

Multi Academy Model
Mainstream

SCHEDULE 1

MODEL SUPPLEMENTAL AGREEMENT

THIS AGREEMENT made 31 August 2012

BETWEEN

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

(2) **KEMNAL ACADEMIES TRUST**

IS SUPPLEMENTAL TO THE MASTER FUNDING AGREEMENT made between the same parties and dated 31ST August 2010 (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 Broadfield East Junior School to be established at Vulcan Close, Broadfield, Crawley, West Sussex RH11 9PD .

"this Agreement" means this agreement and its annexes;

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

"the Land" means the publicly funded land (including for the avoidance of doubt all buildings, structures landscaping and other erections) situated at and known as Broadfield East Junior School Vulcan Close, Broadfield, Crawley, West Sussex RH11 9PD of the land that is to be transferred to the Academy.

Multi Academy Model
Mainstream

1.3 In respect of this Agreement, Clause 5, sub-clause (b) shall be deleted from the Master Agreement.

1.4 In respect of this Agreement, the following definition shall be inserted at the start of Clause 6 of the Master Agreement:

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

1.5 In respect of this Agreement, the following definition shall be inserted before the definition of “DfE” in Clause 6 of the Master Agreement:

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

(a) either by means of the holding of shares in that Entity or having an interest conferring voting rights at general meetings of the membership of the Entity or of any other body corporate;

(b) by virtue or any powers conferred by the articles of association or other document regulating that Entity or any other Entity or partnership including, without limitation, the power to appoint or remove a majority of the governing body thereof, or

(c) by virtue of any agreement, understanding or arrangement between any person or persons,

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

1.6 In respect of this Agreement, the definition of “SEN” in Clause 6 of the Master Agreement shall be replaced with the following:

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

Multi Academy Model
Mainstream

1.7 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 curriculum provided by the Academy to pupils up to the age of 16 shall be broad and balanced,

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

ACADEMY OPENING DATE

2.4 The Academy shall open as a school on the 1st September 2012 replacing **Broadfield East Junior School** which shall cease to be maintained by the Local Authority on that date, which date shall be the conversion date within the meaning of the Academies Act 2010.

2.5 The planned capacity of the Academy is three hundred and sixty (360) in the age range seven to eleven (7 to 11).

CHARACTERISTICS OF THE ACADEMY

2.6 In respect of this Agreement, Clause 12 of the Master Agreement shall be replaced with the following;

“12) The characteristics of an Academy are as set down in section 1A(1) of the Academies Act 2010:

(a) it is an independent school;

(b) it has a curriculum satisfying the requirements of section 78 of the Education Act 2002 (balanced and broadly based curriculum);

(c) it provides education to pupils of different abilities;

(d) it provides education for pupils who are wholly or mainly drawn from the area in which the Academy is situated; and

Multi Academy Model
Mainstream

(e) it is not an alternative provision Academy.”

CONDITIONS OF GRANT

- 2.7 In respect of this Agreement, Clause 13, sub-clause (b) of the Master Agreement shall be replaced with the following:

“b) there will be assessments of pupils’ performance as they apply to maintained schools and the opportunity to study for relevant qualifications in accordance with clause 30 (d);”

- 2.8 In respect of this Agreement, Clause 13, sub-clause (d) of the Master Agreement shall be replaced with the following:

“d) teachers’ levels of pay and conditions of service for all employees will be the responsibility of the Company;”

- 2.9 In respect of this Agreement, the following Clause shall be inserted after Clause 13 of the Master Agreement:

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

CRIMINAL RECORDS BUREAU CHECKS

- 2.10 In respect of this Agreement, Clause 17 of the Master Agreement shall be replaced with the following:

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

PUPILS

- 2.11 In respect of this Agreement, Clause 18, sub-clause c) of the Master Agreement shall be replaced with the following:

Multi Academy Model
Mainstream

“18c) pupil exclusions are set out in regulations made by virtue of section 51A of the Education Act 2002 (as may be amended from time to time, and includes any successor provisions).”

and for the avoidance of doubt, Annex C of the Master Agreement shall not apply in respect of this Agreement.

- 2.11A In respect of this Agreement, Clause 18, sub-clause b) of the Master Agreement shall not apply and the requirements for the admission to the Academy of and support for pupils with SEN and with disabilities (for pupils who have and who do not have statements of SEN) are set out in Annex 2 to this Agreement. For the avoidance of doubt, Annex B of the Master Agreement shall not apply in respect of this Agreement.

CURRICULUM, CURRICULUM DEVELOPMENT AND DELIVERY AND RE COLLECTIVE WORSHIP

- 2.12 In respect of this Agreement, Clause 23 of the Master Agreement shall be replaced with the following:

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

- 2.13 In respect of this Agreement, the following Clauses shall be inserted after Clause 23 of the Master Agreement:

“23A) Not used.

23B) The Academy Trust shall publish information in relation to its current curriculum provision. Such information shall include details relating to

a) the content of the curriculum;

b) its approach to the curriculum;

c) the GCSE options (and other Key Stage 4 qualifications) offered by the Academy;

d) the names of any phonics or reading schemes in operation for Key Stage 1; and

e) how parents (including prospective parents) can obtain further information in relation to the Academy’s curriculum.

Multi Academy Model
Mainstream

23C) Subject to the requirements of clauses 22 to 28A, the curriculum will be the responsibility of the Academy Trust."

2.14 In respect of this Agreement, the following Clause shall be inserted after Clause 24 of the Master Agreement:

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

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

2.15 In respect of this Agreement, Clause 26, sub-clause (a) of the Master Agreement shall be replaced with the following:

"a) subject to clause 28, and paragraph 4 of Schedule 19 to the School Standards and Framework Act 1998 which shall apply as if the Academy were a voluntary aided school with a religious character, the Company shall ensure that provision is made for religious education to be given to all pupils at the Academy in accordance with the tenets of the specified religion or religious denomination of the Academy;"

2.16 In respect of this Agreement, in Clause 26, sub-clause (c) of the Master Agreement the wording "Religious Education" in the first line of this sub-clause shall be replaced with the wording "religious education".

2.17 In respect of this Agreement, the following sub-clause shall be inserted after Clause 27, sub-clause b) of the Master Agreement:

"c) the Company:

(1) agrees that before making an application pursuant to the Religious Character of Schools (Designation Procedure) (Independent Schools) (England) Regulations 2003 for each Academy to be designated as a school

Multi Academy Model
Mainstream

with religious character it shall seek the prior written consent of the Secretary of State;

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

- 2.18 In respect of this Agreement, Clause 29 of the Master Agreement shall be replaced with the following:

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

- 2.19 In respect of this Agreement, the following Clause shall be inserted after Clause 29 of the Master Agreement:

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

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

Multi Academy Model
Mainstream

2.20 In respect of this Agreement, Clause 30, sub-clause d) of the Master Agreement shall be replaced with the following:

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

2.21 In respect of this Agreement, the following Clause shall be inserted after Clause 30 of the Master Agreement:

“30A) The Academy Trust shall ensure that the following information is published on the Academy’s website:

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

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

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

- (i) “% achieving 5 + A* - C GCSEs (or equivalent) including English or Maths GCSEs”;*
- (ii) “% achieving the English Baccalaureate”; and*
- (iii) “% of pupils making expected progress”.*

c) Information as to where and by what means parents (including prospective parents) may access the most recent report about the school published by her Majesty’s Chief Inspector of Education, Children’s Services and Skills.

Multi Academy Model
Mainstream

d) *Information as to where and by what means parents (including prospective parents) may access the School Performance Tables published by the Secretary of State on the Department for Education's website."*

2.22 In respect of this Agreement, in Clause 31 of the Master Agreement the wording "From 1 April 2009" shall be deleted.

CHARGING

2.23 In respect of this Agreement, Clause 34 of the Master Agreement shall be replaced with the following:

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

Multi Academy Model
Mainstream

INTERNATIONAL EDUCATION SURVEYS

2.24 In respect of this Agreement, the following Clauses shall be inserted after Clause 34 of the Master Agreement:

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

PUPIL PREMIUM

“34B) The Company shall publish in each Academy Financial Year information in relation to:

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

DURATION OF SCHOOL DAY AND YEAR

“34C) The duration of the school day and year will be the responsibility of the Academy Trust.”

3 CAPITAL GRANT

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

3.2 In respect of this Agreement, Clause 37, sub-clause (c) of the Master Agreement shall be replaced with the following:

Multi Academy Model
Mainstream

“c) the installation of electrical, mechanical or other services other than necessary replacements, repairs and maintenance due to normal wear and tear;”

- 3.3 In respect of this Agreement, Clause 37, sub-clause (g) of the Master Agreement shall be replaced with the following:

“g) the provision and equipping of premises, including playing fields and other facilities for social activities and physical recreation other than necessary replacements, repairs and maintenance due to normal wear and tear;”

- 3.4 In respect of this Agreement, the following sub-clause shall be inserted after Clause 40, sub-clause (b) of the Master Agreement:

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

ARRANGEMENTS FOR PAYMENT OF CAPITAL GRANT

- 3.5 In respect of this Agreement, Clause 41 of the Master Agreement shall be replaced with the following;

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

IMPLEMENTATION GRANT

- 3.6 Clauses 42 to47 (inclusive) of the Master Agreement shall not apply in respect of this Agreement.

4 GAG AND EAG

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

Multi Academy Model
Mainstream

4.2 In respect of this Agreement, Clauses 48 to 71 (inclusive) of the Master Agreement will be replaced with the following:

“48) 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) teachers' salaries and related costs (including full and part time teaching staff and seconded teachers);*
- b) non-teaching staff salaries and related costs (including pension contributions, educational support staff, administrative and clerical staff and manual and premises related staff);*
- c) employees' expenses;*
- d) the purchase, maintenance, repair and replacement:*
 - (i) of teaching and learning materials and other educational equipment, including books, stationery and ICT equipment and software, sports equipment and laboratory equipment and materials;*
 - (ii) of other supplies and services;*
- e) examination fees;*
- f) repairs, servicing and maintenance of buildings (including redecoration, heating, plumbing, lighting etc); maintenance of grounds (including boundary fences and walls); cleaning materials and contract cleaning; water and sewage; fuel and light (including fuel oil, solid and other fuel, electricity and gas); rents; rates; purchase, maintenance, repairs and replacement of furniture and fittings;*
- g) insurance, provided that the Secretary of State shall not be obliged to pay GAG in relation to insurance to the extent that insurance and/or comparable arrangements are made available to the Company (whether at a cost to the Company or otherwise and whether made available by and/or on behalf of the Secretary of State or otherwise) save that, to the extent that such insurance and/or comparable arrangements as may be*

Multi Academy Model
Mainstream

made available constitute a cost for the Company, the Secretary of State shall provide a contribution through GAG in relation to such cost;

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

49) Subject to clauses 57 and 58, GAG for each Academy Financial Year for each Academy will include;

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

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

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

Multi Academy Model Mainstream

conditions and criteria necessary for a maintained school to receive these grants.

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

52) Subject to clause 53 the basis of the pupil number count for the purpose of determining GAG for an Academy for Academy Financial Years after the Academy Financial Year in which the Academy opens will be:

a) for the pupil number count for pupils in Year 11 and below, the Schools Census which is used to fund maintained schools for the financial year overlapping with the Academy Financial Year in question; and

b) for the pupil number count for pupils in Year 12 and above, the formula which for the time being is in use for maintained schools for the calculation of pupil numbers for pupils in Year 12 and above for the purpose of calculating their level of funding.

53) Where either of the following conditions applies in respect of an Academy Financial Year, the basis of the pupil count shall be determined by the Secretary of State, taking account of any diseconomies of scale that the Academy will be under as a result of such condition(s) applying. The conditions are:

a) not all planned Year-groups will be present at the Academy (that is, not all the pupil cohorts relevant to the age-range of the Academy will have some pupils present); or

b) the total number of pupils as measured in the Schools Census which is used to fund maintained schools for the financial year overlapping with the Academy Financial Year in question is less than 90% of the planned final size of the Academy, as specified in the Academy's Supplemental

Multi Academy Model Mainstream

Agreement, and has not at any previous time been greater than 90% of that number.

54) For any Academy Financial Year in which GAG for an Academy has been calculated in accordance with clause 51, no adjustment shall be made to the following Academy Financial Year's formula funding element of GAG for that Academy to recognise variation from the pupil count basis used.

55) For any Academy Financial Year in which GAG for an Academy is calculated in accordance with clause 52, no adjustment will be made to the formula funding element in the following Academy Financial Year's formula funding element of GAG unless the Company demonstrates to the satisfaction of the Secretary of State that there has been a significant impact on costs, such as an extra class. For any other element of GAG the Secretary of State may make adjustments to recognise a variation in pupil numbers from that used to calculate the element of grant in question; the basis of these will be set out in the annual letter of funding.

56) The Secretary of State recognises that:

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

Multi Academy Model
Mainstream

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

58) The Secretary of State recognises that if he serves notice of intention to terminate a Supplemental Agreement under that agreement the intake of new pupils during the notice period is likely to decline and that in such circumstances payments based simply upon the number of pupils attending the 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 with respect to that Academy in the notice period than would be justified solely on the basis of the methods set out in clauses 49-55, in order to enable the Academy to operate effectively.

59)The Secretary of State also recognises that if this Agreement or a Supplemental Agreement is terminated for any reason by either party the number of pupils at the 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.

60) Subject to clause 79, GAG paid by the Secretary of State in respect of a Academy shall only be spent by the Company towards the normal running costs of that Academy.

Multi Academy Model
Mainstream

EARMARKED ANNUAL GRANT

61) Earmarked Annual Grant (“EAG”) shall be paid by the Secretary of State to the Company in respect of either recurrent or Capital Expenditure for such specific purposes as may from time to time be agreed between the Secretary of State and the Company and as described in the relevant funding letter. The Company shall only spend EAG in accordance with the scope, terms and conditions of the grant set out in the relevant funding letter.

62) Where the Company is seeking a specific EAG in relation to any Academy Financial Year, it shall submit a letter outlining its proposals and the reasons for its request to Academies Division, Sanctuary Buildings, Great Smith Street, London SW1P 3BT.

ARRANGEMENTS FOR PAYMENT OF GAG AND EAG

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

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

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

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

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

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

Multi Academy Model
Mainstream

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

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

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

OTHER RELEVANT FUNDING

68) ¹Not used.

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

Multi Academy Model
Mainstream

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

71)Not used”

- 4.3 In respect of this Agreement, Clause 75, sub-clause (c) of the Master Agreement shall be replaced with the following:

“c) in addition to the obligation to fulfil the statutory requirements referred to in sub-clause f) below, the Company shall prepare its financial statements, Directors’ report, Annual Accounts and its Annual Return for each Academy Financial Year in accordance with the Statement of Recommended Practice as if the Company was a non-exempt Charity and/or in such form or manner and by such date as the Secretary of State may reasonably direct and shall file these with the Secretary of State and the Principal Regulator each Academy Financial Year;”

- 4.4 In respect of this Agreement, Clause 79 of the Master Agreement shall be replaced with the following:

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

- 4.5 In respect of this Agreement, Clause 85 of the Master Agreement shall be replaced with the following:

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

Multi Academy Model
Mainstream

- 4.6 In respect of this Agreement, the following clause shall be inserted after Clause 86 of the master Agreement:

"86A The Company shall abide by the requirements of and have regard to the Charity Commission's guidance to charities and charity trustees and in particular the Charity Commission's guidance in the Protecting Charities from Harm (the compliance toolkit). Any references in this document which require charity trustees to report to the Charity Commission should instead be interpreted as references to report to the Principal Regulator."

- 4.7 In respect of this Agreement, Clause 90, sub-clause a) of the Master Agreement shall be replaced with the following:

"a) the Secretary of State paid capital grant in excess of the value for the time being specified by the Secretary of State for the asset; or"

- 4.8 In respect of this Agreement, Clause 91 of the Master Agreement shall be replaced with the following:

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

CHANGE OF CONTROL OF THE COMPANY

- 4.9 In respect of this Agreement, the following Clause shall be inserted after Clause 99 of the Master Agreement:

"99A) The Secretary of State may at any time by notice in writing, subject to clause 99C) below, terminate this Agreement forthwith (or on such other date as he may in his absolute discretion determine) in the event that there is a change:

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

Multi Academy Model
Mainstream

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

99B) The Company shall, as soon as it is reasonably practicable to do so after it has become aware of any change or proposed change of Control within the meaning of clause 99A), give written notice to the Secretary of State of such change or proposed change of Control.

99C) When notifying the Secretary of State further to clause 99B), the Company may seek the Secretary of State's agreement that, if he is satisfied that the person assuming Control is suitable, he will not in those circumstances exercise his right to terminate this Agreement further to clause 99A). "

4A COMPLAINTS

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

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

4A.2 If the Secretary of State could have given an order and/or a direction under section 496 and/or section 497 of the Education Act 1996 to the governing body of the school the Academy replaced (as referred to in clause 2.4 of the

Multi Academy Model Mainstream

relevant supplemental agreement) and that order and/or direction related to matters occurring within the 12 months immediately prior to conversion, the Company agrees:

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

5 **TERMINATION**

5.1 Either party may give not less than seven Academy Financial Years' written notice to terminate this Agreement, such notice to expire on 31 August 2019 or any subsequent anniversary of that date.

5.2 If the Secretary of State is of the opinion that the Academy no longer has the characteristics set out in clause 12 of the Master Agreement (as amended by this Agreement) or that the conditions and requirements set out in clauses 13–34B of the Master Agreement (as amended by this Agreement) are not being met, or that the Company is otherwise in material breach of the provisions of this Agreement or the Master Agreement, the Secretary of State may give notice of his provisional intention to terminate this Agreement.

5.3 Any such notice shall be in writing and shall:

5.3.1. state the grounds on which the Secretary of State considers the Academy no longer has the characteristics set out in clause 12 of the Master Agreement (as amended by this Agreement) or is not meeting the conditions and requirements of clauses 13-34B of the Master Agreement (as amended by this Agreement) or the Company is otherwise in material breach of the provisions of this Agreement or the Master Agreement;

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

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

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

Multi Academy Model Mainstream

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

Multi Academy Model Mainstream

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

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

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

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

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

5.10 Both parties undertake to use their best endeavours to agree whether or not the cost of running the Academy during the Critical Year would cause the Company, on the basis of the Indicative Funding and All Other Resources, to become insolvent. Both parties recognise that they will need to engage in a

Multi Academy Model Mainstream

constructive dialogue at the time about how best to provide education for the pupils at the Academy and undertake to use their best endeavours to agree a practical solution to the problem.

- 5.11 If no agreement is reached by 30 April (or such other date as may be agreed between the parties) as to whether the cost of running the Academy during the Critical Year on the basis of the Indicative Funding and All Other Resources would cause the Company to become insolvent, then that question shall be referred to an independent expert (the "Expert") for resolution. The Expert's determination shall be final and binding on both parties. The Expert shall be requested to specify in his determination the amount of the shortfall in funding (the "Shortfall"). The Expert shall be an insolvency practitioner with significant professional experience of educational institutions or academies. If the parties fail to agree upon the appointment of the Expert then the Expert shall be appointed by the President for the time being of the Institute of Chartered Accountants in England and Wales. The Expert's fees shall be borne equally between the parties.
- 5.12 The Expert shall be required in reaching his determination to take account of advice from an educational specialist who is professionally familiar with the issues arising from the budget management of large schools. If the parties fail to agree upon the appointment of the educational specialist then the educational specialist shall be appointed by the Chairman for the time being of the Specialist Schools and Academies Trust. The educational specialist's fees shall be borne equally between the parties.
- 5.13 If the Expert determines that the cost of running the Academy during the Critical Year would cause the Company, on the basis of the Indicative Funding and All Other Resources, to become insolvent, and the Secretary of State shall not have agreed to provide sufficient additional funding to cover the Shortfall, then the Company shall be entitled to terminate this Agreement, by notice expiring on 31 August prior to the Critical Year. Any such notice shall be given within 21 days after (a) the Expert's determination shall have been given to the parties or (b), if later, the Secretary of State shall have given written notice of his refusal to provide sufficient additional funding for the Academy to cover the Shortfall.
- 5.14 If the Company shall have given notice to terminate the Agreement under clause 5.13, the Secretary of State may by notice in writing to the Company require the Company to appoint up to two persons as directors of the Company in accordance with the Articles.
- 5.15 The Secretary of State may at any time by notice in writing terminate this Agreement forthwith if the Academy has ceased (except where such

Multi Academy Model Mainstream

cessation occurs temporarily by reason of an event beyond the reasonable control of the Company) to operate as an Academy within the meaning of Section 1 of the Academies Act 2010.

5.16 A “Special Measures Termination Event Occurs” when:

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

5.16.2.the Chief Inspector carries out a subsequent inspection of the Academy in accordance with the Education Act 2005 and makes a report in accordance with the Education Act 2005 stating that the Academy has made inadequate progress since the date of the Special Measures Notice; and

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

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

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

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

5.17.2.subject to clause 108 of the Master Agreement, appoint such Further Directors to the Company as he thinks fit in accordance with the Articles and/or may provide up to 12 months’ notice in writing to terminate this Agreement.

Multi Academy Model
Mainstream

5.18 In the event that the Secretary of State appoints Further Directors in accordance with clause 5.17.2, the Company must, upon the request of the Secretary of State, procure the resignation of the Directors appointed in accordance with Article 50 of the Articles of Association.

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 (as amended by this Agreement), or is no longer meeting the conditions and requirements set out in clauses 13-34B of the Master Agreement (as amended by this Agreement) 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

Multi Academy Model
Mainstream

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

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

- a) The Company obtains his permission to invest the proceeds of sale for its charitable objects; or
- b) The Secretary of State directs all or part of the repayment to be paid to the L A.

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

LAND

Restrictions on Land transfer

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

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

No disposition of the registered estate by the proprietor of the registered estate is to be registered without a written consent signed by the Secretary of

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

7 **ANNEX**

- 7.1 The Annexes to this Agreement form part of and are 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**


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

Multi Academy Model
Mainstream

This Agreement was executed as a Deed on 31 August 2012

Executed on behalf of by THE KEMNAL ACADEMIES TRUST:


.....
Director
BRENDAN HEALY


.....
Director/Secretary
PAUL ALLEN

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


.....

Duly Authorised

