

Multi Academy Model
Mainstream

SCHEDULE 1
MODEL SUPPLEMENTAL FUNDING AGREEMENT

THIS AGREEMENT made 31 August 2012

BETWEEN

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

(2) **AVANTI SCHOOLS TRUST**

IS SUPPLEMENTAL TO THE MASTER FUNDING AGREEMENT made between the same parties and dated 31 August 2012 (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 Krishna Avanti Primary School (Harrow) to be established at Camrose Avenue, Edgware, Middlesex HA8 6ES.

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

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

"the Land" means the land (including for the avoidance of doubt all buildings, structures landscaping and other erections) owned by the Trustee situated at and known as Krishna-Avanti Primary School, Camrose Avenue, Edgware, Middlesex HA8 6ES and registered under title number AGL184232 from which the Academy operates.

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“the Trustee means the IFoundation Limited (a company limited by guarantee registered at Companies House with company number 05137350).

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 Agreement¹.

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

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

ACADEMY OPENING DATE

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

2.5 The planned capacity of the Academy is 210 in the age range 4-11 with, in addition, a nursery for 26 part-time pupils up to the age of 4.

3 CAPITAL GRANT

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

4 GAG AND EAG

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

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

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4A **COMPLAINTS**²

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 supplemental agreement, and all or part of that complaint was being or had been investigated by the Local Government Ombudsman under Part III or the Local Government Act 1974 ('Part III') or that complaint in whole or in part could have been investigated under Part III had the school this 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 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

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

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the characteristics set out in clause 12 of the Master 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 (as amended by this agreement), the Secretary of State may give notice of his provisional intention to terminate this Agreement (as amended by 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.
- 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

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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 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 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

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Critical Year would cause the Company, on the basis of the Indicative Funding, to become insolvent (and for this reason only) then the Company may give notice of its intention to terminate this Agreement at the end of the then current Academy Financial Year.

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

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

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

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

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

5.11 If no agreement is reached by 30 April (or such other date as may be agreed between the parties) as to whether the cost of running the Academy during the Critical Year on the basis of the Indicative Funding and All Other

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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 5.13, the Secretary of State may by notice in writing to the Company require the Company to appoint up to two persons as directors of the Company in accordance with the Articles.

5.15 The Secretary of State may at any time by notice in writing terminate this Agreement forthwith if the Academy has ceased (except where such cessation occurs temporarily by reason of an event beyond the reasonable

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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 102 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.
- 5.18 In the event that the Secretary of State appoints Further Directors in

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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, 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 (as amended by this agreement) , the Secretary of State shall indemnify the Company.
- 6.3 The amount of any such indemnity shall be determined by the Secretary of State having regard to any representations made to him by the Company, and shall be paid at such times and in such manner as the Secretary of State may reasonably think fit.
- 6.4 The categories of expenditure incurred by the Company in consequence of the termination of the Agreement in respect of which the Secretary of State shall indemnify the Company include (but not by way of limitation), staff compensation and redundancy payments, compensation payments in respect of broken contracts, expenses of disposing of assets or adapting them for other purposes, legal and other professional fees, and dissolution expenses.
- 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

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of the capital contribution made by the Secretary of State to the original value of those assets, whether that contribution was made on the establishment of the Academy or later; or

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

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

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

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

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

6A INSURANCE

6A.1 The Company shall:-

a) keep the Land insured in the joint names of the Company and the Trustee 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

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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.

7 **ANNEX**

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

8 **THE MASTER AGREEMENT**

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

8.2 The new clause 13(g) consisting of the following wording is inserted into the Master Agreement for the purposes of this agreement:

the Company shall as soon as reasonably practicable establish an appropriate mechanism for the receipt and management of donations and shall use reasonable endeavours to procure donations through that mechanism for the purpose of the objects specified in the Articles.

8.3 The new clause 13A consisting of the following wording is inserted into the Master Agreement for the purposes of this agreement:

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 the Academy.

8.4 For the purposes of this agreement clause 18(b) of the Master Funding

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Agreement will not apply and will be replaced by the following clause:

18(b) 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.

8.5 For the purposes of this agreement clause 18(c)(i) of the Master Funding Agreement will not apply.

8.6 For the purposes of this agreement clause 23A of the Master Funding Agreement will not apply and will be replaced by the following clauses

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

- a) the content of the curriculum;
- b) its approach to the curriculum;
- c) the GCSE option (and other Key Stage 4 qualifications) offered by 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 curriculum at the Academy.

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

8.7 The new clause 30A consisting of the following wording is inserted into the Master Agreement for the purposes of this agreement:

30A) The Company shall ensure that the following information is published on the website of the Academy:

- a) The school's most recent key stage 2 results as published by the

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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 and Maths GCSEs";
 - (ii) "% achieving the English Baccalaureate"; and
 - (iii) "% of pupils making expected progress".
- c) Information as to where and by what means parents (including prospective parents) may access the most recent report about the school published by her Majesty's Chief Inspector of Education, Children's Services and Skills.
- d) Information as to where and by what means parents (including prospective parents) may access the School Performance Tables published by the Secretary of State on the Department for Education's website.

8.8 The new clause 34C consisting of the following wording is inserted into the Master Agreement for the purposes of this agreement:

DURATION OF SCHOOL DAY AND YEAR

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34C) In respect of **Mainstream Academies**, the duration of the school day and year will be the responsibility of the Company.³

8.9 For the purposes of this agreement clauses 42A to 53 of the Master Funding Agreement will not apply and will be replaced by the following clauses

43) Subject to clauses to 51-52, GAG for each Academy Financial Year for the Academy will include;

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

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

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

45) Subject to clause 47, the basis of the pupil number count for the purposes of determining GAG for the Academy Financial Year in which the **Academy** opens shall be the same basis as that used by the Local Authority for determining the budget share of the predecessor maintained school as adjusted by numbers counted in any subsequent Schools Census, as determined by the Secretary of State. In subsequent years the basis of the pupil count will be as determined by the Secretary of State.

³ In respect of Special Academies, regulations made under section 551 of the Education Act 1996 apply (currently the Education (School Day and School Year) (England) Regulations 1999).

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- 46) Subject to clause 47 the basis of the pupil number count for the purpose of determining GAG for the Academy for Academy Financial Years after the Academy Financial Year in which the Academy opens will be:
- a) for the pupil number count for pupils in Year 11 and below, the Schools Census which is used to fund maintained schools for the financial year overlapping with the Academy Financial Year in question; and
 - b) for the pupil number count for pupils in Year 12 and above, the formula which for the time being is in use for maintained schools for the calculation of pupil numbers for pupils in Year 12 and above for the purpose of calculating their level of funding.
- 47) 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 this Supplemental Agreement, and has not at any previous time been greater than 90% of that number.
- 48) For any Academy Financial Year in which GAG for the **Academy** has been calculated in accordance with clause 45, no adjustment shall be made to the following Academy Financial Year's formula funding element of GAG for the Academy to recognise variation from the pupil count basis used.
- 49) For any Academy Financial Year in which GAG for the **Academy** is calculated in accordance with clause 46, 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

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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.

50) 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 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 43-49, in order to enable the Academy to operate effectively⁴;
- b) in relation to **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.

51) 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 43-49 to allow the Academy to:

- a) purchase a basic stock of teaching and learning materials (including library books, text books, software, stationery, science equipment and equipment for physical education) and other consumable materials;

⁴ Note that a larger GAG for the Start-Up Period is only applicable to Academies with approved Expressions of Interest.

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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.

52) The Secretary of State recognises that if he serves notice of intention to terminate a Supplemental Agreement under that agreement the intake of new pupils during the notice period is likely to decline and that in such circumstances payments based simply upon the number of pupils attending the **Academy** are unlikely to be sufficient to meet the Academy's needs during the notice period. The Secretary of State undertakes to pay a reasonable and appropriately larger GAG with respect to the Academy in the notice period than would be justified solely on the basis of the methods set out in clauses 43-49, in order to enable the Academy to operate effectively.

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

8.10 The new clause 63 consisting of the following wording is inserted into the Master Agreement for the purposes of this agreement:

63) 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.

8.11 For the purposes of this agreement clause 74 of the Master Funding Agreement will not apply and will be replaced by the following clause;

74) Notwithstanding clause 73 any additional grant provided over and above

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that set out in clauses 43-49 and made in accordance with clauses 50-52
may be carried forward without limitation or deduction until the Start-up
Period or the circumstances set out in clause 52 come to an end.

9 **ENGLISH LAW**

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


This Agreement was executed as a Deed on 31 August 2012

Executed on behalf of Avanti Schools Trust by:


.....
Director


.....
Director/Secretary

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


.....

Duly Authorised



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ANNEXES TO THIS SUPPLEMENTAL AGREEMENT

Requirements for the Admission for pupils at the
Academy Annex 1

Arrangements for pupils with SEN and disabilities at the Academy Annex 2

Annex 1

REQUIREMENTS FOR THE ADMISSION OF PUPILS TO KRISHNA AVANTI PRIMARY SCHOOL (HARROW)

GENERAL

1. This annex may be amended in writing at any time by agreement between the Secretary of State and the Company.
2. Except as provided in paragraphs 2A to 2B below the Company will act in accordance with, and will ensure that an Independent Appeal Panel is trained to act in accordance with, all relevant provisions of the School Admissions Code, and the School Admission Appeals Code published by the Department for Education (“the Codes”) as they apply at any given time to maintained schools and with equalities law and the law on admissions as they apply to maintained schools. For this purpose, reference in the Codes or legislation to “admission authorities” shall be deemed to be references to the Directors of the Company.
 - 2A The Company is permitted to determine admission arrangements (subject to consultation in accordance with the School Admissions Code) that give priority for admission (but not above looked after children and previously looked after children⁵) to other children attracting the pupil premium, including the service premium (‘the pupil premium admission criterion’). Where a Company exercises this freedom it will provide information in its admission arrangements of eligibility for the premiums.
 - 2B For the purposes of applying the pupil premium admission criterion only, sections 1.9(f) and 2.4(a) of the School Admissions Code do not apply insofar as they prevent admission authorities from giving priority to children according to the financial or occupational status of parents or using supplementary forms that ask for:
 - any personal details about their financial status; or
 - whether parents are serving in the armed forces (of any nation), stationed in England, and exercising parental care and responsibility for the child in question.
3. Notwithstanding the generality of paragraph 2 of this Annex, the Company will participate in the co-ordinated admission arrangements operated by the Local Authority (LA) and the local Fair Access Protocol.
4. Notwithstanding any provision in this Annex, the Secretary of State may:
 - (a) direct the Company to admit a named pupil to Krishna Avanti

⁵ As defined in the School Admissions Code.

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Primary School (Harrow) on application from an LA. This will include complying with a School Attendance Order⁶. Before doing so the Secretary of State will consult the Company;

- (b) direct the Company to admit a named pupil to Krishna Avanti Primary School (Harrow) if the Company has failed to act in accordance with this Annex or has otherwise failed to comply with applicable admissions and equalities legislation or the provisions of the Codes;
- (c) direct the Company to amend its admission arrangements where they fail to comply with the School Admissions Code or the School Admission Appeals Code.

4A Krishna Avanti Primary School (Harrow) is a Hindu Academy in the London Borough of Harrow. The relevant faith body is the IFoundation, the body promoting Hindu state education in the UK.

5. The Company shall ensure that parents and ‘relevant children⁷’ will have the right of appeal to an Independent Appeal Panel if they are dissatisfied with an admission decision of the Company. The Independent Appeal Panel will be independent of the Company. The arrangements for appeals will comply with the School Admission Appeals Code published by the Department for Education as it applies to Foundation and Voluntary Aided schools. The determination of the appeal panel is binding on all parties.

Relevant Area

6. Subject to paragraph 7, the meaning of “Relevant Area” for the purposes of consultation requirements in relation to admission arrangements is that determined by the local authority for maintained schools in the area in accordance with the Education (Relevant Areas for Consultation on Admission Arrangements) Regulations 1999.

7. If the Company does not consider the relevant area determined by the local authority for the maintained schools in the area to be appropriate, it must apply to the Secretary of State by 1 August for a determination of the appropriate relevant area for the Academy, setting out the reasons for this view. The Secretary of State will consult the Company and the LA in which the Academy is situated in reaching a decision.

⁶ Local authorities are able to issue school attendance orders if a child is not attending school. These are legally binding upon parents. Such an order might, for instance, be appropriate where a child has a place at an Academy but his/her parents are refusing to send him/her to school. The order will require a parent to ensure his/her child attends a specified school.

⁷ relevant children’ means:

- a) in the case of appeals for entry to a sixth form, the child, and;
- b) in any other case, children who are above compulsory school age, or will be above compulsory school age by the time they start to receive education at the school.

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Requirement to admit pupils

8. Pupils on roll in any predecessor maintained or independent school will transfer automatically to the Academy on opening. All children already offered a place at any predecessor school will be admitted.
9. The Company will:
 - a. subject to its right of appeal to the Secretary of State in relation to a named pupil, admit all pupils with a statement of special educational needs naming the Academy;
 - b. determine admission oversubscription criteria for the Academy that give highest priority to looked after children and previously looked after children, in accordance with the relevant provisions of the School Admissions Code.

Oversubscription criteria, admission number, consultation, determination and objections.

10. The Academy admission arrangements will include oversubscription criteria, and an admission number for each relevant age group⁸. The Company will consult on the Academy's admission arrangements and determine them in line with the requirements within the School Admissions Code.
11. The Office of the School's Adjudicator (OSA) will consider objections to the Academy's admission arrangements⁹. The Company should therefore make it clear, when determining the Academy's admission arrangements, that objections should be submitted to the OSA.
12. A determination of an objection by the OSA will be binding upon the Academy and the Company will make appropriate changes as quickly as possible.

⁸ 'Relevant age group' means 'normal point of admission to the school, for example, year R, Year7 and Year 12.

⁹ The OSA has no jurisdiction to consider objections against the agreed variation from the Codes set out in paragraphs 2A and 2B.

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

Duties in relation to pupils with SEN¹⁰

1. The Directors of the Company must, in relation to the Academy, comply with all of the duties imposed upon the governing bodies of maintained schools in;
 - Part 4 of the Education Act 1996 as amended from time to time¹¹;
 - The Education (Special Educational Needs) (Information) Regulations 1999 as amended from time to time;
 - The Education (Special Educational Needs Co-ordinators) (England) (Amendment) Regulations 2008 as amended from time to time¹².
2. Notwithstanding any provision in this Agreement, the Secretary of State may (whether following a complaint made to him or otherwise) direct the Company to comply with an obligation described in this Annex where the Company has failed to comply with any such obligation.
3. Where a child who has SEN is being educated in the **Academy**, those concerned with making special educational provision for the child must secure that the child engages in the activities of the school together with children who do not have SEN, so far as is reasonably practicable and is compatible with:
 - (a) the child receiving the special educational provision which his learning difficulty calls for,
 - (b) the provision of efficient education for the children with whom he will be educated, and
 - (c) the efficient use of resources.
4. In addition to complying with the duties imposed upon the governing bodies of maintained schools set out in The Education (Special Educational Needs) (Information) Regulations 1999 (as amended from time to time) the Company must ensure that the website for the Academy includes details of the implementation of its policy for pupils with special educational needs; the arrangements for the admission of

¹⁰ Duties in relation to pupils with SEN at Special Academies are at clause 12A of the Master Funding Agreement.

¹¹ Currently these duties are in sections 313 (Duty to have regard to the Special Educational Needs Code of Practice 2001); 317 (Duties in relation to pupils with special educational needs), 317A (Duty to advise parents that special educational provision is being made); and 324(5)(b) (Duty to admit the child where a school is named in the statement).

¹² These Regulations are amended by The Education (Special Educational Needs Co-ordinators) (England) (Amendment) Regulations 2009 (SI 2009 No 1387).

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disabled pupils; the steps taken to prevent disabled pupils from being treated less favourably than other pupils; and the facilities provided to assist access to the Academy by disabled pupils (disabled pupils meaning pupils who are disabled for the purposes of the Equality Act

2010¹³).

Admissions¹⁴

5. The Company must ensure that pupils with SEN are admitted on an equal basis with others in accordance with the Academy's admissions policy.
6. Where a local authority ("LA") proposes to name the **Academy** in a statement of SEN made in accordance with section 324 of the Education Act 1996, it must give the Company written notice that it so proposes. Within 15 days of receipt of the LA's notice that it proposes to name the Academy in a statement, the Company must consent to being named, except where admitting the child would be incompatible with the provision of efficient education for other children; and where no reasonable steps may be made to secure compatibility. In deciding whether a child's inclusion would be incompatible with the efficient education of other children, the Company must have regard to the relevant guidance issued by the Secretary of State to maintained schools.
7. If the Company determines that admitting the child would be incompatible with the provision of efficient education, it must, within 15 days of receipt of the LA's notice, notify the LA in writing that it does not agree that the Academy should be named in the pupil's statement. Such notice must set out all the facts and matters the Company relies upon in support of its contention that: (a) admitting the child would be incompatible with efficiently educating other children; and (b) the Company cannot take reasonable steps to secure this compatibility.
8. After service by the Company on the LA of any notice (further to paragraph 7 above) stating that it does not agree with the LA's proposal that the Academy be named, the Company must seek to establish from the LA, as soon as is reasonably practicable, whether or not the LA agrees with the Company. If the LA notifies the Company that it does not agree with the Company's response, and names the Academy in the child's statement, then the Company must admit the child to the school on the date specified in the statement or on the date specified by the LA.
9. Where the Company consider that the Academy should not have been named in a child's statement, they may ask the Secretary of State to

¹³ For the meaning of 'disabled', see section 6 of the Equality Act 2010.

¹⁴ SEN Admissions requirements for special academies are set out in the Special Academy Supplemental Funding Agreement Annex 1.

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determine that the LA has acted unreasonably in naming the Academy and to make an order directing the LA to reconsider.

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