

SCHEDULE 1

SUPPLEMENTAL AGREEMENT FOR SIR FRANK WHITTLE STUDIO SCHOOL

THIS AGREEMENT made 30 April 2014

BETWEEN

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

(2) **THE LUTTERWORTH ACADEMIES TRUST (“the Company”)**

IS SUPPLEMENTAL TO THE MASTER FUNDING AGREEMENT made between the same parties and dated 30 April 2014 (the “**Master Agreement**”).

1 **DEFINITIONS AND INTERPRETATION**

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

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

“the Academy” means the Studio School and is called Sir Frank Whittle Studio School and is to be established at Sir Frank Whittle Studio School, Bitteswell Road, Lutterworth, Leicestershire, LE17 4EW;.

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

“the Land” means the land (including for the avoidance of doubt all buildings, structures landscaping and other erections) situated at and known as Bitteswell Road, Lutterworth, Leicestershire LE17 4EW and edged red on the plan attached at Annex 2

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

“Start-up period” means up to a maximum of 2 Academy Financial Years and covers the period up to and including the first Academy Financial Year in which all age groups are present at the Academy (that is, all the pupil cohorts relevant to the age-range of the Academy will have some pupils present).

“Temporary Site” means the land (including for the avoidance of doubt all buildings, structures landscaping and other erections) at [] and edged red on the plan attached at Annex 3, which is used to temporarily site the Academy;

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

2 THE ACADEMY

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

2.2 The curriculum provided by the Academy to pupils up to the age of 16 shall be broad and balanced and include an emphasis on obtaining employability skills through project based learning.

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 2014.

The planned capacity of the Academy is 300 in the age range 14-19, including a sixth form of 150 places.

FURTHER CONDITIONS OF GRANT

2.5 Further to the conditions and requirements of grant which apply to the Academy by virtue of clause 13 of the Master Agreement, the following conditions and requirements shall also apply in relation to the Academy:

(a) there will be an emphasis on the needs of the individual pupils and where appropriate personal coaches will contribute to the needs of the individual pupils including pupils with special educational needs (SEN), both those with and without statements of SEN.

(b) the school will, as far as is reasonably practicable, arrange for pupils to gain meaningful experience of work by securing access of up to four hours per week work experience for pupils in years 10 and 11 and of up to twelve hours per week paid work for pupils in years 12 and 13; and

(c) there will be an emphasis on obtaining employability skills through project based learning.

SAFEGUARDING

2.6 (i) The Academy will abide by the requirements of and have regard to any guidance issued by the Secretary of State on

(a) safeguarding, in particular that contained in the guidance document entitled “Safeguarding Children and Safer Recruitment in Education”, as amended from time to time; and

(b) the employment and work placement/work experience opportunities for pupils, in particular that contained in the document entitled “Guidance on the Employment of

Children”, as amended from time to time

2.6 (ii) The Academy will take appropriate steps to ensure that any employment and work placement/work experience opportunities for pupils are suitable, so as to safeguard the health, safety and welfare of pupils whilst employed or on work placement/work experience either on or off the school premises.

3 CAPITAL GRANT

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

4 GAG AND EAG

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

4.2 Clause 47 of the Master Agreement will not apply in respect of the Academy. For the purpose of clause 46 of the Master Agreement, the condition is satisfied 3 Academy Financial Years after the Academy opening date.

4A ADDITIONAL FUNDING

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

4B 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 2021 or any subsequent anniversary of that date.

Notice of Intention to Terminate by the Company

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

5.3 Any notice given by the Company under clause 5.2 shall be in writing and shall be served on the Secretary of State not later than 28 February preceding the Critical Year or, if the Secretary of State shall not have given notice of the Indicative Funding to the Company on or before the date specified in clause 5.2 above, within six weeks after the Secretary of State shall have done so. The notice must specify:

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

- 5.3.2. the shortfall in the Critical Year between the Indicative Funding and All Other Resources expected to be available to the Company to run the Academy and the projected expenditure on the Academy; and
 - 5.3.3. a detailed budget of income and expenditure for the Academy during the Critical Year (the “**Projected Budget**”).
- 5.4 Both parties undertake to use their best endeavours to agree whether or not the cost of running the Academy during the Critical Year would cause the Company, on the basis of the Indicative Funding and All Other Resources, to become insolvent. Both parties recognise that they will need to engage in a constructive dialogue at the time about how best to provide education for the pupils at the Academy and undertake to use their best endeavours to agree a practical solution to the problem.
- 5.5 If no agreement is reached by 30 April (or such other date as may be agreed between the parties) as to whether the cost of running the Academy during the Critical Year on the basis of the Indicative Funding and All Other Resources would cause the Company to become insolvent, then that question shall be referred to an independent expert (the “**Expert**”) for resolution. The Expert’s determination shall be final and binding on both parties. The Expert shall be requested to specify in his determination the amount of the shortfall in funding (the “**Shortfall**”). The Expert shall be an insolvency practitioner with significant professional experience of educational institutions or academies. If the parties fail to agree upon the appointment of the Expert then the Expert shall be appointed by the President for the time being of the Institute of Chartered Accountants in England and Wales. The Expert’s fees shall be borne equally between the parties.
- 5.6 The Expert shall be required in reaching his determination to take account of advice from an educational specialist who is professionally familiar with the issues arising from the budget management of large

schools. If the parties fail to agree upon the appointment of the educational specialist then the educational specialist shall be appointed by the Chairman for the time being of the Specialist Schools and Academies Trust. The educational specialist's fees shall be borne equally between the parties.

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

Termination Warning Notice

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

- a) the Academy is no longer meeting the requirements set out in clause 12 of the Master Agreement (subject to clause 5.11);
- b) the conditions and requirements set out in clauses 2.2, 2.3, 2.5, 2.6(i) and 2.6(ii) of this Agreement and clauses 13-34C of the Master Agreement (where applicable to a Mainstream Free School) are no longer being met;
- c) the standards of performance of pupils at the Academy are unacceptably low;
- d) there has been a serious breakdown in the way the Academy is managed or governed;
- e) the safety of pupils is threatened (whether by breakdown of

discipline or otherwise); or

- f) the Company is otherwise in material breach of the provisions of this Agreement.

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

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

5.7C The Secretary of State shall consider any response and representations from the Company which are received by the date specified in accordance with clause 5.7B c) and shall, within three months of receipt, confirm whether he considers that:

- a) in light of the Company's representations in response to the Termination Warning Notice, some or all of the Specified Remedial Measures are not required to be implemented (and if so which) and/or the Specified Remedial Measures are being or will be implemented with the specified timeframe; or
- b) subject to any further measures he reasonably requires ("Further Remedial Measures") being implemented by a specified date or any evidence he requires being provided, the implementation of such measures has been or will be successfully completed within the specified timeframes; or
- c) he is not satisfied that the Company will rectify the defaults identified in the Termination Warning Notice. (In such circumstances, the Secretary of State may notify the Company of

his intention to terminate the Agreement on a specified date.)

5.7D The Secretary of State may by notice in writing terminate this Agreement with effect from a specified date specified in the Termination Warning Notice in the event that:

a) the Company has not by the date specified in clause 5.7 B c) responded to the Termination Warning Notice either confirming that it accepts and agrees to undertake the Specified Remedial Measures or providing its representations with regard to the Specified Remedial Measures; or

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

provided that having considered any representations made by the Company pursuant to clause 5.7B c), the Secretary of State remains satisfied that it is appropriate to terminate the Agreement

Notice of Intention to Terminate

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

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

(b) the Academy requires significant improvement.

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

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

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

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

Termination with Immediate Effect

5.7H If on or after 30 April 2014 or at any time after signing this Agreement and before the Academy opens, the total number of prospective pupils having accepted offers of places to attend at the Academy in September 2014 is fewer than 50, the Secretary of State may by written notice to the Academy Trust:-

- (a) require the Academy Trust not to open the Academy until 50 prospective pupils have accepted offers of places to attend at the Academy; or
- (b) terminate this Agreement such termination to take effect on the date specified in the notice.

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

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

For the purposes of this clause a "Warning Notice" means a notice in

writing by the Secretary of State to the Academy Trust requiring the Academy Trust to procure the admission of a sufficient number of pupils by such date as he deems appropriate in the circumstances and setting out the consequences of not procuring the admission of a sufficient number of pupils by the date specified in such Warning Notice.

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

5.8 If the Company has not obtained full planning permission (including where relevant listed building consent), in respect of the Land, by date 30/09/2014, the Secretary of State may terminate this Agreement by notice in writing to the Company such termination to take effect on the date of the notice.

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

1. the Academy would, on opening, provide an unacceptably low standard of education; or
2. the safety of pupils or staff at the Academy would, on opening, be threatened; or
3. the staff employed at the Academy are unsuitable;
4. there is a serious breakdown in the way the Company is being managed or governed; or
5. the buildings and other structures on the Land are unsuitable or the Company has not obtained Building Regulation approval;

he may in writing either:

- (a) require the Company (i) not to open the Academy; and/or (ii) not to admit pupils of a particular age range, to be determined by the Secretary of State; and/or (iii) not to use any building or

other structure on the Land until such time as the relevant matter or matters listed in 1. to 5. above has or have been resolved to the Secretary of State's satisfaction; or

- (b) terminate this Agreement by notice in writing to the Company such termination to take effect on the date of the notice.

5.10 Not Used.

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

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

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

- (b) terminate this Agreement by notice in writing to the Company such termination to take effect on the date of the notice.

5.13 (i) Not used.

- (ii) If by 30 09 2014, it becomes clear that the Company will not be

using the Land, the Secretary of State may direct the Company to enter into negotiations in respect of securing an alternative permanent site which the Secretary of State considers suitable for the needs of the Academy.

(iii) If having been directed under 5.13(ii) to enter into negotiations, the Company has not secured an interest in that alternative site to the satisfaction of the Secretary of State by 31 12 2014, the Secretary of State may:

- a) by notice terminate this Agreement forthwith or may provide such notice as he deems appropriate in the circumstances in writing to terminate this Agreement; or
- b) provide up to 12 months' notice in writing to terminate this Agreement

6 **EFFECT OF TERMINATION**

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

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

6.3 The amount of any such indemnity or compensation shall be determined by the Secretary of State having regard to any representations made to him by the Company, and shall be paid at

such times and in such manner as the Secretary of State may reasonably think fit.

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

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

(a) promptly transfer a proportion of the assets to a person nominated by the Secretary of State, if the Secretary of State considers that all or some of those assets need to be used for any educational purpose by that nominee. The proportion of the assets to be transferred shall be the same as the proportion of the capital contribution made by the Secretary of State to the original value of those assets, whether that contribution was made on the establishment of the Academy or later; or

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

State to the original value of those assets, whether that contribution was made on the establishment of the Academy or later.

- 6.6 The Secretary of State may waive in whole or in part the repayment due under clause 6.5(b) if:
- a) The Company obtains his permission to invest the proceeds of sale for its charitable objects; or
 - b) The Secretary of State directs all or part of the repayment to be paid to the LA.
- 6.7 The sale or disposal by other means of publicly funded land held for the purposes of an Academy is now governed by Part 3 of Schedule 1 to the Academies Act 2010.

7 **ANNEX**

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

8 **GENERAL**

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

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

9. THE MASTER AGREEMENT

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

9.2 In relation to the Academy, Clause 15 of the Master Agreement shall not apply and the following sub-clause shall apply instead.

The Company shall establish for the Academy a Local Governing Body to which it may delegate its powers and functions in relation to the operation of the Academy. The role of the Local Governing Body and the membership of it shall be for the Company to decide, but the Company will, as a minimum, ensure that:

- a) the members of the Local Governing Body shall recognise and support the individual ethos of the Academy as a school not designated as having a religious character and shall maintain the Academy's relationship with the local community within which it is situated and which it serves;
- b) a minimum of two parents of a pupil at the Academy (to be elected by the parents of registered pupils of the Academy) shall be members of the Local Governing Body;

9 ENGLISH LAW

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

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

Debt

10A) Not used.

Restrictions on Land transfer

10B) Not Used.

Obligations of the Company

10C) Not Used.

Insurance

10D) Not Used.

Transfer of Land

10E) Not used.

10F) Not used.

Legal Charge

10G) Not used.

Failure to use the Land for the purposes of the Academy

10H) Not used.

Sharing of the Land

10I) Not Used.

Exercise of Rights

10J) Not Used.

10K) Not Used.

10L) Not Used.

10M) Not Used.

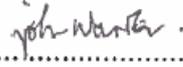
Payment of Debt

10N) Not used.

10O) Not used.

This Agreement was executed as a Deed on 30 April 2014

Executed on behalf of by:

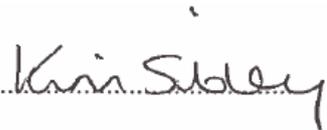

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Director


.....

Director/Secretary

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


.....

Duly Authorised



ANNEX TO THIS SUPPLEMENTAL AGREEMENT

Requirements for the Admission for pupils at the Academy

Annex 1

Plan of the Land

Annex 2

Plan of the Temporary Site

Annex 3

Annex 1

Requirements for the Admissions of Pupils at Sir Frank Whittle Studio School (“the Academy”)

GENERAL

1. This Annex may be amended in writing at any time by agreement between the Secretary of State and The Lutterworth Academies Trust (“the Company”).

2. Except as provided in paragraphs 2A to 3 below the (“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 governing body of the Company.

2A The Company is permitted to determine admission arrangements 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 the 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 (2012) 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:

- (a) any personal details about their financial status; or
- (b) 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.

2C The Academy Trust is also permitted by the Secretary of State to determine admission arrangements that give priority for admission (but not above looked after children and previously looked after children) to children whose parents have permitted Founders status. The Academy Trust should ensure that they grant Founders status according to the requirements of Charity law, which permit special provision to be made for a small group of the general beneficiaries of the Charity providing that the greatest benefit is to the wider community. The Academy Trust should only grant Founders status to a parent or guardian whom the Company has identified in its discretion as having genuinely played a material role in setting up the school and, where appropriate, whose continued role is deemed by the Company to be needed to establish the school in its early years for the benefit of the public as a whole.

¹ As defined in the School Admissions Code.

3. Notwithstanding the generality of paragraph 2 of this Annex, the Company will not participate in the co-ordinated admission arrangements operated by the LA for the first year of opening but will participate in such arrangements operated by the LA in subsequent years 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 the Academy on application from a 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 the Academy 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 Admission Appeals Code.

5. The Company shall ensure that parents and ‘relevant children³’ 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

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.

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.

9. The Academy 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. adopt admission oversubscription criteria that give highest priority to 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 group⁴. The Company will consult on its admission arrangements and determine them in line with the requirements within the School Admissions Code.

11. The Company must make it clear, when determining the Academy's admission arrangements, that objections should be submitted to the Schools Adjudicator.

12. A determination of an objection by the Schools Adjudicator will be binding upon the Company.

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

ANNEX B

Arrangements for pupils with Special Educational Needs ('SEN') and disabilities at Traditional Mainstream Academies, Mainstream Free Schools, Traditional Alternative Provision Academies and Alternative Provision Free Schools*

Duties in relation to pupils with SEN

1. The Governing Body of the Company must comply with all of the duties imposed upon the governing bodies of maintained schools in:
 - Part 4 of the Education Act 1996 as amended from time to time⁵;
 - 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 time⁶.
2. Notwithstanding any provision in this Agreement, the Secretary of State may (whether following a complaint made to him or otherwise) direct the Company to comply with an obligation described in this Annex where the Company has failed to comply with any such obligation.
3. Where a child who has SEN is being educated in the Academy, those concerned with making special educational provision for the child must secure that the child engages in the activities of the school together with children who do not have SEN, so far as is reasonably practicable and is compatible with:
 - (a) the child receiving the special educational provision which his learning difficulty calls for, the provision of efficient education for the children with whom he will be educated, and
 - (b) the efficient use of resources.
4. In addition to complying with the duties imposed upon the governing bodies of maintained schools set out in The Education (Special Educational Needs) (Information) Regulations 1999 (as amended from time to time), the Company must ensure that the Academy's website includes details of the arrangements for the admission of disabled pupils; the steps taken to prevent disabled pupils from being treated less favourably than other pupils; and the facilities provided to assist access to the Academy by disabled pupils (disabled pupils meaning pupils who are disabled for the purposes of the Equality Act 2010⁷).

⁵ 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).

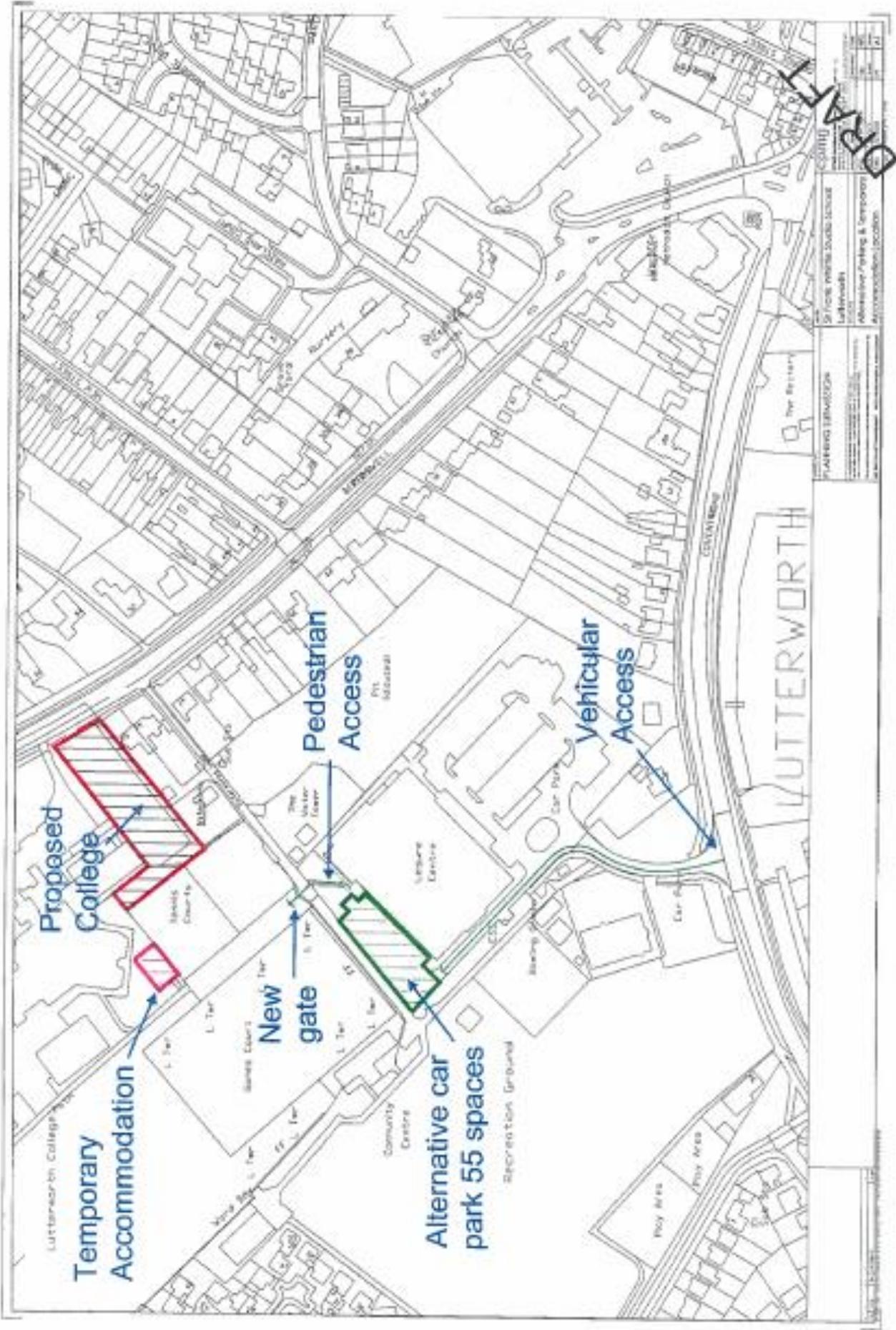
⁶ These Regulations are amended by The Education (Special Educational Needs Co-ordinators) (England) (Amendment) Regulations 2009 (SI 2009 No 1387).

⁷ For the meaning of 'disabled', see section 6 of the Equality Act 2010.

Admissions

5. The Company must ensure that pupils with SEN are admitted on an equal basis with others in accordance with its admissions policy.
6. Where a local authority ("LA") proposes to name the Company in a statement of SEN made in accordance with section 324 of the Education Act 1996, it must give the Company written notice that it so proposes. Within 15 days of receipt of the LA's notice that it proposes to name the Academy in a statement, the Company must consent to being named, except where admitting the child would be incompatible with the provision of efficient education for other children; and where no reasonable steps may be made to secure compatibility. In deciding whether a child's inclusion would be incompatible with the efficient education of other children, the Company must have regard to the relevant guidance issued by the Secretary of State to maintained schools.
7. If the Company determines that admitting the child would be incompatible with the provision of efficient education, it must, within 15 days of receipt of the LA's notice, notify the LA in writing that it does not agree that the Academy should be named in the pupil's statement. Such notice must set out all the facts and matters the Company relies upon in support of its contention that: (a) admitting the child would be incompatible with efficiently educating other children; and (b) the Company cannot take reasonable steps to secure this compatibility.
8. After service by the Company on the LA of any notice (further to paragraph 7 above) stating that it does not agree with the LA's proposal that the Academy be named, the Company must seek to establish from the LA, as soon as is reasonably practicable, whether or not the LA agrees with the Company. If the LA notifies the Academy that it does not agree with the Company's response, and names the Academy in the child's statement, the Company must admit the child to the school on the date specified in the statement or on the date specified by the LA.
9. Where the Company considers that the Academy should not have been named in a child's statement, they may ask the Secretary of State to determine that the LA has acted unreasonably in naming the Academy and to make an order directing the LA to reconsider.
10. The Secretary of State's determination shall, subject only to any right of appeal which any parent or guardian of the child may have to the First-tier Tribunal (Special Educational Needs and Disability), be final.
11. If a parent or guardian of a child in respect of whom a statement is maintained by the local authority appeals to the First-tier Tribunal (Special Educational Needs and Disability) either against the naming of the Academy in the child's SEN statement or asking the Tribunal to name the Academy, then the decision of the Tribunal on any such appeal shall be binding and shall, if different from that of the Secretary of State under paragraph 9 above, be substituted for the Secretary of State's decision.
12. Where the Academy, the Secretary of State or the First-tier Tribunal (Special Educational Needs and Disability) have determined that it should be named in a child's statement, the Company shall admit the child to the Academy.

*For the avoidance of doubt this Annex does not apply to Special Academies as defined in the Master Funding Agreement. The arrangements for the admission and support of pupils with SEN and disabilities are set out in the relevant Supplemental Funding Agreement and its Annexes.



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