

DATED

22 August

2013

(1) THE SECRETARY OF STATE FOR EDUCATION

AND

(2) HARRIS FEDERATION

SUPPLEMENTAL AGREEMENT FOR
HARRIS PRIMARY ACADEMY BENSON



Stone King LLP
16 St John's Lane
London
EC1M 4BS
T: 020 7796 1007
F: 020 7796 1017
DX 53314 Clerkenwell

GRD/096602/13
18 July 2013

THIS AGREEMENT made 22 August 2013

BETWEEN

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

(2) **HARRIS FEDERATION**

IS SUPPLEMENTAL TO THE MASTER FUNDING AGREEMENT made between (1) The Secretary of State for Education and Skills and (2) the Company (under its then name "Harris Federation of South London Schools") dated 31 August 2007 (the "Master Agreement").

DEFINITIONS AND INTERPRETATION

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.

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

"the Academy" means the Harris Primary Academy Benson to be established at West Way, Shirley, Croydon, CR0 8RQ;

"Academy Financial Year" means the year from 1st September to 31st August in any year;

"Additional Directors" means the Directors who may be appointed by the Secretary of State in accordance with the Articles;

"this agreement" means this agreement and its annexes;

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

"Insolvency" has the meaning given to it in section 123 of the Insolvency Act 1986;

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

"LA" means The London Borough of Croydon;

the "Land" means the land to be leased to the Company (including for the avoidance of doubt all buildings, structures landscaping and other erections) situated at and known as Benson Primary School, West Way, Shirley, Croydon, CR0 8RQ which comprises the whole of the site delineated in red on the plan attached at Annex 3

the "School" means Benson Primary School, West Way, Shirley, Croydon, CR0 8RQ.

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

4 **THE ACADEMY**

4.1 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.

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

5 **ACADEMY OPENING DATE**

5.1 The Academy shall open as a school on 1 September 2013 replacing the Benson Primary School which shall cease to be maintained by the LA on that date, which date shall be the conversion date within the meaning of the Academies Act 2010.

5.2 The planned capacity of the Academy is 420 places in the age range 3-11 and a nursery unit of 52 places and the curriculum provided by the Academy to pupils shall be broad and balanced.

6 **LOCAL GOVERNMENT PENSION SCHEME**

6.1 The Company shall ensure that all employees at the Academy other than teachers ("Non-teaching Staff") have access to either the Local Government Pension Scheme in accordance with the Local Government Pension Scheme (Administration) Regulations 2008 (SI2008/239) ("the Regulations"), where the Regulations require this, or such other pension benefits as those Regulations, or any legislation which may in the future replace the Regulations, require for Non-teaching staff.

7 **APPLICATION OF MASTER AGREEMENT CLAUSES**

Clauses 12, 17-20, 22, 24, 27, 34-37, 41-42, 46-69, 81, 84, 92 and 100 of the Master Agreement do not apply to the Academy and are replaced as follows.

8 **CHARACTERISTICS OF THE ACADEMY**

8.1 In respect of the Academy only, Clause 12 of the Master Agreement shall be replaced with the following;

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

(a) it is an independent school;

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

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

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

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

9 **CONDITIONS OF GRANT**

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

"b) there will be assessments of pupils' performance as they apply to maintained schools;"

10 **GOVERNANCE**

10.1 Clauses 14 and 15 of the Master Agreement shall apply.

11 **DISCLOSURE AND BARRING SERVICE CHECKS**

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

11.2 The Company shall, on receipt of a copy of an enhanced criminal record certificate, on request from the Secretary of State or his agents, as soon as possible thereafter submit

information contained in the certificate to the Secretary of State in accordance with section 124 of the Police Act 1997.

12 **PUPILS**

12.1 In respect of the Academy only, a new Clause 21 sub-clause c) of the Master Agreement shall be inserted as follows:

“21c) pupil exclusions are set out in regulations made by virtue of section 51A of the Education Act 2002 (as may be amended from time to time, and includes any successor provisions).”

12.2 For the avoidance of doubt Annex C of the Master Agreement shall not apply in respect of the Academy and the wording “Arrangements for pupil exclusions are set out in Annex C to this agreement” in Clause 21 of the Master Agreement shall not apply in respect of the Academy.

12.3 In respect of the Academy, Clause 21, sub-clause b) of the Master Agreement shall not apply and the requirements for the admission to the Academy of and support for pupils with SEN and with disabilities (for pupils who have and who do not have statements of SEN) are set out in Annex 2 to this agreement. For the avoidance of doubt, Annex B of the Master Agreement shall not apply in respect of the Academy.

TEACHERS AND OTHER STAFF

13 In respect of the Academy only, Clause 22 of the Master Agreement shall be replaced with the following:

“22) In respect of the Academy:

- a) subject to clause 22(b), the Company shall, in accordance with any guidance which the Secretary of State may issue on the qualifications of teaching and other staff in Academies, employ anyone it deems is suitably qualified or is otherwise eligible 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.*

- b) *clause 22(a) does not apply to anyone who:*
- i) *is appointed as the SENCO by the Company under section 317(3A) of the Education Act 1996, who must meet the requirements set out in Regulation 3 of the Education (Special Educational Needs Co-ordinators) (England) Regulations 2008 (SI 2008/2945); or*
 - ii) *is appointed as a designated teacher for looked after children further to clause*
- 14 of the Relevant Supplemental Agreement.*

22A) *Where a teacher employed at an Academy applies for a teaching post at another Academy, 16 to 19 Academy, maintained school, school maintained by a local authority or institution within the further education sector, the Company must at the request of the governing body or Academy Trust of that other educational institution:*

- a) *advise in writing whether or not, in the preceding two years, there has been any formal consideration of that teacher's capability to perform their role at the Academy, or the school the Academy replaced; and*
- b) *provide written details of the concerns which gave rise to any such consideration of that teacher's capability, the duration of the proceedings and their outcome".*

DESIGNATED TEACHER FOR LOOKED AFTER CHILDREN

- 14** The Company will in respect of the Academy act in accordance with, and be bound by, all relevant statutory and regulatory provisions and have regard to 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 an LA and are registered pupils at the school. For the purpose of this clause, 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.

ASSESSMENT

- 15** The Secretary of State will notify the appropriate body for assessment purposes about the Academy:
- (a) The Company shall ensure that the Academy complies with any guidance issued by the Secretary of State from time to time to ensure that pupils take part in assessments and in teacher assessments of pupil's performance as they apply to maintained schools.
 - (b) The Company shall report to any body on assessments in respect of the Academy as the Secretary of State shall prescribe and shall provide such information as may be required by that body as applies to maintained schools.
 - (c) In respect of all Key Stages, the Company will submit the Academy to monitoring and moderation of its assessment arrangements as prescribed by the Secretary of State.
- 16** The Company shall ensure that the following information is published on the Academy's website:
- (a) The Academy's most recent key stage 2 results as published by the Secretary of State under the following column headings in the School Performance Tables published on the Department for Education's website:
 - (i) "% achieving Level 4 or above in English and maths";
 - (ii) "% making expected progress";
 - (iii) in relation to English, "% achieving Level 5 or above"; and
 - (iv) in relation to maths, "% achieving Level 5 or above".
 - (b) Information as to where and by what means parents (including prospective parents) may access the most recent report about the Academy published by the Chief Inspector.
 - (c) Information as to where and by what means parents (including prospective parents) of pupils at the Academy may access the School Performance

Tables published by the Secretary of State on the Department for Education's website.

- 17** There is no requirement to publish information under clause 16 if to do so would be in breach of the Company's obligations under the Data Protection Act 1998.

POLITICAL INDOCTRINATION

- 18** In respect of the Academy, the Company agrees to act in accordance with Sections 406 (Political Indoctrination) and 407 (Duty to secure balanced treatment of political issues) of the Education Act 1996 as if it were a maintained school, subject to the following modifications:

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

EXCLUSIONS AGREEMENT

- 19** The Company shall, if invited to do so by a 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 Regulation is Regulation 23 of the School Finance (England) Regulations 2008.

DISPOSAL OF ASSETS

- 20** The Company shall provide 30 days notice to the Secretary of State of its intention to dispose of assets for a consideration less than the best price that can reasonably be obtained, whether or not such disposal requires the Secretary of State's consent under clause 103 of the Master Agreement. This clause shall only apply to publicly funded assets.

CURRICULUM, CURRICULUM DEVELOPMENT AND DELIVERY AND RE AND COLLECTIVE WORSHIP

- 21** In addition to the requirements of clauses 28 to 33 of the Master Agreement, the following shall apply:

- 21.1 The Company shall publish information in relation to its current curriculum provision in relation to the Academy. Such information shall include details relating to:

- (a) the content of the curriculum;
- (b) its approach to the curriculum;
- (c) the names of any phonics or reading schemes in operation for Key Stage 1;
and
- (d) how parents (including prospective parents) can obtain further information in relation to the Academy's curriculum.

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

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

21.3 The Company shall have regard to the requirements set out in section 405 of the Education Act 1996 which shall apply to the Academy as if it were a maintained school.

PUPIL PREMIUM

22 The Company shall publish, for the Academy, in each Academy Financial Year information in relation to:

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

COMPLAINTS

- 23.1 If a complaint is made about matters arising in whole or in part prior to the opening of the Academy, as referred to in clause 5.1 above, and all or part of that complaint was being or had been investigated by the Local Government Ombudsman under Part III of the Local Government Act 1974 ("Part III") or that complaint in whole or in part could have been investigated under Part III had the school the Academy replaced remained a maintained school, the Company:
- (a) will abide by the provisions of Part III as though the Academy were a maintained school;
 - (b) agrees that the Secretary of State shall have the power to investigate the matter complained of as if it had taken place after conversion;
 - (c) agrees to act in accordance with any recommendation from the Secretary of State as though that recommendation had been made under Part III and the Academy were a maintained school.
- 23.2 If at the time of the opening of the Academy the investigation of a complaint made to the governing body of the school the Academy replaced (as referred to in clause 5.1 above) has not yet been completed, the Company shall continue to investigate that complaint in accordance with the complaints procedures established by that governing body.
- 23.3 If a complaint is made to the Company about matters arising in whole or in part during the 12 months prior to the opening of the Academy, the Company agrees to investigate that complaint as if the matter complained of had taken place after the opening of the Academy.

24 If the Secretary of State could have given an order and/or a direction under section 496 and/or section 497 of the Education Act 1996 to the governing body of the school the Academy replaced (as referred to in clause 5.1 above) and that order and/or direction related to matters occurring within the 12 months immediately prior to conversion, the Company agrees:

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

INTERNATIONAL EDUCATION SURVEYS

25 The Secretary of State may, by notice in writing to the Company, require the Company, in relation to the Academy, in the event that it is selected by the relevant international organisation, as part of a national sample of schools, to participate in an international education survey¹ and the Company shall, upon receipt of such notice, participate in that survey and provide to the Secretary of State or to those carrying out the survey all such assistance and information as may reasonably be required for the purposes of the Academy's participation in that survey.

CAPITAL GRANT AND IMPLEMENTATION GRANT

26 The Secretary of State may, in his absolute discretion, provide Capital Expenditure funding in accordance with this clause and any arrangements he considers appropriate.

27 The Company shall use the GAG funding it receives prudently in order to cover the normal reasonable running costs of the Academy.

¹ The international education surveys which operate at present and may apply to the Academy are the Trends in International Mathematics and Science Study ("TIMSS") and Progress in International Reading Literacy Study ("PIRLS")

- 28** Any Capital Expenditure incurred in respect of the Academy on which Capital Grant payments are sought from the Secretary of State will require the specific prior written agreement of the Secretary of State, which agreement shall not be unreasonably withheld or delayed.
- 29** Any payment of Capital Grant to the Company 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 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; and
 - (c) any other conditions that the Secretary of State may specify.
- 30** Capital Grant will be paid by the Secretary of State to the Company in respect of this Academy 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 28 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 and shall promptly pay any additional amount due to the Company following resolution of the dispute if further payment is due to the Company.

IMPLEMENTATION GRANT

- 31** The Secretary of State will not in relation to the Academy pay Implementation Grant pursuant to clauses 60 to 64 of the Master Agreement.

GAG AND EAG

32 Subject to clause 33 the Secretary of State agrees to pay GAG and EAG to the Company in relation to the Academy in accordance with the Master Agreement.

33 In respect of the Academy only, Clauses 65 to 67 of the Master Agreement will be replaced with the following:

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

- (a) teachers' salaries and related costs (including full and part time teaching staff and seconded teachers);*
- (b) non-teaching staff salaries and related costs (including pension contributions, educational support staff, administrative and clerical staff and manual and premises related staff);*
- (c) employees' expenses;*
- (d) the purchase, maintenance, repair and replacement:
 - (i) of teaching and learning materials and other educational equipment, including books, stationery and ICT equipment and software, sports equipment and laboratory equipment and materials;*
 - (ii) of other supplies and services;**
- (e) examination fees;*
- (f) repairs, servicing and maintenance of buildings (including redecoration, heating, plumbing, lighting etc); maintenance of grounds (including boundary fences and walls); cleaning materials and contract cleaning; water*

and sewage; fuel and light (including fuel oil, solid and other fuel, electricity and gas); rents; rates; purchase, maintenance, repairs and replacement of furniture and fittings;

- (g) *insurance, provided that the Secretary of State shall not be obliged to pay GAG in relation to insurance to the extent that insurance and/or comparable arrangements are made available to the Company (whether at a cost to the Company or otherwise and whether made available by and/or on behalf of the Secretary of State or otherwise) save that, to the extent that such insurance and/or comparable arrangements as may be made available constitute a cost for the Company, the Secretary of State shall provide a contribution through GAG in relation to such cost;*
- (h) *medical equipment and supplies;*
- (i) *staff development (including in-service training);*
- (j) *curriculum development;*
- (k) *the costs of providing school meals for pupils (including the cost of providing free school meals to pupils who are eligible to receive them), and discretionary grants to pupils to meet the cost of pupil support, including support for pupils with special educational needs or disabilities (taking account of the fact that separate additional money will be available for pupils with statements of special educational needs);*
- (l) *administration;*
- (m) *establishment expenses and other institutional costs.*

66) *Subject to clauses 72 and 73, GAG for each Academy Financial Year for the Academy will include;*

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

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

- a) *funding for matters for which it is necessary for 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 Academy meets the requisite conditions and criteria necessary for a maintained school to receive these grants."*

34 [Not used]

35 In respect of the Academy only Clauses 68 and 69 of the Master Agreement shall not apply and shall be replaced with the following provisions:

"68) Subject to Clause 68A, the basis of the pupil number count for the purposes of determining GAG for the first Academy Financial Year in which the Academy opens and the following four Academy Financial Years (for the avoidance of doubt, ending at the end of the 2018/19 Academy Financial Year (the "Initial Five Year Term")) will be the most recent estimate provided by the Company at the request of the Secretary of State in advance of the Academy Financial Year for numbers on the roll in the following September (the "Estimated Figure"). The Estimated Figure will be based on a reasonable assessment of pupil numbers. However, the Secretary of State may make adjustments to the GAG for the following Academy Financial Year to recognise any variation between the number of pupils that were actually on the roll in the

previous September (the "Actual Figure") and the Company's Estimated Figure. The basis of these will be set out in the Annual Letter of Funding.

68B) If the Conditions (as defined in Clause 69 below) have been met then the basis of the pupil number count for the purpose of determining GAG for the Academy Financial Year in question will be determined in accordance with Clause 69 and Clause 68 will no longer apply.

69) After: (i) all planned Year-groups are present at the Academy (that is, all the pupil cohorts relevant to the age-range of the Academy will have some pupils present); and (ii) the total number of pupils as measured in the Schools Census which is used to fund maintained schools for the financial year overlapping with the Academy Financial Year in question is 90% of the planned final size of the Academy, as specified in the Supplemental Agreement applicable to the Academy (together, the "Conditions"), the basis of the pupil number count for the purpose of determining GAG for the Academy for Academy Financial Years will be the Schools Census which is used to fund maintained schools for the financial year overlapping with the Academy Financial Year in question.

69A) If either of the Conditions have not been met in respect of an Academy Financial Year and the Initial Five Year Term has come to an end, the basis of the pupil count shall be determined by the Secretary of State, taking account of any diseconomies of scale that the Academy will be under as a result of such Condition(s) not applying."

36 Grants paid by the Secretary of State shall only be used by the Company for the educational purposes set out in Clause 3 of the Memorandum ("the Object"). Such funds shall not be used by the Company for purposes that do not directly relate to the Object of providing education in the United Kingdom, in particular by establishing, maintaining, carrying on, managing and developing schools. Grants shall not be used for purposes other than the Object without the prior written consent of the Secretary of State.

37 In respect of the Academy only Clause 100 of the Master Agreement shall not apply and shall be replaced with the following provision:

“100) The sale or disposal by other means, or reinvestment of proceeds 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 the value for the time being specified by the Secretary of State 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 the value for the time being specified by the Secretary of State or with other special features will be subject to Parliamentary approval. The percentage of the proceeds for which consent is needed is the percentage of the initial price of the asset which was paid by capital grant from the Secretary of State.”

- 38** 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.

TERMINATION

- 39** Either party may give not less than seven Academy Financial Years' written notice to terminate this agreement, such notice to expire on 31 August 2020 or any subsequent anniversary of that date.
- 40** If the Secretary of State is of the opinion that the Academy no longer has the characteristics set out in clause 12 of the Master Agreement or that the conditions and requirements set out in clauses 13-42 (other than clauses 17, 18, 19, 20, 24, 27, 34-37 and 41-42) of the Master Agreement (as amended by this agreement) and clauses 6, 10, 11, 14 to 19, 21, 22 and 25 of this agreement are not being met, or that the Company is otherwise in material

breach of the provisions of this agreement, the Master Agreement (as amended by this agreement), the Secretary of State may give notice of his provisional intention to terminate this agreement.

41 Any such notice shall be in writing and shall:

- (a) state the grounds on which the Secretary of State considers the Academy no longer has the characteristics set out in clause 12 of the Master Agreement (as amended by this agreement) or is not meeting the conditions and requirements set out in clauses 13-42 (other than clauses 17, 18, 19, 20, 24, 27, 34-37 and 41-42) of the Master Agreement (as amended by this agreement) and clauses 6, 10, 11, 14 to 19, 21, 22 and 25 of this agreement or the Company is otherwise in material breach of the provisions of this agreement or the Master Agreement (as amended by this agreement);
- (b) specify the measures needed to remedy the situation or breach;
- (c) specify a reasonable date by which these measures are to be implemented; and
- (d) state the form in which the Company is to provide its response and a reasonable date by which it must be provided.

42 If no response is received by the date specified in accordance with clause 41(d), 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.

43 If a response is received by the date specified in accordance with clause 41(d), the Secretary of State shall consider it, and any representations made by the Company, and shall, within three months of its receipt, indicate that:-

- (a) he is content with the response and/or that the measures which he specified are being implemented; or
- (b) 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

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

44 In the circumstances of clause 43(c) 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 12 of the Master Agreement (as amended by this agreement) or does not and will not meet the conditions and requirements set out in clauses 13-42 (other than clauses 17, 18, 19, 20, 24, 27, 34-37 and 41-42) of the Master Agreement (as amended by this agreement) and clauses 6, 10, 11, 14 to 19, 21, 22 and 25 of this agreement or the Company is in material breach of the provisions of this agreement and/or the Master Agreement (as amended by this agreement) and such breach will not be remedied to his reasonable satisfaction, he shall give the Company twelve months (or such lesser period as he consider appropriate in the circumstances) written notice to terminate this agreement.

45 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 44 may be shortened to a period deemed appropriate by the Secretary of State.

46 The Secretary of State shall, at a date preceding the start of each Academy Financial Year (but using his best endeavours to do so by the end of December), provide to the Company an indication of the level of funding to be provided by the Secretary of State to the Company by way of GAG and EAG in the next following Academy Financial Year (the “**Indicative Funding**”). If the Company is of the opinion that, after receipt of the Indicative Funding for the next following Academy Financial Year (the “**Critical Year**”) and of the taking into account all other resources available and likely to be available to the Academy, including such funds as are set out in clause 73 of the Master Agreement and such other funds as are and likely to be available to the Academy from other academies operated by the Company (“**All Other Resources**”), it is likely that the cost of running the Academy during the Critical

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

47 Any notice given by the Company under clause 46 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 43 above, within six weeks after the Secretary of State shall have done so. The notice must specify:

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

48 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.

49 If no agreement is reached by 30 April (or such other date as may be agreed between the parties or in the absence of such agreement is two months after the date upon which the Company shall have received notice of the Indicative Funding) 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.

- 50** 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.
- 51** 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.
- 52** If the Company shall have given notice to terminate the Agreement under clauses 51, 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.
- 53** [Not used].

54 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 1 of the Academies Act 2010.

55 "Special Measures Termination Event" occurs when:

- (a) 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
- (b) 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;
- (c) 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
- (d) 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.

55A If a Special Measures Termination Event occurs, the Secretary of State may:

- (a) in relation to a member of the Academy Governing Body who has been appointed by the Company serve notice in writing on the Company requiring the Company to procure the resignation and removal of such persons and/or procure the appointment of such additional Academy Governing

- Body members as the Company has the power to appoint under its Articles and as specified by the Secretary of State in the notice; or
- (b) give notice in writing to terminate this agreement forthwith.

EFFECT OF TERMINATION

- 56** In the event of termination of this agreement however occurring, the Academy shall cease to be an academy within the meaning of Section 1 of the Academies Act 2010.
- 57** Subject to clause 58, if the Secretary of State terminates this agreement for reasons other than that:
- (a) a Special Measure Termination Event occurs;
 - (b) the Academy no longer has the characteristics set out in clause 12 of the Master Agreement (as amended by this agreement), or is no longer meeting the conditions and requirements set out in clauses 13-42 (other than clauses 17, 18, 19, 20, 24, 27, 34-37 and 41-42) of the Master Agreement (as amended by this agreement) and clauses 6, 10, 11, 13, 14 to 19, 21, 22 and 25 of this agreement;
 - (c) that 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 1 of the Academies Act 2010; or
 - (d) 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.

- 58** 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.

- 59** The categories of expenditure incurred by the Company in consequence of the termination of the Agreement in respect of which the Secretary of State shall indemnify the Company include (but not by way of limitation), staff compensation and redundancy payments, compensation payments in respect of broken contracts, expenses of disposing of assets or adapting them for other purposes, legal and other professional fees, and dissolution expenses.
- 60** Subject to clause 61, 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 60(a) is not required, promptly repay to the Secretary of State a percentage of the Net Proceeds of Sale of such assets at the date of 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. For the purposes of this clause "Net Proceeds of Sale" shall mean the amount received by the Company on the disposal of such assets after deducting VAT and all costs (including legal and other fees) incurred in relation to such disposal.
- 61** The Secretary of State may waive in whole or in part the repayment due under clause 60(b) if:
- (a) the Company obtains his permission to invest the proceeds of sale for its charitable objects; or

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

62 If any land or premises of the Academy were acquired by the Company from the LA by a scheme under Paragraph 1 of Schedule 1 of the Academies Act 2010 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 paragraph 6 of Schedule 1 of the Academies Act 2010, 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.

RESTRICTIONS ON LAND TRANSFER

63 The Company:

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

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

- (b) shall take any further steps required to ensure that the restriction referred to in clause 60(a) is entered on the proprietorship register,
- (c) shall provide the Secretary of State with confirmation of the entry of the restriction referred to in clause 60(a) as soon as practicable after it receives notification from the Land Registry,

- (d) in the event that it has not registered the restriction referred to in clause 60(a), hereby consents to the entering of the restriction referred to in 60(a) in the register by the Secretary of State (under s. 43(1)(b) of the Land Registration Act 2002),
- (e) shall not, without the consent of the Secretary of State, apply to dis-apply, modify or remove (by cancellation or otherwise) a restriction entered in accordance with clause 60(a) or 60(d) above, whether by itself, a holding company, a subsidiary company, or a receiver, administrator or liquidator acting in the name of the Company.

REPAIR AND UPKEEP

64 The Company shall keep the Land clean and tidy and make good any damage it causes to the Land and/or any deterioration to the condition of the Land that may arise from the date of this agreement.

INSURANCE

65 The Company shall:-

- (a) keep the Land insured with a reputable insurance office against loss or damage by the Insured Risks in the sum the Company is advised represents the reinstatement value of the Land from time to time;
- (b) pay the premiums for insurance promptly as they become due and maintain in force the policies of insurance on the Land;
- (c) following the incidence of damage to or destruction of the Land and subject to receipt of all necessary consents licences permissions and the like apply the proceeds of the policy of the insurance received for those purposes in rebuilding and reinstating the Land (provided that this clause should be satisfied if the Company provides premises not necessarily identical to the

Land as the same existing prior to such damage or destruction occurring) as soon as may be reasonably practicable;

- (d) produce to the Secretary of State a copy of the insurance policy whenever reasonably requested and the receipt for the last or other evidence of renewal and up to date details of the amount of cover (but no more often than once in any period of 12 months in both cases);
- (e) insure against liability in respect of property owners' and third party risks including occupiers liability;
- (f) not knowingly do anything whereby any policy of insurance relating to the Land may become void or voidable.

TRANSFER OF LAND ON TERMINATION OF THIS AGREEMENT

66 In recognition by the Company that they are or will be taking a transfer of publicly-funded land for nil consideration (which for the purposes of this transaction shall include leases granted at a peppercorn rent), the Company hereby grants and the Secretary of State hereby accepts an option, exercisable by the Secretary of State or his nominee, to transfer the said land pursuant to Schedule 1 to the Academies Act 2010 (subject to any restrictions contained in the Project Agreement). The option hereby granted shall be exercisable (by notice in writing by or on behalf of the Secretary of State) on the termination of this Funding Agreement for whatever cause. On the exercise of this option, the Law Society's Standard Conditions of Sale for Commercial Property in force at the date of such exercise shall apply to the transaction and completion shall take place 28 days after such exercise.

67 In further recognition by the Company that they are or will be taking a transfer of publicly-funded land for nil consideration, (which for the purposes of this transaction shall include leases granted at a peppercorn rent), to protect the option granted under clause 66, the Company:

- (a) shall, within 14 days from the transfer to it of the Land, apply to the Land Registry in Form AN1 as prescribed by Rule 81 of the Land Registration Rules

2003 for a notice to be entered in the register (under section 34(3)(a) of the Land Registration Act 2002) to protect the option granted under clause 66 and including a copy of this agreement as evidence of that option.

- (b) shall take any further steps required to ensure that the notice referred to in clause 67(a) is entered on the proprietorship register,
- (c) shall provide the Secretary of State with confirmation of the entry of the notice referred to in clause 67(a) as soon as practicable after it receives notification from the Land Registry,
- (d) in the event that it has not registered the notice referred to in clause 67(a), hereby consents to the entering of the notice referred to in 67(a) in the register by the Secretary of State (by application in Form UN1 under s. 34(3)(b) of the Land Registration Act 2002),
- (e) shall not, without the consent of the Secretary of State, apply to dis-apply, modify or remove (by cancellation or otherwise) a notice entered in accordance with clause 67(a) or 67(d) above, whether by itself, a holding company, a subsidiary company, or a receiver, administrator or liquidator acting in the name of the Company.
- (f) in the case of previously unregistered land, for the further protection of the option granted in Clause 66 the Company shall within 14 days of the signing of this agreement make application to register a Class C (iv) land charge in the Land Charges Registry and a Caution against First Registration in the Land Registry and shall provide the Secretary of State with copies of the entries secured thereby within 7 days of completing each registration, respectively. If the Secretary of State is of the view that the Company has failed to perform the registration obligations in this sub-clause he shall be at liberty to make his own applications to secure these registrations.

ANNEX

68 The Annexes to this agreement form part of and are incorporated into this agreement.

THE MASTER AGREEMENT

69 Except as expressly provided in this agreement the Master Agreement (as amended in relation to the Academy by this agreement) shall continue in full force and effect.

ENGLISH LAW AND THIRD PARTY RIGHTS

70 This agreement shall be governed by and interpreted in accordance with English law.

71 The parties do not intend that any term of this agreement shall be enforceable solely by virtue of the Contracts (Rights of Third Parties) Act 1999 by any person who is not a party to this agreement.

Executed on behalf of the Company by:


Director

In the presence of:

Witness. 

Address... 

Occupation. 

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



Duly Authorised



ANNEX TO THIS SUPPLEMENTAL AGREEMENT

Requirements for the Admission of pupils at the Academy - Annex 1

Requirements for the Admission to the Academy of and support for pupils with SEN and with disabilities - Annex 2

Site plan of the Land – Annex 3

Annex 1

REQUIREMENTS FOR THE ADMISSION OF PUPILS TO THE HARRIS PRIMARY ACADEMY BENSON

GENERAL

1. This annex may be amended in writing at any time by agreement between the Secretary of State and the Company.
2. Except as provided in paragraphs 2A to 2B below the Company will act in accordance with, and will ensure that an Independent Appeal Panel is trained to act in accordance with, all relevant provisions of the School Admissions Code, and the School Admission Appeals Code published by the Department for Education ("the Codes") as they apply at any given time to maintained schools and with equalities law and the law on admissions as they apply to maintained schools. For this purpose, reference in the Codes or legislation to "admission authorities" shall be deemed to be references to the Directors of the Company.

2A The Company is permitted to determine admission arrangements (subject to consultation in accordance with the School Admissions Code) that give priority for admission (but not above looked after children and previously looked after children¹) to other children attracting the pupil premium, including the service premium ('the pupil premium admission criterion'). Where a Company exercises this freedom it will provide information in its admission arrangements of eligibility for the premiums.

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

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

3. Notwithstanding the generality of paragraph 2 of this Annex, the Company will participate in the co-ordinated admission arrangements operated by the Local Authority (LA) and the local Fair Access Protocol.
4. Notwithstanding any provision in this Annex, the Secretary of State may:
 - (a) direct the Company to admit a named pupil to the Harris Primary Academy Benson on application from an LA. This will include

¹ As defined in the School Admissions Code.

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complying with a School Attendance Order². Before doing so the Secretary of State will consult the Company;

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

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

Relevant Area

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

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

Requirement to admit pupils

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

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

³ 'relevant children' means:

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

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9. The Company will:
- a. subject to its right of appeal to the Secretary of State in relation to a named pupil, admit all pupils with a statement of special educational needs naming the Academy;
 - b. determine admission oversubscription criteria for the Academy that give highest priority to looked after children and previously looked after children, in accordance with the relevant provisions of the School Admissions Code.

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

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

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

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

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

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

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

Duties in relation to pupils with SEN¹

1. The Directors of the Company must, in respect of the Academy, comply with all of the duties imposed upon the governing bodies of maintained schools in;
 - Part 4 of the Education Act 1996 as amended from time to time²;
 - The Education (Special Educational Needs) (Information) Regulations 1999 as amended from time to time;
 - The Education (Special Educational Needs Co-ordinators) (England) (Amendment) Regulations 2008 as amended from time to time³.
2. Notwithstanding any provision in this Agreement, the Secretary of State may (whether following a complaint made to him or otherwise) direct the Company to comply with an obligation described in this Annex where the Company has failed to comply with any such obligation.
3. Where a child who has SEN is being educated in the Academy, those concerned with making special educational provision for the child must secure that the child engages in the activities of the school together with children who do not have SEN, so far as is reasonably practicable and is compatible with:
 - (a) the child receiving the special educational provision which his learning difficulty calls for,
 - (b) the provision of efficient education for the children with whom he will be educated, and
 - (c) the efficient use of resources.
4. In addition to complying with the duties imposed upon the governing bodies of maintained schools set out in The Education (Special Educational Needs) (Information) Regulations 1999 (as amended from time to time) the Company must ensure that the website for the Academy includes details of the implementation of its policy for pupils with special educational needs; the arrangements for the admission of disabled pupils; the steps taken to prevent disabled pupils from being treated less favourably than other pupils; and the facilities provided to

¹ Duties in relation to pupils with SEN at Special Academies are at clause 12A of the Master Funding Agreement.

² Currently these duties are in sections 313 (Duty to have regard to the Special Educational Needs Code of Practice 2001); 317 (Duties in relation to pupils with special educational needs), 317A (Duty to advise parents that special educational provision is being made); and 324(5)(b) (Duty to admit the child where a school is named in the statement).

³ These Regulations are amended by The Education (Special Educational Needs Co-ordinators) (England) (Amendment) Regulations 2009 (SI 2009 No 1387).

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assist access to the Academy by disabled pupils (disabled pupils meaning pupils who are disabled for the purposes of the Equality Act

2010¹).

Admissions²

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

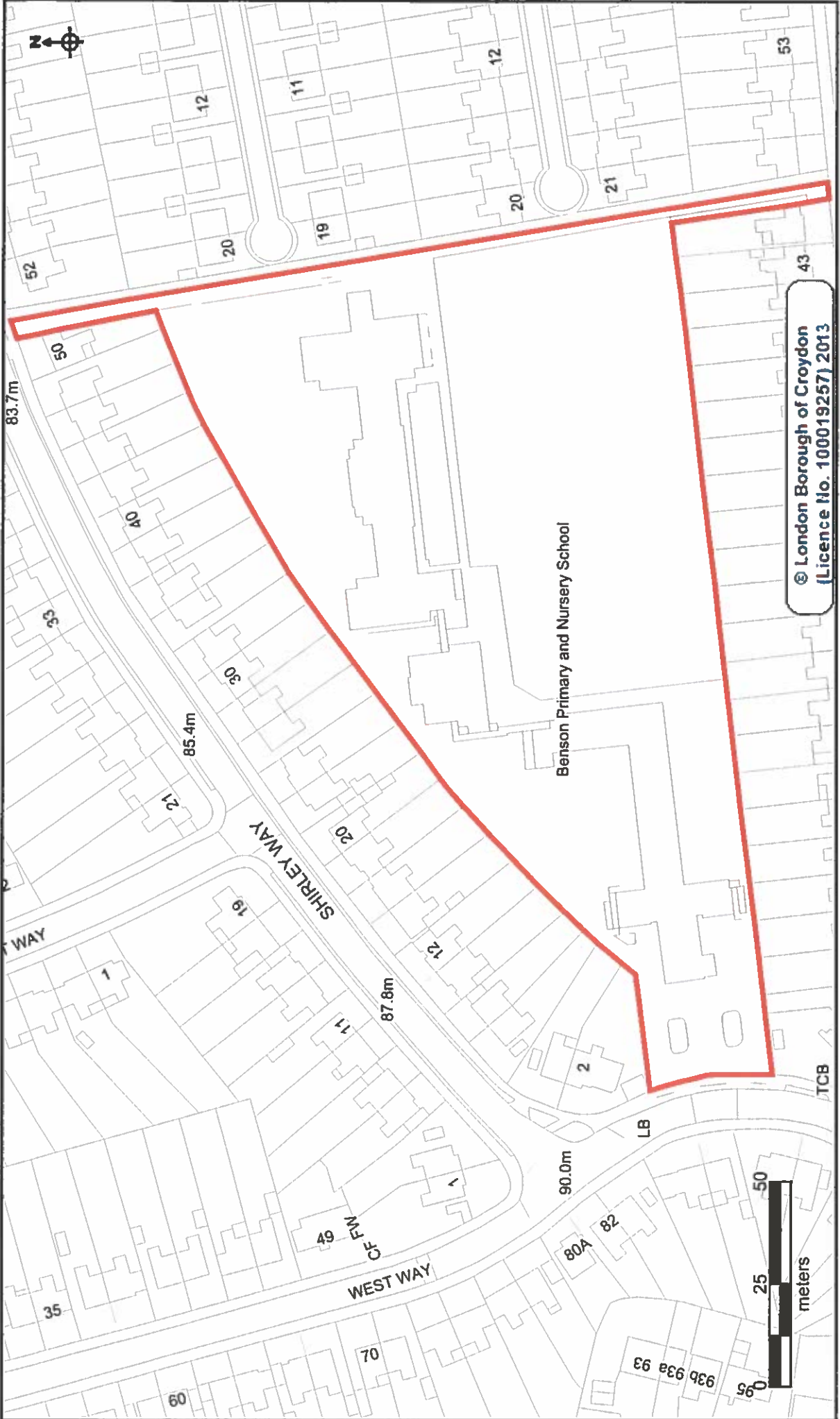
¹ For the meaning of 'disabled', see section 6 of the Equality Act 2010.

² SEN Admissions requirements for special academies are set out in the Special Academy Supplemental Funding Agreement Annex 1.

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appeal which any parent or guardian of the child may have to the First-tier Tribunal (Special Educational Needs and Disability), be final.

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



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