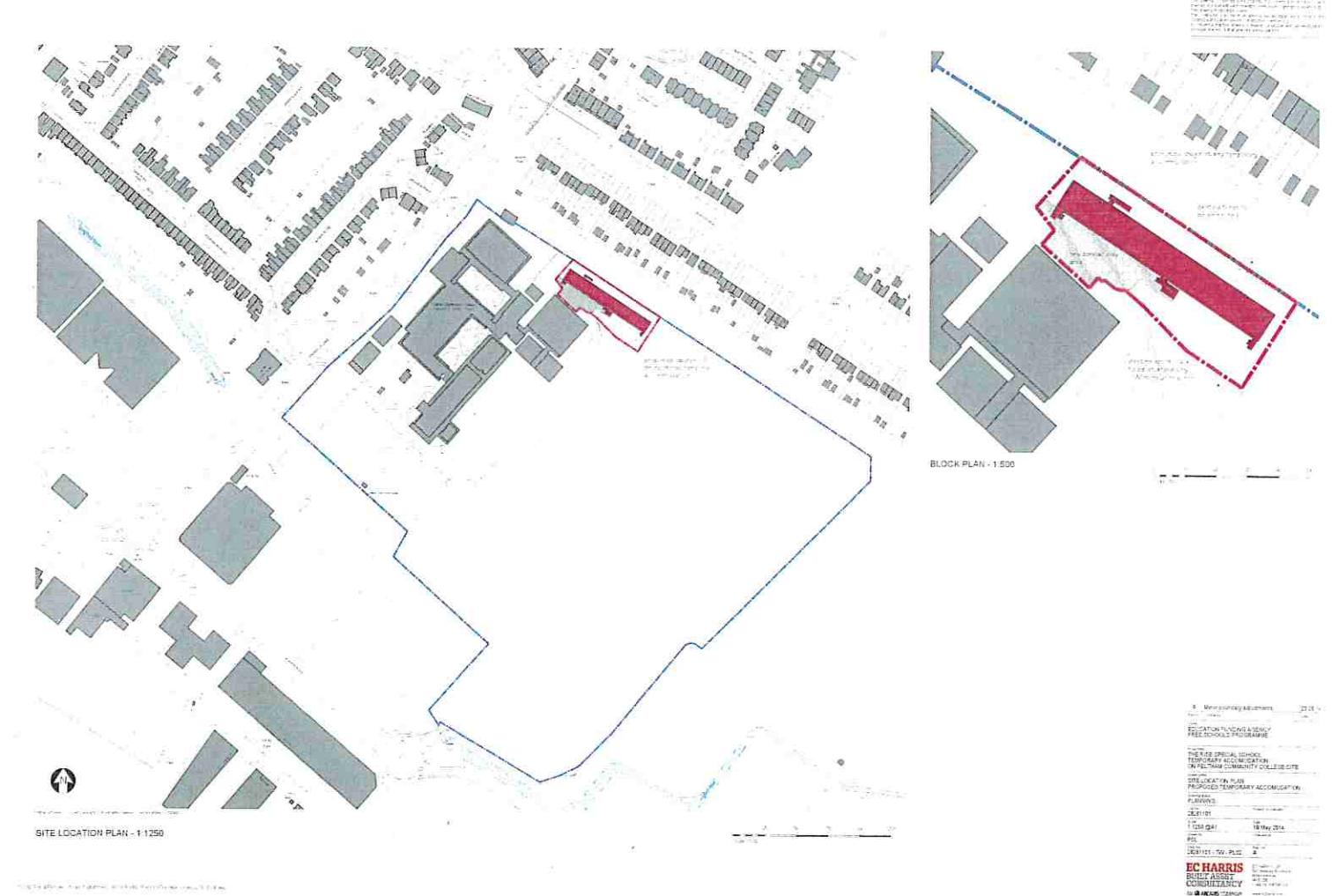
#### **GENERAL**

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

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

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

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



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ON FELTHAM COMMUNITY COLLEGE SITE  
SITUATION PLAN  
PROPOSED TEMPORARY ACCOMMODATION  
PLANNED  
DECEMBER 2011  
17 MAY 2012  
18 May 2012  
EC HARRIS LTD  
BUILT ASSET CONSULTANCY  
HEAD OFFICE



## **ANNEX B**

### **Arrangements for pupils with Special Educational Needs ('SEN') and disabilities at mainstream Free Schools or alternative provision Free Schools**

#### **Duties in relation to pupils with SEN**

1. The Governing Body of the Company must 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 time<sup>1</sup>;
  - 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 time<sup>2</sup>.
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 the 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, the provision of efficient education for the children with whom he will be educated, and
  - (b) 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 Academy's website includes details of the arrangements for the admission of disabled pupils; the steps taken to prevent disabled pupils from being treated less favourably than other pupils; and the facilities provided to assist access to the Academy by disabled pupils (disabled pupils meaning pupils who are disabled for the purposes of the Equality Act 2010<sup>3</sup>).

#### **Admissions**

5. The Company must ensure that pupils with SEN are admitted on an equal basis with others in accordance with its admissions policy.

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<sup>1</sup> 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).

<sup>2</sup> These Regulations are amended by The Education (Special Educational Needs Co-ordinators) (England) (Amendment) Regulations 2009 (SI 2009 No 1387).

<sup>3</sup> For the meaning of 'disabled', see section 6 of the Equality Act 2010.

6. Where a local authority ("LA") proposes to name the Company 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 Academy that it does not agree with the Company's response, and names the Academy in the child's statement, 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 considers that the Academy should not have been named in a child's statement, they may ask the Secretary of State to determine that the 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 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 the Academy in the child's SEN statement or asking the Tribunal to name the 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 Academy, the Secretary of State or the First-tier Tribunal (Special Educational Needs and Disability) have determined that it should be named in a child's statement, the Company shall admit the child to the Academy.

## DEED OF VARIATION TO THE FUNDING AGREEMENT

THIS DEED is made the 27 day of June 2019

### BETWEEN

- 1) The Secretary of State for Education (the "**Secretary of State**"); and
- 2) The Ambitious about Autism Schools Trust (previously known as Autism Schools Trust), (the "**Company**") [a charitable company incorporated in England and Wales with registered number [08335297], together, the "**Parties**".

### INTRODUCTION

- A. The Parties entered into a funding agreement dated on or about [30<sup>th</sup> June 2014] (the "**Funding Agreement**") relating to the establishment, maintenance and funding of an Academy in accordance with the Funding Agreement.
- B. The Parties now wish to vary and amend certain terms and conditions of the Funding Agreement in accordance with the terms of this Deed.
- C. This Deed is supplemental to the Funding Agreement.

### 1. INTERPRETATION

- 1.1 Words, expressions and interpretations used in this Deed shall, unless the context expressly requires otherwise, have the meaning given to them in, and shall be interpreted in accordance with, the Funding Agreement.

### 2. VARIATION OF THE FUNDING AGREEMENT

- 2.1 The Parties agree that with effect from the date of this Deed the Funding Agreement shall be amended as follows:

The Parties agree to amend the current Pupil Admission Number (PAN) by 9.6% from 96 to a new agreed PAN of 105.

- 2.2 Except as varied by this Deed, the Funding Agreement shall remain in full force and effect.

### 3. Governing law and jurisdiction

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

### 4. Counterparts

- 4.1 This Deed may be executed in any number of counterparts and by the parties to it on separate counterparts, each of which when so executed and delivered shall be an original, but all the counterparts shall together constitute one and the same instrument.

IN WITNESS whereof this Deed has been executed by the parties hereto and is intended to be and is hereby delivered on the date first above written.

**EXECUTED** as a deed by affixing the corporate seal of the **Secretary of State for Education** authenticated by:- )  
))  
))



Duly authorised by the Secretary of State for Education

**EXECUTED** as a deed by Ambitious about Autism Schools Trust (previously known as Autism Schools Trust),  
acting by:

acting by:

## Director

*Jam d.m.*

## **Director/Secretary**

OR

**EXECUTED** as a deed by Ambitious about Autism Schools Trust (previously known as Autism Schools Trust),  
acting by:

## **Director**

In the presence of:

W Sign  
I  
T Name  
N  
E Address  
S  
S Occupation