

DEED OF VARIATION & NOVATION

The parties to this Deed are:

- (1) **THE SECRETARY OF STATE FOR EDUCATION** (“the Secretary of State”);
- (2) **SUTTON PARK PRIMARY SCHOOL**, an exempt charitable company limited by guarantee (company number 08426042) whose registered office is at Sutton Park Primary School, Marsdale, Sutton Park, Hull HU7 4AH (“Transferor”); and
- (3) **HULL COLLABORATIVE ACADEMY TRUST**, an exempt charitable company limited by guarantee (company number 08542806) whose registered office is C/O Harris Lacey And Swain 8 Waterside Park, Livingstone Road, Hessle, Hull, HU13 0EN (“Transferee”);

together referred to as the “Parties”.

DEFINITIONS

Academy: means Sutton Park Primary School (URN 139513 a converter academy)

Existing Funding Agreement: means the Funding Agreement dated 28 March 2013 made between (1) the Secretary of State and (2) the Transferor

Master Funding Agreement: means the Funding Agreement dated 27 June 2013 made between (1) the Secretary of State and (2) the Transferee

Land: the land including for the avoidance of doubt all buildings, structures landscaping and other erections) situated at and known as Sutton Park Primary School, Marsdale, Sutton Park, Hull HU7 4AH which is registered under Title number HS370129

Supplemental Funding Agreement: means the Funding Agreement set out at Schedule 1 to this Deed

Transfer Date: 00.01am on 1 November 2015

INTRODUCTION

- A. The Secretary of State and the Transferor entered into the Existing Funding Agreement in relation to the Academy relating to the establishment, maintenance and funding of the Academy as an independent school.
- B. The Transferor holds a lease to the Land from the local authority.
- C. It is proposed that with effect from and including the Transfer Date the Transferee will assume responsibility for the management and operation of the Academy in succession to the Transferor.
- D. The parties wish to novate the Existing Funding Agreement to the Transferee and to vary the terms of the Existing Funding Agreement subject to the provisions of this Deed.

LEGAL AGREEMENT

Interpretation

- 1. Any word or phrase used in this Deed shall, if that word or phrase is defined in the Master Funding Agreement bear the meaning given to it in that agreement.

Novation of existing funding agreement

- 2. The Transferor transfers all its rights and obligations under the Existing Funding Agreement to the Transferee with effect from and including the Transfer Date. With effect from and including the Transfer Date, the Transferee shall enjoy all the rights and benefits of the Transferor under the Existing Funding Agreement, and all references to the Transferor in the Existing Funding Agreement shall be read and construed as references to the Transferee.

3. The Transferee agrees to perform the Existing Funding Agreement and be bound by its terms in every way as if it were the original party to it in place of the Transferor with effect from and including the Transfer Date.
4. The Secretary of State agrees to perform the Existing Funding Agreement and be bound by its terms in every way as if the Transferee were the original party to it in place of the Transferor.

Obligations and liabilities

5. With effect from and including the Transfer Date, the Transferor and the Secretary of State release each other from all future obligations claims and demands to the other under or in connection with the Existing Funding Agreement arising on or after the Transfer Date.
6. Each of the Transferee and the Secretary of State will have the right to enforce the Existing Funding Agreement and pursue claims and demands under the Existing Funding Agreement against the other with respect to matters arising before, on or after the date of this Deed as though the Transferee were the original party to the Existing Funding Agreement instead of the Transferor.

Variation of existing funding agreement

7. The Secretary of State and the Transferee agree that with effect from and including the Transfer Date the Existing Funding Agreement shall be amended and restated so as to take effect in the form of the Supplemental Funding Agreement which is supplemental to the Master Funding Agreement.
8. As varied by this Deed, the Master Funding Agreement, and the Supplemental Funding Agreement shall remain in full force and effect.

Consent

9. The Secretary of State gives consent to the Transferor transferring the Land to the Transferee and to the Transferee receiving the Land from the Transferor. For the purposes of Schedule 1 Paragraph 17 Academies Act 2010 the Secretary of State agrees that notice of the disposition has been received from the Transferor and no direction shall be made under that provision and the Transferor accepts this acknowledgement as notification of the Secretary of State's decision.

10. Provided that the Transferee registers the restriction contained at clause 6A(a) of the Supplemental Funding Agreement the Secretary of State consents to the removal of the restriction registered on the title to the Land required by clause 115A(a) of the Existing Funding Agreement.


11. This Deed shall be governed by and interpreted in accordance with English Law.

EXECUTED AND DELIVERED AS A DEED by the Parties on

the 2d OCTOBER

2015

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


.....
Duly Authorised by the Secretary of State for Education



**Sutton Park Primary
School**
acting by a director in the
presence of a witness

Deborah Tague
.....
Director
Print name..... *Deborah Tague*

Witnessed by .. *[Signature]*

Full name

Address

Occupation

**Hull Collaborative
Academy Trust**
acting by a director in the
presence of a witness

Estelle Macdonald
.....
Director
Print name..... *ESTELLE MACDONALD*

Witnessed by .. *[Signature]*

Full name

Address

Occupation

Schedule 1 (the Supplemental Funding Agreement)

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SCHEDULE 1

SUPPLEMENTAL AGREEMENT

THIS AGREEMENT made

2015

BETWEEN

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

(2) **HULL COLLABORATIVE ACADEMY TRUST**

IS SUPPLEMENTAL TO THE MASTER FUNDING AGREEMENT made between the same parties and dated 27 June 2013 (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 Sutton Park Primary School established at Sutton Park Primary School, Marsdale, Sutton Park, Hull HU7 4AH.

“the Academy Trust” means the Company

“Charity Trustees” means the Directors of the Company

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

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“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 Sutton Park Primary School, Marsdale, Sutton Park, Hull HU7 4AH registered under title number HS370129 (Academy Trust’s leasehold Local Authority’s freehold registered under Title number: HS351436).

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

2 THE ACADEMY

2.1 The Company will establish and maintain, and carry on or provide for the carrying on of the Academy in accordance with the Master Agreement and this Agreement.

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

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

2.3A The Academy Trust must ensure that so far as is reasonably practicable and consistent with (i) the provisions of the Master Agreement and this Agreement as they relate to the provision of religious education and collective worship; and (ii) the Equality Act 2010, the policies and practices adopted by the Academy (in particular regarding curriculum, uniform and school food) enable pupils of all faiths and none to play a full part in the life of the Academy, and do not disadvantage pupils or parents of any faith or none. For the avoidance of doubt, this requirement applies irrespective of the proportion of pupils of any faiths or none currently attending or predicted to join the school.

ACADEMY OPENING DATE

2.4 The Academy opened as a school on 1 April 2013 replacing Sutton Park Primary School (a community school) which ceased to be maintained

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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 350 in the age range 3-11 including a nursery unit of 39 FTE places.

RUNNING OF THE ACADEMY

Pupils

2.6 The relevant clauses in the Master Agreement and Annex B to the Master Agreement shall only apply insofar as the relevant provisions of the Children and Families Act 2014 relating to SEN and disability do not apply to Academies and Free Schools.

School meals

Clauses 32 and 33 of the Master Agreement are disapplied and replaced with the following clauses 2.7, 2.8 and 2.9.

2.7 The Academy Trust must provide school lunches and free school lunches in accordance with the provisions of sections 512(3) and 512ZB(1) of the Education Act 1996 as if references in sections 512 and 512ZB to a local authority were to the Academy Trust and as if references to a school maintained by a local authority were to any of its Academies.

2.8 The Academy Trust must comply with school food standards legislation as if its Academies were maintained schools.

2.9 Where the Academy Trust provides milk to pupils, it must be provided free of charge to pupils who would be eligible for free milk if they were pupils at a maintained school.

Curriculum

2.10 The Academy Trust must not allow any view or theory to be taught as evidence-based if it is contrary to established scientific or historical evidence and explanations. This clause applies to all subjects taught at an Academy.

2.11 The Academy Trust must provide for the teaching of evolution as a comprehensive, coherent and extensively evidenced theory.

2.12 The Academy Trust must ensure that principles are promoted which support fundamental British values, of: respect for the basis on which the law is made and applied in England; respect for democracy and

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support for participation in the democratic processes; support for equality of opportunity for all; support and respect for the liberties of all within the law; and respect for and tolerance of different faiths and religious and other beliefs.

Governance

- 2.13 The Academy Trust must provide to the Secretary of State the names of all new or replacement members of the Academy Trust, stating the date of their appointment and, where applicable, the name of the member they replaced as soon as is practicable and in any event within 14 days of their appointment.
- 2.14 The Academy Trust must not appoint any new or replacement members until it has first informed them, and they have agreed, that their names will be shared with the Secretary of State to enable him to assess their suitability.
- 2.14A The Academy Trust must not amend or remove the provisions in its Articles relating to the appointment or election or the resignation or removal of Charity Trustees or members (“the Governance Articles”) without the Secretary of State’s consent.
- 2.14B Before any change to the Governance Articles is proposed the Academy Trust must give notice to the Secretary of State of:
- a) the proposed amendment or removal; and
 - b) the reason for it.
- 2.14C If the Secretary of State consents to the proposed changes, the Academy Trust shall approve any changes to the Articles as soon as reasonably practicable and provide the Secretary of State with a copy of the amended Articles and the resolution(s) approving them.

Pupil Premium

- 2.15 For each Academy Financial Year, the Academy Trust must publish, on the Academy’s website, information about:
- a) the amount of Year 7 literacy and numeracy catch-up premium grant that it will receive during the Academy Financial Year;
 - b) what it intends to spend its Year 7 literacy and numeracy catch-up premium grant on;
 - c) what it spent its Year 7 literacy and numeracy catch-up premium grant on in the previous Academy Financial Year;

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- d) the impact of the previous year's Year 7 literacy and numeracy catch-up premium grant on educational attainment, and how that effect was assessed.

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.

4A Not used.

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 2022 or any subsequent anniversary of that date.

Termination Warning Notice

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

- a) the Academy is no longer meeting the requirements referred to in clause 12 of the Master Agreement (subject to clause 5.9 of this Agreement);
- b) the conditions and requirements set out in clauses 13-34B of the Master Agreement are no longer being met;
- c) the standards of performance of pupils at the Academy are unacceptably low;
- d) there has been a serious breakdown in the way the Academy is

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managed or governed;

- e) the safety of pupils or staff is threatened (whether by breakdown of discipline or otherwise); or
- f) the Company is otherwise in material breach of the provisions of this Agreement or the Master Agreement.

5.3 A Termination Warning Notice issued by the Secretary of State in accordance with clause 5.2 shall specify:

- a) reasons for the Secretary of State's issue of the Termination Warning Notice;
- b) the remedial measures which the Secretary of State requires the Company to carry out, with associated deadlines, in order to rectify the defaults identified ("Specified Remedial Measures"); and
- c) the date by which the Company must respond to the Termination Warning Notice providing its representations with regard thereto or confirm that it accepts and agrees to undertake the Specified Remedial Measures.

5.4 The Secretary of State shall consider any response and representations from the Company which are received by the date specified in accordance with clause 5.3(c) and shall confirm whether he considers that:

- a) in the light of the Company's representations in response to the Termination Warning Notice, some or all of the Specified Remedial Measures are not required to be implemented (and if so which) and/or the Specified Remedial Measures are being or will be implemented within the specified timeframe; or
- b) subject to any further measures he reasonably requires ("Further Remedial Measures") being implemented by a specified date or any evidence he requires being provided, the implementation of such measures has been or will be successfully completed within the

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specified timeframes; or

c) he is not satisfied that the Company will rectify the defaults identified in the Termination Warning Notice within the specified timeframes. (In such circumstances, the Secretary of State may notify the Company of his intention to terminate the Agreement on a specified date.)

5.5 The Secretary of State may by notice in writing terminate this Agreement with effect from a specified date in the event that:

a) the Company has not, by the date specified in clause 5.3(c), responded to the Termination Warning Notice either confirming that it accepts and agrees to undertake the Specified Remedial Measures or providing its representations with regard to the Specified Remedial Measures; or

b) the Company has not carried out the Specified Remedial Measures and/or Further Remedial Measures within the specified timeframes;

provided that having considered any representations made by the Academy Trust pursuant to clause 5.3(c), the Secretary of State remains satisfied that it is appropriate to terminate the Agreement.

Notice of Intention to Terminate

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

(a) special measures are required to be taken in relation to the Academy; or

(b) the Academy requires significant improvement.

5.7 Any notice issued by the Secretary of State in accordance with clause 5.6 shall invite the Company to respond with any representations within a

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specified timeframe.

5.8 Where the Secretary of State has given notice of his intention to terminate this Agreement in accordance with clauses 5.6 and 5.7 and –

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

he may by notice in writing terminate this Agreement with effect from a specified date.

Termination with Immediate Effect

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

5.9A) If

- a) Any Charity Trustee or member of the Academy Trust refuses to consent to any checks required under this Agreement, or as otherwise requested by the Secretary of State; or
- b) The Secretary of State determines that any Charity Trustee or member of the Academy Trust is unsuitable,

the Secretary of State may:

- i. direct the Academy Trust to ensure that the Charity Trustee or member resigns or is removed within 42 days, failing which the Secretary of State may serve a Termination Notice; or
- ii. serve a Termination Notice.

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5.9B) For the purposes of clause 5.9A a Charity Trustee or member of the Academy Trust will be "unsuitable" if that Charity Trustee or member:

- a) has been convicted of an offence;
- b) has been given a caution in respect of an offence;
- c) is subject to a relevant finding in respect of an offence; or
- d) has engaged in relevant conduct,

as a result of which, the Secretary of State considers that that Charity Trustee or member is unsuitable to take part in the management of the Academies.

5.9C) For the purposes of clause 5.9B:

- a) a Charity Trustee or member of the Academy Trust will be subject to a "relevant finding" in respect of an offence if:
 - i. that Charity Trustee or member has been found not guilty of the offence by reason of insanity;
 - ii. that Charity Trustee or member has been found to be under a disability and to have done the act charged against them in respect of the offence; or
 - iii. a court outside the United Kingdom has made a finding equivalent to that described in paragraphs (i) and (ii) above.
- b) "relevant conduct" is conduct by a Charity Trustee or member of the Academy Trust which is:
 - i. aimed at undermining the fundamental British values of democracy, the rule of law, individual liberty and mutual respect and tolerance of those with different faiths and beliefs; or
 - ii. found to be in breach of professional standards by a professional body; or
 - iii. so inappropriate that, in the opinion of the Secretary of State, it makes that Charity Trustee or member unsuitable to take part in the management of the Academy.

Notice of Intention to Terminate by Company

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

5.11 Any notice given by the Company under clause 5.10 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 5.10 above, within six weeks after the Secretary of State shall have done so. The notice must specify:

5.11.1.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

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5.11.2. 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

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

5.12 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.

5.13 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.

5.14 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 schools. If the parties fail to agree upon the appointment of the educational specialist

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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.

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

6 EFFECT OF TERMINATION

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

6.2 Subject to clauses 6.3 and 6.4, if the Secretary of State terminates this Agreement pursuant to clause 5.1 of this Agreement, the Secretary of State shall indemnify the Company. If the Secretary of State terminates this Agreement otherwise than pursuant to clause 5.1 of this Agreement, the Secretary of State may in his absolute discretion indemnify or (to such extent if any as he may in his absolute discretion consider appropriate) compensate the Company.

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

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

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

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

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

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

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

LAND

Restrictions on Land transfer

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

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

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

- b) shall take any further steps required to ensure that the restriction referred to in clause 6A(a) is entered on the proprietorship register,

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c) shall provide the Secretary of State with confirmation of the entry of the restriction referred to in clause 6A(a) as soon as practicable after it receives notification from the Land Registry,

d) in the event that it has not registered the restriction referred to in clause 6A(a), hereby consents to the entering of the restriction referred to in 6A(a) in the register by the Secretary of State (under s. 43(1)(b) of the Land Registration Act 2002),

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

6.B Not used

6.C Not used

6.D Not used

6.E Not used

6.F Where:

a) the Secretary of State identifies basic or parental need for additional places in the area in which the Academy is situated; and

b) the Secretary of State then considers that not all the Land is needed for the operation of the Academy at planned capacity,

the Secretary of State must consult with the Academy Trust to determine whether part of the Land could be demised or sublet to another academy trust, as the Secretary of State considers appropriate, for the purpose of that academy trust establishing and maintaining an educational institution on the Land.

6.G To the extent the Academy Trust and the Secretary of State agree to part of the Land being demised or sublet in accordance with clause 6.F, the Academy Trust must use its best endeavours to procure either the approval of the Landlord or any necessary amendments to the Lease in order to enable it to share occupation of the Land with the

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incoming academy trust, and shall enter into any legal arrangements which the Secretary of State requires for this purpose. The Secretary of State shall meet the necessary and reasonable costs incurred by the Academy Trust in connection with this clause.

6.H For the purposes of clause 6.F:

- a) **a basic need** will arise when the forecast demand for pupil places in the area where the Academy is situated is greater than the existing capacity to provide them;
- b) **a parental need** will arise when the DfE is actually aware of an additional demand for pupil places in the area where the Academy is situated, following representations from parents in that area;

7 ANNEX

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

8 THE MASTER AGREEMENT

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

8.2 Not used.

9 GENERAL

9.1 This Agreement shall not be assignable by the Company.

9.2 No delay, neglect or forbearance on the part of the Secretary of State in enforcing (in whole or in part) any provision of this Agreement or in exercising (in whole or in part) any right or remedy conferred on him by this Agreement shall be or be deemed to be a waiver of such provision or right or remedy or a waiver of any other provision or right or remedy or shall in any way prejudice any right or remedy of the Secretary of State under this Agreement or shall amount to an election not to enforce such provision or

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exercise such right or remedy (including, for the avoidance of doubt, any right to terminate this Agreement). No single or partial exercise of such right or remedy shall preclude or restrict the further exercise of that or any other right or remedy.

9.3 Termination of this agreement, for any reason, shall not affect the accrued rights, remedies, obligations or liabilities of the parties existing at termination.

9.4 This deed may be executed in any number of counterparts, each of which when executed and delivered shall constitute a duplicate original, but all the counterparts shall together constitute the one agreement.

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

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

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ANNEX TO THIS SUPPLEMENTAL AGREEMENT

Requirements for the Admission for pupils at the
Academy Annex 1

Annex 1

REQUIREMENTS FOR THE ADMISSION OF PUPILS TO SUTTON PARK PRIMARY SCHOOL

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 children¹) to other children attracting the pupil premium, including the service premium ('the pupil premium admission criterion'). Where a Company exercises this freedom it will provide information in its admission arrangements of eligibility for the premiums.

2B For the purposes of applying the pupil premium admission criterion only, sections 1.9(f) and 2.4(a) of the School Admissions Code do not apply insofar as they prevent admission authorities from giving priority to children according to the financial or occupational status of parents or using supplementary forms that ask for:

- any personal details about their financial status; or
- whether parents are serving in the armed forces (of any nation), stationed in England, and exercising parental care and responsibility for the child in question.

3. Notwithstanding the generality of paragraph 2 of this Annex, the Company will participate in the co-ordinated admission arrangements operated by the Local Authority (LA) and the local Fair Access Protocol.

4. Notwithstanding any provision in this Annex, the Secretary of State may:

- (a) direct the Company to admit a named pupil to Sutton Park Primary

¹ As defined in the School Admissions Code.

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School on application from an LA. This will include complying with a School Attendance Order². Before doing so the Secretary of State will consult the Company;

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

5. The Company shall ensure that parents and 'relevant children'³ will have the right of appeal to an Independent Appeal Panel if they are dissatisfied with an admission decision of the Company. The Independent Appeal Panel will be independent of the Company. The arrangements for appeals will comply with the School Admission Appeals Code published by the Department for Education as it applies to Foundation and Voluntary Aided schools. The determination of the appeal panel is binding on all parties.

Relevant Area

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

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

Requirement to admit pupils

8. Pupils on roll in any predecessor maintained or independent school will transfer automatically to the Academy on opening. All children already offered a place at any predecessor school will be admitted.

² Local authorities are able to issue school attendance orders if a child is not attending school. These are legally binding upon parents. Such an order might, for instance, be appropriate where a child has a place at an Academy but his/her parents are refusing to send him/her to school. The order will require a parent to ensure his/her child attends a specified school.

³ 'relevant children' means:

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

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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.
 - c. not used

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

10. The Academy admission arrangements will include oversubscription criteria, and an admission number for each relevant age group⁴. The Company will consult on the Academy's admission arrangements and determine them in line with the requirements within the School Admissions Code.

11. The Office of the School's Adjudicator (OSA) will consider objections to the Academy's admission arrangements⁵. The Company should therefore make it clear, when determining the Academy's admission arrangements, that objections should be submitted to the OSA.

12. A determination of an objection by the OSA will be binding upon the Academy and the Company will make appropriate changes as quickly as possible.

⁴ 'Relevant age group' means 'normal point of admission to the school, for example, year R, Year7 and Year 12.

⁵ The OSA has no jurisdiction to consider objections against the agreed variation from the Codes set out in paragraphs 2A and 2B.