

**ACADEMIES SPONSORED BY**  
**HARRIS FEDERATION OF SOUTH LONDON**  
**SCHOOLS**

**MASTER FUNDING AGREEMENT**

**2007**

Lewis Silkin LLP  
5 Chancery Lane  
Clifford's Inn  
London EC4A 1BL

GRD/95682-1  
1290295-7

**ACADEMIES SPONSORED BY  
HARRIS FEDERATION OF SOUTH LONDON SCHOOLS  
MASTER FUNDING AGREEMENT**

**CONTENTS:**

SECTION	CLAUSE NO
<b>INTRODUCTION</b>	1 – 10
<b>LEGAL AGREEMENT</b>	11
<b>CHARACTERISTICS OF AN ACADEMY</b>	12
<b>CONDITIONS OF GRANT</b>	
General	13
Governance	14 - 15
Conduct	16
Academy Development plan and target setting	17 - 20
Pupils	21
Teachers and other staff	22 - 27
Curriculum, curriculum development and delivery and RE and collective worship	28 - 33
Assessment	34 - 36
Crisis Development Plan	37
School meals	38 - 39
Charging	40
Provision of Information to parents and others	41 - 42
<b>GRANTS TO BE PAID BY THE SECRETARY OF STATE</b>	
General	43 - 44
Capital Grant	45 - 50
Capital expenditure necessary to establish the Academy	51 - 56
Other Capital Expenditure	57

Conditions on Capital Grant	58
Arrangement for Payment of Capital Grant	59
Implementation Grant	60 - 62
Arrangement for payment of Implementation Grant	63 - 64
General Annual Grant	65 - 74
Earmarked Annual Grant	75 – 76
Arrangements for payment of GAG and EAG	77 – 80
Other relevant funding	81 – 84
Financial and Accounting Requirements	85 – 97
Borrowing Powers	98
<b>DISPOSAL OF ASSETS</b>	99 - 103
<b>TERMINATION</b>	104 - 105
Effect of Termination	106
<b>GENERAL</b>	
Information	107 - 109
Access by Secretary of State's Officers	110 - 112
Notices	113 - 115
Appointment of Additional Governors by Secretary of State	116 - 119
General	120
<b>SCHEDULE 1</b>	
Model Supplemental Agreement for Accelerated Academies	
<b>SCHEDULE 2</b>	
Model Supplemental Agreement for all other Academies	
<b>SCHEDULE 3</b>	
Details of Existing Academies and Existing Funding Agreements	

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

Memorandum and Articles of the Company	Annex A
Arrangements for pupils with SEN and disabilities at each Academy	Annex B
Learning Behaviour policy (including discipline and or arrangements for fixed term and permanent exclusions and appeals against exclusions) for each Academy	Annex C
Schedule of approvals by Secretary of State required in relation to Capital Programme to establish an Academy	Annex D

## INTRODUCTION

- 1) This Master Funding Agreement is made under section 482 of the Education Act 1996, as substituted by the Education Act 2002, between **The Secretary of State for Education and Skills** (the “**Secretary of State**”) and **Harris Federation of South London Schools** (the “**Company**”).
- 2) The Company is a company incorporated in England and Wales, limited by guarantee with registered company number 6228587, and is registered as a charity with charity number 1120150.
- 3) The Company intends to sponsor a number of Academies.
- 4) This Agreement and the Supplemental Agreements will apply in respect of all Academies from such time as a Supplemental Agreement relating to that Academy shall have been entered into between the Secretary of State and the Company and shall be read in conjunction with the Master Side Agreement and the Supplemental Side Agreements.
- 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) “Accounting Officer” – clause 85;
  - b) "annual letter of funding" - clause 78;
  - c) "GAG" – clauses 65-74;
  - d) “Capital Cash Flow Programme” – clause 48;
  - e) “Capital Costs Spreadsheet” – clause 47;
  - f) "Capital Expenditure" - clause 45;
  - g) “Capital Grant” – clause 45;
  - h) "EAG" - clause 75;
  - i) “Financial Handbook” - clause 86;
  - j) "financial year" - clause 80;

- k) "Implementation Grant" – clause 60;
  - l) "Academy Governing Body" – clause 14;
  - m) "Monthly Report" – clause 55) a);
  - n) "NAA" – clause 34;
  - o) "Projected Cost Overrun" – clause 55) a) v);
  - p) "recurrent expenditure" – clause 44;
  - q) "Academy Development Plan" – clause 17;
  - r) "Start-up Period" – clause 71.
- 6) In this Agreement the following words and expressions shall have the following meanings:-

"1996 Act" means the Education Act 1996;

"Academy" – an Academy in respect of which a Supplemental Agreement shall have been entered into between the Secretary of State and the Company and the expression "Academies" shall refer to all or any of such Academies;

"Accelerated Academy" means an Academy which is due to open in September 2007 and any other Academy which the Company and the Secretary of State agree should be an Accelerated Academy;

"Actual Development Expenditure" means (at any time) the amount of Capital Expenditure incurred at that time;

"admission arrangements" – the arrangements described in an annex to the relevant Supplemental Agreement;

"this Agreement" means this agreement and its annexes and a reference in the 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;

“Budgeted Development Expenditure” means (at any time) the amount of Capital Expenditure intended to be incurred at that time in accordance with Annex 3B to the relevant Supplemental Agreement;

“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 Finance Dealings Act 1971.

“Cash Limit” means the amount of the Cash Limit shown in the relevant Supplemental Agreement;

“Company’s Contribution” means the amount of the Company’s Contribution shown in the relevant Supplemental Agreement;

“DfES” means Department for Education and Skills;

“Existing Academies” means the Academies of which particulars are set out in Schedule 3 to this Agreement;

“Existing Funding Agreements” means the funding agreements relating to the Existing Academies of which particulars are set out in Schedule 3 to this Agreement;

“Existing Side Agreements” means agreements supplemental to the Existing Funding Agreements of which particulars are set out in Schedule 3 to this Agreement;

“LA” means the relevant local authority;

“Master Side Agreement” means an agreement of even date between the parties and others to this Agreement relating to additional grants to be given or already given by the Secretary of State in relation to the establishment of Academies;

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

“parents” means parents or guardians;

“persons” includes a body of persons, corporate or incorporate;

“Principal” means the Principal of an Academy;

“project” means the establishment of an Academy;

“Project Board” means the group of persons representing, inter alia, the Company, the relevant LA and the Secretary of State which prior to the opening of the relevant Academy and/or completion of the buildings for the relevant Academy normally meets monthly under the chairmanship of the Company to consider issues arising in connection with the establishment of the Academy;

references to “school” shall where the context so admits be references to the Academy;

“SEN” means Special Educational Needs;

“Supplemental Agreements” means agreements substantially in the form set out in Schedule 1 to this Agreement in relation to an Accelerated Academy or in the form set out in Schedule 2 to this Agreement for all other Academies to be entered into between the Secretary of State and the Company supplemental to this Agreement pursuant to which the Company agrees to sponsor and the Secretary of State agrees to fund, upon the terms and subject to the conditions set out in this Agreement and the relevant Supplemental Agreement, an Academy;

“Supplemental Side Agreements” means agreements to be entered into between the Secretary of State and the Company substantially in the form of the Schedule to the Master Side Agreement relating to additional grants to be given in respect of Academies.

- 7) Expressions defined in this Agreement shall have the same meaning where used in any Annex to this Agreement or Supplemental Agreement.
- 8) The Interpretation Act 1978 shall apply for the interpretation of this Agreement as it applies for the interpretation of an Act of Parliament.
- 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. In resolving any such questions the Secretary of State must act reasonably. For the avoidance of doubt this clause does not prevent the court from reviewing the Secretary of State’s decision in line with the principles of administrative law.
- 10) Section 482 (1) of the 1996 Act as substituted by the Education Act 2002 states that -

"(1) The Secretary of State may enter into an agreement with any person under which-



- a) that person undertakes to establish and maintain, and to carry on or provide for the carrying on of, an independent school in England with the characteristics mentioned in subsection (2), and such other characteristics as are specified in the agreement, and
- b) the Secretary of State agrees to make payments to that person in consideration of those undertakings."

## **LEGAL AGREEMENT**

11) If it is agreed between the Secretary of State and the Company that the Company will sponsor an Academy the parties will enter into a Supplemental Agreement in relation to that Academy.

## **CHARACTERISTICS OF AN ACADEMY**

12) The characteristics of an Academy set down in section 482 (2) of the 1996 Act, as substituted by the Education Act 2002, are that the school

- a) has a broad curriculum with an emphasis on a particular subject area, or particular subject areas, specified in the Agreement, and
- b) provides education for pupils of different abilities and who are wholly or mainly drawn from the area in which the school is situated.

## **CONDITIONS OF GRANT**

### General

13) Section 482(4) of the 1996 Act provides for an agreement to specify other conditions and requirements. Unless specified otherwise in a Supplemental Agreement, these conditions in respect of an Academy are that:

- a) the school will be at the heart of its community, sharing facilities with other schools and the wider community;
- b) there will be assessment in the core subjects of the national curriculum at Key Stage 3, and the opportunity to study for external qualifications as defined by section 96 of the Learning and Skills Act 2000;

- c) the admissions policy and arrangements for the school will be consistent with admissions law, and the DfES Codes of Practice, for maintained schools;
- d) levels of pay and conditions of service for all employees will be the responsibility of the Company;
- e) there will be an emphasis on the needs of the individual pupils including pupils with SEN both those with and without statements of SEN;
- f) there will be no charge in respect of admission to the school and the school will only charge pupils where the law allows maintained schools to charge.

### **Governance**

- 14) Each Academy will be governed by the Company delegating functions as appropriate to a committee of the directors of the Company (the "**Academy Governing Body**") which is appointed by the directors of the Company as a committee in accordance with the Articles. The directors of the Company shall exercise their powers and functions with a view to fulfilling a largely strategic role in the running of the Academy and shall consider any advice given by the Principal and the chief executive officer of the Company. The Company may exercise its powers and fulfil its functions through its servants or agents.
- 15) Subject to the Memorandum and Articles, this Agreement and each Supplemental Agreement, the Company may regulate its own procedure and that of any of its committees.

### **Conduct**

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

### **Academy Development Plan and target setting**

- 17) The Company shall draw up an Academy Development Plan for each Academy each year in accordance with a format and timetable to be advised by the Secretary of State. The Academy Development Plan shall, in particular:
- a) in accordance with a format and timetable to be advised by the Secretary of State, set out plans for ensuring that all pupils are supported to reach the highest standards of which they are capable;
  - b) describe the Company's proposals for each Academy to work with other schools and with the wider community.
- 18) The Company shall in relation to each Academy set such targets in areas to be specified by the Secretary of State each year. When there are students in an Academy to whom the targets apply, the target areas for the initial year shall be:
- a) percentage of pupils achieving five or more GCSEs at grades A\*-C;
  - b) percentage of pupils achieving level 5 or above at Key Stage 3 in English, Maths, Science and ICT;
  - c) percentage of pupils achieving level 4 or above at Key Stage 2 in English and Maths where any Academy has pupils in Years 1 to 6; and
  - d) the average point scores at Key Stage 4 for Approved Qualifications.
- 19) In clause 18, "Approved Qualification" means an external qualification at entry level, level 1 or level 2 (as set out in the Qualifications and Curriculum Authority's National Qualifications Framework and determined by the Qualifications and Curriculum Authority) or as GCE AS level, which is approved under section 98 of the Learning and Skills Act 2000 and which is appropriate for pupils of compulsory school age.
- 20) The Company shall consult the Secretary of State and the LA in whose area the relevant Academy is situated each year before setting the targets referred to above and shall take into account (but not be bound by) any comments received from the Secretary of State and/or the LA. The Company shall set its targets for each Academy in accordance with the timetable for target setting which applies to maintained schools.

## **Pupils**

21) Each Academy will be an all ability and inclusive school. The arrangements for:

- a) the admission of pupils to the Academy will be set out in an annex to the relevant Supplemental Agreement; and
- 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) (including the appointment of a responsible person) are set out in Annex B to this Agreement;

in each case together with the arrangements for making changes to such arrangements, including the requirement to secure the consent of the Secretary of State, such consent not to be unreasonably withheld or delayed. Arrangements for pupil exclusions are set out in Annex C to this Agreement.

## **Teachers and other staff**

22) The Company shall not engage 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 in a maintained school under the Education (Specified Work and Registration) (England) Regulations 2003 (SI 2003/1663).

23) 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.

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

25) Reasonable notice shall be given to the Secretary of State of any meeting of the Directors of the Company or any committee or sub-committee thereof (including any interview or appointments panel), at which the appointment of a person as Principal of any Academy is being considered and a representative of the Secretary of State shall be

entitled to attend and speak at any such meeting whether or not they are also entitled to attend such meeting by virtue of clause 110. Advice given by any such representative shall be taken into account by those persons considering the appointment of the Principal before a decision is made.

26) It shall be the responsibility of the Company to agree levels of pay and conditions of service with its employees, and to determine and employ such numbers of staff as may be appropriate. The Company shall approve policies for:

- a) staffing structure, and staff remuneration
- b) staff discipline and performance management.

27) The Company will:

- (1) use its reasonable endeavours to encourage teachers eligible to do so to register with, and to maintain their registration with, the General Teachers Council;
- (2) not after 1 September 2007 offer to employ as teachers persons eligible to be registered into the General Teachers Council without requiring them as a term of their contracts of employment to register with, and to maintain their registration with, the General Teachers Council; and
- (3) pay or reimburse to the teachers in question the cost of such teachers registering with, and maintaining their registration with, the General Teachers Council.”

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

28) The curriculum provided by each Academy to pupils up to the age of 16 shall be broad and balanced. The specialism for each Academy will be set out in the relevant Supplemental Agreement. In providing its curriculum, the Company shall ensure that:

- a) English, Mathematics, Science and Information and Communication Technology are taught to any pupils in Years 1 to 6 and that the curriculum for these Years is sufficiently broad and has such depth, as to enable pupils to be adequately prepared for study at Key Stage 3 whether at the respective Academy or any other mainstream educational institution, including those institutions not sharing the respective Academy's specialism;
- b) English, Mathematics, Science and Information and Communication Technology are

taught to pupils in Years 7, 8 and 9; and

c) English, Mathematics and Science are taught to pupils in Years 10 and 11;

except that the Company is not required to teach an individual pupil or groups of pupils in one or more subjects where, in the opinion of the principal, it is inappropriate to do so.

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

30) Subject to clause 32 or unless specified otherwise in a Supplemental Agreement provision shall be made for religious education to be given to all pupils at each Academy in accordance with the requirements for agreed syllabuses in section 375(3) of the Education Act 1996 and paragraph 2(5) of Schedule 19 to the School Standards and Framework Act 1998, and having regard to the requirements of the Qualifications and Curriculum Authority's national framework for religious education in schools.

31) Subject to clause 32, or unless specified otherwise in a Supplemental Agreement, each Academy shall comply with the requirements of section 70(1) of, and Schedule 20 to, the Schools 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. Each Academy may apply to the Secretary of State for consent to be relieved of the requirement imposed by paragraph 3(2) of that Schedule, the Secretary of State's consent to such an application not to be unreasonably withheld or delayed.

32) Section 71(1) – (4) of the School Standards and Framework Act 1998 shall apply as if each Academy were a community, foundation or voluntary school, and as if references to "Religious Education" and to "Religious Worship" in that section were references to the religious education and religious worship provided by each Academy in accordance with clauses 30 and 31 respectively.

33) The Company shall have regard to any guidance issued by the Secretary of State on sex and relationship education to ensure that children at each Academy are protected from inappropriate teaching materials and they learn the nature of marriage and its importance for family life and for bringing up children.

### **Assessment**

34) Each Academy will be notified to the National Assessment Agency ("NAA") by the

Secretary of State and the Company shall provide the NAA with such information as the NAA shall require for the purposes of enabling all pupils at each Academy to take part in and report to the NAA and its agencies Key Stage 3, and where any Academy has pupils in Years 1 to 6 assessment Key Stage 1 and 2, assessments in English, Maths and Science (and from 2008, ICT at appropriate stages) and for teacher assessments of pupil's performance in those subjects.

35) In respect of all Key Stages, each Academy will submit to monitoring and moderation of its assessment arrangements and may choose to be monitored either:-

- a) by the LA in whose area the Academy exists, with the consent of that Authority; or
- b) by an agency accredited by the NAA,

but in either event shall notify the Secretary of State of the basis upon which it has chosen to be monitored, or any change to that choice. The NAA will conduct an annual audit of the monitoring arrangements. The Company shall comply with the relevant provisions of the 'Assessment and Reporting Arrangements' as published from time to time by the Qualifications and Curriculum Authority as they apply to maintained schools.

36) The results of any test or assessment conducted in accordance with this clause shall also be reported to the Department and/or the LA as required and as set out in the Assessment and Reporting arrangements, in a format approved by the DfES. The Company may not offer courses at an Academy which lead to external qualifications, as defined in section 96 of the Learning and Skills Act 2000, unless they are either approved under section 98 of that Act, or, in respect of individual pupils, groups of pupils or all pupils in Key Stage 4, the Secretary of State gives specific consent for such courses to be offered.

### **Crisis Management Plan**

37) Before each Academy opens to pupils the Company shall have in place a Crisis Management Plan setting out steps to be taken in the event of an emergency situation at the Academy.

### **School meals**

38) The Company shall, if requested to do so by or on behalf of any pupils at an Academy, provide school lunches for those pupils unless it would be unreasonable for it to do so. Subject to the provisions of clause 40 charges may be levied for lunches.

39) In relation to a pupil who is himself or whose parents are in receipt of benefits mentioned in section 512ZB of the 1996 Act (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.

### **Charging**

40) Sections 402 (Obligation to enter pupils for public examinations), 450 - 457 (charges), 459 (regulations about information about charges and school hours) and 460 (voluntary contributions), 461 (recovery of sums as civil debt) - 462 (Interpretation re charges) of the 1996 Act shall be deemed to apply to each Academy with the following modifications:

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

### **Provision of Information to parents and others**

41) The Company shall publish a prospectus for each Academy annually, shall send it on request (free of charge) to parents of pupils at the Academy and to the Secretary of State; and shall make it available for inspection by other persons at the relevant Academy. The prospectus shall, except in so far as such information is published in a document known as a School Profile (which would accompany or be incorporated in the prospectus), include:

- a) details of admission arrangements;
- b) details of the curriculum offered, of assessment arrangements and of the results of attainment tests and public examinations at school level, but this shall not include details of individual pupils' attainment and examination results;



- c) details of any religious affiliation of the school; policy on providing for children with SEN; arrangements for pupils with disabilities (as specified in an annex to the relevant Supplemental Agreement); pupil absence rates; and destination of school leavers; and
- d) any further information as set out in Schedule 3 of the Education (School Information) (England) Regulations 2002 (SI 2002/2897) as applies to maintained schools.
- e) such other information as the Company may determine.

42) The prospectus referred to above shall be published in the school year immediately preceding the school year to which it relates and shall be published at least six weeks before the closing date for applying for a place.

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

### **General**

- 43) The Secretary of State shall pay grants towards capital and recurrent expenditure of each Academy. Except with the Secretary of State's prior agreement, the Company shall not budget for its expenditure in any year to exceed its expected income. Except in the ordinary course of business 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.
- 44) "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 45. 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**

- 45) "Capital Expenditure" means expenditure on:
- a) the acquisition of land and buildings;
  - b) the erection, enlargement, improvement or demolition of any building including fixed plant, installation, wall, fence or other structure, or any playground or hard standing;

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

46) Before a Supplemental Agreement is entered into between the Secretary of State and the Company in relation to an Academy it will be necessary for the Secretary of State and the Company to agree between them the amount and expected timing of the Capital Expenditure necessary to establish that Academy and in particular to agree the forms of the Annexes to the relevant Supplemental Agreement.

47) Annex 2 to the Supplemental Agreement (the “**Capital Costs Spreadsheet**”) will include Capital Expenditure incurred prior, in the case of the Existing Academies, to the dates of the Existing Funding Agreements applicable to those Academies and, in the case of

other Academies, to the execution of the relevant Supplemental Agreement and the Capital Expenditure to be incurred after execution of that agreement and before the Academy opens. For this purpose an Academy opens on the first day that its pupils attend school at the Academy.

- 48) Annex 3B to the Supplemental Agreement will show the projected cashflow of capital expenditure (the “**Capital Cash Flow Programme**”) by the Company after, in the case of the Existing Academies, the dates of the Existing Funding Agreements applicable to those Academies and, in the case of other Academies, after the date of the relevant Supplemental Agreement.
- 49) Both parties recognise that as projects develop it may be necessary to revise costs in the relevant Capital Cost Spreadsheets and to move costs between spreadsheet elements in order to ensure that the projects remain within their approved budget. Notwithstanding the provisions of this Agreement and the relevant Supplemental Agreements relating to Cash Limits and the allocation of Capital Expenditure to particular Academies, the parties agree that for the purposes of the Academies particulars of which are set out in Part 1 of Schedule 3 to this Agreement and the Academy (“**Harris Boys**”) to be established by the Company in East Dulwich and called “Harris Boys Academy East Dulwich” (the “**Specified Academies**”) there shall be no specific Cash Limit applicable to any of the Specified Academies but instead there shall be an aggregate Cash Limit applicable to all the Specified Academies of the aggregate of (a) £71,790,000 plus (b) any amount agreed by the parties to reflect inflation in the Capital Expenditure proposed to be incurred in connection with Harris Boys and that the Company shall be entitled to utilise the Capital Grants and any additional grants made pursuant to this Agreement, the Relevant Side Agreements, the Master Side Agreement and/or the Relevant Supplemental Agreements for the purposes of Capital Expenditure on any of the Specified Academies. In addition, if the Capital Expenditure incurred in connection with the South Norwood Academy (being one of the Existing Academies) shall be less than the Cash Limit applicable to that Academy (the “**Shortfall**”) the Company will be entitled to utilise the amount of any Capital Grants or additional grants made to the Company in respect of the South Norwood Academy for the purposes of Capital Expenditure to be incurred in relation to the Specified Academies or any of them.
- 50) Where the Company foresees a significant change in the timing of capital expenditure shown in the Capital Cash Flow Programme of over £100,000, a revised Capital Cash Flow Programme must be submitted to the Secretary of State for approval. The Company must ensure that no pattern of spending is allowed to develop which cannot be

contained within the approved capital expenditure limits. The Secretary of State must be informed immediately if any danger of any of the capital costs set out in Capital Costs spreadsheet being exceeded is foreseen so that steps can be taken to rectify the situation and ensure that the project remains within its capital cash limit.

### **Capital Expenditure necessary to establish the Academy**

- 51) The Secretary of State and the Company hereby agree that each Academy will be constructed in accordance with the architect's drawings and specification on materials set out as an annex of the relevant Supplemental Agreement.
- 52) Before a Supplemental Agreement is entered into between the Secretary of State and the Company in relation to an Academy it will be necessary for the Secretary of State and the Company to agree between them the Cash Limit and the amount of the Company's Contribution. The Cash Limit will include Capital Expenditure incurred for the purposes of or in connection with the establishment of the Academy prior to the date of the relevant Supplemental Agreement as shown in the Capital Costs Spreadsheet.
- 53) The Secretary of State and the Company agree that the Secretary of State will bear the Capital Expenditure required to establish each Academy up to an amount equal to the sum of the Cash Limit less the Company's Contribution and the Company will fund (and then bear) the Company's Contribution. If the actual Capital Expenditure required to establish an Academy shall be less than the Cash Limit applicable to that Academy the amount to be borne by the Secretary of State shall be reduced by the amount by which such Capital Expenditure falls below the Cash Limit.
- 54) The arrangements (including timing) for payments for these costs are set out in clause 53 and an annex to the relevant Supplemental Agreement. Payment by the Secretary of State will be dependent on his approval of the matters set out in Annex D to this Agreement.
- 55) a) The Company shall, by the fifth Business Day before each meeting of the Project Board for each Academy, provide to the Secretary of State a copy of a report (the "Monthly Report") setting out in relation to the Academy:
- i) the Actual Development Expenditure as at the end of the calendar month immediately before the date when the Monthly Report is provided to the Secretary of State (the "**relevant month**");
  - ii) the Budgeted Development Expenditure as at the end of the relevant month;

- iii) the amount (if any) by which the Actual Development Expenditure exceeds Budgeted Development Expenditure as at the end of the calendar month;
- iv) a projection, as at the end of the relevant month, of the Capital Expenditure required to establish the Academy;
- v) if the Capital Expenditure shown in such projection is greater than the Cash Limit (the different being a "**Projected Cost Overrun**"), the reason why a Projected Cost Overrun may be incurred.

b) In the event that a Monthly Report shows that a Projected Cost Overrun may be incurred the parties will use their best endeavours to agree ways in which the amount of Capital Expenditure may be reduced, including, if necessary, amendments to the specification for the Academy, so as to keep the Capital Expenditure within the Cash Limit.

56) If the actual Capital Expenditure required to establish an Academy exceeds the Cash Limit applicable to that Academy the additional Capital Expenditure shall be the responsibility of the Company except that the Secretary of State shall (subject to the Company complying with its obligations under clause 55) contribute:

- a) in full any agreed necessary additional Capital Expenditure (such agreement not to be unreasonably withheld or delayed), the need for which could not reasonably have been foreseen by the Company at the time the Cash Limit was set;
- b) such percentage as may be agreed between the parties of any other additional Capital Expenditure which the parties agree should be incurred.

### **Other Capital Expenditure**

57) Any Capital Expenditure incurred in respect of an Academy beyond the Cash Limit applicable to that Academy on which Capital Grant payments are sought from the Secretary of State will require the specific agreement of the Secretary of State, which agreement shall not be unreasonably withheld or delayed. Unless the Company undertakes to meet such Capital Expenditure entirely itself such agreed Capital Expenditure as is incurred will be shared in a proportion to be agreed between the Secretary of State and the Company in relation to, and having regard to the nature of, each such Capital Expenditure. Any agreed Capital Expenditure required in order to meet the requirements of legislation enacted or made, in the case of the Existing Academies, the date of the relevant Existing Agreements and, in the case of other

Academies, after the date of the relevant Supplemental Agreements shall be funded in full by the Secretary of State.

### **Conditions on Capital Grant**

58) Payment of Capital Grant is subject to the fulfilment of the following conditions:

- a) such grants are used to provide accommodation constructed and equipped to standards agreed by the Secretary of State as described in the relevant annex of the relevant Supplemental Agreement, or to defray other 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 of the relevant Academy have been obtained or put in place.

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

59) Capital Grant will be paid monthly by the Secretary of State to the Company on the basis of claims for grant submitted. Each month the Company must submit a claim for Capital Grant to the Secretary of State in the notified format with supporting invoices and certificates as requested by the Secretary of State from time to time. Capital Grant will be paid within 21 days from the day on which a claim is received if the claim is in the proper format, supported by the appropriate documentation and the conditions on its payment set out at clause 58 are complied with. If a dispute arises as to whether a claim is or is not acceptable both parties undertake to attempt to resolve it in good faith. In the event of such a dispute, the Secretary of State shall pay to the Company so much of the claim as shall not be in dispute.

### **Implementation Grant**

60) The Secretary of State shall pay grant (known as "**Implementation Grant**") towards the establishment of each Academy. Implementation Grant covers the recurrent expenditure that the parties agree is necessary to establish and open the relevant Academy.

61) The Company shall prepare and submit to the Secretary of State for approval an Implementation budget showing recurrent costs to be incurred before the Academy opens and for which grant is sought. The approved Implementation budget cashflow will be attached as Annex 3C to the relevant Supplemental Agreement and will show the limits of the recurrent expenditure and the projected cashflow which the parties have

agreed the Company is permitted to incur in order to establish the Academy.

- 62) Both parties recognise that as a project develops it may be necessary to revise individual costs in the implementation budget and to move costs between budget headings in order to ensure that the project remains within its approved budget. Where the Company wishes to make such an adjustment of over £10,000, the reason for the change and a revised implementation budget must be submitted to the Secretary of State for approval.

### **Arrangement for Payment of Implementation Grant**

- 63) The Secretary of State will pay Implementation Grant to the Company on the basis of claims for grant submitted to the Secretary of State in accordance with the approved Implementation Budget and in the notified format with supporting invoices, receipts and documents as required by the Secretary of State. If the grant claim is acceptable the Secretary of State undertakes to pay the amount due within 21 days from the day on which it was received. If a dispute arises over whether a grant claim or part of it is acceptable, both parties undertake to attempt to resolve the dispute in good faith. If the Secretary of State is of the opinion that the claim in question is not within the approved budget and that the claim is unacceptable then he shall notify the Company in writing of the reasons for his opinion. If the dispute has not been resolved by the due date for payment of the claim in question, the Secretary of State shall pay so much of the claim as shall not be in dispute.

- 64) Any amount of approved Implementation Grant in respect of which the expenditure has not been incurred by the Company by the date on which an Academy opens will lapse. Any amount of grant which has been paid but remains unexpended on relevant expenditure by the opening of an Academy will, without prejudice to any other mode of recovery, be taken into account in determining the total amount of grant to be paid to the Company after the Academy has opened. Any amount of Implementation Grant paid which is found to have been used on ineligible expenditure will, without prejudice to any other mode of recovery, be taken into account in determining the total amount of grant to be paid to the Company.

### **General Annual Grant**

- 65(1) GAG will be paid by the Secretary of State to the Company in order to cover the normal running costs of each Academy. These will include, but are not limited to:

- a) teacher 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, administrative and clerical; 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) bank charges;
- f) examination fees;
- g) repairs, servicing and maintenance, including, redecoration, repair and maintenance of buildings (including 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;
- h) insurance;
- i) medical equipment and supplies;
- j) staff development (including in-service training);
- k) curriculum development;
- l) 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 grants will also be paid for pupils with statements of special educational needs);
- m) administration;



n) establishment expenses and other institutional costs.

65(2) Subject to clause 92 GAG paid in respect of each Academy shall only be used for the purposes of the Academy.

66) Subject to clauses 68-72, GAG for each financial year of an Academy will be funded at a level comparable to and as close to equal as possible to the expected level of funding which would be provided through the relevant LA's funding formula for a comparable LA maintained school in the area which the Academy is located and which has the Academy's relevant characteristics, including pupil numbers; plus:

a) LA Holdback: Funding representing a proportion of the LA Education Budget money which the LA would be able to retain, from the non-delegated elements of the Schools Block and the relevant items in the LA Block, if the relevant Academy were a maintained school. The proportion which this funding will represent will be based on the elements of the LA's Section 52 Budget Return which are relevant to the relevant Academy; plus

b) Specialist Schools Allowance: a further sum representing funding which an LA maintained school with the relevant Academy's characteristics would receive in respect of their participation in the DfES specialist schools programme; plus

c) VAT: a sum in respect of the estimated Value Added Tax payable by the Company for each financial year in relation to the normal running costs of the relevant Academy which is not recoverable; the estimate shall be made using the method determined by the Secretary of State after consultation with finance directors of academies; plus

d) Insurance: In the academic year beginning 1 September 2006, insurance costs for each Academy will be reimbursed at actual cost. Thereafter, the Secretary of State will pay grant in respect of insurance costs sufficient to enable the Company to arrange insurance for each Academy of the kind which appears reasonable and necessary, having regard to any reasonable requirements of the Secretary of State as to the level and type of cover.

67) The GAG for each Academy will also include:

a) funding for costs which the Secretary of State agrees (acting reasonably) is necessary for the Academy to incur where such costs are in excess of the costs which a maintained school would incur, including, without limitation, any additional

costs in order for the Company to be a member of the LGPS due to having a small number of employees partaking in the LGPS. Both parties acknowledge that new ways of working are being explored to lessen these costs and if these are successful this element of GAG will reduce or cease accordingly; and

- b) payments in respect of further, specific grants made available to maintained schools, where the Academy meets the requisite conditions and criteria necessary for a maintained school to receive these grants.

68) The basis of the pupil number count for the purposes of determining GAG will initially be the estimate of the Company each November for numbers on roll in the following September. An adjustment will be made to the following year's formula funding element of GAG to recognise any variation (shown by the Schools Census in the January following the September by reference to which the estimate was made) from that estimate which is greater than 2.5%, the additional or clawed-back grant being only that amount relevant to the number of pupils beyond the 2.5% variation.

69) After:

- a) all planned year-groups will be present in an Academy (that is, all the pupil cohorts relevant to the age-range of the Academy will have some pupils present); and
- b) the total number of pupils at the Academy as measured in the Schools Census for the preceding January is 90% or more of the planned final size of the Academy, as stated in the relevant Supplemental Agreement

the basis of the pupil number count will be the Schools Census for the January preceding the financial year in question (preceding September Pupil Count or autumn term Schools Census for pupils in Year 12 and above).

70) For any financial year in which GAG is based on the Schools Census (or the September Pupil Count for sixth form pupils), no adjustment will be made to the formula funding element for actual pupil numbers which are below those used to calculate GAG. Neither will an adjustment normally be made to the formula funding element for actual pupil numbers higher than those used; but an adjustment may be made by the Secretary of State if the Company demonstrates that there has been a significant impact on costs (eg an extra class had been added). For any other element of GAG the Secretary of State may make adjustments to recognise a variation in pupil numbers from that used to calculate the element of grant in question; the basis of

these will be set out in the annual letter of funding.

71) The Secretary of State recognises that:

- a) in relation to Academies which open with intakes representing only a proportion of the final planned size of the Academy, payments based simply upon the number of pupils present are unlikely to be sufficient to meet the Academy's needs in the years before all age groups are present at their planned size (the "**Start-up Period**") because of a lack of economies of scale. The Secretary of State undertakes to pay an appropriately larger GAG in the Start-up Period than would be justified solely on the basis of the methods set out in clauses 66 and 67, in order to enable the Academy to operate effectively. The Company will make a bid to the Secretary of State for this addition to GAG based upon need and providing appropriate supporting evidence;
- b) in relation to Academies which open with pupils transferred from one or more LA-maintained schools which have closed, additional GAG resources will be required to take account of transitional costs including any costs associated with supporting the integration of pupils from the closed schools and, where necessary, to offer a dual curriculum.

72) During the Start-up Period or during the period when year groups are present who have transferred from a predecessor school or schools, the Secretary of State will pay a further element of GAG additional to that calculated in accordance with the methods set out in clauses 66 and 67 to allow the relevant Academy to:

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

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

73) The Secretary of State recognises that if he serves notice of intention to terminate a Supplemental Agreement under that agreement the intake of new pupils during the notice period is likely to decline and that in such circumstances payments based simply upon the number of pupils attending the relevant Academy are unlikely to be sufficient to meet the Academy's needs during the notice period. The Secretary of State

undertakes to pay a reasonable and appropriately larger GAG in the notice period than would be justified solely on the basis of the methods set out in clauses 66 and 67, in order to enable the Academy to operate effectively.

74) 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 Academy or Academies is likely to decline. In these circumstances both parties undertake to attempt to resolve issues arising from such termination in good faith and with the aim of protecting the interests and the education of the pupils at the Academy.

### **Earmarked Annual Grant**

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

76) Where the Company is seeking a specific EAG in relation to any financial year, it shall submit a letter outlining its proposals and the reasons for its request to Academies Division, Sanctuary Buildings, Great Smith Street, London SW1P 3BT by 15 February of the year preceding the financial year in question.

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

77) The Secretary of State shall notify the Company in December preceding the start of each 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 year and of the assumptions and figures on which these are based.

78) The amount of GAG for an Academy financial year will be determined annually by the Secretary of State. The amount of GAG will be notified to the Company in a funding letter not later than 1 April preceding that financial year (the “annual letter of funding”). The annual letter of funding will not include the amount that the Company will receive in respect of grants for which information to enable timely calculation is not available or is incomplete, such grants will be notified as soon as practicable later in the year. Amounts of EAG will be notified to the Company wherever possible in the annual letter of funding or as soon as practicable thereafter.

- 79) If an error in the calculation of GAG or EAG occurs for any year, whether in the calculation or because of erroneous data supplied to the Secretary of State, the Secretary of State reserves the right to correct the calculation and, if appropriate, amend the baseline calculations for GAG in subsequent years. If an underpayment or overpayment has occurred as a consequence of the error, the Secretary of State will consider paying additional grant, and reserves the right to recover overpaid grant, as appropriate having considered all the relevant circumstances including the Company's view as to what would be (1) an appropriate and reasonable level of instalments for the payment or recovery, and (2) an appropriate and reasonable period of time over which payment or recovery should be spread.
- 80) For the purposes of this Agreement, the Academy's financial year shall be deemed to run from September to August, in order to align it to the school academic year. The Secretary of State undertakes to pay GAG in monthly instalments on or before the twenty fifth day of each month, each such instalment to fund the salaries and other payroll costs for the relevant month of all monthly paid employees and all other costs payable during the next following month. The detailed arrangements for payment will be set out in the annual letter of funding.

#### **Other relevant funding**

- 81) Subject to the Company first obtaining the Secretary of State's consent to make the relevant redundancies, which consent shall not be unreasonably withheld or delayed, the Secretary of State shall meet a proportion of the costs arising from the inclusion of Academies in the Schedules to the Redundancy Payments (Continuity of Employment in Local Government) (Modification) Order 1999. The Secretary of State shall meet the costs of the employee's prior eligible service, being service prior to the opening of the Academy, and the Company will meet the costs of service after the opening of the Academy.
- 82) The Secretary of State may meet costs incurred by the Company in connection with the transfer of employees from a predecessor undertaking under the Transfer of Undertakings (Protection of Employment) Regulations 2006. Payment of grant in respect of such costs is to be agreed between the parties on a case by case basis and the Company shall not budget on the basis that it will receive any grant in respect of such costs unless it is specifically notified that such grant will be paid.
- 83) The Company may also receive funding from LAs 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.

- 84) The Company should also receive funding from the LA in whose area it is located, from the Standards Fund. The scheme under which the Standards Fund money is to be distributed by the Secretary of State to LAs and schools will permit LAs to receive grants to Academies in the same way as they can do for maintained schools. The relevant Academy must use any grants received under the Standards Fund in accordance with any conditions specified in relation to that grant. Grants paid to the Company from the Standards Fund are not paid under this Agreement.

### **Financial and Accounting Requirements**

- 85) Finance Director of the Company shall be the Academy's Accounting Officer. The Accounting Officer will be personally responsible to the Company for ensuring regularity and propriety, and for the economic, efficient and effective use of resources (i.e. ensuring value for money), and administration of the financial affairs of the Academy. The Accounting Officer may delegate or appoint others, to assist in carrying out these responsibilities.
- 86) The Company shall in relation to each Academy abide by the provisions within the Financial Handbook published by the DfES as 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.
- 87) The formal budget should take in to account items in the School Development Plan requiring expenditure and must be approved each year by the Directors of the Company.
- 88) 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, namely, that:

- a) in its conduct and operation of the relevant Academy 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) such financial statements are published at the end of each financial year in such form and manner as the Secretary of State may reasonably direct and a copy sent to him by 31 December each year. These statements should carry an audit report stating that, in the opinion of the auditors, the statements show a true and fair view of each Academy's affairs and that the grants were used for the purposes intended;
  - d) the Company prepares and files with the Companies Registry such annual accounts as are required by the Companies Act 1985;
  - e) a statement of the accounting policies used is sent to the Secretary of State with the financial statements;
  - f) 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 the Academy is situated;
  - g) the Company prepares and files with the Charity Commission annual accounts prepared in accordance with the Statement of Recommended Practice;
  - h) the Company shall comply with their obligation under the Charities Act 1993 (or any statutory re-enactment or modification of that Act) with regard to the preparation of an annual report and its transmission to the Charity Commissioners;
  - i) the Company shall ensure that each Academy's accounts are audited annually by independent auditors whose appointment is approved by the Secretary of State.
- 89) In addition, and at his expense, the Secretary of State may instruct any suitably qualified person to report to him on the adequacy and effectiveness of the accounting systems and internal controls maintained by the Company in relation to each Academy and to make recommendations for improving the financial management of each

Academy.

- 90) The books of accounts and all relevant records, files and reports of the Company relating to each Academy including those relating to financial controls, shall be open at all reasonable times to officials of the DfES and the National Audit Office and to contractors retained by the DfES 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.
- 91) The Company shall submit indicative budgets relating to each Academy to the Secretary of State not later than by 15 February before the start of each financial year. Such budgets shall set out clearly the prospective income and expenditure of the relevant Academy and shall differentiate, and give adequate details of:
- a) a statement of expected income for that year including cash donations and gifts in kind from sources other than GAG, EAG and grants from the Secretary of State towards capital expenditure, distinguishing between income from public funds including the national lottery and income from other sources. Income from cash donations and gifts in kind from sources other than GAG, EAG and grants from the Secretary of State towards capital expenditure will not be taken into account by the Secretary of State in the calculation of GAG;
  - b) a statement of proposed recurrent expenditure for that financial year;
  - c) a statement of proposed capital expenditure for that financial year.
- 92) At the beginning of any year the Company may hold unspent GAG from previous years amounting to 12% of the total GAG payable in the year just ended or such higher amount as may from time to time be agreed. This carried forward amount may be used as follows:
- a) equivalent to 2% of the total GAG payable in the year just ended may be used by the Company for any of the purposes for which GAG is paid whether for the purposes of the relevant Academy or for the purposes of any other Academy;
  - b) equivalent to a further 12% of the total GAG payable in the year just ended, or such higher figure as may from time to time be agreed, minus any amount used under sub-clause (a) above, may be used on the upkeep and improvement of premises,



including the costs of equipment and routine repairs and maintenance of the relevant Academy, and on capital expenditure relating to the relevant Academy.

Notwithstanding the foregoing provisions of this clause 92 any additional grant provided over and above that set out in clauses 66 and 67 and made in accordance with clauses 68 and 69 may be carried forward without limitation or deduction until the start up period or the circumstances set out in clauses 71 and 72 come to an end.

- 93) Any savings of GAG not allowed to be carried forward under clause 92 will be taken into account in the payment of subsequent grant.
- 94) The Company may also accumulate funds from private sources or public sources other than grants from the Secretary of State for application to the benefit of the 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.
- 95) The Company shall not, without the prior written consent of the Secretary of State which shall not be unreasonably withheld or delayed:
- a) other than any subsidiary company of the Company, in relation to an Academy and except such as are given in normal contractual relations give any guarantees, indemnities or letters of comfort;
  - b) write off any debts or liabilities owed to it above a value to be set out in the annual letter of funding, nor offer to make any ex gratia payments;
  - c) make any sale or purchase of freehold property; or
  - d) grant or take up any leasehold or tenancy agreement for a term exceeding three years.
- 96) Each discovered loss of an amount exceeding the amount set out in the annual letter of funding, and arising from suspected theft or fraud, shall be reported by the Company to the Secretary of State at the earliest practical opportunity.
- 97) It is the responsibility of the Company to ensure that each Academy balances its budget from year to year.

### **Borrowing Powers**

- 98) The Company shall not operate an overdraft except to cover irregularities in cash flow. Such an overdraft, and the maximum amount to be borrowed, shall require approval in writing of the Secretary of State and shall be subject to any conditions which the Secretary of State may reasonably impose.

### **Disposal of Assets**

- 99) Where the Company acquires assets for a nil consideration or at an under value it shall be treated for the purpose of this Agreement as having incurred expenditure equal to the market value of those assets at the time that they were acquired. This provision shall not apply to assets transferred to the Company at nil or nominal consideration and which were previously used for the purposes of a state funded school or where transferred from an LA, the value of which assets shall be disregarded.
- 100) The sale or disposal by other means 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 £20,000 for the asset; or
  - b) the asset was transferred to the Company from an LA for no or nominal consideration.

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 £1,000,000 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.

- 101) This clause applies in the event, during the currency 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.

- 102) This clause applies in the event, during the currency 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.
- 103) Except with the consent of the Secretary of State, the Company shall not dispose of assets for a consideration less than the best price that can reasonably be obtained, such consent not to be unreasonably withheld or delayed.

## **TERMINATION**

- 104) This Agreement shall commence on the date hereof and continue until terminated in accordance with clause 105 or until all Supplemental Agreements entered into between the Secretary of State and the Company shall have terminated.
- 105) The Secretary of State may at any time by notice in writing terminate this Agreement and each of the Supplemental Agreements forthwith on the occurrence of any of the following events:-
- a) the Company calls a meeting of its creditors (whether formal or informal) or enters into any composition or arrangement (whether formal or informal) with its creditors; or
  - b) the Company proposes a voluntary arrangement within Section 1 of the Insolvency Act 1986; 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 had a receiver (and manager with the exception of Receivers and Managers appointed by the Charity Commission under the Charity Act 1993 or

any subsequent re-enactment of that Act), administrator or administrative receiver appointed over all or any part of its undertakings, assets or income; or

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

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

### **Effect of Termination**

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

## **GENERAL**

### **Information**

- 107) Without prejudice to any other provision of this Agreement, the Secretary of State acting reasonably may from time to time call for information on, inter alia, any Academy's:
- a) curriculum;
  - b) arrangements for the assessment of pupils;
  - c) targets, including those set in accordance with the provisions of clause 31;
  - d) teaching staff including numbers, qualifications, experience, salaries, and teaching loads;
  - e) class sizes;

- f) outreach work with other schools and the local community;
  - g) 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;
  - h) numbers of pupils excluded (including permanent and fixed term exclusions);
  - i) levels of authorised and unauthorised attendance;
  - j) charging and remissions policies and the operation of those policies;
  - k) organisation, operation and building management;
  - l) financial controls; and
  - m) membership and proceedings of the Company and the Academy Governing Body.
- 108) 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.
- 109) Any information of a secret or confidential nature obtained by the Secretary of State or by any officials or advisers or contractors to such person, shall be kept confidential by such persons, as the Secretary of State shall procure, and shall not (except as required by law) be disclosed to any third party (including without limitation any LA) without the prior written approval of the Company, such approval not to be unreasonably withheld or delayed.

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

- 110) The Company shall allow access to the premises of any Academy at any reasonable time to DfES officials. All records, files and reports relating to the running of each Academy shall be available to them at any reasonable time. The Company shall provide the DfES in advance with papers relating to each Academy prepared for meetings of the Academy Governing Body, of the Company's directors and of the members of the Company. The Company need not provide to the DfES any part of these papers which relate to any issues of contention with the Secretary of State or any discussion of bids for funding to the Secretary of State. Two DfES 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.

111) The Company shall ensure that to the extent only that such documents relate to an Academy:

- i) the agenda for every meeting of the relevant Academy Governing Body;
- ii) the draft minutes of every such meeting, if they have been approved by the person acting as chairman of that meeting;
- iii) the signed minutes of every such meeting; and
- iv) any report, document or other paper considered at any such meeting,

which are to be made available for inspection at the relevant Academy by virtue of article 100 of the Articles of Association are, as soon as is reasonably practicable, sent to the DfES.

112) There may be excluded from any item required to be sent to the DfES by virtue of clause 110, any material relating to:

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

## **Notices**

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

effected two Business Days after the same shall have been posted.

- 114) This Agreement may be amended in writing at any time by agreement between the Secretary of State and the Company.
- 115) The service by the Secretary of State of a notice of termination of a Supplemental Agreement shall not prejudice the ability of the Company (if it wishes to do so) during the notice period to admit pupils to the relevant Academy in accordance with the provisions of this Agreement and the relevant Supplemental Agreement and to receive GAG and EAG in respect of them.

### **Appointment of Additional Governors by the Secretary of State**

- 116) If the Secretary of State becomes entitled in accordance with the Articles to appoint Additional Governors (as defined in the Articles) by reference to the particular circumstances of an Academy rather than circumstances pertaining to all or substantially all Academies or the affairs of the Company generally, the Company will:
- a) replace such members of the Academy Governing Body of the relevant Academy as shall have been appointed by the Governors in accordance with article 78(f) of the Articles and/or appoint additional members of the Academy Governing Body as, in either case, the Secretary of State may by notice in writing specifying the persons so to be appointed to the Company require, provided that at least one of the members of the Academy Governing Body is also a Governor (as defined in the Articles); and
  - b) upon the replacement or appointment, as the case may be, of the members of the Relevant Academy Governing Body, delegate to the relevant Academy Governing Body all such powers as may be necessary to ensure that the Relevant Academy Governing Body is capable of properly conducting the affairs of the Academy on the Company's behalf.
- 117) Notwithstanding the delegation referred to in clause 116 the relevant Academy Governing Body will report to the Governors of the Company upon all decisions taken by the Academy Governing Body at such intervals as the Company may reasonably require, following reasonable notice from the Company of its reporting requirements.
- 118) The Company may at any time revoke the delegation of powers referred to in clause 116 by notice in writing to the members of the relevant Academy Governing Body. A copy of any such notice will also be sent to the Secretary of State.

119) The Secretary of State undertakes to the Company not to exercise the powers under the Articles to appoint Additional Governors unless:-

- a) the Company fails to comply with its obligations under clause 116; or
- b) if, such powers having been delegated to the Academy Governing Body in accordance with clause 116, such delegation is subsequently revoked or, without the prior written consent of the Secretary of State, varied in any material respect; or
- c) in the Secretary of State’s opinion the circumstances pertain to all or substantially all the Academies or the affairs of the Company generally.

**General**

120) The Secretary of State and the Company recognise the difficulties in catering in this Agreement and the Supplemental Agreements for all the circumstances which may arise in relation to the Academies and undertake in good faith to conduct such consultations as may from time to time be desirable in order to promote the interests of the Academies throughout the currency of this Agreement.

This Agreement was signed on 2007

SIGNED on behalf of Harris Federation of South

London Schools by : .....

**Director**

SIGNED on behalf of the Secretary of State by : .....

**Duly Authorised**



**SCHEDULE 1**

**MODEL SUPPLEMENTAL AGREEMENT FOR ACCELERATED ACADEMIES**

**THIS AGREEMENT** made 200[●]

**BETWEEN**

(1) **THE SECRETARY OF STATE FOR EDUCATION AND SKILLS**; [and]

(2) **HARRIS FEDERATION OF SOUTH LONDON SCHOOLS** [and]

*[in the case of Existing Academies only]*

(3) **[name and particulars of company which entered into the relevant Existing Funding Agreement]**

**IS SUPPLEMENTAL TO THE MASTER FUNDING AGREEMENT** made between The Secretary of State for Education and Skills and Harris Federation of South London Schools and dated ● 2007 (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” the [●] Academy [to be] established at [●].

“Chief Inspector” means H.M. Chief Inspector of Schools in England or his successor from time to time;

“EA 2005” means the Education Act 2005; and

“Minimum Period” means a period determined according to the following table:

If at the time the Special Measures Notice is given the Academy shall have been opened for:	The Minimum Period will be
---	----------------------------

Less than 12 months	36 months
Less than 24 months but 12 months or more	24 months
24 months or more	12 months

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 sponsor the Academy.

2.2 The specialism of the Academy will be [●].

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

2.4 The Academy [is intended to open] [opened] on 1 September ●.

## 3 **CAPITAL EXPENDITURE**

3.1 Clauses 47 to 57 (inclusive) of the Master Agreement shall not apply to the Academy and the terms of this clause 3 shall apply in their place.

3.2 The Company and the Secretary of State have agreed that the amount of expenditure necessary to provide for the refurbishment and the costs of establishing the Academy is £● million (the "Cash Limit").

3.3 The Secretary of State will bear £[●] of the Cash Limit and the Company will bear £[●] of the Cash Limit (the "Company's Contribution"). [*for Existing Academies only*]: For this purpose any capital expenditure incurred by [*name of existing company*] in relation to the Academy shall be treated as borne and paid by the Company.]

3.4 The Academy opens on the first day that its pupils attend school at the Academy. In addition, the Company and the Secretary of State have agreed that it is necessary to incur capital expenditure for the undertaking of minor capital works to facilitate the opening of the Academy (Pre-Opening Works). The parties agree that:

3.4.1. the cost of the Pre-Opening Works will not exceed ● ("**Pre-Opening Works Costs**");

- 3.4.2. the Secretary of State will bear the Pre-Opening Works Costs;
  - 3.4.3. no Pre-Opening Works Costs will be incurred after the opening of the Academy;
  - 3.4.4. no Pre-Opening Works Costs will be incurred without the consent of the Secretary of State;
  - 3.4.5. any unauthorised expenditure in contravention of clauses 3.4.1 to 3.4.5 above, will be borne entirely by the Company;
  - 3.4.6. the Company must submit a claim for payments for Pre-Opening Works to the Secretary of State in the notified format with supporting invoices and certificates as requested by the Secretary of State from time to time. Payments for Pre-Opening Works Costs will be paid within 21 days from the day on which a claim for payment is received if the claim is in the proper format, supported by the appropriate documentation and the conditions of this clause 3.4.6 have been met. If a dispute arises as to whether a payment is acceptable or not both parties undertake to attempt to resolve it in good faith;
  - 3.4.7. the Cash Limit does not include any Pre-Opening Works Costs;
  - 3.4.8. the expenditure for Pre-Opening Works Costs is not subject to the provisions of clause 3.5-3.9 below.
- 3.5 The Academy is planned to open in September 200● and it has not been practicable for the Company and the Secretary of State to agree, prior to the making of this Agreement, the various detailed matters in respect of which expenditure is to be incurred up to the amount of the Cash Limit, including:
- 3.5.1. the detailed Capital Cost Spreadsheet (a pro-forma of which is set out in Annex 2), showing the limit of the capital costs that may be incurred in order to provide for the refurbishment and capital development of the Academy;
  - 3.5.2. the Capital Cash Flow Programme (a pro-forma of which is set out in Annex 3B) showing the projected cash flow of capital expenditure by the Company after the execution of this Agreement;

3.5.3. the arrangements for payments (including the timing) of the capital expenditure (a pro-forma of which is set out in Annex 3C);

3.5.4. the architect's drawings and material specifications for the construction/refurbishment of the Academy.

Accordingly, the parties agree to negotiate with a view to reaching agreement on such matters as soon as practicable and in any event not later than [*cut off date*]. The documents referred to in clauses 3.5.1 to 3.5.3 above will be in the form of the pro-forma documents set out in Annexes 2, 3B and 3C or as near thereto as circumstances permit and the parties agreement of such documents shall be recorded in writing.

3.6 Both parties recognise that as the project develops it may be necessary to review costs in the Capital Cost Spreadsheet, once agreed in accordance with clause 3.5, and to move costs between spreadsheet elements in order to ensure that the project remains within its approved budget. Where the Company wishes to make such adjustments of over £10,000, it must submit the requested adjustment with the reasons for it to the Secretary of State for approval.

3.7 Where the Company foresees a significant change in the timing of Capital Expenditure, that is a change to the figures of over £100,000 in the Capital Cash Flow Programme, once agreed in accordance with clause 3.5, a revised Capital Cash Flow Programme must be submitted to the Secretary of State for approval.

3.8 The Secretary of State and the Company hereby agree that:

3.8.1. The Company must ensure that no pattern of spending is allowed to develop which cannot be contained within the approved capital expenditure limits. The Secretary of State must be informed immediately if any danger of any of the capital costs, once agreed in accordance with clause 3.5, being exceeded is foreseen so that steps can be taken to rectify the situation and ensure that the project remains within its capital cash limit.

3.8.2. If the costs finally incurred for the purposes set out in clause 3.5 above are less than the Cash Limit, the costs borne by the Secretary of State shall be reduced accordingly and the Company shall pay the same amount as indicated in clause 3.2.

- 3.8.3. If at any stage it appears that the costs incurred for the purposes set out in clause 3.5 are likely to exceed the Cash Limit, the parties to the Agreement shall urgently consider how to reduce those costs, if necessary by amending the specification of the Academy.
- 3.8.4. If the costs incurred for the purposes set out in clause 3.5 exceed the Cash Limit the Secretary of State shall bear the cost of any necessary additional costs the need for which could not reasonably have been foreseen at the time the Cash Limit was set.
- 3.8.5. If the parties agree that additional capital expenditure to establish the Academy, other than that specified in clause 3.5 may be incurred then the parties shall divide such additional costs between them in such proportions as may be agreed between them. No such additional expenditure is to be incurred without prior agreement in writing between the parties.
- 3.9 Any capital expenditure during the life of this Agreement beyond the Cash Limit on which grant payments are sought from the Secretary of State will require the specific agreement of the Secretary of State. Such consent shall not be unreasonably withheld or delayed. Unless the Company undertakes to meet such capital costs entirely itself such approved costs as are incurred will be shared in a proportion to be agreed between the Secretary of State and the Company in relation to, and having regard to the nature of, each such capital project.

#### **4 IMPLEMENTATION GRANT**

The Secretary of State agrees to pay Implementation Grant to the Company in accordance with Annex 3C to this Agreement (when agreed in accordance with clause 3.5).

#### **5 GAG AND EAG**

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

#### **6 TERMINATION OF THIS AGREEMENT**

- 6.1 Either party may give not less than seven years' written notice to terminate this Agreement, such notice to expire on 31 August ● or any subsequent anniversary of that date.

- 6.2 The Secretary of State may at any time after [cut off date] terminate this Agreement immediately by notice in writing to the Company if the Company and the Secretary of State do not on or before [cut off date] reach agreement on funding the establishment of the Academy as provided for in clause 3.5.
- 6.3 If the Secretary of State is of the opinion that the Academy no longer has the characteristics set out in clause 12 of the Master Agreement or that the conditions and requirements set out in clauses 12 and 13 of the Master Agreement are not being met, or that the Company is otherwise in material breach of the provisions of this Agreement or the Master Agreement, the Secretary of State may give notice of his provisional intention to terminate this Agreement.
- 6.4 Any such notice shall be in writing and shall:
- 6.4.1. state the grounds on which the Secretary of State considers the Academy no longer has the characteristics set out in clause 12 of the Master Agreement or is not meeting the conditions and requirements of clauses 12 and 13 of the Master Agreement or the Company is otherwise in material breach of the provisions of this Agreement or the Master Agreement;
  - 6.4.2. specify the measures needed to remedy the situation or breach;
  - 6.4.3. specify a reasonable date by which these measures are to be implemented;  
and
  - 6.4.4. state the form in which the Company is to provide its response and a reasonable date by which it must be provided.
- 6.5 If no response is received by the date specified in accordance with clause 6.4, the Secretary of State may give the Company 12 months, or such lesser period as he considers appropriate in the circumstances, written notice to terminate this Agreement.
- 6.6 If a response is received by the date specified in accordance with clause 6.4, the Secretary of State shall consider it, and any representations made by the Company, and shall, within three months of its receipt, indicate that:
- 6.6.1. he is content with the response and/or that the measures which he specified are being implemented; or

- 6.6.2. he is content, subject to any further measures he reasonably specifies being implemented by a specified date or any evidence he requires that implementation of such measures have been successfully completed; or
- 6.6.3. he is not satisfied, that he does not believe that he can be reasonably satisfied, and that he will proceed to terminate the Agreement.
- 6.7 In the circumstances of clause 6.6 the Secretary of State shall notify the Company why he believes that he cannot be reasonably satisfied and, if so requested by the Company within thirty days from such notification, he shall meet a deputation including representatives from directors of the Company and the Academy Governing Body to discuss his concerns. If following such meeting he has good reasons for remaining satisfied that the Academy does not and will not have the characteristics set out in clause 12 of the Master Agreement or does not and will not meet the conditions and requirements set out in clauses 12 and 13 of the Master Agreement or the Company is in material breach of the provisions of this Agreement or the Master Agreement and such breach will not be remedied to his reasonable satisfaction, he shall give the Company twelve months written notice to terminate this Agreement.
- 6.8 If the Secretary of State has cause to serve a notice on the Company under section 165 of the Education Act 2002 and a determination (from which all rights of appeal have been exhausted) has been made that the Academy shall be struck off the Register of Independent Schools, the period of twelve months' notice referred to in clause 6.6 may be shortened to a period deemed appropriate by the Secretary of State.
- 6.9 The Secretary of State will, by not later than the end of December each 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 financial year (the "**Indicative Funding**"). If the Company is of the opinion that, after receipt of the Indicative Funding for the next following 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 89 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 financial year.

6.10 Any notice given by the Company under clause 6.9 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 6.8 above, within six weeks after the Secretary of State shall have done so. The notice must specify:

6.10.1. 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

6.10.2. 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

6.10.3. a detailed budget of income and expenditure for the Academy during the Critical Year (the "**Projected Budget**").

6.11 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.

6.12 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.

- 6.13 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.
- 6.14 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.
- 6.15 If the Company shall have given notice to terminate the Agreement under clause 6.14, the Secretary of State may by notice in writing to the Company appoint up to two persons as directors of the Company. The right to nominate additional directors shall be without prejudice to the right of the Secretary of State to appoint Additional Directors under article 42 of the Articles if the conditions in Article 40 of the Articles are, or become, satisfied.
- 6.16 The Secretary of State may at any time by notice in writing terminate this Agreement forthwith if the Academy has ceased (except where such cessation occurs temporarily by reason of an event beyond the reasonable control of the Company) to operate as an Academy within the meaning of Section 482 of the Education Act 1996.
- 6.17 If:

- 6.17.1. the Chief Inspector shall have given a notice to the Company in accordance with s13(3) Education Act 2005 (the “Special Measures Notice”) stating that in his opinion special measures are required to be taken in relation to the Academy; and
- 6.17.2. not less than the Minimum Period after the Special Measures Notice, the Chief Inspector shall have carried out a subsequent inspection of the Academy in accordance with the EA 2005 and shall have made a report in accordance with the EA 2005 stating that the Academy has made inadequate progress since the date of the Special Measures Notice; and
- 6.17.3. the Secretary of State shall have requested the Company to deliver within 10 Business Days a written statement (a “Further Action Statement”) of the action the Company proposes to take, and the period within which it proposes to take such action, or, if it does not propose to take any action, the reasons for not doing so; and
- 6.17.4. the Secretary of State, having considered the Further Action Statement, is not satisfied that any action proposed to be taken by the Company is sufficient in all the circumstances, or, if no Further Action Statement shall have been given to the Secretary of State within the requested timeframe or otherwise,

the Secretary of State may by notice in writing to the Company terminate this Agreement forthwith in which case, for the avoidance of doubt, the provisions of clauses 7.2 and 7.3 shall apply.

## **7 EFFECT OF TERMINATION OF THIS AGREEMENT**

- 7.1 In the event of termination of this Agreement however occurring the school shall cease to be an Academy within the meaning of Section 482 of the Education Act 1996.
- 7.2 If the Secretary of State terminates this Agreement for reasons other than that the Academy no longer has the characteristics set out in clause 12 of the Master Agreement, or is no longer meeting the conditions and requirements set out in clauses 12 and 13 of the Master Agreement that the Company is otherwise in material breach of the provisions of this Agreement or the Master Agreement, the Secretary of State shall indemnify the Company.

- 7.3 The amount of any such indemnity shall be determined by the Secretary of State having regard to any representations made to him by the Company, and shall be paid at such times and in such manner as the Secretary of State may reasonably think fit.
- 7.4 The amounts and categories of expenditure incurred by the Company in consequence of the termination of the Agreement in respect of which the Secretary of State shall indemnify the Company include (but not by way of limitation), staff compensation and redundancy payments, compensation payments in respect of broken contracts, expenses of disposing of assets or adapting them for other purposes, legal and other professional fees, and dissolution expenses.
- 7.5 On the termination of this Agreement however occurring the Company shall repay to the Secretary of State a sum in respect of the Capital Grant made under clause 3.
- 7.6 The amount to be repaid to the Secretary of State in accordance with clause 7.5 shall be determined in accordance with sub-clauses 7.6.1 or 7.6.2 as appropriate.
- 7.6.1. Where the Company retains the site and buildings of the Academy the amount to be repaid to the Secretary of State shall be a percentage of the value of the assets belonging to the Company at the date of termination which were purchased wholly or in part with capital grants paid under this agreement. Such percentage to be the same as the percentage of the capital contribution made by the Secretary of State to the original cost of those assets, whether that contribution was made on the establishment of the Academy or later;
- 7.6.2. Where the Company disposes of the site and buildings of the Academy the amount to be repaid to the Secretary of State shall be a percentage of the net proceeds of the realisation of the assets belonging to the Company at the date of termination, which were purchased wholly or in part with capital grants paid under this agreement. 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 than contribution was made on the establishment of the Academy or later.
- 7.7 The Secretary of State may waive in whole or in part the repayment due under clause 7.6 if:

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

7.7.2. The Secretary of State directs all or part of the repayment to be paid to the LA.

7.8 If any land or premises of the Academy were acquired by the Company from an LA by a scheme under Schedule 35A of the 1996 Act or otherwise at less than the market value of the land at the date of acquisition, and the Secretary of State does not make a scheme as provided for in Schedule 35A (Paragraph 8) of the 1996 Act , the Company may dispose of its interest in that land or premises but only with the consent of the Secretary of State, who shall have regard to any representations from the Company and the LA from which the land was transferred before giving or withholding that consent.

*[in the case of Existing Academies only*

**8 TERMINATION OF EXISTING FUNDING AGREEMENT**

The Existing Funding Agreement in respect of the Academy shall cease to have any further force and effect after 31 August 2007 (without prejudice to the rights of either party thereto in respect of any antecedent breach of the Existing Funding Agreement in respect of the Academy).]

**9 ANNEXES**

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

**10 THE MASTER AGREEMENT**

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

**11 ENGLISH LAW**

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

**ANNEXES TO THIS SUPPLEMENTAL AGREEMENT**

Arrangements for Admission for pupils at the Academy	Annex 1
Pro-forma Capital Costs Spreadsheet	Annex 2

Capital expenditure incurred for the purposes of or in connection with the establishment of the Academy prior to the date of this agreement	Annex 3A
Pro-forma Capital Cashflow Programme (for monthly Capital expenditure during the Academy's Implementation phase)	Annex 3B
Pro-forma Implementation phase cashflow programme	Annex 3C

**SCHEDULE 2**

**MODEL SUPPLEMENTAL AGREEMENT FOR ALL OTHER ACADEMIES**

**THIS AGREEMENT** made 200[●]

**BETWEEN**

(1) **THE SECRETARY OF STATE FOR EDUCATION AND SKILLS**; [and]

(2) **HARRIS FEDERATION OF SOUTH LONDON SCHOOLS** [and]

**[in the case of Existing Academies only]**

(3) **[name and particulars of company which entered into the Relevant Existing Funding Agreement]**

**IS SUPPLEMENTAL TO THE MASTER FUNDING AGREEMENT** made between The Secretary of State for Education and Skills and Harris Federation of South London Schools and dated ● 2006 (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” the [●] Academy [to be] established at [●].

“Chief Inspector” means H.M. Chief Inspector of Schools in England or his successor from time to time;

“EA 2005” means the Education Act 2005; and

“Minimum Period” means a period determined according to the following table:

If at the time the Special Measures Notice is given the Academy shall have been opened for:	The Minimum Period will be
---	----------------------------

Less than 12 months	36 months
Less than 24 months but 12 months or more	24 months
24 months or more	12 months

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 sponsor the Academy.

2.2 The specialism of the Academy will be [●].

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

2.4 The Academy [is intended to open] [opened] on 1 September ●.

## 3 **CAPITAL EXPENDITURE**

3.1 The Cash Limit will be £●.

3.2 The Company's Contribution will be £●. [*For existing academies only: Capital Expenditure incurred by [existing company] in relation to the Academy will be treated as part of the Company's contribution.*]

3.3 The Capital Costs Spreadsheet is annexed to this Agreement as Annex 2.

3.4 The Capital Cashflow Programme is attached to this Agreement as Annex 3B.

3.5 Payment of Capital Grant is conditional upon the approval by the Secretary of State of the matters set out in Capital Cashflow Programme.

3.6 The Secretary of State agrees to pay Capital Grant to the Company in accordance with the Master Agreement and this Agreement.

## 4 **IMPLEMENTATION GRANT**

The Secretary of State agrees to pay Implementation Grant to the Company in accordance with Annex 3C to this Agreement.

5 **GAG AND EAG**

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

6 **TERMINATION OF THIS AGREEMENT**

6.1 Either party may give not less than seven years' written notice to terminate this Agreement, such notice to expire on 31 August ● or any subsequent anniversary of that date.

6.2 If the Secretary of State is of the opinion that the Academy no longer has the characteristics set out in clause 12 of the Master Agreement or that the conditions and requirements set out in clauses 12 and 13 of the Master Agreement are not being met, or that the Company is otherwise in material breach of the provisions of this Agreement or the Master Agreement, the Secretary of State may give notice of his provisional intention to terminate this Agreement.

6.3 Any such notice shall be in writing and shall:

6.3.1. state the grounds on which the Secretary of State considers the Academy no longer has the characteristics set out in clause 12 of the Master Agreement or is not meeting the conditions and requirements of clauses 12 and 13 of the Master Agreement or the Company is otherwise in material breach of the provisions of this Agreement or the Master Agreement;

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

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

6.3.4. state the form in which the Company is to provide its response and a reasonable date by which it must be provided.

6.4 If no response is received by the date specified in accordance with clause 6.3, the Secretary of State may give the Company 12 months, or such lesser period as he considers appropriate in the circumstances, written notice to terminate this Agreement.



- 6.5 If a response is received by the date specified in accordance with clause 6.3, the Secretary of State shall consider it, and any representations made by the Company, and shall, within three months of its receipt, indicate that:
- 6.5.1. he is content with the response and/or that the measures which he specified are being implemented; or
  - 6.5.2. he is content, subject to any further measures he reasonably specifies being implemented by a specified date or any evidence he requires that implementation of such measures have been successfully completed; or
  - 6.5.3. he is not satisfied, that he does not believe that he can be reasonably satisfied, and that he will proceed to terminate the Agreement.
- 6.6 In the circumstances of clause 6.5 the Secretary of State shall notify the Company why he believes that he cannot be reasonably satisfied and, if so requested by the Company within thirty days from such notification, he shall meet a deputation including representatives from directors of the Company and the Academy Governing Body to discuss his concerns. If following such meeting he has good reasons for remaining satisfied that the Academy does not and will not have the characteristics set out in clause 12 of the Master Agreement or does not and will not meet the conditions and requirements set out in clauses 12 and 13 of the Master Agreement or the Company is in material breach of the provisions of this Agreement or the Master Agreement and such breach will not be remedied to his reasonable satisfaction, he shall give the Company twelve months written notice to terminate this Agreement.
- 6.7 If the Secretary of State has cause to serve a notice on the Company under section 165 of the Education Act 2002 and a determination (from which all rights of appeal have been exhausted) has been made that the Academy shall be struck off the Register of Independent Schools, the period of twelve months notice referred to in clause 6.6 may be shortened to a period deemed appropriate by the Secretary of State.
- 6.8 The Secretary of State will, by not later than the end of December each 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 financial year (the “**Indicative Funding**”). If the Company is of the opinion that, after receipt of the Indicative Funding for the next following 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 89 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 financial year.

6.9 Any notice given by the Company under clause 6.8 shall be in writing and shall be served on the Secretary of State not later than 28 February preceding the Critical Year or, if the Secretary of State shall not have given notice of the Indicative Funding to the Company on or before the date specified in clause 6.8 above, within six weeks after the Secretary of State shall have done so. The notice must specify:

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

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

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

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

6.11 If no agreement is reached by 30 April (or such other date as may be agreed between the parties) as to whether the cost of running the Academy during the

Critical Year on the basis of the Indicative Funding and All Other Resources would cause the Company to become insolvent, then that question shall be referred to an independent expert (the “**Expert**”) for resolution. The Expert’s determination shall be final and binding on both parties. The Expert shall be requested to specify in his determination the amount of the shortfall in funding (the “**Shortfall**”). The Expert shall be an insolvency practitioner with significant professional experience of educational institutions or academies. If the parties fail to agree upon the appointment of the Expert then the Expert shall be appointed by the President for the time being of the Institute of Chartered Accountants in England and Wales. The Expert’s fees shall be borne equally between the parties.

- 6.12 The Expert shall be required in reaching his determination to take account of advice from an educational specialist who is professionally familiar with the issues arising from the budget management of large schools. If the parties fail to agree upon the appointment of the educational specialist then the educational specialist shall be appointed by the Chairman for the time being of the Specialist Schools and Academies Trust. The educational specialist’s fees shall be borne equally between the parties.
- 6.13 If the Expert determines that the cost of running the Academy during the Critical Year would cause the Company, on the basis of the Indicative Funding and All Other Resources, to become insolvent, and the Secretary of State shall not have agreed to provide sufficient additional funding to cover the Shortfall, then the Company shall be entitled to terminate this Agreement, by notice expiring on 31 August prior to the Critical Year. Any such notice shall be given within 21 days after (a) the Expert’s determination shall have been given to the parties or (b), if later, the Secretary of State shall have given written notice of his refusal to provide sufficient additional funding for the Academy to cover the Shortfall.
- 6.14 If the Company shall have given notice to terminate the Agreement under 6.13, the Secretary of State may by notice in writing to the Company appoint up to two persons as directors of the Company. The right to appoint additional directors shall be without prejudice to the right of the Secretary of State to appoint Additional Directors under article 42 of the Articles if the provisions of Article 40 of the Articles are, or become, satisfied.
- 6.15 The Secretary of State may at any time by notice in writing terminate this Agreement forthwith if the Academy has ceased (except where such cessation occurs

temporarily by reason of an event beyond the reasonable control of the Company) to operate as an Academy within the meaning of Section 482 of the Education Act 1996.

6.16 If:

6.16.1. the Chief Inspector shall have given a notice to the Company in accordance with s13(3) Education Act 2005 (the "Special Measures Notice") stating that in his opinion special measures are required to be taken in relation to the Academy; and

6.16.2. not less than the Minimum Period after the Special Measures Notice, the Chief Inspector shall have carried out a subsequent inspection of the Academy in accordance with the EA 2005 and shall have made a report in accordance with the EA 2005 stating that the Academy has made inadequate progress since the date of the Special Measures Notice; and

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

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

the Secretary of State may by notice in writing to the Company terminate this Agreement forthwith in which case, for the avoidance of doubt, the provisions of clauses 7.2 and 7.3 shall apply.

## **7 EFFECT OF TERMINATION OF THIS AGREEMENT**

7.1 In the event of termination of this Agreement however occurring the school shall cease to be an Academy within the meaning of Section 482 of the Education Act 1996.

- 7.2 If the Secretary of State terminates this Agreement for reasons other than that the Academy no longer has the characteristics set out in clause 12 of the Master Agreement, or is no longer meeting the conditions and requirements set out in clauses 12 and 13 of the Master Agreement that the Company is otherwise in material breach of the provisions of this Agreement or the Master Agreement, the Secretary of State shall indemnify the Company.
- 7.3 The amount of any such indemnity shall be determined by the Secretary of State having regard to any representations made to him by the Company, and shall be paid at such times and in such manner as the Secretary of State may reasonably think fit.
- 7.4 The amounts and categories of expenditure incurred by the Company in consequence of the termination of the Agreement in respect of which the Secretary of State shall indemnify the Company include (but not by way of limitation), staff compensation and redundancy payments, compensation payments in respect of broken contracts, expenses of disposing of assets or adapting them for other purposes, legal and other professional fees, and dissolution expenses.
- 7.5 On the termination of this Agreement however occurring the Company shall repay to the Secretary of State a sum in respect of the Capital Grant made under clause 3.
- 7.6 The amount to be repaid to the Secretary of State in accordance with clause 7.5 shall be determined in accordance with sub-clauses 7.6.1 or 7.6.2 as appropriate.
- 7.6.1. Where the Company retains the site and buildings of the Academy the amount to be repaid to the Secretary of State shall be a percentage of the value of the assets belonging to the Company at the date of termination which were purchased wholly or in part with capital grants paid under this agreement. Such percentage to be the same as the percentage of the capital contribution made by the Secretary of State to the original cost of those assets, whether that contribution was made on the establishment of the Academy or later;
- 7.6.2. Where the Company disposes of the site and buildings of the Academy the amount to be repaid to the Secretary of State shall be a percentage of the net proceeds of the realisation of the assets belonging to the Company at the date of termination, which were purchased wholly or in part with capital grants paid under this agreement. 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 than contribution was made on the establishment of the Academy or later.

7.7 The Secretary of State may waive in whole or in part the repayment due under clause 7.6 if:

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

7.7.2. The Secretary of State directs all or part of the repayment to be paid to the LA.

7.8 If any land or premises of the Academy were acquired by the Company from an LA by a scheme under Schedule 35A of the 1996 Act or otherwise at less than the market value of the land at the date of acquisition, and the Secretary of State does not make a scheme as provided for in Schedule 35A (Paragraph 8) of the 1996 Act , the Company may dispose of its interest in that land or premises but only with the consent of the Secretary of State, who shall have regard to any representations from the Company and the LA from which the land was transferred before giving or withholding that consent.

***[in the case of Existing Academies only***

**8 TERMINATION OF EXISTING FUNDING AGREEMENT**

The Existing Funding Agreement in respect of the Academy shall cease to have any further force and effect after 31 August 2007 (without prejudice to the rights of either party thereto in respect of any antecedent breach of the Existing Funding Agreement in respect of the Academy).]

**9 ANNEXES**

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

**10 THE MASTER AGREEMENT**

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

**11 ENGLISH LAW**

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

9.2 The parties do not intend that any term of this Agreement shall be enforceable solely by virtue of the Contracts (Rights of Third Parties) Act 1999 by any person who is not a party to this Agreement.

This Agreement was executed as a Deed on 1 July 2012

Executed on behalf of by:

Donnel Mof  
Director

In the presence of:

Randall

Witness... CHRISTOPHER JOHN RANDALL

Address



Occupation... PROJECT DIRECTOR

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

Christopher John Randall

Duly Authorised



101247/9/3316288-v0.1

### **SCHEDULE 3**

#### **Part 1**

<b><u>Existing Academies</u></b>	<b><u>Existing Funding Agreements</u></b>	<b><u>Existing Side Agreements</u></b>
Harris Academy Bermondsey	Dated 31 July 2006 between the Secretary of State and Harris Academy Bermondsey	Dated 31 July 2006 between the Secretary of State and Harris Academy Bermondsey
Harris Girls' Academy East Dulwich	Dated 31 August 2006 between the Secretary of State and Harris Girls' Academy East Dulwich	Dated 31 August 2006 between the Secretary of State and Harris Girls' Academy East Dulwich
Harris City Technology College (to be renamed Harris City Academy Crystal Palace)	Dated 2 October 1990 between the Secretary of State and Harris City Technology College (as amended)	-
Harris Academy Merton	Dated 31 July 2006 between the Secretary of State and Harris Academy Merton	Dated 7 August 2006 between the Secretary of State and Harris Academy Merton

#### **Part 2**

Harris Academy South Norwood	Dated 30 March 2005 between the Secretary of State and Harris Academy South Norwood (under its then name The Harris Academy at Stanley) (as amended)	Dated 18 March 2005 between the Secretary of State and Harris Academy South Norwood (under its then name Harris Academy at Stanley)
The Academy at Peckham (to be called Harris Academy Peckham)	Dated 12 August 2002 between the Secretary of State and The Academy at Peckham	-



## **ANNEXES TO THIS SUPPLEMENTAL AGREEMENT**

Arrangements for Admission for pupils at the Academy	Annex 1
Capital Costs Spreadsheet	Annex 2
Capital expenditure incurred for the purposes of or in connection with the establishment of the Academy prior to the date of this agreement	Annex 3A
Capital Cashflow Programme (for monthly capital expenditure during the Academy's Implementation phase)	Annex 3B
Implementation phase cashflow programme	Annex 3C
Architects drawings/specification of the new build as proposed up to RIBA Stage D	Annex 4

**DATED**

**2012**

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

**AND**

**(2) HARRIS FEDERATION**

---

**SUPPLEMENTAL AGREEMENT FOR  
HARRIS PRIMARY ACADEMY CHAFFORD  
HUNDRED**

---

Lewis Silkin LLP  
5 Chancery Lane  
Clifford's Inn  
London EC4A 1BL

**THIS AGREEMENT** made

2012

**BETWEEN**

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

(2) **HARRIS FEDERATION**

**IS SUPPLEMENTAL TO THE MASTER FUNDING AGREEMENT** made between (1) The Secretary of State for Education and Skills (2) the Company (under its then name "Harris Federation of South London Schools") dated 31 August 2007 (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 Harris Primary Academy Chafford Hundred established at Mayflower Road, Chafford Hundred, Essex RM16 6SA;

"Academy Financial Year" means the year from 1<sup>st</sup> September to 31<sup>st</sup> August in any year;

"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 to be leased to the Company (including for the avoidance of doubt all buildings, structures landscaping and other erections) situated at and known as Chafford Hundred Primary School, Mayflower Road, Chafford Hundred, Essex RM16 6SA which forms part of the land registered under Land Registry

(freehold) Title Number EX651102 and which includes the whole of the premises registered under Land Registry (leasehold) Title Number EX871446.

- 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 arrangements for the admission of pupils to the Academy are set out at Annex 1.

### **ACADEMY OPENING DATE**

- 2.3 The Academy shall open as a school on 1 June 2012 replacing Chafford Hundred Primary School which shall cease to be maintained by the Local Authority on that date, which date shall be the conversion date within the meaning of the Academies Act 2010.

- 2.4 The planned capacity of the Academy is 630 places in the age range 4 –11 together with a nursery for 26 FTE pupils aged 3 - 4, and the curriculum provided by the Academy shall be broad and balanced.

### **LOCAL GOVERNMENT PENSION SCHEME**

- 2.5 The Company shall ensure that all employees at the Academy other than teachers ("Non-teaching Staff") have access to either the Local Government Pension Scheme in accordance with the Local Government Pension Scheme (Administration) Regulations 2008 [SI2008/239] ("the Regulations"), where the Regulations require this, or such other pension benefits as those Regulations, or any legislation which may in the future replace the Regulations, require for Non-teaching staff.

### **APPLICATION OF MASTER AGREEMENT CLAUSES**

- 2.6 Clauses 17- 20, 34-37, 41-42, 46-64, 68 and 81 of the Master Agreement do not apply to the Academy.

### **GOVERNANCE**

- 2.7 Clauses 14 and 15 of the Master Agreement shall apply but, in addition, the Company will as a minimum ensure that:

- (a) a minimum of two parents of a pupil at the Academy (to be elected by the parents of registered pupils of the Academy) shall be a member of the Academy Governing Body; and
- (b) any advice of the Academy Governing Body is brought to the attention of the Directors of the Company.

#### **CRIMINAL RECORDS BUREAU CHECKS**

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

#### **DESIGNATED TEACHER FOR LOOKED AFTER CHILDREN**

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

#### **TEACHERS AND OTHER STAFF**

- 2.10 Clause 27 of the Master Agreement shall apply except that there will be no requirement for teachers to be registered with the General Teaching Council for England.

#### **ASSESSMENT**

- 2.11 The Secretary of State will notify the appropriate body for assessment purposes about the Academy:

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

#### **POLITICAL INDOCTRINATION**

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

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

#### **EXCLUSIONS AGREEMENT**

2.13 The Company shall, if invited to do so by an LA, enter into an agreement in respect of the Academy with that LA, which has the effect that where:

- (a) the Company admits a pupil to the Academy who has been permanently excluded from a maintained school, the Academy itself or another Academy with whom the LA has a similar agreement; or
- (b) the Company permanently excludes a pupil from the Academy payment will flow between the Company and the LA in the same direction and for the same amount that it would, were the Academy a maintained school, under Regulations made under section 47 of the School Standards and Framework Act 1998 relating to the addition or deduction of a maintained school's budget following a permanent exclusion or the admission of a permanently excluded pupil. At the date of this Agreement, the applicable Regulation is Regulation 23 of the School Finance (England) Regulations 2008.

### **DISPOSAL OF ASSETS**

- 2.14 The Company shall provide 30 days notice to the Secretary of State of its intention to dispose of assets for a consideration less than the best price that can reasonably be obtained, whether or not such disposal requires the Secretary of State's consent under clause 103 of the Master Agreement. This clause shall only apply to publicly funded assets.

### **INTERNATIONAL EDUCATION SURVEYS**

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

### **3 CAPITAL GRANT AND IMPLEMENTATION GRANT**

- 3.1 Clauses 46 to 59 of the Master Agreement shall not apply. The Secretary of State may, in his absolute discretion provide Capital Expenditure funding in accordance with this clause and any arrangements he considers appropriate.
- 3.2 Any Capital Expenditure incurred in respect of the 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.

- 3.3 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.
- 3.4 Capital Grant will be paid by the Secretary of State to the Company in respect of this Academy 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. Capital Grant will be paid within 21 days from the day on which a claim for grant is received if the claim is in the proper format, supported by the appropriate documentation and the conditions on its payment set out at clause 3.3 are complied with. If a dispute arises as to whether a claim is or is not acceptable both parties undertake to attempt to resolve it in good faith. In the event of such a dispute, the Secretary of State shall pay to the Company so much of the claim as shall not be in dispute and shall promptly pay any additional amount due to the Company following resolution of the dispute if further payment is due to the Company.

#### **IMPLEMENTATION GRANT**

- 3.5 The Secretary of State will not, in relation to the Academy, pay Implementation Grant pursuant to clauses 60 to 64 of the Master Agreement.

#### **GAG AND EAG**

- 4.1 Subject to clauses 4.2 to 4.7 the Secretary of State agrees to pay GAG and EAG to the Company in relation to the Academy in accordance with the Master Agreement.
- 4.2 Clause 68 of the Master Agreement shall not apply.
- 4.3 Subject to clause 4.5, the basis of the pupil number count for the purposes of determining GAG for an Academy Funding Year for the Academy will be the Company's estimate each November for numbers on roll in the following September for the Academy.



- 4.4 Once the condition specified in clause 4.5 has been satisfied with respect to the Academy for the Academy Funding Year for which funding is being calculated, the basis of the pupil number count for the purpose of determining GAG for the Academy will be:
- 4.4.1 for the pupil number count for pupils in Year 6 and below, the Schools Census for the January preceding the Academy Funding Year in question.
- 4.5 For the purpose of clause 4.4, the condition is satisfied after 7 years of opening (that is academic year 2019/20 when year groups of 90 are in all years of the school )
- 4.6 For any Academy Funding Year in which GAG for the Academy has been calculated in accordance with clause 4.3, an adjustment will be made to the following Academy Funding Year's formula funding element of GAG for the Academy to recognise any variation from that estimate greater than or lower than 2.5%. The additional or clawed-back grant will be only that amount relevant to the number of pupils beyond the 2.5% variation.
- 4.8 For any Academy Funding Year in which GAG for the Academy is calculated in accordance with clause 4.4, no adjustment will be made to the equivalence funding element in the following Academy Funding Year's equivalence funding element of GAG unless the Company demonstrates to the satisfaction of the Secretary of State that there has been a significant impact on costs, such as an extra class. For any other element of GAG the Secretary of State may make adjustments to recognise a variation in pupil numbers from that used to calculate the element of grant in question; the basis of these will be set out in the Annual Letter of Funding or its equivalent.
- 4.9 Grants paid by the Secretary of State shall only be used by the Company for the educational purposes listed in Article 3 of the Articles ("the Object"). Such funds shall not be used by the Company for purposes that do not directly relate to the Object of providing education in the United Kingdom, in particular by establishing, maintaining, carrying on, managing and developing schools. Grants shall not be used for purposes other than this Object without the prior written consent of the Secretary of State.

## **5 TERMINATION**

5.8 Either party may give not less than seven Academy Financial Years' written notice to terminate this Agreement, such notice to expire on 31 August 2020 or any subsequent anniversary of that date.

5.9 If the Secretary of State is of the opinion that the Academy no longer has the characteristics set out in clause 12 of the Master Agreement or that the conditions and requirements set out in clauses 13-42 (other than clauses 17, 18, 19, 20, 34-37 and 41-42) of the Master Agreement are not being met, or that the Company is otherwise in material breach of the provisions of this Agreement or the Master Agreement, the Secretary of State may give notice of his provisional intention to terminate this Agreement.

5.10 Any such notice shall be in writing and shall:

5.10.1 state the grounds on which the Secretary of State considers the Academy no longer has the characteristics set out in clause 12 of the Master Agreement or is not meeting the conditions and requirements of clauses 13-42 (other than clauses 17-20, 34-37 and 41-42) of the Master Agreement or the Company is otherwise in material breach of the provisions of this Agreement or the Master Agreement;

5.10.2 specify the measures needed to remedy the situation or breach;

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

5.10.4 state the form in which the Company is to provide its response and a reasonable date by which it must be provided.

5.11 If no response is received by the date specified in accordance with clause 5.3.4, the Secretary of State may give the Company 12 months, or such lesser period as he considers appropriate in the circumstances, written notice to terminate this Agreement.

5.12 If a response is received by the date specified in accordance with clause 5.3.4, the Secretary of State shall consider it, and any representations made by the Company, and shall, within three months of its receipt, indicate that:

5.12.1 he is content with the response and/or that the measures which he specified are being implemented; or

5.12.2 he is content, subject to any further measures he reasonably specifies being implemented by a specified date or any evidence he requires that implementation of such measures have been successfully completed; or

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

5.13 In the circumstances of clause 5.5.3 the Secretary of State shall notify the Company why he believes that he cannot be reasonably satisfied and, if so requested by the Company within thirty days from such notification, he shall meet a deputation including representatives from directors of the Company to discuss his concerns. If following such meeting he has good reasons for remaining satisfied that the Academy does not and will not have the characteristics set out in clause 12 of the Master Agreement or does not and will not meet the conditions and requirements set out in clauses 13-42 (other than clauses 17-20, 34-37 and 41-42) of the Master Agreement or the Company is in material breach of the provisions of this Agreement or the Master Agreement and such breach will not be remedied to his reasonable satisfaction, he shall give the Company twelve months written notice to terminate this Agreement.

5.14 If the Secretary of State has cause to serve a notice on the Company under section 165 of the Education Act 2002 and a determination (from which all rights of appeal have been exhausted) has been made that the Academy shall be struck off the Register of Independent Schools, the period of twelve months notice referred to in clause 5.6 may be shortened to a period deemed appropriate by the Secretary of State.

5.15 The Secretary of State shall, by the end of December 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.

5.16 Any notice given by the Company under clause 5.8 shall be in writing and shall be served on the Secretary of State not later than 28 February preceding the Critical Year or, if the Secretary of State shall not have given notice of the Indicative Funding to the Company on or before the date specified in clause 5.8 above, within six weeks after the Secretary of State shall have done so. The notice must specify:

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

5.16.2 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

5.16.3 a detailed budget of income and expenditure for the Academy during the Critical Year (the "**Projected Budget**").

5.17 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.

5.18 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.

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

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

5.21 If the Company shall have given notice to terminate the Agreement under 5.13, the Secretary of State may by notice in writing to the Company require the Company to appoint up to two persons as directors of the Company in accordance with the Articles.

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

5.23 A "Special Measures Termination Event Occurs" when:

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

5.23.2 the Chief Inspector carries out a subsequent inspection of the Academy in accordance with the Education Act 2005 and makes a report in accordance

with the Education Act 2005 stating that the Academy has made inadequate progress since the date of the Special Measures Notice; and

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

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

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

5.17.1 in relation to a member of the Academy Governing Body who has been appointed by the Company serve notice in writing on the Company requiring the Company to procure the resignation and removal of such persons and/or procure the appointment of such additional Academy Governing Body members as the Company has the power to appoint under its Articles and as specified by the Secretary of State in the notice; or

5.17.2 provide notice in writing to terminate this Agreement forthwith.

## **6 EFFECT OF TERMINATION**

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

6.2 Subject to clause 6.3, if the Secretary of State terminates this Agreement for reasons other than that a Special Measure Termination Event occurs, the Academy no longer has the characteristics set out in clause 12 of the Master Agreement, or is no longer meeting the conditions and requirements set out in clauses 14-42 of the Master Agreement (other than clauses 17-20, 34-37 and 41-42) or that the Company is otherwise in material breach of the provisions of this Agreement or the Master Agreement, the Secretary of State shall indemnify the Company.

- 6.3 The amount of any such indemnity shall be determined by the Secretary of State having regard to any representations made to him by the Company, and shall be paid at such times and in such manner as the Secretary of State may reasonably think fit.
- 6.4 The categories of expenditure incurred by the Company in consequence of the termination of the Agreement in respect of which the Secretary of State shall indemnify the Company include (but not by way of limitation), staff compensation and redundancy payments, compensation payments in respect of broken contracts, expenses of disposing of assets or adapting them for other purposes, legal and other professional fees, and dissolution expenses.
- 6.5 Subject to clause 6.6, on the termination of this Agreement however occurring, the Company shall in respect of any of its capital assets at the date of termination:
- (a) promptly transfer a proportion of the assets to a person nominated by the Secretary of State, if the Secretary of State considers that all or some of those assets need to be used for educational purposes by that nominee. The proportion of the assets to be transferred shall be the same as the proportion of the capital contribution made by the Secretary of State to the original value of those assets, whether that contribution was made on the establishment of the Academy or later; or
  - (b) if the Secretary of State confirms that a transfer under clause 6.5(a) is not required, promptly repay to the Secretary of State a percentage of the Net Proceeds of Sale of such assets at the date of 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. For the purposes of this clause "Net Proceeds of Sale" shall mean the amount received by the Company on the disposal of such assets after deducting VAT and all costs (including legal and other fees) incurred in relation to such disposal.
- 6.6 The Secretary of State may waive in whole or in part the repayment due under clause 6.5(b) if:
- (a) the Company obtains his permission to invest the proceeds of sale for its charitable objects; or

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

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

### **Restrictions on Land transfer**

6A The Company:

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

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

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



company, a subsidiary company, or a receiver, administrator or liquidator acting in the name of the Company.

### **Repair and Upkeep**

6B) The Company shall keep the Land clean and tidy and make good any damage it causes to the Land and / or any deterioration to the condition of the Land that may arise from the date of this Agreement.

### **Insurance**

6C) The Company shall:-

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

6D Transfer of Land on Termination of this Agreement

6D.1 On termination of this Agreement the Company shall, if the Secretary of State so requires by notice in writing to the Company, immediately transfer its interest in the

Land to the Secretary of State or such other person as the Secretary of State may nominate.

**7 ANNEX**

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

**8 THE MASTER AGREEMENT**

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

**9 ENGLISH LAW AND THIRD PARTY RIGHTS**

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

9.2 The parties do not intend that any term of this Agreement shall be enforceable solely by virtue of the Contracts (Rights of Third Parties) Act 1999 by any person who is not a party to this Agreement.

This Agreement was executed as a Deed on

1 July

2012

Executed on behalf of by:

*Daniel Hoyle*  
.....  
Director

In the presence of:

*Randall*

Witness... CHRISTOPHER JOHN RANDALL

.....

Occupation... PROJECT DIRECTOR

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

*Randall*  
.....

Duly Authorised



**ANNEX TO THIS SUPPLEMENTAL AGREEMENT**

Requirements for the Admission for pupils at the  
Academy      Annex 1

**DATED**

**2012**

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

**AND**

**(2) HARRIS FEDERATION**

---

**SUPPLEMENTAL AGREEMENT FOR  
HARRIS PRIMARY ACADEMY CHAFFORD  
HUNDRED**

---

Lewis Silkin LLP  
5 Chancery Lane  
Clifford's Inn  
London EC4A 1BL

**THIS AGREEMENT** made

2012

**BETWEEN**

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

(2) **HARRIS FEDERATION**

**IS SUPPLEMENTAL TO THE MASTER FUNDING AGREEMENT** made between (1) The Secretary of State for Education and Skills (2) the Company (under its then name "Harris Federation of South London Schools") dated 31 August 2007 (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 Harris Primary Academy Chafford Hundred established at Mayflower Road, Chafford Hundred, Essex RM16 6SA;

"Academy Financial Year" means the year from 1<sup>st</sup> September to 31<sup>st</sup> August in any year;

"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 to be leased to the Company (including for the avoidance of doubt all buildings, structures landscaping and other erections) situated at and known as Chafford Hundred Primary School, Mayflower Road, Chafford Hundred, Essex RM16 6SA which forms part of the land registered under Land Registry

(freehold) Title Number EX651102 and which includes the whole of the premises registered under Land Registry (leasehold) Title Number EX871446.

- 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 arrangements for the admission of pupils to the Academy are set out at Annex 1.

### **ACADEMY OPENING DATE**

- 2.3 The Academy shall open as a school on 1 June 2012 replacing Chafford Hundred Primary School which shall cease to be maintained by the Local Authority on that date, which date shall be the conversion date within the meaning of the Academies Act 2010.

- 2.4 The planned capacity of the Academy is 630 places in the age range 4 –11 together with a nursery for 26 FTE pupils aged 3 - 4, and the curriculum provided by the Academy shall be broad and balanced.

### **LOCAL GOVERNMENT PENSION SCHEME**

- 2.5 The Company shall ensure that all employees at the Academy other than teachers ("Non-teaching Staff") have access to either the Local Government Pension Scheme in accordance with the Local Government Pension Scheme (Administration) Regulations 2008 [SI2008/239] ("the Regulations"), where the Regulations require this, or such other pension benefits as those Regulations, or any legislation which may in the future replace the Regulations, require for Non-teaching staff.

### **APPLICATION OF MASTER AGREEMENT CLAUSES**

- 2.6 Clauses 17- 20, 34-37, 41-42, 46-64, 68 and 81 of the Master Agreement do not apply to the Academy.

### **GOVERNANCE**

- 2.7 Clauses 14 and 15 of the Master Agreement shall apply but, in addition, the Company will as a minimum ensure that:

- (a) a minimum of two parents of a pupil at the Academy (to be elected by the parents of registered pupils of the Academy) shall be a member of the Academy Governing Body; and
- (b) any advice of the Academy Governing Body is brought to the attention of the Directors of the Company.

#### **CRIMINAL RECORDS BUREAU CHECKS**

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

#### **DESIGNATED TEACHER FOR LOOKED AFTER CHILDREN**

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

#### **TEACHERS AND OTHER STAFF**

- 2.10 Clause 27 of the Master Agreement shall apply except that there will be no requirement for teachers to be registered with the General Teaching Council for England.

#### **ASSESSMENT**

- 2.11 The Secretary of State will notify the appropriate body for assessment purposes about the Academy:



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

#### **POLITICAL INDOCTRINATION**

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

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

#### **EXCLUSIONS AGREEMENT**

2.13 The Company shall, if invited to do so by an LA, enter into an agreement in respect of the Academy with that LA, which has the effect that where:

- (a) the Company admits a pupil to the Academy who has been permanently excluded from a maintained school, the Academy itself or another Academy with whom the LA has a similar agreement; or
- (b) the Company permanently excludes a pupil from the Academy payment will flow between the Company and the LA in the same direction and for the same amount that it would, were the Academy a maintained school, under Regulations made under section 47 of the School Standards and Framework Act 1998 relating to the addition or deduction of a maintained school's budget following a permanent exclusion or the admission of a permanently excluded pupil. At the date of this Agreement, the applicable Regulation is Regulation 23 of the School Finance (England) Regulations 2008.

### **DISPOSAL OF ASSETS**

- 2.14 The Company shall provide 30 days notice to the Secretary of State of its intention to dispose of assets for a consideration less than the best price that can reasonably be obtained, whether or not such disposal requires the Secretary of State's consent under clause 103 of the Master Agreement. This clause shall only apply to publicly funded assets.

### **INTERNATIONAL EDUCATION SURVEYS**

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

### **3 CAPITAL GRANT AND IMPLEMENTATION GRANT**

- 3.1 Clauses 46 to 59 of the Master Agreement shall not apply. The Secretary of State may, in his absolute discretion provide Capital Expenditure funding in accordance with this clause and any arrangements he considers appropriate.
- 3.2 Any Capital Expenditure incurred in respect of the 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.

- 3.3 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.
- 3.4 Capital Grant will be paid by the Secretary of State to the Company in respect of this Academy 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. Capital Grant will be paid within 21 days from the day on which a claim for grant is received if the claim is in the proper format, supported by the appropriate documentation and the conditions on its payment set out at clause 3.3 are complied with. If a dispute arises as to whether a claim is or is not acceptable both parties undertake to attempt to resolve it in good faith. In the event of such a dispute, the Secretary of State shall pay to the Company so much of the claim as shall not be in dispute and shall promptly pay any additional amount due to the Company following resolution of the dispute if further payment is due to the Company.

#### **IMPLEMENTATION GRANT**

- 3.5 The Secretary of State will not, in relation to the Academy, pay Implementation Grant pursuant to clauses 60 to 64 of the Master Agreement.

#### **GAG AND EAG**

- 4.1 Subject to clauses 4.2 to 4.7 the Secretary of State agrees to pay GAG and EAG to the Company in relation to the Academy in accordance with the Master Agreement.
- 4.2 Clause 68 of the Master Agreement shall not apply.
- 4.3 Subject to clause 4.5, the basis of the pupil number count for the purposes of determining GAG for an Academy Funding Year for the Academy will be the Company's estimate each November for numbers on roll in the following September for the Academy.

- 4.4 Once the condition specified in clause 4.5 has been satisfied with respect to the Academy for the Academy Funding Year for which funding is being calculated, the basis of the pupil number count for the purpose of determining GAG for the Academy will be:
- 4.4.1 for the pupil number count for pupils in Year 6 and below, the Schools Census for the January preceding the Academy Funding Year in question.
- 4.5 For the purpose of clause 4.4, the condition is satisfied after 7 years of opening (that is academic year 2019/20 when year groups of 90 are in all years of the school )
- 4.6 For any Academy Funding Year in which GAG for the Academy has been calculated in accordance with clause 4.3, an adjustment will be made to the following Academy Funding Year's formula funding element of GAG for the Academy to recognise any variation from that estimate greater than or lower than 2.5%. The additional or clawed-back grant will be only that amount relevant to the number of pupils beyond the 2.5% variation.
- 4.8 For any Academy Funding Year in which GAG for the Academy is calculated in accordance with clause 4.4, no adjustment will be made to the equivalence funding element in the following Academy Funding Year's equivalence funding element of GAG unless the Company demonstrates to the satisfaction of the Secretary of State that there has been a significant impact on costs, such as an extra class. For any other element of GAG the Secretary of State may make adjustments to recognise a variation in pupil numbers from that used to calculate the element of grant in question; the basis of these will be set out in the Annual Letter of Funding or its equivalent.
- 4.9 Grants paid by the Secretary of State shall only be used by the Company for the educational purposes listed in Article 3 of the Articles ("the Object"). Such funds shall not be used by the Company for purposes that do not directly relate to the Object of providing education in the United Kingdom, in particular by establishing, maintaining, carrying on, managing and developing schools. Grants shall not be used for purposes other than this Object without the prior written consent of the Secretary of State.

## **5 TERMINATION**

5.8 Either party may give not less than seven Academy Financial Years' written notice to terminate this Agreement, such notice to expire on 31 August 2020 or any subsequent anniversary of that date.

5.9 If the Secretary of State is of the opinion that the Academy no longer has the characteristics set out in clause 12 of the Master Agreement or that the conditions and requirements set out in clauses 13-42 (other than clauses 17, 18, 19, 20, 34-37 and 41-42) of the Master Agreement are not being met, or that the Company is otherwise in material breach of the provisions of this Agreement or the Master Agreement, the Secretary of State may give notice of his provisional intention to terminate this Agreement.

5.10 Any such notice shall be in writing and shall:

5.10.1 state the grounds on which the Secretary of State considers the Academy no longer has the characteristics set out in clause 12 of the Master Agreement or is not meeting the conditions and requirements of clauses 13-42 (other than clauses 17-20, 34-37 and 41-42) of the Master Agreement or the Company is otherwise in material breach of the provisions of this Agreement or the Master Agreement;

5.10.2 specify the measures needed to remedy the situation or breach;

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

5.10.4 state the form in which the Company is to provide its response and a reasonable date by which it must be provided.

5.11 If no response is received by the date specified in accordance with clause 5.3.4, the Secretary of State may give the Company 12 months, or such lesser period as he considers appropriate in the circumstances, written notice to terminate this Agreement.

5.12 If a response is received by the date specified in accordance with clause 5.3.4, the Secretary of State shall consider it, and any representations made by the Company, and shall, within three months of its receipt, indicate that:

5.12.1 he is content with the response and/or that the measures which he specified are being implemented; or

5.12.2 he is content, subject to any further measures he reasonably specifies being implemented by a specified date or any evidence he requires that implementation of such measures have been successfully completed; or

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

5.13 In the circumstances of clause 5.5.3 the Secretary of State shall notify the Company why he believes that he cannot be reasonably satisfied and, if so requested by the Company within thirty days from such notification, he shall meet a deputation including representatives from directors of the Company to discuss his concerns. If following such meeting he has good reasons for remaining satisfied that the Academy does not and will not have the characteristics set out in clause 12 of the Master Agreement or does not and will not meet the conditions and requirements set out in clauses 13-42 (other than clauses 17-20, 34-37 and 41-42) of the Master Agreement or the Company is in material breach of the provisions of this Agreement or the Master Agreement and such breach will not be remedied to his reasonable satisfaction, he shall give the Company twelve months written notice to terminate this Agreement.

5.14 If the Secretary of State has cause to serve a notice on the Company under section 165 of the Education Act 2002 and a determination (from which all rights of appeal have been exhausted) has been made that the Academy shall be struck off the Register of Independent Schools, the period of twelve months notice referred to in clause 5.6 may be shortened to a period deemed appropriate by the Secretary of State.

5.15 The Secretary of State shall, by the end of December 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.

5.16 Any notice given by the Company under clause 5.8 shall be in writing and shall be served on the Secretary of State not later than 28 February preceding the Critical Year or, if the Secretary of State shall not have given notice of the Indicative Funding to the Company on or before the date specified in clause 5.8 above, within six weeks after the Secretary of State shall have done so. The notice must specify:

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

5.16.2 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

5.16.3 a detailed budget of income and expenditure for the Academy during the Critical Year (the "**Projected Budget**").

5.17 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.

5.18 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.

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

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

5.21 If the Company shall have given notice to terminate the Agreement under 5.13, the Secretary of State may by notice in writing to the Company require the Company to appoint up to two persons as directors of the Company in accordance with the Articles.

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

5.23 A "Special Measures Termination Event Occurs" when:

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

5.23.2 the Chief Inspector carries out a subsequent inspection of the Academy in accordance with the Education Act 2005 and makes a report in accordance



with the Education Act 2005 stating that the Academy has made inadequate progress since the date of the Special Measures Notice; and

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

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

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

5.17.1 in relation to a member of the Academy Governing Body who has been appointed by the Company serve notice in writing on the Company requiring the Company to procure the resignation and removal of such persons and/or procure the appointment of such additional Academy Governing Body members as the Company has the power to appoint under its Articles and as specified by the Secretary of State in the notice; or

5.17.2 provide notice in writing to terminate this Agreement forthwith.

## **6 EFFECT OF TERMINATION**

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

6.2 Subject to clause 6.3, if the Secretary of State terminates this Agreement for reasons other than that a Special Measure Termination Event occurs, the Academy no longer has the characteristics set out in clause 12 of the Master Agreement, or is no longer meeting the conditions and requirements set out in clauses 14-42 of the Master Agreement (other than clauses 17-20, 34-37 and 41-42) or that the Company is otherwise in material breach of the provisions of this Agreement or the Master Agreement, the Secretary of State shall indemnify the Company.

- 6.3 The amount of any such indemnity shall be determined by the Secretary of State having regard to any representations made to him by the Company, and shall be paid at such times and in such manner as the Secretary of State may reasonably think fit.
- 6.4 The categories of expenditure incurred by the Company in consequence of the termination of the Agreement in respect of which the Secretary of State shall indemnify the Company include (but not by way of limitation), staff compensation and redundancy payments, compensation payments in respect of broken contracts, expenses of disposing of assets or adapting them for other purposes, legal and other professional fees, and dissolution expenses.
- 6.5 Subject to clause 6.6, on the termination of this Agreement however occurring, the Company shall in respect of any of its capital assets at the date of termination:
- (a) promptly transfer a proportion of the assets to a person nominated by the Secretary of State, if the Secretary of State considers that all or some of those assets need to be used for educational purposes by that nominee. The proportion of the assets to be transferred shall be the same as the proportion of the capital contribution made by the Secretary of State to the original value of those assets, whether that contribution was made on the establishment of the Academy or later; or
  - (b) if the Secretary of State confirms that a transfer under clause 6.5(a) is not required, promptly repay to the Secretary of State a percentage of the Net Proceeds of Sale of such assets at the date of 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. For the purposes of this clause "Net Proceeds of Sale" shall mean the amount received by the Company on the disposal of such assets after deducting VAT and all costs (including legal and other fees) incurred in relation to such disposal.
- 6.6 The Secretary of State may waive in whole or in part the repayment due under clause 6.5(b) if:
- (a) the Company obtains his permission to invest the proceeds of sale for its charitable objects; or

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

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

### **Restrictions on Land transfer**

6A The Company:

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

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

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

company, a subsidiary company, or a receiver, administrator or liquidator acting in the name of the Company.

### **Repair and Upkeep**

6B) The Company shall keep the Land clean and tidy and make good any damage it causes to the Land and / or any deterioration to the condition of the Land that may arise from the date of this Agreement.

### **Insurance**

6C) The Company shall:-

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

6D Transfer of Land on Termination of this Agreement

6D.1 On termination of this Agreement the Company shall, if the Secretary of State so requires by notice in writing to the Company, immediately transfer its interest in the

Land to the Secretary of State or such other person as the Secretary of State may nominate.

**7 ANNEX**

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

**8 THE MASTER AGREEMENT**

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

**9 ENGLISH LAW AND THIRD PARTY RIGHTS**

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

9.2 The parties do not intend that any term of this Agreement shall be enforceable solely by virtue of the Contracts (Rights of Third Parties) Act 1999 by any person who is not a party to this Agreement.

This Agreement was executed as a Deed on 2012

Executed on behalf of by:

.....  
**Director**

In the presence of:

Witness.....

Address.....

Occupation.....

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

.....  
**Duly Authorised**

**ANNEX TO THIS SUPPLEMENTAL AGREEMENT**

Requirements for the Admission for pupils at the  
Academy Annex 1