Annex - The Master Funding Agreement
For Academies Sponsored by
The Academies Enterprise Trust

Exemptions in full

Annex A – Memorandum and Articles of Association - exempt under section 21 of the Act, as this document is available at Companies House.
http://www.companieshouse.gov.uk/

Partial exemptions [if any]

<table>
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<th>Factors for disclosure of…</th>
<th>Factors for Withholding</th>
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<td>▪ further to the understanding of and increase participation in the public debate of issues concerning Academies.</td>
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<td>▪ to ensure transparency in the accountability of public funds</td>
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<td>▪ DCSFs’ commercial interest would be prejudiced –</td>
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<td>▪ To reveal financial relationships between the SoS and the Academy Trust and others would prejudice Ads ability to obtain maximum VFM in future agreements.</td>
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Reasons why public interest favours withholding information

Whilst releasing the majority of the Funding Agreement will further the public understanding of Academies. The whole of the Funding Agreement cannot be revealed. If Annex A was to be revealed under the FOI act, DCSFs’ commercial interest would be prejudiced, which could result in the less effective use of public money.
DEED OF VARIATION

The parties to this Deed are:

(1) The Secretary of State for Children, Schools and Families (the "Secretary of State"),

- and -

(2) The Academies Enterprise Trust, a charitable company incorporated in England and Wales with registered number 6625091 (the "Academy Trust"),

together referred to as the "Parties".

INTRODUCTION

A. The Parties entered into a funding agreement dated 10 July 2008 (the "Funding Agreement") relating to the establishment, maintenance and funding of a number of independent schools (the "Academies").

B. The Parties now wish to vary and amend the terms of the Funding Agreement and wish to record their agreement as to such variations/amendments to the Funding Agreement by this Deed.

LEGAL AGREEMENT

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

2. The Secretary of State and the Academy agree that with effect from the date of this Deed, the Funding Agreement shall be amended in accordance with Schedule 1 to this Deed.

3. As varied by this Deed, the Funding Agreement shall remain in full force and effect.
EXECUTED AND DELIVERED AS A DEED by the Parties on the 28 day of August 2009

The Corporate Seal of the Secretary of State for Children, Schools and Families hereunto affixed is authenticated by: B. L.H.

........................................ BRETT WELCH
Duly Authorised by the Secretary of State for Children, Schools and Families

The Academies Enterprise Trust
acting by two directors or a director and a secretary

Director
Print name

Director/Secretary
Print name

Witnessed by CAROLINE MARTINDILL
Full name
Address: 147 ASHINGDOVER. ROCHESTER. ESSEX. SS4 1BP
Occupation: ADMINISTRATOR
1. The following definitions shall be inserted at Clause 6 of the Funding Agreement:

"PFI Academy" means an Academy which forms part of a scheme procured pursuant to the Government’s Private Finance Initiative;

"Further Directors" means Directors who may be appointed by the Secretary of State under the Articles if a Special Measures Termination Event, as defined in the relevant Supplemental Agreement, occurs.

2. The following clause 110A shall be inserted immediately after Clause 110 of the Funding Agreement:

Without prejudice to clause 110, the Company shall appoint a finance director to each PFI Academy ("Academy Finance Director"). Each Academy Finance Director shall be responsible for the day-to-day financial affairs of the relevant PFI Academy for which he is responsible. Each Academy Finance Director will report to the Company’s Accounting Officer.

3. The following clause 122A shall be inserted immediately after Clause 122 of the Funding Agreement:

In complying with clauses 110 - 122 (inclusive), the Company shall (where relevant) be obliged to provide information which relates to each PFI Academy in addition to information which relates to the Company and any combined information which relates to all of the Academies that the Company operates.

4. The following clause 109A shall be inserted immediately after Clause 109 of the Funding Agreement:

Subject always to Clause 117, the Company shall, in relation to each PFI Academy, establish and maintain separate bank accounts to be used solely in respect of any monies provided by the Secretary of State pursuant to this Agreement for that PFI Academy. Monies provided by the Secretary of State will be paid into such accounts and will remain in those accounts until required. The Company agrees that such monies will be applied in accordance with the requirements of this Agreement.
5. The heading ‘Implementation’ immediately after Clause 82 of the Funding Agreement be deleted and the heading ‘Implementation Grant’ inserted.

6. Clause 83 of the Funding Agreement be deleted and the following clause 83 inserted:

“Implementation Grant” means payments towards recurrent expenditure incurred for the establishment of the Academy prior to it opening.

7. Clause 84 of the Funding Agreement be deleted and the following clause 84 inserted:

The Secretary of State may enter into an agreement with a third party ("Project Management Company") for the provision of project management services to assist in the establishment of the Academy. Where such an agreement has been entered into, the Secretary of State shall pay Implementation Grant relating to such project management services to the Project Management Company in accordance with that agreement.

8. Clause 85 of the Funding Agreement be deleted and the following clause 85 inserted:

The Academy Trust shall prepare and submit to the Secretary of State a budget showing expected recurrent expenditure to be incurred by the Academy Trust before the Academy opens and for which grant is sought. This budget must either be agreed to or modified by the Secretary of State as he considers appropriate ("Approved Implementation Budget").

9. The heading ‘Arrangements for Payment of Implementation Grant’ immediately after Clause 85 of the Funding Agreement be deleted.

10. Clause 86 of the Funding Agreement be deleted and the following clause 86 inserted:

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

11. Clause 87 of the Funding Agreement be deleted and the following clause 87 inserted:

The Secretary of State will pay Implementation Grant to the Academy Trust on the basis of claims for grant submitted to the Secretary of State in accordance with the Approved Implementation Budget and in the notified format with supporting invoices, receipts and documents as required by the Secretary of State. If the grant claim is acceptable, the Secretary of State undertakes to pay the amount due within 21 days from the day on which it was received. If a dispute arises over whether a grant claim or part of it is acceptable, both parties undertake to attempt to resolve the dispute in good faith.

12. The following clause 87A shall be inserted immediately after Clause 87 of the Funding Agreement:

Any amount in the Approved Implementation Budget in respect of which the expenditure has not been incurred by the Academy Trust by the date on which the Academy opens will lapse and no Implementation Grant will be payable in respect of that part of the Approved Implementation Budget. Any amount of Implementation Grant which has been paid but remains unexpended on relevant expenditure by the date on which the Academy opens will, without prejudice to any other mode of recovery, be taken into account in determining the total amount of grant to be paid to the Academy Trust after the Academy has opened. Any amount of Implementation Grant which is found to have been used on ineligible expenditure will, without prejudice to any other mode of recovery, be taken into account in determining the total amount of grant to be paid to the Academy Trust.

13. The following clause 56A shall be inserted immediately after Clause 56 of the Funding Agreement:
In respect of each Academy, the Secretary of State may provide to the relevant LA the information which the Company has provided to the Secretary of State:

a) under Schedules 2-5 to the Education (School Performance Information) (England) Regulations 2007; and

b) under paragraphs 1-3 of Part 3 to Schedule 1 to the Education (Information about Individual Pupils) (England) Regulations 2006.

14. The following clause 56B shall be inserted immediately after Clause 56A of the Funding Agreement (as inserted in accordance with clause 13 of this Deed):

The Company shall ensure that all pupils at each Academy and their parents are informed via Fair Processing Notices that the pupils’ personal data may be transferred in accordance with clause 56A.

15. The reference to clause 130 in clause 26 of the Funding Agreement shall be amended to clause 134.

16. The reference to clauses 28-31 in clauses 31 and 32 of the Funding Agreement shall be amended to clauses 28 and 29.

17. The reference to clauses 96-97 in Clause 89 of the Funding Agreement shall be amended to clauses 97-98.

19. The reference to clauses 91 and 92 in Clause 97 of the Funding Agreement shall be amended to clauses 89-95.

20. The words “If an” shall be deleted from the beginning of Clause 103 of the Funding Agreement.

21. (i) The reference to clauses 91 and 92 in clause 117 of the Funding Agreement shall be amended to clauses 89-95.

(ii) The reference to clauses 96 and 97 in clause 117 of the Funding Agreement shall be amended to clauses 96-98.
22. The reference to clause 113 in clause 118 of the Funding Agreement shall be amended to clause 117.

23. The word "processed" in clause 125 of the Funding Agreement shall be amended to "proceeds".

24. The phrase "in accordance with this Agreement and the Supplemental Agreements" be inserted at the end of Clause 3 of the Funding Agreement.

25. The following definitions of "Additional Directors" and "Further Directors" be instated in Clause 6 of the Funding Agreement.

   "Additional Directors means [...]"
   "Further Directors means [...]"

26. The wording "and any Supplemental Agreement" be reinstated in Clause 7 of the Funding Agreement immediately after "of this Agreement".

27. The following sentence be inserted at the end of Clause 11 of the Funding Agreement:

   "For the avoidance of doubt, any obligations imposed upon or powers given to an Academy by this Agreement or any Supplemental Agreement are also imposed upon the Company".

28. The word "daily" be inserted after the word "of" and immediately before the word "worship" in Clause 37 of the Funding Agreement.
MASTER FUNDING AGREEMENT

[ 10 JULY. ] 2008
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INTRODUCTION

1) This Agreement is made under section 482 of the Education Act 1996, as substituted by the Education Act 2002, between The Secretary of State for Children, Schools and Families (the "Secretary of State") and Academies Enterprise Trust (the "Company").

2) The Company is a company incorporated in England and Wales, limited by guarantee with registered company number 6625091, and is registered as a charity (charity number [ ]).

3) The Company intends to establish and maintain, and to carry on or provide for the carrying on of a number of Academies.

4) This Agreement and the Supplemental Agreements will apply in respect of all Academies, from such time as a Supplemental Agreement relating to that Academy shall have been entered into between the Secretary of State and the Company.

5) The following expressions used in this Agreement have the respective meanings assigned to them by the numbered clauses of this Agreement referred to immediately after the reference to the expressions -

   a) "Academy Governing Body" – clause 15;
   b) "Accounting Officer" – clause 110;
   c) "annual letter of funding" - clause 104;
   d) "GAG" – clauses 88-99;
   e) "Capital Expenditure" - clause 60;
   f) "Capital Grant" – clause 60;
   g) "EAG" - clause 100;
   h) "Financial Handbook" - clause 111;
   i) "Academy Financial Year" - clause 105;
   j) "recurrent expenditure" – clause 58;
   k) "School Development Plan" – clause 19;
I) "Start-up Period" – clause 96;

6) In this Agreement the following words and expressions shall have the following meanings:

"1996 Act" means the Education Act 1996;

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

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

"this Agreement" means this agreement and its annexes and a reference in the Agreement to a numbered clause or annex is a reference to the clause or annex of this Agreement bearing that number or letter as the same may be amended or supplemented from time to time;

"BSF Procured Academy" means an Academy which has new buildings or initial capital refurbishments procured in accordance with the Building Schools for the Future Programme or through Partnerships for Schools;

"Business Day" means any day other than a Saturday, Sunday, Christmas Day, Good Friday or a day which is a bank holiday with the meaning given to that expression in the Banking and Finance Dealings Act 1971;

"CEO" means such person as may be appointed by the Directors in accordance with the Articles as the Chief Executive Officer of the Company;

"Company Procured Academy" means an Academy which has new buildings or initial capital refurbishments procured by the Company or the Secretary of State;

"DCSF" means Department for Children, Schools and Families;

"Headteacher" means the Principal of an Academy;

"LA" means the Local Authority (and/or district or borough council where appropriate) in the area in which the relevant Academy is situated;
"Memorandum" and "Articles" means the Memorandum and Articles of Association of the Company for the time being in force, a copy of the current version of which is annexed to this Agreement as Annex A;

"parents" means parents or guardians;

"persons" includes a body of persons, corporate or incorporate;

references to "school" shall where the context so admits be references to an Academy;

"SEN" means Special Educational Needs;

"Supplemental Agreement" means an agreement supplemental to this Agreement substantially in the form set out in:

- Schedule 1 to this Agreement in relation to a BSF Procured Academy; or
- Schedule 2 in relation to a Company Procured Academy

to be entered into by the Secretary of State and the Company pursuant to which the Company agrees to establish and maintain, and to carry on or provide for the carrying on of, and the Secretary of State agrees to fund, an Academy in accordance with the terms and conditions of that Supplemental Agreement and this Agreement;

7) The Interpretation Act 1978 shall apply for the interpretation of this Agreement as it applies for the interpretation of an Act of Parliament.

8) Expressions defined in this Agreement shall have the same meaning where used in any Annex to this Agreement or Supplemental Agreement.

9) Questions arising on the interpretation of the arrangements in this Agreement shall be resolved by the Secretary of State after consultation with the Company.

10) Section 482 (1) of the 1996 Act as substituted by the Education Act 2002 states that -

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

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

LEGAL AGREEMENT

11) In consideration of the Company undertaking to establish and maintain, and to carry on or provide for the carrying on, of a number of independent schools having such characteristics as are referred to in clauses 13-14, the Secretary of State agrees to make payments to the Company in accordance with the conditions and requirements set out in this Agreement and Supplemental Agreements. If it is agreed between the Secretary of State and the Company that the Company will establish and maintain, and carry on or provide for the carrying on of an Academy, the parties will enter into a Supplemental Agreement in relation to that Academy.

12) Before a Supplemental Agreement is entered into between the Secretary of State and the Company in relation to an Academy, the Secretary of State and the Company will agree between them whether the Academy will be:

a) A BSF Procured Academy; or

b) A Company Procured Academy.

CHARACTERISTICS OF AN ACADEMY

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

a) has a broad curriculum with an emphasis on a particular subject area, or particular subject areas, specified in the Agreement; and

b) provides education for pupils of different abilities and who are wholly or mainly drawn from the area in which the school is situated.
CONDITIONS OF GRANT

General

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

a) the school will be at the heart of its community, sharing facilities with other schools and the wider community;

b) there will be assessment in the core subjects of the national curriculum at Key Stage 3, and the opportunity to study for external qualifications as defined by section 96 of the Learning and Skills Act 2000;

c) the admissions policy and arrangements for the school will be in accordance with admissions law, and the DCSF Codes of Practice, as they apply to maintained schools;

d) teachers will be required to have qualified teacher status; levels of pay and conditions of service for all employees will be the responsibility of the Company;

e) there will be an emphasis on the needs of the individual pupils including pupils with special education needs (SEN), both those with and without statements of SEN;

f) there will be no charge in respect of admission to the school and the school will only charge pupils where the law allows maintained schools to charge.

Governance

15) Each Academy will be governed by the Company. In accordance with the Articles, the Company will establish an Academy Governing Body ("Academy Governing Body") in respect of each Academy and the Directors may delegate such of their functions with respect to an Academy as it considers appropriate to an Academy's Academy Governing Body. The Company, including the relevant Academy Governing Body as appropriate, shall exercise their powers and functions with a view to fulfilling a largely strategic role in the running of the Academy and shall consider any advice given by the Headteacher. The Company may exercise its powers and fulfil its functions through its servants or agents.

16) Subject to the Memorandum and Articles, this Agreement and each Supplemental
Agreement, the Company may regulate its own procedure and that of any of its committees.

Conduct

17) Each Academy shall be conducted in accordance with:

a) the Memorandum and Articles, which shall not be amended by the Company without the explicit consent of the Secretary of State, such consent not to be unreasonably withheld;

b) all provisions by or under statute which confer rights or impose obligations on Academies including, without limitation, the independent schools standards prescribed under section 157 of the Education Act 2002 to the extent they apply to the Academy;

c) the terms of this Agreement and the relevant Supplemental Agreement.

Pupil well-being; Community Cohesion; and the Children & Young People Plan

18) In conducting an Academy and in providing community facilities the Company shall, so far as is reasonably practicable –

a) promote the well-being of pupils at the Academy;

b) promote community cohesion; and

c) have regard to any plan published by the LA under section 17 of the Children Act 2004 or (where the LA is not required to publish such a plan) any plan published by the LA setting out their strategy in relation to children and relevant young people.

Designated teacher for children in care

18A) The Company will in respect of each Academy act in accordance with, and be bound by, all relevant statutory and regulatory provisions and with any guidance and codes of practice issued pursuant to such provisions, as they apply at any time to a maintained school, relating to the designation of a person to manage the teaching and learning programme for children who are looked after by a local authority and are registered pupils at the school. Any reference to the governing body of a maintained school in such statutory and regulatory provisions, or in any guidance and code of practice issued pursuant to such provisions, shall be deemed to be references to the Directors.
of the Company.

School Development Plan and target setting

19) The Company shall draw up a School Development Plan for each Academy each Academy Financial Year in accordance with a format and timetable to be advised by the Secretary of State. The School Development Plan shall, in particular:

a) in accordance with a format and timetable to be advised by the Secretary of State, set out plans for ensuring that all pupils are supported to reach the highest standards of which they are capable;

b) describe the Company's proposals for each Academy to work with other schools and with the wider community.

20) The Company shall in relation to each Academy set targets each Academy Financial Year in areas which are prescribed for maintained schools in Regulations made by the Secretary of State under section 19 of the Education Act 1997 (or any statutory amendment or re-enactment of that section).

21) The Company shall consult the Secretary of State before setting these targets in respect of each Academy and shall take into account (but not be bound by) any comments received from the Secretary of State. The Company shall set its targets for each Academy in accordance with the timetable for target setting which applies to maintained schools.

Pupils

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

a) the admission of pupils to an Academy together with the arrangements for making changes to such arrangements, including the requirement to secure the consent of the Secretary of State, such consent not to be unreasonably withheld or delayed, will be set out in an annex to the relevant Supplemental Agreement; and

b) the admission to an Academy of and support for pupils with SEN and with disabilities (for pupils who have and who do not have statements of SEN) (including the appointment of a responsible person) together with the arrangements for making changes to such arrangements, including the requirement to secure the consent of
the Secretary of State, such consent not to be unreasonably withheld or delayed, are set out in Annex B to this Agreement.

Arrangements for pupil exclusions are set out in Annex C to this Agreement.

Teachers and other staff

23) Subject to clause 23A, the Company shall not employ anyone under a contract of employment or for services to carry out planning and preparing lessons and courses for pupils, delivering lessons to pupils, assessing the development, progress and attainment of pupils, and reporting on the development, progress and attainment of pupils ("specified work") who is not:

   a) A qualified teacher within the meaning of regulations made under section 132 of the Education Act 2002 and registered with full registration with the General Teaching Council for England; or

   b) Otherwise eligible to do specified work under the Education (Specified Work and Registration) (England) Regulations 2003 (SI 2003/1663), which for the purpose of this clause shall be construed as if the relevant Academy were a maintained school.

23A) Clause 23 and the requirement in clause 14(d) for teachers to have qualified teacher status do not apply to anyone who:

   a) was transferred to the employment of the Company by virtue of the Transfer of Undertakings (Protection of Employment) Regulations 2006; and

   b) immediately prior to the transfer, was employed to do specified work; and

   c) immediately prior to the transfer, was not:

      i) a qualified teacher within the meaning of Regulations made under section 132 of the Education Act 2002 and registered with full registration with the General Teaching Council for England; or

      ii) eligible to do specified work under the Education (Specified Work and Registration) (England) Regulations 2003 (SI 2003/1663)

("transferred staff member"). The Company shall use its reasonable endeavors to ensure that any transferred staff member who undertakes specified work and does
not meet the requirements of either clause 23(a) or clause 23(b) meets such requirements as soon as possible.

24) The Company shall ensure that all teachers employed at each Academy have access to the Teachers Pension Scheme and, in so doing, will comply with the statutory provisions underlying the scheme.

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

26) Reasonable notice shall be given to the Secretary of State of any meeting of the Directors or any Academy Governing Body or any committee or sub-committee thereof (including any interview or appointments panel), at which the appointment of a Headteacher of any Academy or the CEO is being considered and a representative of the Secretary of State shall be entitled to attend and speak at any such meeting whether or not they are also entitled to attend such meeting by virtue of clause 130 of this agreement. Advice given by any such representative shall be taken into account by those persons considering the appointment of the Headteacher or CEO before a decision is made.

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

a) staffing structure, and staff remuneration

b) staff discipline and performance management.

14-19 entitlement

28) The Company shall make arrangements to ensure that, so far as reasonably practicable, a pupil at any Academy in the fourth key stage has the same curriculum entitlements as are conferred on such a pupil at a maintained school by section 85A(1) of the Education Act 2002.

29) The Company shall make arrangements to ensure that, so far as reasonably practicable, a course of study in the core subjects and a course of study in one of the entitlement areas is made available (whether at the relevant Academy or otherwise) to any pupil at any Academy who is above compulsory school age.
30) Nothing in clauses 28 and 29-
   a) requires the Company to incur disproportionate expenditure in making these arrangements;
   b) confers any greater entitlements on a pupil than are conferred by section 85A(1) of the Education Act 2002 and section 3A of the Learning and Skills Act 2000.

31) In making arrangements under clauses 28-30 the Company shall have regard to any guidance issued from time to time by the Secretary of State or the Qualifications and Curriculum Authority.

32) For the purpose of clauses 28-31, "course of study", "core subjects" and "entitlement areas" have the same meaning as in sections 3A, 3B and 3C respectively of the Learning and Skills Act 2000.

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

33) The curriculum provided by each Academy to pupils up to the age of 16 shall be broad and balanced. The specialism for each Academy will be set out in the relevant Supplemental Agreement.

34) The Company shall ensure that the National Curriculum programmes of study for English, Mathematics and Science and ICT for the time being prescribed by the Secretary of State under section 87 of the Education Act 2002 are taught so far as appropriate to any pupils admitted to an Academy in Years 1-11. In any event, the Company must ensure that such programmes of study have been covered in full at each Academy by the end of the final year of the Key Stage relevant for each Year group.

35) The Company shall ensure that for any Academy that admits pupils in Years 1-6, the curriculum for these Years is sufficiently broad and has such depth as to enable such pupils to be adequately prepared for study at Key Stage 3 whether at the Academy or any other mainstream educational institution, including those institutions not sharing the Academy’s specialism.

36) Despite clauses 34-35, the Company is not required to teach an individual pupil or group of pupils in one or more subjects where, in the opinion of the Headteacher, it is inappropriate to do so by reason of the pupil’s or group’s ability or attainment.

37) The Company shall ensure that there is provision for an appropriate teaching of religious
education and for an appropriate act of worship at each Academy.

38) Where an Academy is designated with a religious character in accordance with section 124B of the School Standards and Framework Act 1998:

a) subject to clause 40, the Company shall ensure that provision is made for Religious Education to be given to all pupils at the Academy in accordance with the tenets of the specified religion or religious denomination of the Academy.

b) Subject to clause 40, the Company shall comply with the requirements of section 70(1) of, and Schedule 20 to, the School Standards and Framework Act 1998 as if the Academy were a foundation school with a religious character or a voluntary school, and as if references to 'the required collective worship' were references to collective worship in accordance with the tenets and practices of the specified religion or religious denomination of the Academy.

c) The Company shall ensure that the quality of Religious Education given to pupils at the Academy and the contents of the Academy's collective worship given in accordance with the tenets and practice of the specific religion or religious denomination are inspected. Such inspection shall be conducted by a person chosen by the Company and the Academy shall secure that such inspection shall comply with the requirements set out in any statutory provision and regulations as if the Academy were a foundation of voluntary school which has been designated under section 69(3) of the School Standards and Framework Act 1998 as having a religious character.

39) Where an Academy has not been designated with a religious character in accordance with section 124B of the School Standards and Framework Act 1998:

a) subject to clause 40 the Company shall ensure that provision shall be made for religious education to be given to all pupils at the Academy in accordance with the requirements for agreed syllabuses in section 375(3) of the Education Act 1988 and paragraph 2(5) of Schedule 19 to the School Standards and Framework Act 1998, and having regard to the requirements of the Qualifications and Curriculum Authority's national framework for religious education in schools;

b) Subject to clause 40, the Company shall ensure that the Academy complies with the requirements of section 70(1) of, and Schedule 20 to, the Schools Standards and Framework Act 1998 as if it were a community, foundation or voluntary school which
does not have a religious character, except that the provisions of paragraph 4 of that Schedule do not apply. The Academy may apply to the Secretary of State for consent to be relieved of the requirement imposed by paragraph 3(2) of that Schedule, the Secretary of State’s consent to such an application not to be unreasonably withheld or delayed.

40) Section 71(1) – (4) of the School Standards and Framework Act 1998 shall apply as if each Academy were a community, foundation or voluntary school, and as if references to "Religious Education" and to "Religious Worship" in that section were references to the religious education and religious worship provided by each Academy in accordance with clauses 38 and 39 respectively.

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

Assessment

42) The Secretary of State will notify the National Assessment Agency (NAA) about each Academy.

43) The Company shall ensure that the pupils at each Academy take part in Key Stage 3 and, if relevant, Key Stages 1 and 2, assessments in English, Maths and Science and ICT and in teacher assessments of pupil’s performance in those subjects.

44) The Company shall report to the NAA and its agencies on the assessments required under clause 43 and shall provide the NAA with such information as the NAA may require in order for the requirements of clause 43 to be met.

45) In respect of all Key Stages, the Company will submit each Academy to monitoring and moderation of its assessment arrangements. The Company shall choose for each Academy to be monitored either:-

a) by the LA, with the consent of that LA; or

b) by an Agency accredited by the NAA.
46) The Company shall notify the Secretary of State about the basis upon which it has chosen to have each of its Academies monitored, or any change to that choice. The NAA will conduct an annual audit of the monitoring arrangements.

47) The Company shall ensure that each Academy complies with the relevant provisions of the ‘Assessment and Reporting Arrangements’ as published from time to time by the Qualifications and Curriculum Authority, as they apply to maintained schools.

48) The results of any test or assessment conducted in accordance with clause 43 shall also be reported to the Secretary of State and/or the LA as required and as set out in the ‘Assessment and Reporting Arrangements’, in a format approved by the Secretary of State.

49) The Company may not offer courses at any Academy which lead to external qualifications, as defined in section 96 of the Learning and Skills Act 2000, unless they are approved under section 98 of that Act.

Crisis Management Plan

50) Before any Academy opens to pupils it shall have in place a Crisis Management Plan setting out steps to be taken in the event of an emergency situation at that Academy, which has regard to local emergency planning arrangements.

Exclusions Agreement

50A) From 1 April 2009, the Company shall, if invited to do so by an LA, enter into an agreement in respect of the Academy with that LA, which has the effect that where:

a) the Company admits a pupil to the Academy who has been permanently excluded from a maintained school, the Academy itself or another Academy with whom the LA has a similar agreement; or

b) the Company permanently excludes a pupil from the Academy

payment will flow between the Company and the LA in the same direction and for the same amount that it would, were the Academy a maintained school, under Regulations made under section 47 of the School Standards and Framework Act 1998 relating to the addition or deduction of a maintained school’s budget following a permanent exclusion or the admission of a permanently excluded pupil. At the date of this Agreement, the
applicable Regulations are Regulation 23 of the School Finance (England) Regulations 2008.

School meals

51) The Company shall, if requested to do so by or on behalf of any pupils at any Academy, provide school lunches for those pupils unless it would be unreasonable for it to do so. Subject to the provisions of clause 52 charges may be levied for lunches.

52) In relation to a pupil who is himself or whose parents are in receipt of benefits mentioned in section 512ZB of the 1996 Act (or equivalent provision governing the entitlement to free school lunches of pupils at maintained schools), the Company shall ensure that a school lunch is provided for such a pupil free of charge.

53) All food and drink provided by or on behalf of each Academy shall comply with legislation governing the provision of food and drink in maintained schools as this applies from time to time. In particular, the Company shall ensure that school meals (breakfasts, lunches, or other meals) and food and drink available on each Academy's premises through other outlets such as tuck shops and vending machines comply with the relevant standards set out in regulations.

Charging

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

a) references to any maintained school shall be treated as references to an Academy;

b) references to registered pupils shall be treated as references to registered pupils at an Academy;

c) references to the governing body or the local education authority shall, in each case, be treated as references to the Company;

d) the charging and remissions policies required to be determined under section 457, and any amendment thereto, shall require the approval of the Secretary of State; and

e) the Company may charge persons who are not registered pupils at an Academy for education provided or for facilities used by them at that Academy.
Provision of Information to parents and others

55) The Company shall publish a prospectus for each Academy annually, shall send it on request (free of charge) to parents of pupils at the Academy and to the Secretary of State; and shall make it available for inspection by other persons at the relevant Academy. The prospectus shall include details of admissions arrangements, school term dates and, except insofar as such information is published in a document known as a School Profile (which would accompany or the prospectus), the following:

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

b) details of any religious affiliation of the school; policy on providing for children with SEN; arrangements for pupils with disabilities (as specified in an annex to the relevant Supplemental Agreement); pupil absence rates; and destination of school leavers; and

c) any further information as set out in Schedule 3 of the Education (School Information) (England) Regulations 2002 (SI 2002/2697) as applies to maintained schools.

d) such other information as the Company may determine.

56) The prospectus referred to above shall be published in the Academy Financial Year immediately preceding the school year to which it relates and shall be published at least six weeks before the closing date for applying for a place provided always that, in the case of the first Academy Financial Year of the Academy, it is recognised that it might not be possible to publish the prospectus within this timeframe, in which case the prospectus shall be published before the opening of the Academy.

Grants to be paid by the Secretary of State

General

57) The Secretary of State shall pay grants towards capital and recurrent expenditure of each Academy. Except with the Secretary of State's prior agreement, the Company shall not budget for its expenditure in any Academy Financial Year in excess of expected income. The Company shall not enter into commitments which are likely to have substantial implications for future levels of grant, or for the period for which grant may be required. No decision by the Company shall commit the Secretary of State to paying any
particular amount of grant.

58) “Recurrent expenditure” means any expenditure on the establishment, conduct, administration and maintenance of the Academy which does not fall within the categories of capital expenditure set out at clause 60. The Secretary of State shall pay two separate and distinct grants in respect of recurrent expenditure: General Annual Grant (“GAG”) and Earmarked Annual Grant (“EAG”).

59) For the avoidance of doubt, GAG and EAG does not include payments towards new premises or the substantive refurbishment or remodelling of existing premises for the purpose of an Academy.

CAPITAL GRANT

60) “Capital Expenditure” means expenditure on:

a) the acquisition of land and buildings;

b) the erection, enlargement, improvement or demolition of any building including fixed plant, installation, wall, fence or other structure, or any playground or hard standing;

c) the installation of electrical, mechanical or other services;

d) the purchase of vehicles and other self-propelled mechanical equipment;

e) the installation and equipping of premises with furnishings and equipment, other than necessary replacements, repairs and maintenance due to normal wear and tear;

f) the installation and equipping of premises with computers, networking for computers, operating software and information and communication technology equipment, other than necessary updates or necessary replacements, repairs and maintenance due to normal wear and tear;

g) the provision and equipping of premises, including playing fields and other facilities for social activities and physical recreation;

h) works of a permanent character other than the purchase or replacement of minor day-to-day items;

i) any major repairs or replacements which are specified as constituting capital expenditure in any grant letter relating to them;
j) such other items (whether of a like or dissimilar nature to any of the foregoing) of a substantial or enduring nature as the Secretary of State may agree shall constitute capital expenditure for the purposes of the Agreement;

k) all professional fees properly and reasonably incurred in connection with the provision of any of the above;

l) VAT and other taxes payable on any of the above.

"Capital Grant" means grant paid in respect of Capital Expenditure.

CAPITAL GRANT FOR A BSF PROCURED ACADEMY

61) Clauses 62 - 64 shall only apply in relation to a BSF Procured Academy.

62) Where an Academy is to open in new premises, or where existing premises are to be substantially refurbished or remodelled to enable the Academy to use such premises, the Secretary of State will be responsible for meeting the incurred Capital Expenditure for that Academy. To that end, he will provide funding to the LA in accordance with either:

a) arrangements made under the Building Schools for the Future programme; or

b) arrangements made under the BSF National Construction Contractors’ Framework for Academies and Educational Facilities

as the Secretary of State considers appropriate.

63) Any Capital Expenditure incurred in respect of each Academy on which Capital Grant payments are sought from the Secretary of State will require the specific agreement of the Secretary of State, which agreement shall not be unreasonably withheld or delayed. Unless the Company undertakes to meet such Capital Expenditure entirely itself such agreed Capital Expenditure as is incurred will be shared in a proportion to be agreed between the Secretary of State and the Company in relation to, and having regard to the nature of, each such Capital Expenditure.

64) Any payment of Capital Grant under this Agreement is subject to the fulfilment of the following conditions:

a. such grants are used solely to defray expenditure approved by the Secretary of State;
b. the payment of such grants is subject to the Company certifying and providing evidence that all planning and other consents necessary for the development and all related infrastructure to be completed have been obtained or put in place.

CAPITAL GRANT FOR A COMPANY PROCURED ACADEMY

65) Clauses 66 – 81 shall only apply in relation to a Company Procured Academy. For the purpose of clauses 66 – 81, the following words shall have the following meanings:

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

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

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

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

“project” means the establishment of an Academy;

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

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

67) Annex 2 to the Supplemental Agreement (the “Capital Costs Spreadsheet”) will include Capital Expenditure incurred prior to the execution of the relevant Supplemental Agreement and the Capital Expenditure to be incurred after execution of that Agreement and before the Academy opens. For this purpose an Academy opens on the first day
shall be reduced by the amount by which such Capital Expenditure falls below the Cash Limit.

75) The arrangements (including timing) for payments for these costs are set out in clause 82 and an annex to the relevant Supplemental Agreement.

76) The Company shall, by the fifth Business Day before each meeting of the Project Board for each Academy, provide to the Secretary of State a copy of a report (the "Monthly Report") setting out in relation to the Academy:

i) the Actual Development Expenditure as at the end of the calendar month immediately before the date when the Monthly Report is provided to the Secretary of State (the "relevant month");

ii) the Budgeted Development Expenditure as at the end of the relevant month;

iii) the amount (if any) by which the Actual Development Expenditure exceeds Budgeted Development Expenditure as at the end of the calendar month;

iv) a projection, as at the end of the relevant month, of the Capital Expenditure required to establish the Academy;

v) if the Capital Expenditure shown in such projection is greater than the Cash Limit (the different being a "Projected Cost Overrun"), the reason why a Projected Cost Overrun may be incurred.

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

78) If the actual Capital Expenditure required to establish an Academy exceeds the Cash Limit applicable to that Academy the additional Capital Expenditure shall be the responsibility of the Company except that the Secretary of State shall (subject to the Company complying with its obligations under clause 81) contribute:

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

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

a) such grants are used to provide accommodation constructed and equipped to standards agreed by the Secretary of State as described in the relevant annex of the relevant Supplemental Agreement, or to defray other expenditure approved by the Secretary of State;

b) the Company certifying and providing evidence that all planning and other consents necessary for the development and all related infrastructure of the relevant Academy have been obtained or put in place.

80) Any Capital Expenditure incurred in respect of an Academy beyond the Cash Limit applicable to that Academy on which Capital Grant payments are sought from the Secretary of State will require the specific agreement of the Secretary of State, which agreement shall not be unreasonably withheld or delayed. Unless the Company undertakes to meet such Capital Expenditure entirely itself such agreed Capital Expenditure as is incurred will be shared in a proportion to be agreed between the Secretary of State and the Company in relation to, and having regard to the nature of, each such Capital Expenditure.

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

a) such grants are used to provide accommodation constructed and equipped to standards agreed by the Secretary of State as described in the relevant annex of the relevant Supplemental Agreement, or to defray other expenditure approved by the Secretary of State;

b) the Company certifying and providing evidence that all planning and other consents necessary for the development and all related infrastructure of the relevant Academy have been obtained or put in place.

Arrangements for Payment of Capital Grant

82) Capital Grant will be paid by the Secretary of State to the Company on the basis of claims for grant submitted to the Secretary of State in the notified format with supporting invoices and certificates as required by the Secretary of State. Capital Grant will be paid within 21 days from the day on which a claim for grant is received if the claim is in the
proper format, supported by the appropriate documentation and the conditions on its payment set out at clause 64 or 81 (as applicable) are complied with. If a dispute arises as to whether a claim is or is not acceptable both parties undertake to attempt to resolve it in good faith. In the event of such a dispute, the Secretary of State shall pay to the Company so much of the claim as shall not be in dispute.

Implementation

83) For each Academy, the Secretary of State shall enter into an agreement with a third party ("Project Manager") for the provision of project management services to assist in the establishment of that Academy.

84) The Secretary of State shall make payments to the Project Manager for its work on the establishment of the relevant Academy. These payments will be known as "Implementation Grant". Implementation Grant will cover recurrent expenditure to be incurred on the establishment of the relevant academy, prior to opening. The Secretary of State shall pay Implementation Grant in accordance with his agreement with the Project Manager.

85) Not used.

Arrangements for Payment of Implementation Grant

86) Not used.

87) Not used.

General Annual Grant

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

a) teachers’ salaries and related costs (including full and part time teaching staff and seconded teachers);

b) non-teaching staff salaries and related costs (including pension contributions, educational support staff, administrative and clerical staff and manual and premises related staff);

c) employees’ expenses;
b) **Local Authority Central Spend Equivalent**: Funding representing a proportion of the LA Education Budget money which the LA would be able to retain, from the non-delegated elements of the Schools Budget and the relevant items in the LA Block, if the relevant Academy were a maintained school. The proportion which this funding will represent will be based on the elements of the LA's Section 52 Budget Return which are relevant to that Academy.

c) **Specialist Schools Allowance**: Funding equivalent to that which a maintained school with the relevant Academy's characteristics would receive in respect of their participation in the specialist schools programme;

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

a) funding for matters for which it is necessary for that Academy to incur extra costs, for as long as those costs are deemed necessary by the Secretary of State; and

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

91) **Subject to clause 92, the basis of the pupil number count for the purposes of determining GAG for an Academy will be the Company’s estimate each November for numbers on roll in the following September for that Academy.**

92) **Once the conditions specified in clause 93 have been satisfied with respect to an Academy for the Academy Financial Year for which funding is being calculated, the basis of the pupil number count for the purpose of determining GAG for that Academy will be:**

a) for the pupil number count for pupils in Year 11 and below, the Schools Census for the January preceding 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.
93) For the purpose of clause 92, the conditions are:

a) all planned year-groups will be present at the Academy (that is, all the pupil cohorts relevant to the age-range of the Academy will have some pupils present); and

b) the total number of pupils as measured in the Schools Census for the preceding January is 90% or more of the planned final size of the Academy, as specified in the Academy's Supplemental Agreement.

94) For any Academy Financial Year in which GAG for an Academy has been calculated in accordance with clause 91, an adjustment will be made to the following Academy Financial Year's formula funding element of GAG for that Academy to recognise any variation from that estimate greater than or lower than 2.5%. The additional or clawed-back grant will be only that amount relevant to the number of pupils beyond the 2.5% variation.

95) For any Academy Financial Year in which GAG for an Academy is calculated in accordance with clause 92, no adjustment will be made to the formula funding element in the following Academy Financial Year's formula funding element of GAG unless the Company demonstrates to the satisfaction of the Secretary of State that there has been a significant impact on costs, such as an extra classroom. 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.

96) 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 undertakes to pay an appropriately larger GAG in the Start-up Period than would be justified solely on the basis of the methods set out in clauses 91 and 92, in order to enable the Academy to operate effectively. The Company will make a bid to the Secretary of State for this addition to GAG based upon need and providing appropriate supporting evidence;
b) in relation to Academies which open with pupils transferred from one or more maintained schools which have closed, additional GAG resources will be required to take account of transitional costs including any costs associated with supporting the integration of pupils from the closed schools and, where necessary, to offer a dual curriculum.

97) 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 91 and 92 to allow the relevant Academy to:

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

b) meet the costs associated with the recruitment and induction of additional teaching and other staff.

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

98) The Secretary of State recognises that if he serves notice of intention to terminate a Supplemental Agreement under that agreement the intake of new pupils during the notice period is likely to decline and that in such circumstances payments based simply upon the number of pupils attending the relevant Academy are unlikely to be sufficient to meet the Academy’s needs during the notice period. The Secretary of State undertakes to pay a reasonable and appropriately larger GAG with respect to that Academy in the notice period than would be justified solely on the basis of the methods set out in clauses 91 and 92, in order to enable the Academy to operate effectively.

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

99A) Subject to clause 117, GAG paid by the Secretary of State in respect of an Academy shall only be spent by the Company towards the normal running costs of that Academy.
Earmarked Annual Grant

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

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

Arrangements for Payment of GAG and EAG

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

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

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

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

103A) If GAG or EAG is calculated incorrectly because the Company provides incorrect information to the Secretary of State then;

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

b) if this leads to an overpayment of GAG, the Secretary of State reserves the right to recover any overpaid grant in subsequent Academy Financial Years, as appropriate, having considered all the relevant circumstances and taking into
104) The amounts of GAG for an Academy Financial Year will be determined annually by the Secretary of State. The amount of GAG for each Academy will be notified to the Company in a funding letter not later than 1 April preceding that Academy Financial Year (the “annual letter of funding”). The annual letter of funding will not include the amount that the Company will receive in respect of grants for which information to enable timely calculation is not available or is incomplete, such grants will be notified as soon as practicable later in the Academy Financial Year. Amounts of EAG will be notified to the Company wherever possible in the annual letter of funding or as soon as practicable thereafter.

105) For the purposes of this Agreement, an Academy Financial Year shall be deemed to run from September to August, in order to align it to the school academic year. The Secretary of State undertakes to pay GAG in monthly instalments on or before the twenty-fifth day of each month, each such instalment to fund the salaries and other payroll costs for the relevant month of all monthly paid employees and all other costs payable during the next following month. The detailed arrangements for payment will be set out in the annual letter of funding.

Other relevant funding

106) The Secretary of State shall meet a proportion of the Company’s costs arising from the inclusion of Academies in the Schedules to the Redundancy Payments (Continuity of Employment in Local Government) (Modification) Order 1999. The Secretary of State shall meet the costs of the employees’ prior eligible service, being service prior to the opening of an Academy, and the Company will meet the costs of service after the opening of an Academy. The Company shall seek the Secretary of State’s consent for these redundancies, such consent not to be unreasonably withheld, before committing to the redundancies.

107) 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.

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

109) The Company may also receive funding for each Academy from the relevant LAs from the Standards Fund. The scheme under which the Standards Fund money is to be distributed by the Secretary of State to LAs and schools will permit LAs to receive grants on behalf of Academies in the same way as they can do for maintained schools. The Company must ensure that the relevant Academy uses any grants received under the Standards Fund in accordance with any conditions specified in relation to that grant. Grants paid to the Company from the Standards Fund are not paid under this Agreement.

Financial and Accounting Requirements

110) The Chief Executive Officer of the Company shall be the Company's Accounting Officer. The Accounting Officer will be personally responsible to the Company for ensuring regularity and propriety, and for the economic, efficient and effective use of resources (i.e. ensuring value for money), and administration of the financial affairs of Company. The Accounting Officer may delegate or appoint others, such as a Finance Director, to assist in carrying out these responsibilities.

111) The Company shall abide by the provisions within the Academies Financial Handbook published by the DCSF and amended from time to time and as modified to take account of the fact that the Company manages more than one Academy, which sets out in detail provisions for the financial management of each Academy including guidance on financial systems and controls and accounting and reporting requirements.

112) The formal budget plan should take into account items in the School Development Plan requiring expenditure and must be approved each Academy Financial Year by the directors of the Company.

113) Any payment of grant by the Secretary of State in respect of each Academy is subject to his being satisfied as to the fulfilment by the Company of the following conditions, namely, that:

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a) in its conduct and operation it shall apply financial and other controls which conform to the requirements both of propriety and of good financial management;

b) arrangements have been made to maintain proper accounting records and that statements of income and expenditure and balance sheets may be produced in such form and frequency as the Secretary of State may from time to time reasonably direct;

c) such financial statements are published at the end of each Academy Financial Year in such form and manner as the Secretary of State may reasonably direct and a copy sent to him by 31 December each year. These should carry an audit report stating that, in the opinion of the auditors, the statements show a true and fair view of the Company's affairs and that the grants were used for the purposes intended;

d) the Company prepares and files with the Companies Registry such annual accounts as are required by the Companies Act 2006;

e) a statement of the accounting policies used is sent to the Secretary of State with the financial statements;

f) the Company insures or procures insurance by another person of its assets in accordance with normal commercial practice or under the terms of any subsisting leases in respect of the leasehold interest of the site upon which each Academy is situated;

g) the Company prepares and files with the Charity Commission annual accounts prepared in accordance with the Statement of Recommended Practice;

h) the Company shall comply with their obligation under the Charities Act 1993 and the Charities Act 2006 (or any statutory re-enactment or modification of those Acts) with regard to the preparation of an annual report and its transmission to the Charity Commissioners;

i) the Company shall ensure that its accounts are audited annually by independent auditors appointment under arrangements approved by the Secretary of State.

114) In addition, and at his expense, the Secretary of State may instruct auditors to report to him on the adequacy and effectiveness of the accounting systems and internal controls maintained by the Company to standards determined by the Secretary of State and to make recommendations for improving the financial management of the Company.
115) The books of accounts and all relevant records, files and reports of the Company including those relating to financial controls, shall be open at all reasonable times to officials of the DCSF and the National Audit Office and to contractors retained by the DCSF or the National Audit Office for inspection or the carrying out of value for money studies; and the Company shall secure that those officials and contractors are given reasonable assistance with their enquiries. For the purposes of this clause 'relevant' means in any way relevant to the provision and use of grants provided by the Secretary of State under this Agreement.

116) The Company shall submit indicative budgets relating to each Academy to the Secretary of State not later than by 15 February before the start of each Academy Financial Year. Such budgets shall set out clearly the prospective income and expenditure of the relevant Academy and shall differentiate, and give adequate details of:

a) a statement of expected income for that Academy Financial Year including cash donations and gifts in kind from sources other than GAG, EAG and grants from the Secretary of State towards capital and revenue expenditure, distinguishing between income from public funds including the national lottery and income from other sources. Income from cash donations and gifts in kind from sources other than GAG, EAG and grants from the Secretary of State towards capital expenditure will not be taken into account by the Secretary of State in the calculation of GAG;

b) a statement of proposed recurrent expenditure for that Academy Financial Year;

c) a statement of proposed capital expenditure for that Academy Financial Year.

117) At the beginning of any Academy Financial Year the Company may hold unspent GAG for any Academy from previous Academy Financial Years amounting to 12% of the total GAG payable for the Academy in the Academy Financial Year just ended or such higher amount as may from time to time be agreed. This carried forward amount may be used as follows:

a) equivalent to 2% of the total GAG payable in the Academy Financial Year just ended may be used by the Company for any of the purposes for which GAG is paid, whether for the purposes of the relevant Academy or for the purposes of any other Academy;
b) equivalent to 12% of the total GAG payable in the Academy Financial Year just ended, or such higher figure as may from time to time be agreed, minus any amount used under sub-clause (a) above, may be used on the upkeep and improvement of premises, including the costs of equipment and routine repairs and maintenance of the relevant Academy, and on capital expenditure relating to the relevant Academy.

Notwithstanding the foregoing provisions of this clause 117 any additional grant provided over and above that set out in clauses 91 and 92 and made in accordance with clauses 96 and 97 may be carried forward without limitation or deduction until the Start-up Period or the circumstances set out in clause 98 come to an end.

118) Any savings of GAG not allowed to be carried forward under clause 113 will be taken into account in the payment of subsequent grant.

119) The Company may also accumulate funds from private sources or public sources other than grants from the Secretary of State for application to the benefit of an Academy as it sees fit. Any surplus arising from private sources or public sources other than grants from the Secretary of State shall be separately identified in the Company’s balance sheet.

120) The Company shall not, without the prior written consent of the Secretary of State which shall not be unreasonably withheld or delayed:

a) except such as are given in normal contractual relations, give any guarantees, indemnities or letters of comfort;

b) write off any debts or liabilities owed to it above a value to be set out in the annual letter of funding, nor offer to make any ex gratia payments;

c) make any sale or purchase of freehold property; or

d) grant or take up any leasehold or tenancy agreement for a term exceeding three years.

121) Each discovered loss of an amount exceeding the amount set out in the annual letter of funding, and arising from suspected theft or fraud, shall be reported by the Company to the Secretary of State at the earliest opportunity.

122) It is the responsibility of the Company to ensure that each Academy balances its budget from Academy Financial Year to Academy Financial Year.
Borrowing Powers

123) The Company shall not borrow without specific approval of the Secretary of State, such approval may only be granted in limited circumstances. The Company shall not operate an overdraft except to cover irregularities in cash flow. Such an overdraft, and the maximum amount to be borrowed, shall require approval by the Company in General Meeting and in writing by the Secretary of State, and shall be subject to any conditions which the Secretary of State may reasonably impose.

Disposal of Assets

124) Where the Company acquires assets for a nil consideration or at an under value it shall be treated for the purpose of this Agreement as having incurred expenditure equal to the market value of those assets at the time that they were acquired. This provision shall not apply to assets transferred to the Company at nil or nominal consideration and which were previously used for the purposes of any Academy or where transferred from an LA, the value of which assets shall be disregarded.

125) The sale or disposal by other means, or reinvestment of processed from the disposal, of a capital asset by the Company shall require the consent of the Secretary of State, such consent not to be unreasonably withheld or delayed, where:

a) the Secretary of State paid capital grant in excess of £20,000 for the asset; or

b) the asset was transferred to the Company from an LA for no or nominal consideration.

Furthermore, reinvestment of a percentage of the proceeds of disposal of a capital asset paid for with a capital grant from the Secretary of State shall require the Secretary of State’s consent in the circumstances set out above and reinvestment exceeding £1,000,000 or with other special features will be subject to Parliamentary approval. The percentage of the proceeds for which consent is needed is the percentage of the initial price of the asset which was paid by capital grant from the Secretary of State.

126) This clause applies in the event, during the lifetime of this agreement, of the disposal of a capital asset for which capital grant of any amount was paid by the Secretary of State, where the asset was acquired by the Company. In this event, the Company shall repay to the Secretary of State the same proportion of the proceeds of the disposal as equates with the proportion of the original cost met by the Secretary of State, unless
the Secretary of State agrees to some or all of the proceeds being retained by the Company for its charitable purposes.

127) This clause applies in the event, during the lifetime of this agreement, that the Secretary of State consents to the disposal of an asset which was transferred to the Company from an LA for no or nominal consideration. In this event the Secretary of State may give consent on the basis that all or part of the proceeds of the disposal should be made over to the LA from which the asset was transferred, taking into account the amount of the proceeds to be reinvested by the Company. The Secretary of State will have regard to any representations from the Company and the LA from which the asset was transferred before giving consent under this clause.

128) Except with the consent of the Secretary of State, the Company shall not dispose of assets for a consideration less than the best price that can reasonably be obtained, such consent not to be unreasonably withheld or delayed.

TERMINATION

129) This Agreement shall commence on the date hereof and continue until terminated in accordance with clause 130 or until all Supplemental Agreements have terminated.

130) The Secretary of State may at any time by notice in writing terminate this Agreement and each of the Supplemental Agreements forthwith on the occurrence of any of the following events:-

a) the Company calls a meeting of its creditors (whether formal or informal) or enters into any composition or arrangement (whether formal or informal) with its creditors; or

b) the Company proposes a voluntary arrangement within Section 1 of the Insolvency Act 1986; or

c) the Company is unable to pay its debts within the meaning of Section 123 of the Insolvency Act 1986 provided that, for the purposes of this Clause Section 123 (1)(a) of the Insolvency Act 1986 shall have effect as if the amount of £10,000 was substituted for £750. The Company shall not be deemed unable to pay its debts for the purposes of this clause if any such demand as is mentioned in the said Section is being contested in good faith by the Company; or

d) the Company has a receiver and manager (with the exception of Receivers and Managers or Interim Managers appointed by the Charity Commission under the
Charity Act 1993 or any subsequent re-enactment of that Act), administrator or administrative receiver appointed over all or any part of its undertakings, assets or income; or

e) any restraint, execution or other process is levied or enforced on any of the Company's property and is not paid out, withdrawn or discharged within fifteen Business Days; or

f) the Company has passed a resolution for its winding up;

g) an order is made for the winding up or administration of the Company; or

h) by 1 August 2008 the Secretary of State is not satisfied that the Company has entered into appropriate lease agreements in respect of the following sites:

i) the site of Greensward College, Greensward Lane, Hockley, Essex, SS5 5HG, Title Numbers: EX568410, EX568955, EX568952, EX30257, EX72316, EX63882;

ii) the site of the John Bramston School, Spinks Lane, Witham, Essex, CM8 1EP; and

iii) the site of Rickstones School, Conrad Road, Witham, Essex, CM8 2SD, Title Number: EX559281.

130A The Company shall notify the Secretary of State as soon as possible after receiving any petition which may result in an order for the winding up or administration of the Company and shall provide an explanation to the Secretary of State of the circumstances giving rise to the service of such a petition.

Effect of Termination

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

GENERAL

Information

132) Without prejudice to any other provision of this Agreement, the Secretary of State
acting reasonably may from time to time call for information on, inter alia, any Academy's:

a) curriculum;

b) arrangements for the assessment of pupils;

c) targets, including those set in accordance with the provisions of clause 20;

d) teaching staff including numbers, qualifications, experience, salaries, and teaching loads;

e) class sizes;

f) outreach work with other schools and the local community;

g) operation of the admission criteria and over subscription arrangements for the Academy including numbers of applications for places and the number and characteristics of pupils accepted for admission;

h) numbers of pupils excluded (including permanent and fixed term exclusions);

i) levels of authorised and unauthorised attendance;

j) charging and remissions policies and the operation of those policies;

k) organisation, operation and building management;

l) financial controls; and

m) membership and proceedings of the Company and the Academy Governing Body.

133) The Company shall make such information available to the Secretary of State, in such form and manner and at such times as may reasonably be required. The Secretary of State shall provide the Company with such information as it may reasonably require of him for the running of an Academy.

Access by the Secretary of State's Officers

134) The Company shall allow access to the premises of any Academy at any reasonable time to DCSF officials. All records, files and reports relating to the running of each Academy shall be available to them at any reasonable time. The Company shall
provide the DCSF in advance with papers relating to each Academy prepared for meetings of the Academy Governing Body, of the Company's directors and of the members of the Company. Two DCSF officials shall be entitled to attend and to speak at all such meetings, but shall withdraw from any discussion of an Academy's or the Company's relationship with the Secretary of State or any discussion of bids for funding to the Secretary of State. The Company shall take any steps which are required to secure its compliance with the obligations imposed by this clause of the agreement.

135) The Company shall ensure that:

i) the agenda for every meeting of the relevant Academy Governing Body and the Company's directors;

ii) the draft minutes of every such meeting, if they have been approved by the person acting as chairman of that meeting;

iii) the signed minutes of every such meeting; and

iv) any report, document or other paper considered at any such meeting,

are made available for inspection by any interested party at the relevant Academy and, as soon as is reasonably practicable, sent to the Secretary of State.

136) There may be excluded from any item required to be made available and sent to the DCSF by virtue of clause 135, any material relating to:

a) a named teacher or other person employed, or proposed to be employed, at any Academy;

b) a named pupil at, or candidate for admission to, any Academy; and

c) any matter which, by reason of its nature, the Company is satisfied should remain confidential.

Notices

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

138) Not used.

139) The service by the Secretary of State of a notice of termination of a Supplemental Agreement shall not prejudice the ability of the Company (if it wishes to do so) during the notice period to admit pupils to the relevant Academy in accordance with the provisions of this Agreement and the relevant Supplemental Agreement and to receive GAG and EAG in respect of them.

**Appointment of Additional Directors by the Secretary of State**

140) The Company shall follow the requirements of clause 141 if the Secretary of State becomes entitled in accordance with the Articles to appoint:

   a) additional Directors, by reference to the particular circumstances of an Academy rather than circumstances pertaining to all or substantially all Academies or the affairs of the Company generally, or

   b) Further Directors.

141) The Company will:

   a) replace such members of the Academy Governing Body of the Academy that the power to appoint the additional Directors or Further Directors pertains to; and/or appoint additional members of that Academy Governing Body as, in either case, the Secretary of State may by notice in writing to the Company specify must be appointed, provided that at least one of the members of that Academy Governing Body is also a Director (as defined in the Articles); and

   b) upon the replacement or appointment, as the case may be, of the members of the relevant Academy Governing Body, delegate to the relevant Academy Governing Body all such powers as may be necessary to ensure that the relevant Academy
Governing Body is capable of properly conducting the affairs of the relevant Academy on the Company’s behalf.

142) Notwithstanding the delegation referred to in clause 141(b) the relevant Academy Governing Body will report to the Directors of the Company upon all decisions taken by the Academy Governing Body at such intervals as the Company may reasonably require, following reasonable notice from the Company of its reporting requirements.

143) The Company may at any time revoke the delegation of powers referred to in clause 141 by notice in writing to the members of the relevant Academy Governing Body. A copy of any such notice will also be sent to the Secretary of State.

143A The Secretary of State undertakes to the Company not to exercise the powers under the Articles to appoint additional Directors or Further Directors unless:

a) the Company fails to comply with its obligations under clause 141; or

b) if, such powers having been delegated to the Academy Governing Body in accordance with clause 141, such delegation is subsequently revoked or, without the prior written consent of the Secretary of State, varied in any material respect; or

c) in the Secretary of State’s opinion the circumstances pertain to all or substantially all the Academies or the affairs of the Company generally.

General

144) The Secretary of State and the Company recognise the difficulties in catering in this Agreement and the Supplemental Agreements for all the circumstances which may arise in relation to the Academies and undertake in good faith to conduct such consultations as may from time to time be desirable in order to promote the interests of the Academies throughout the currency of this Agreement.
This Agreement was signed on 10 JULY, 2008

SIGNED on behalf of Academies Enterprise Trust by:

Witnessed by:
REBECCA COLE
14 SANDRIDGE RD
ST ALBANS, HERTS,
AL1 4AP

SIGNED on behalf of the Secretary of State by:

Director

Duly Authorised
SCHEDULE 1
MODEL SUPPLEMENTAL AGREEMENT FOR BSF PROCURED ACADEMIES

THIS AGREEMENT made 200[●]

BETWEEN

(1) THE SECRETARY OF STATE FOR CHILDREN, SCHOOLS AND FAMILIES; and

(2) [●]

IS SUPPLEMENTAL TO THE MASTER FUNDING AGREEMENT made between the same parties and dated ● 200[●] (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 [●] Academy [to be] established at [●].

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

"EA 2005" means the Education Act 2005;

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

<table>
<thead>
<tr>
<th>If at the time the Special Measures Notice is given the Academy shall have been opened for:</th>
<th>The Minimum Period will be</th>
</tr>
</thead>
<tbody>
<tr>
<td>Less than 12 months</td>
<td>36 months</td>
</tr>
<tr>
<td>Less than 24 months but 12 months or more</td>
<td>24 months</td>
</tr>
<tr>
<td>24 months or more</td>
<td>12 months</td>
</tr>
</tbody>
</table>
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 specialism of the Academy will be [ ].

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

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

2.5 The planned final pupil number of the Academy is [ ].

3 GAG AND EAG

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

4 TERMINATION

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

4.2 If the Secretary of State is of the opinion that the Academy no longer has the characteristics set out in clause 13 of the Master Agreement or that the conditions and requirements set out in clauses 14-59 of the Master Agreement are not being met, or that the Company is otherwise in material breach of the provisions of this Agreement or the Master Agreement, the Secretary of State may give notice of his provisional intention to terminate this Agreement.

4.3 Any such notice shall be in writing and shall:

4.3.1 state the grounds on which the Secretary of State considers the Academy no longer has the characteristics set out in clause 13 of the Master Agreement or is not meeting the conditions and requirements of clauses 14-59 of the Master Agreement or the Company is otherwise in material breach of the provisions of this Agreement or the Master Agreement;

4.3.2 specify the measures needed to remedy the situation or breach;
4.3.3. specify a reasonable date by which these measures are to be implemented; and

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

4.4 If no response is received by the date specified in accordance with clause 4.3.4, 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.

4.5 If a response is received by the date specified in accordance with clause 4.3.4, the Secretary of State shall consider it, and any representations made by the Company, and shall, within three months of its receipt, indicate that:

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

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

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

4.6 In the circumstances of clause 4.5.3 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 Academy 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 13 of the Master Agreement or does not and will not meet the conditions and requirements set out in clauses 14-59 of the Master Agreement or the Company is in material breach of the provisions of this Agreement or the Master Agreement and such breach will not be remedied to his reasonable satisfaction, he shall give the Company twelve months written notice to terminate this Agreement.

4.7 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 4.6 may be shortened to a period deemed appropriate by the Secretary of State.

4.8 The Secretary of State will, by not later than the end of December 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 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 113 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.

4.9 Any notice given by the Company under clause 4.8 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 4.8 above, within six weeks after the Secretary of State shall have done so. The notice must specify:

4.9.1. 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

4.9.2. 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
4.9.3. a detailed budget of income and expenditure for the Academy during the Critical Year (the "Projected Budget").

4.10 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.

4.11 If no agreement is reached by 30 April (or such other date as may be agreed between the parties) as to whether the cost of running the Academy during the Critical Year on the basis of the Indicative Funding and All Other Resources would cause the Company to become insolvent, then that question shall be referred to an independent expert (the "Expert") for resolution. The Expert's determination shall be final and binding on both parties. The Expert shall be requested to specify in his determination the amount of the shortfall in funding (the "Shortfall"). The Expert shall be an insolvency practitioner with significant professional experience of educational institutions or academies. If the parties fail to agree upon the appointment of the Expert then the Expert shall be appointed by the President for the time being of the Institute of Chartered Accountants in England and Wales. The Expert's fees shall be borne equally between the parties.

4.12 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.

4.13 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.

4.14 If the Company shall have given notice to terminate the Agreement under 4.13, 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.

4.15 The Secretary of State may at any time by notice in writing terminate this Agreement forthwith if the Academy has ceased (except where such cessation occurs temporarily by reason of an event beyond the reasonable control of the Company) to operate as an Academy within the meaning of Section 482 of the Education Act 1996.

4.16 A “Special Measures Termination Event Occurs” when:

4.16.1 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

4.16.2 not less than the Minimum Period after the Special Measures Notice, 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

4.16.3 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

4.16.4 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.

4.17 If a Special Measures Termination Event occurs, the Secretary of State may:
4.17.1. by notice in writing to the Company terminate this Agreement forthwith; or

4.17.2. subject to clauses 140-143A of the Master Agreement, appoint such Further Directors to the Company as he thinks fit in accordance with the Company's Articles and/or may provide up to 12 months' notice in writing to terminate this Agreement in which case.

4.18 In the event that the Secretary of State appoints Further Directors in accordance with clause 4.17.2, the Company must, upon the request of the Secretary of State, procure the resignation of the Sponsor Directors (as defined in the Articles) in accordance with the Company's Articles.

5 EFFECT OF TERMINATION

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

5.2 If the Secretary of State terminates this Agreement for reasons other than that the Academy no longer has the characteristics set out in clause 13 of the Master Agreement, or is no longer meeting the conditions and requirements set out in clauses 14-59 of the Master Agreement, that a Special Measures Termination Event occurs or that the Company is otherwise in material breach of the provisions of this Agreement or the Master Agreement, the Secretary of State shall indemnify the Company.

5.3 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.

5.4 The amounts and categories of expenditure incurred by the Company in consequence of the termination of the Agreement in respect of which the Secretary of State shall indemnify the Company include (but not by way of limitation), staff compensation and redundancy payments, compensation payments in respect of broken contracts, expenses of disposing of assets or adapting them for other purposes, legal and other professional fees, and dissolution expenses.

5.5 Subject to clause 5.6, on the termination of this agreement however occurring, the Company shall in respect of any of its capital assets at the date of termination:
(a) promptly transfer a proportion of the assets to a person nominated by the Secretary of State, if the Secretary of State considers that all or some of those assets need to be used for educational purposes by that nominee. The proportion of the assets to be transferred shall be the same as the proportion of the capital contribution made by the Secretary of State to the original value of those assets, whether that contribution was made on the establishment of the Academy or later; or

(b) if the Secretary of State confirms that a transfer under clause 5.5(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.

5.6 The Secretary of State may waive in whole or in part the repayment due under clause 5.5(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.

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

6 ANNEX

The Annex to this Agreement forms part of and is incorporated into this Agreement.
7 **THE MASTER AGREEMENT**

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

8 **ENGLISH LAW**

This Agreement shall be governed by and interpreted in accordance with English law.
ANNEX TO THIS SUPPLEMENTAL AGREEMENT

Arrangements for Admission for pupils at the Academy

Annex 2
SCHEDULE 2

MODEL SUPPLEMENTAL AGREEMENT FOR COMPANY PROCURED ACADEMY

THIS AGREEMENT made 200(1)

BETWEEN

(1) THE SECRETARY OF STATE FOR CHILDREN, SCHOOLS AND FAMILIES; and

(2) THE

IS SUPPLEMENTAL TO THE MASTER FUNDING AGREEMENT made between the same parties and dated 200(1) (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 [●] Academy [to be] established at [●].

“Chief Inspector” means Her Majesty’s Chief Inspector of Education, Children’s Services and Skills;

“EA 2005” means the Education Act 2005;

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

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</table>
or more

| 24 months or more | 12 months |

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

2 **THE ACADEMY**

2.1 The Company will 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 specialism of the Academy will be [●].

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

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

2.5 The planned final pupil number of the Academy is ●

3 **CAPITAL EXPENDITURE**

3.1 The Cash Limit will be £●.

3.2 The Company’s Contribution will be £●.

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

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

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

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

4 **GAG AND EAG**

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

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

5.2 If the Secretary of State is of the opinion that the Academy no longer has the characteristics set out in clause 13 of the Master Agreement or that the conditions and requirements set out in clauses 14-59 of the Master Agreement are not being met, or that the Company is otherwise in material breach of the provisions of this Agreement or the Master Agreement, the Secretary of State may give notice of his provisional intention to terminate this Agreement.

5.3 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 13 of the Master Agreement or is not meeting the conditions and requirements of clauses 14-59 of the Master 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 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 Academy 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 13 of the Master Agreement or does not and will not meet the conditions and requirements set out in clauses 14-59 of the Master Agreement or the Company is in material breach of the provisions of this Agreement or the Master Agreement and such breach will not be remedied to his reasonable satisfaction, he shall give the Company twelve months written notice to terminate this Agreement.

5.7 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 will, by not later than the end of December 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 113 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.

5.9 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 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 4.13, 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 control of the Company) to operate as an Academy within the meaning of Section 482 of the Education Act 1996.

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 not less than the Minimum Period after the Special Measures Notice, 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 clauses 140-143A of the Master Agreement, appoint such Further Directors to the Company as he thinks fit in accordance with the Company's articles and/or may provide up to 12 months' notice in writing to terminate this Agreement in which case.

5.18 In the event that the Secretary of State appoints Further Directors in accordance with clause 5.17.2, the Company must, upon the request of the Secretary of State, procure the resignation of the Sponsor Directors (as defined in the articles) in accordance with the Company's articles.
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 482 of the Education Act 1996.

6.2 If the Secretary of State terminates this Agreement for reasons other than that the Academy no longer has the characteristics set out in clause 13 of the Master Agreement, or is no longer meeting the conditions and requirements set out in clauses 14-59 of the Master Agreement or that the Company is otherwise in material breach of the provisions of this Agreement or the Master Agreement, the Secretary of State shall indemnify the Company.

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

6.4 The amounts and categories of expenditure incurred by the Company in consequence of the termination of the Agreement in respect of which the Secretary of State shall indemnify the Company include (but not by way of limitation), staff compensation and redundancy payments, compensation payments in respect of broken contracts, expenses of disposing of assets or adapting them for other purposes, legal and other professional fees, and dissolution expenses.

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

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

(b) if the Secretary of State confirms that a transfer under clause 6.5(a) is not required, promptly repay to the Secretary of State a 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 Local Authority.

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

7 ANNEX

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

8 THE MASTER AGREEMENT

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

9 ENGLISH LAW

This Agreement shall be governed by and interpreted in accordance with English law.
ANNEX TO THIS SUPPLEMENTAL AGREEMENT

Arrangements for Admission for pupils at the Academy

Annex 2
ANNEX 3

Arrangements for pupils with SEN and disabilities at each Academy
Annex 3

Arrangements for pupils with SEN and disabilities at [ ] Academy
Duty to have regard to the Code of Practice and other guidance

1. The Academy shall have regard to the Special Educational Needs Code of Practice (2001) and any guidance issued by the Secretary of State relating to sections 316 and 316A of the Education Act 1996. Any changes to be made to the provisions set out in this document must be approved in advance by the Secretary of State.

Duties in relation to pupils with SEN

2. The governors of the Academy shall designate a person, who may be the headteacher, the chair of governors or another governor as appropriate, who shall be the responsible person for the purposes of the following duties in relation to pupils with SEN.

3. The governors of the Academy shall:

   - use their best endeavours, in exercising their functions in relation to the school, to secure that, if any registered pupil has special educational needs, the special educational provision which the pupil's learning difficulty calls for is made;

   - secure that, where the responsible person has been informed by the local education authority that a registered pupil has special educational needs, those needs are made known to all who are likely to teach the pupil;

   - secure that the teachers in the school are aware of the importance of identifying, and providing for, those registered pupils who have special educational needs; and

   - consult the local education authority and the governing bodies of other schools in the area, to the extent that this is necessary for co-ordinating provision for pupils with SEN.

4. Where a child who has special educational needs is being educated in the Academy, those concerned with making special educational provision for the child shall secure, 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,

   (c) the efficient use of resources and

   (d) that the child engages in the activities of the school together with

SV2006.2 (November 2006)
children who do not have SEN.

5. The Academy prospectus shall include details of the governing body's policy for pupils with SEN and in particular shall include the information specified in Schedule 1 to the Education (Special Educational Needs) (Information) Regulations 1999 as amended or re-enacted from time to time. It shall also include 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 Disability Discrimination Act 1995).

Admissions

6. The Academy shall ensure that pupils with SEN are admitted on an equal basis with others in accordance with its admissions policy.

7. Where a local education authority proposes to name the Academy in a statement of SEN made in accordance with section 324 of the Education Act 1996, the Academy shall 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 Academy shall have regard to the relevant guidance issued by the Secretary of State to maintained schools.

8. In the event of any disagreement between the Academy and the local education authority over the proposed naming of the Academy in a statement, the Academy may ask the Secretary of State to determine whether the Academy should be named. 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 Special Educational Needs and Disability Tribunal (SENDIST), be final.

9. If a parent or guardian of a child in respect of whom a statement is maintained by the local education authority appeals to SENDIST 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 7 above, be substituted for the Secretary of State’s decision.

10. Where the Academy has consented to be named in a child’s statement of SEN, or the Secretary of State or SENDIST have determined that it should be named, the Academy shall admit the child notwithstanding any provision of Annex 2 of this agreement.
Annex 3

Arrangements for pupils with SEN and disabilities at Greensward Academy

Duty to have regard to the Code of Practice and other guidance

1. The Academy shall have regard to the Special Educational Needs Code of Practice (2001) and any guidance issued by the Secretary of State relating to sections 316 and 316A of the Education Act 1996. Any changes to be made to the provisions set out in this document must be approved in advance by the Secretary of State.

Duties in relation to pupils with SEN

2. The governors of the Academy shall designate a person, who may be the Principal, the Chair of Governors or another governor as appropriate, who shall be the responsible person for the purposes of the following duties in relation to pupils with SEN.

3. The governors of the Academy shall:

   - use their best endeavours, in exercising their functions in relation to the school, to secure that, if any registered pupil has special educational needs, the special educational provision which the pupil's learning difficulty calls for is made;
   
   - secure that, where the responsible person has been informed by the local education authority that a registered pupil has special educational needs, those needs are made known to all who are likely to teach the pupil;
   
   - secure that the teachers in the school are aware of the importance of identifying, and providing for, those registered pupils who have special educational needs; and
   
   - consult the local education authority and the governing bodies of other schools in the area, to the extent that this is necessary for co-ordinating provision for pupils with SEN.

4. Where a child who has special educational needs is being educated in the Academy, those concerned with making special educational provision for the child shall secure, 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,
(c) the efficient use of resources and 

(d) that the child engages in the activities of the school together with children who do not have SEN.

5. The Academy prospectus shall include details of the governing body’s policy for pupils with SEN and in particular shall include the information specified in Schedule 1 to the Education (Special Educational Needs) (Information) Regulations 1999 as amended or re-enacted from time to time. It shall also include 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 Disability Discrimination Act 1995).

Admissions

6. The Academy shall ensure that pupils with SEN are admitted on an equal basis with others in accordance with its admissions policy.

7. Where a local education authority proposes to name the Academy in a statement of SEN made in accordance with section 324 of the Education Act 1996, the Academy shall 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 Academy shall have regard to the relevant guidance issued by the Secretary of State to maintained schools.

8. In the event of any disagreement between the Academy and the local education authority over the proposed naming of the Academy in a statement, the Academy may ask the Secretary of State to determine whether the Academy should be named. 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 Special Educational Needs and Disability Tribunal (SENDIST), be final.

9. If a parent or guardian of a child in respect of whom a statement is maintained by the local education authority appeals to SENDIST 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 7 above, be substituted for the Secretary of State’s decision.

10. Where the Academy has consented to be named in a child’s statement of SEN, or the Secretary of State or SENDIST have determined that it should be named, the Academy shall admit the child notwithstanding any provision of Annex 2 of this agreement.
Annex 3

Arrangements for pupils with SEN and disabilities at The Maltings Academy

Duty to have regard to the Code of Practice and other guidance

1. The Academy shall have regard to the Special Educational Needs Code of Practice (2001) and any guidance issued by the Secretary of State relating to sections 316 and 316A of the Education Act 1996. Any changes to be made to the provisions set out in this document must be approved in advance by the Secretary of State.

Duties in relation to pupils with SEN

2. The governors of the Academy shall designate a person, who may be the Principal, the Chair of Governors or another governor as appropriate, who shall be the responsible person for the purposes of the following duties in relation to pupils with SEN.

3. The governors of the Academy shall:

   • use their best endeavours, in exercising their functions in relation to the school, to secure that, if any registered pupil has special educational needs, the special educational provision which the pupil’s learning difficulty calls for is made;

   • secure that, where the responsible person has been informed by the local education authority that a registered pupil has special educational needs, those needs are made known to all who are likely to teach the pupil;

   • secure that the teachers in the school are aware of the importance of identifying, and providing for, those registered pupils who have special educational needs; and

   • consult the local education authority and the governing bodies of other schools in the area, to the extent that this is necessary for co-ordinating provision for pupils with SEN.

4. Where a child who has special educational needs is being educated in the Academy, those concerned with making special educational provision for the child shall secure, 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,
(c) the efficient use of resources and

(d) that the child engages in the activities of the school together with children who do not have SEN.

5. The Academy prospectus shall include details of the governing body's policy for pupils with SEN and in particular shall include the information specified in Schedule 1 to the Education (Special Educational Needs) (Information) Regulations 1999 as amended or re-enacted from time to time. It shall also include 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 Disability Discrimination Act 1995).

Admissions

6. The Academy shall ensure that pupils with SEN are admitted on an equal basis with others in accordance with its admissions policy.

7. Where a local education authority proposes to name the Academy in a statement of SEN made in accordance with section 324 of the Education Act 1996, the Academy shall 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 Academy shall have regard to the relevant guidance issued by the Secretary of State to maintained schools.

8. In the event of any disagreement between the Academy and the local education authority over the proposed naming of the Academy in a statement, the Academy may ask the Secretary of State to determine whether the Academy should be named. 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 Special Educational Needs and Disability Tribunal (SENDIST), be final.

9. If a parent or guardian of a child in respect of whom a statement is maintained by the local education authority appeals to SENDIST 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 7 above, be substituted for the Secretary of State's decision.

10. Where the Academy has consented to be named in a child's statement of SEN, or the Secretary of State or SENDIST have determined that it should be named, the Academy shall admit the child notwithstanding any provision of Annex 2 of this agreement.
Annex 3

Arrangements for pupils with SEN and disabilities at New Rickstones Academy

Duty to have regard to the Code of Practice and other guidance

1. The Academy shall have regard to the Special Educational Needs Code of Practice (2001) and any guidance issued by the Secretary of State relating to sections 316 and 316A of the Education Act 1996. Any changes to be made to the provisions set out in this document must be approved in advance by the Secretary of State.

Duties in relation to pupils with SEN

2. The governors of the Academy shall designate a person, who may be the Principal, the Chair of Governors or another governor as appropriate, who shall be the responsible person for the purposes of the following duties in relation to pupils with SEN.

3. The governors of the Academy shall:

- use their best endeavours, in exercising their functions in relation to the school, to secure that, if any registered pupil has special educational needs, the special educational provision which the pupil’s learning difficulty calls for is made;

- secure that, where the responsible person has been informed by the local education authority that a registered pupil has special educational needs, those needs are made known to all who are likely to teach the pupil;

- secure that the teachers in the school are aware of the importance of identifying, and providing for, those registered pupils who have special educational needs; and

- consult the local education authority and the governing bodies of other schools in the area, to the extent that this is necessary for co-ordinating provision for pupils with SEN.

4. Where a child who has special educational needs is being educated in the Academy, those concerned with making special educational provision for the child shall secure, 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,
(c) the efficient use of resources and
(d) that the child engages in the activities of the school together with children who do not have SEN.

5. The Academy prospectus shall include details of the governing body’s policy for pupils with SEN and in particular shall include the information specified in Schedule 1 to the Education (Special Educational Needs) (Information) Regulations 1999 as amended or re-enacted from time to time. It shall also include 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 Disability Discrimination Act 1995).

Admissions

6. The Academy shall ensure that pupils with SEN are admitted on an equal basis with others in accordance with its admissions policy.

7. Where a local education authority proposes to name the Academy in a statement of SEN made in accordance with section 324 of the Education Act 1996, the Academy shall 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 Academy shall have regard to the relevant guidance issued by the Secretary of State to maintained schools.

8. In the event of any disagreement between the Academy and the local education authority over the proposed naming of the Academy in a statement, the Academy may ask the Secretary of State to determine whether the Academy should be named. 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 Special Educational Needs and Disability Tribunal (SENDIST), be final.

9. If a parent or guardian of a child in respect of whom a statement is maintained by the local education authority appeals to SENDIST 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 7 above, be substituted for the Secretary of State’s decision.

10. Where the Academy has consented to be named in a child’s statement of SEN, or the Secretary of State or SENDIST have determined that it should be named, the Academy shall admit the child notwithstanding any provision of Annex 2 of this agreement.
ANNEX 4

Learning Behaviour policy (including discipline and or arrangements for fixed term and permanent exclusions and appeals against exclusions) for each Academy
ANNEX 4

Essex Academies 4, 5 & 6

Greensward Academy
The Maltings Academy
New Rickstones Academy

Serious incidents of misbehaviour leading to fixed period or permanent exclusion

1. In discharging its duty the Academies Enterprise Trust ("the Academy Trust") will have regard and will ensure that the Independent Appeal Panel has regard to the Secretary of State's guidance on exclusions for maintained schools in accordance with any written directions from the Secretary of State on the interpretation of such guidance for the purpose of this annex.

2. At the date of this agreement, the Secretary of State's guidance on exclusions is called "Improving Behaviour and Attendance: Guidance on Exclusion from Schools and Pupil Referral Units", which is published on the DfES website at:

The title, contents and publication site of this guidance may be subject to change and the Academies Enterprise Trust will have regard to the guidance as it stands at any given time.

Constitution and conduct of independent appeal panels

3. In addition to the obligations under paragraphs 1 and 2, the Academies Enterprise Trust will be responsible for carrying out the functions of the Local Authority, as specified in the guidance, for the management of the appeal procedure. The Appeal panel must be impartial and constituted in accordance with the provisions of the guidance detailing the composition of the Appeal Panel. The Academies Enterprise Trust will arrange suitable training for appeal panel members and clerks.

4. The appeal panel's decision is final and binding on the Academies Enterprise Trust. Decisions of appeal panels are in principle amendable to judicial review on the application of a parent. A parent may not, however, appeal to the Commissioner for Local Administration (the Local Government Ombudsman) about maladministration because the Commissioner's remit is limited to considering the conduct of appeal panels constituted by Local Authorities.

5. Where a pupil is excluded permanently, the Academy Trust must ensure that the pupil's home Local Authority is notified at the earliest possible opportunity.