

**SUPPLEMENTAL AGREEMENT FOR ST WILFRID'S ACADEMY,  
DONCASTER**

**THIS AGREEMENT** made *22 August* 2014

**BETWEEN**

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

(2) **SCHOOL PARTNERSHIP TRUST ACADEMIES ("the Company")**

**IS SUPPLEMENTAL TO THE MASTER FUNDING AGREEMENT** made between the same parties and dated 21 October 2010, 1 May 2013 and 21 August 2013 as consolidated and amended by a Deed of Variation dated

*22 August 2014* (the "**Master Agreement**").

**1 DEFINITIONS AND INTERPRETATION**

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

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

"the Academy" means the alternative provision Free School and is called St Wilfrid's Academy, Doncaster and is to be established at St Wilfrid's Road, Doncaster DN4 6AH;

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

"Insured Risks" means fire, lightning, explosion, earthquake, storm, tempest, flood, subsidence, landslip, heave, impact, terrorism, bursting or overflowing of water tanks and pipes, damage by aircraft and other

aerial devices or articles dropped therefrom, riot and civil commotion, labour disturbance and malicious damage and such other risks as the Company insures against from time to time, subject in all cases to any exclusions or limitations as may from time to time be imposed by the insurers or underwriters;

“the Land” means the land (including for the avoidance of doubt all buildings, structures landscaping and other erections) situated at and known as the former Cantley Sycamore Primary School, St Wilfrids Road, Doncaster DN4 6AH and registered under title number SYK519637 making up the permanent site of the Academy or the part of such land remaining in the ownership of the Company, following any disposal in accordance with clause 10I(c)ii;

“the Lease” means the leasehold agreement between the Company and Doncaster Metropolitan Borough Council in respect of the site upon which the Academy is situated;

“Start-up period” means up to a maximum of 3 Academy Funding Years up to the first Academy Funding Year in which the Academy can offer its planned places (as set down in clause 2.7 of this Agreement), whichever is the shorter;

“Termination Notice” means a notice sent by the Secretary of State to the Company, terminating this Agreement on the date specified in the notice

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

## **2 THE ACADEMY**

- 2.1 The Company will establish and maintain, and carry on or provide for the carrying on of the Academy in accordance with the Master Agreement and this Agreement.
- 2.2 The curriculum provided by the Academy to pupils up to the age of 16 shall be broad and balanced.
- 2.3 The Company shall ensure that the broad and balanced curriculum includes English and mathematics.
- 2.3A) The Company must ensure that so far as is reasonably practicable and consistent with clause 27 of the Master Agreement, of this Agreement and the Equality Act 2010, the policies and practices adopted by the Academy (in particular regarding curriculum, uniform and school food) enable pupils of all faiths and none to play a full part in the life of the Academy, and do not disadvantage pupils or parents of any faith or none. For the avoidance of doubt, this requirement applies irrespective of the proportion of pupils of any faiths or none currently attending or predicted to join the school.
- 2.4 The Company must ensure that the alternative provision Academy meets the requirements set out in section 1C of the Academies Act 2010, and that educational provision is made at the alternative provision Academy for children of compulsory school age who, by reason of illness, exclusion from school or otherwise, may not for any period receive suitable education unless alternative provision is made for them.
- 2.5 The requirements for the admission of pupils to the Academy are set out at Annex 1.

## **RUNNING OF THE ACADEMY**

### **School meals**

[Clauses 32 and 33 of the Master Agreement are disapplied and replaced with the following clauses 2.6, 2.7 and 2.8].

- 2.6 The Company must provide school lunches and free school lunches in accordance with the provisions of sections 512(3) and 512ZB(1) of the Education Act 1996 as if references in sections 512 and 512ZB to a local authority were to the Company and as if references to a school maintained by a local authority were to any of its Academies.
- 2.7 The Company must comply with school food standards legislation as if its Academies were maintained schools.
- 2.8 Where the Company provides milk to pupils, it must be provided free of charge to pupils who would be eligible for free milk if they were pupils at a maintained school.

### **Governance**

- 2.9 The Company must provide to the Secretary of State the names of all new or replacement Governors and members of the Company, stating whether they have been appointed or elected, the date of their appointment or election and, where applicable, the name of the Governor or member they replaced as soon as is practicable and in any event within 14 days of their appointment or election.
- 2.10 The Company must not appoint any new or replacement Governors or members until it has first informed them, and they have agreed, that their names will be shared with the Secretary of State to enable him to assess their suitability.

### **ACADEMY OPENING DATE**

- 2.11 The Academy shall open as a school on 02 September 2014.
- 2.12 The planned number of places at the Academy is 153 places in the age range 4-19, including a sixth form of 19 places.

### **3 CAPITAL GRANT**

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

**4 GAG AND EAG**

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

**4A ADDITIONAL FUNDING**

4A.1 Not used.

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

**4B LEASE**

- 4B.1 If the Company is in material breach of the provisions of the Lease or if it is reasonably foreseeable that the Company will be in material breach of the Lease, the Company shall forthwith give written notice to the Secretary of State specifying the exact nature of the material breach or reasonably foreseeable material breach and such notice shall set out the steps taken or to be taken by the Company to remedy the material breach or reasonably foreseeable material breach and, where appropriate, shall include the timescales relating to any remedial action.
- 4B.2 The Company will at its own cost provide all information reasonably required by the Secretary of State in respect of any material breach or reasonably foreseeable material breach.
- 4B.3 Following the receipt by the Secretary of State of the written notice under clause 4B.1, the Company shall permit the Secretary of State to take all such steps in conjunction with or instead of the Company as may be necessary to remedy or prevent the material breach referred to



in the said notice. The Company shall, in such circumstances, use its best endeavours to assist the Secretary of State to remedy or prevent such material breach.

4B.4 The Company shall, within 14 days of receiving any order, notice, proposal, demand or any other requirement materially affecting the ability of the Company to use the Land for the purposes of the Academy from any competent authority (including the Landlord), give full particulars by written notice to the Secretary of State and deliver to the Secretary of State copies of such documents as he may require. Such notice shall state what steps, if any actions are required, the Company intends to take in response to the order, notice, proposal, demand or other requirement affecting the Land.

4B.5 The Company will at its own cost provide all information reasonably required by the Secretary of State in respect of an order, notice, proposal, demand or any other requirement affecting the Land as referred to in clause 4B.4.

4B.6 Following the receipt by the Secretary of State of the written notice under clause 4B.4, the Company shall permit the Secretary of State to take all steps in conjunction with or instead of the Company as may be necessary to comply with any order, notice, proposal, demand or other requirement affecting the Land referred to in the said notice. The Company shall, in such circumstances, use all reasonable endeavours to assist the Secretary of State to take the appropriate required steps.

## **5 TERMINATION**

5.1 Either party may give not less than seven Academy Financial Years' written notice to terminate this Agreement, such notice to expire on 31 August 2021 or any subsequent anniversary of that date.

### **Notice of Intention to Terminate by Company**

5.2 The Secretary of State shall, at a date preceding the start of each

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

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

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

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



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

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

#### **Termination Warning Notice**

- 5.7A The Secretary of State shall be entitled to issue to the Company a written notice of his intention to terminate this Agreement ("Termination Warning Notice") where he considers that:
- a) the Academy is no longer meeting the requirements set out in clause 12 of the Master Agreement and clauses 2.1 to 2.10 of this Agreement (subject to clause 5.11);
  - b) the conditions and requirements set out in clauses 2.2 and 2.3 of this Agreement and 13-34C of the Master Agreement (where applicable to an alternative provision Free School) are no longer being met;
  - c) the standards of performance of pupils at the Academy are unacceptably low;

- d) there has been a serious breakdown in the way the Academy is managed or governed;
- e) the safety of pupils is threatened (whether by breakdown of discipline or otherwise); or
- f) the Company is otherwise in material breach of the provisions of this Agreement.

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

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

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

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

such measures has been or will be successfully completed within the specified timeframes; or

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

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

- a) the Company has not by the date specified in clause 5.7Bc) responded to the Termination Warning Notice either confirming that it accepts and agrees to undertake the Specified Remedial Measures or providing its representations with regard to the Specified Remedial Measures; or
- b) the Company has not carried out the Specified Remedial Measures and/or Further Remedial Measures within the specified timeframes;

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

#### **Notice of Intention to Terminate**

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

- (a) special measures are required to be taken in relation to the Academy; or
- (b) the Academy requires significant improvement.

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

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

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

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

#### **Termination with Immediate Effect**

5.7H For the purposes of clauses 5.7I and 5.7J, “prospective pupils” means those pupils who have been referred to the Academy and accepted a place.

5.7I If on or after 31 August 2014 and before the Academy opens, the total number of prospective pupils is fewer than 94, the Secretary of State may by written notice to the Company:-

- (a) require the Company not to open the Academy until the number of prospective pupils has reached 94; or
- (b) terminate this Agreement such termination to take effect on the date specified in the notice.

5.7J If at any time after signing this Agreement and after the Academy has opened, the Secretary of State is of the opinion that, by virtue of low



pupil numbers, the Academy is not financially viable, then the Secretary of State may:-

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

For the purposes of this clause a "Warning Notice" means a notice in writing by the Secretary of State to the Company requiring that the Company admits a sufficient number of pupils by such date as he deems appropriate in the circumstances and setting out the consequences if the Company has not admitted a sufficient number of pupils by the date specified in such Warning Notice.

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

5.8 Not used.

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

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



he may in writing either:

- (a) require the Company (i) not to open the Academy; and/or (ii) not to admit pupils of a particular age range, to be determined by the Secretary of State; and/or (iii) not to use any building or other structure on the Land until such time as the relevant matter or matters listed in 1. to 5. above has or have been resolved to the Secretary of State's satisfaction; or
- (b) terminate this Agreement by notice in writing to the Company such termination to take effect on the date of the notice.

5.10 Not used.

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

5.12 If

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

the Secretary of State may:

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

ii. serve a Termination Notice.

5.13 For the purposes of clause 5.12 a Governor or member of the Company will be “unsuitable” if that Governor or member:

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

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

5.14 For the purposes of clause 5.13:

- a) a Governor or member of the Company will be subject to a “relevant finding” in respect of an offence if:
  - i. that Governor or member has been found not guilty of the offence by reason of insanity;
  - ii. that Governor or member has been found to be under a disability and to have done the act charged against them in respect of the offence; or
  - iii. a court outside the United Kingdom has made a finding equivalent to that described in paragraphs (i) and (ii) above.
- b) “relevant conduct” is conduct by a Governor or member of the Company which is:
  - i. aimed at undermining the fundamental British values of democracy, the rule of law, individual liberty and mutual

- respect and tolerance of those with different faiths and beliefs; or
- ii. found to be in breach of professional standards by a professional body; or
  - iii. so inappropriate that, in the opinion of the Secretary of State, it makes that Governor or member unsuitable to take part in the management of the Academy.

## **6 EFFECT OF TERMINATION**

- 6.1 In the event of termination of this Agreement however occurring, the school shall cease to be an Academy within the meaning of Sections 1 and 1C of the Academies Act 2010.
- 6.2 Subject to clause 6.3 and 6.4, if the Secretary of State terminates this Agreement pursuant to clause 5.1 of this Agreement, the Secretary of State shall indemnify the Company. If the Secretary of State terminates this Agreement other than pursuant to clause 5.1 of this Agreement, the Secretary of State may in his absolute discretion indemnify or (to such extent if any as he may in his absolute discretion consider appropriate) compensate the Company.
- 6.3 The amount of any such indemnity or compensation shall be determined by the Secretary of State having regard to any representations made to him by the Company, and shall be paid at such times and in such manner as the Secretary of State may reasonably think fit.
- 6.4 The categories of expenditure incurred by the Company in consequence of the termination of the Agreement in respect of which the Secretary of State shall (where the Secretary of State terminates this Agreement pursuant to clause 5.1) indemnify the Company and may (where the Secretary of State terminates this Agreement

otherwise than pursuant to clause 5.1) in his absolute discretion indemnify or compensate the Company include (but not by way of limitation), staff compensation and redundancy payments, compensation payments in respect of broken contracts, expenses of disposing of assets or adapting them for other purposes, legal and other professional fees, and dissolution expenses.

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

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

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

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

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

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

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

## **7 ANNEX**

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

## **8 GENERAL**

8.1 This Agreement shall not be assignable by the Company.

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

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

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



## **9 THE MASTER AGREEMENT**

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

## **10 ENGLISH LAW**

- 10.1 This Agreement and any dispute or claim arising out of or in connection with it or its subject matter or formation (including non-contractual disputes or claims) shall be governed by and construed in accordance with the law of England and Wales.
- 10.2 The parties irrevocably agree that the courts of England and Wales shall have exclusive jurisdiction to settle any dispute or claim that arises out of or in connection with this agreement or its subject matter or formation (including non-contractual disputes or claims).

## **10A LAND CLAUSES**

### **Debt**

10A) Not used.

### **Restrictions on Land transfer**

- 10B) In consideration that it has or will be obtaining a legal interest in the Land, such acquisition being financed by the Secretary of State, the Company: a) shall, within 28 days from the acquisition of the legal interest in the Land or the signing of this Agreement, whichever is the latter, apply to the Land Registry for restrictions in the proprietorship register (under section 43(1)(a) of the Land Registration Act 2002 in Form RX1 as prescribed by Rule 91 and Schedule 4 of the Land Registration Rules 2003) ('LRR 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.]*

- b) shall take any further steps reasonably required to ensure that the restriction referred to in clause 10B(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 10B(a) as soon as reasonably practicable after it receives notification from the Land Registry,
- d) in the event that it has not registered the restriction referred to in clause 10B(a), hereby consents to the entering of the restriction referred to in 10B(a) in the register by the Secretary of State (under s. 43(1)(b) of the Land Registration Act 2002); and
- 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 10B(a) or 10B(d) above, whether by itself, a holding company, a subsidiary company, or a receiver, administrator or liquidator acting in the name of the Company.

### **Obligations of the Company**

10C)(i) 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, save that

the Company shall ensure that any actions undertaken in compliance with this clause shall be consistent with the terms of the Lease. In compliance with this clause, the Company shall not do or cause or permit to be done anything to lessen the value or marketability of the Land save with the express written consent of the Secretary of State.

10C)(ii) The Company shall observe and comply with its obligations under the Lease and shall promptly enforce its rights against the Landlord.

10C)(iii) The Company agrees it shall seek and obtain the prior written consent of the Secretary of State, not to be unreasonably withheld or delayed before taking any steps to:

- a) terminate, vary, surrender or dispose of the Lease; and / or
- b) grant any consent or licence in respect of the Land or any part of it; and / or
- c) create or permit to arise or continue any encumbrance affecting the Land or any part of it; and / or
- d) part with or share possession or occupation of the Land or any part of it; and / or
- e) enter into any onerous or restrictive obligations affecting the Land or any part of it.

10C)(iv) The Company agrees that prior to taking any steps, including but not limited to the service of any notice or waiver of any condition, under any contractual arrangement entered into in respect of the acquisition of the legal interest in the Land, it shall seek and obtain the written consent of the Secretary of State, not to be unreasonably withheld or delayed.

## **Insurance**

10D) The Company shall, save where the terms of the Lease provide for the Landlord to obtain insurance in respect of the Land:-

- a) keep the Land insured as in accordance with the terms of the Lease and in any event 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 or opt in to the Department's arrangements as set out in the Academies Financial Handbook;
- 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 premium or other evidence of renewal and up to date details of the amount of cover (but no more often than once in any period of 12 months in both cases);
- e) not knowingly do anything whereby any policy of insurance relating to the Land may become void or voidable.
- f) insure against liability in respect of property owners' and third party risks including occupiers liability or opt in to the Department's arrangements as set out in the Academies Financial Handbook.

## Transfer of Land

- 10E) The Company hereby grants and the Secretary of State hereby accepts an option, exercisable by the Secretary of State or his nominee, to acquire the said Land or any part thereof at nil consideration. 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 or in circumstances where the Company is unable to use all or part of the Land as the permanent site of the Academy in accordance with clause 10H. 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.
- 10F) The Company:
- a) shall, within 14 days from the transfer to it of the Land or the signing of this Agreement, whichever is the latter, 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 10E 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 10F(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 10F(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 10F(a), hereby consents to the entering of the notice referred to in 10F(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 10F(a) or 10F(d) above, whether by itself, a holding company, a subsidiary company, or a receiver, administrator or liquidator acting in the name of the Company, and
- f) in the case of previously unregistered land, for the further protection of the option granted in Clause 10E the Company shall within 14 days of the acquisition of the legal interest in the Land or the signing of this Agreement, whichever is the latter, 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.

#### **Legal Charge**

10G) Not used.

#### **Failure to use the Land for the purposes of the Academy**

10H) If the Company is unable to use the Land or any part thereof as the permanent site of the Academy but the Secretary of State agrees not to terminate this Agreement on that basis, the Secretary of State may give notice to the Company that:-

a) he intends to exercise the option granted under clause 10E) to transfer the Land or the relevant part thereof for nil consideration to himself or his nominee;

and/or

b) the Company shall dispose of the Land or the relevant part thereof and that, pursuant to clause 86 of the Master Agreement, the Company may retain some or all of the proceeds of sale of the Land or the relevant part thereof in order to fulfil its charitable purposes by funding the purchase of an alternative permanent site for the Academy, save that any proceeds not used to fund the purchase of an alternative permanent site shall be accounted for to the Secretary of State or his nominee.

### **Sharing of the Land**

10I) The Company agrees that if:

a) the Academy does not fill its planned number of places (as set down in clause 2.12) over a period of three Academy Funding Years; or

b) notice of termination is served by either the Company or the Secretary of State in accordance with clause 5.1 of this Agreement; or

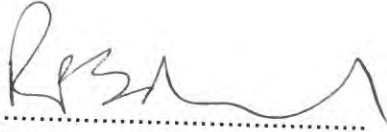
c) in the reasonable opinion of the Secretary of State the operation of the Academy at its planned number of places (as set down in clause 2.13) does not require the use of the full extent of the

Land,

- i. it will share occupation of the Land with such other Academies as the Secretary of State deems appropriate in the circumstances and enter into such legal arrangements in respect of the same as are required by the Secretary of State; or
- ii. it will dispose of part of the Land as required by the Secretary of State and account for any proceeds of such disposal to the Secretary of State or his nominee.

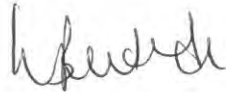
This Agreement was executed as a Deed  
on 22 August 2014

Executed on behalf of School Partnership Trust Academies by:



Director

In the presence of:



Witness LUCY BETTEIDGE

Address 23 MAINT AVENUE - WALSOL

Occupation PA

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



~~FRANK HAMILL~~  
Assistant Director.

PS  
27-8-14

Duly Authorised



# Annex 1

## Requirements for the Admission of pupils at SPTA Alternative Provision Academy ("the Academy")

### General

1. This Annex may be amended in writing at any time by agreement between the Secretary of State and School Partnership Alternative Provision Academies ("the Company").
2. The Company will act in accordance with equalities law.
3. Except where paragraphs 4 or 5 applies, the Company may not admit a child of compulsory school age unless it is by way of a referral from a Commissioner through one of the referral routes set out in paragraph 6 below.
4. Notwithstanding any provision in this Annex, the Secretary of State may:
  - (a) direct the Company to admit a named pupil to the SPTA Alternative Provision Academy ("the Academy") on application from a local authority. This will include complying with a School Attendance Order<sup>1</sup>. Before doing so the Secretary of State will consult the Company.
  - (b) direct the Company to admit a named pupil to the Academy if the Company has failed to act in accordance with this Annex or has otherwise failed to comply with applicable equalities legislation.

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<sup>1</sup> 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 alternative provision 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.



- (c) direct the Company to amend its admission arrangements where the Company fails to comply with relevant legislation or where the Secretary of State is concerned that because of its admissions arrangements the Academy is no longer meeting the requirements at 1C of the Academies Act 2010.
5. Pupils on roll in any predecessor provider will transfer automatically to the Academy on opening. All children already offered a place at any predecessor provider will be admitted.

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; and
- b) Adopt admission oversubscription criteria<sup>2</sup> that give highest priority to looked after children.

#### **Admission arrangements**

6. The Company may only admit a child of compulsory school age:
- a) referred by a local authority where the local authority has a duty to that child under section 19 of the Education Act 1996.<sup>3</sup>
  - b) referred by a maintained school or Academy where the maintained school or Academy has a duty under Section 100 of the Education and Inspections Act 2006.<sup>4</sup>

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<sup>2</sup> Over subscription criteria means how the Company will distinguish/prioritise between pupils where it has more referrals than places currently available.

<sup>3</sup> Section 19 of the Education Act 1996, and regulations made under that section, require a local authority to make arrangements (from the sixth day of exclusion where a pupil has been permanently excluded) for the provision of suitable, full time (unless there are medical reasons as to why this would not be appropriate) education at school or otherwise for a child of compulsory school age who, for a range of reasons, would otherwise be without such education.

- c) referred by a maintained school under powers set out in section 29(A) of the Education Act 2002<sup>5</sup>.
  - d) referred by an Academy which, under general powers in the Articles of the Company may send pupils off-site to an alternative provision Academy as part of early intervention measures to address behaviour. However, as with a maintained school there is an expectation in law that a pupil will be educated at the school where he is registered, so placements would generally be relatively short and subject to review<sup>6</sup>.
7. The Company shall have admission arrangements agreed with the Department which will include oversubscription criteria, a fair, transparent and objective process for considering whether the education provided will be appropriate for prospective pupils and an admission number for each relevant key stage. The Company will consult on its admission arrangements.
8. Any changes to admission arrangements proposed by the Company should be discussed with Commissioners and must be agreed with the Secretary of State.

### **Pupil registration and information sharing**

9. The pupil numbers of an alternative provision Academy will fluctuate throughout the academic year.

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<sup>4</sup> Section 100 of the Education and Inspections Act 2006 requires maintained schools and Academies to arrange full-time education for pupils on a fixed period exclusion of more than five days from the sixth day of the exclusion.

<sup>5</sup> Section 29A of the Education Act 2002 provides that governing bodies of maintained schools may direct a pupil off-site for the purpose of receiving educational provision which is intended to improve the behaviour of the pupil.

<sup>6</sup> It is possible that some off-site directions may become longer term placements in cases where the referring school and local authority agree that the provision in an alternative provision Academy is meeting the pupil's needs, and that a mainstream school place cannot meet that pupil's needs. These pupils could fall within the terms of section 19 of the Education Act.

10. The Company must ensure that pupils are appropriately registered<sup>7</sup>. In the case of a fixed period exclusion or an off site direction, the excluded pupil should remain on the register of the excluding school as they are expected to return when the exclusion period is completed and should also be registered with the Academy (dual registered). In the case of a permanent exclusion, the excluded pupil should be removed from the excluding school's register and be registered with the Academy.
11. As far as reasonably practicable, in agreeing contractual arrangements with Commissioners the Company shall request appropriate information on the needs and prior attainment of pupils who will attend the Academy.
12. The Company will provide regular feedback to a Commissioner (and in any event when requested by the Commissioner to do so) on progress made by the pupil, the pupil's needs and attainment.

#### **Objections and determinations**

13. The Company must make clear when determining the Academy's admission arrangements, that objections should be submitted to the EFA or any successor to it.
14. A determination of an objection, by the EFA or any successor to it on behalf of the Secretary of State, or by the Secretary of State, will be binding upon the Academy.

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<sup>7</sup> The requirements of section 434 of the Education Act 1996 (registration of pupils) and regulations made under that section apply to schools (which includes alternative provision Academies)



**SUPPLEMENTAL AGREEMENT FOR ST WILFRID'S ACADEMY,  
DONCASTER**

**THIS AGREEMENT** made 26 August 2014

**BETWEEN**

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

(2) **SCHOOL PARTNERSHIP TRUST ACADEMIES ("the Company")**

IS SUPPLEMENTAL TO THE MASTER FUNDING AGREEMENT made between the same parties and dated 21 October 2010, 1 May 2013 and 21 August 2013 as consolidated and amended by a Deed of Variation dated

(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 alternative provision Free School and is called St Wilfrid's Academy, Doncaster and is to be established at St Wilfrid's Road, Doncaster DN4 6AH;

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

"Insured Risks" means fire, lightning, explosion, earthquake, storm, tempest, flood, subsidence, landslip, heave, impact, terrorism, bursting or overflowing of water tanks and pipes, damage by aircraft and other



aerial devices or articles dropped therefrom, riot and civil commotion, labour disturbance and malicious damage and such other risks as the Company insures against from time to time, subject in all cases to any exclusions or limitations as may from time to time be imposed by the insurers or underwriters;

“the Land” means the land (including for the avoidance of doubt all buildings, structures landscaping and other erections) situated at and known as the former Cantley Sycamore Primary School, St Wilfrids Road, Doncaster DN4 6AH and registered under title number SYK519637 making up the permanent site of the Academy or the part of such land remaining in the ownership of the Company, following any disposal in accordance with clause 10I(c)ii;

“the Lease” means the leasehold agreement between the Company and Doncaster Metropolitan Borough Council in respect of the site upon which the Academy is situated;

“Start-up period” means up to a maximum of 3 Academy Funding Years up to the first Academy Funding Year in which the Academy can offer its planned places (as set down in clause 2.7 of this Agreement), whichever is the shorter;

“Termination Notice” means a notice sent by the Secretary of State to the Company, terminating this Agreement on the date specified in the notice

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

## **2 THE ACADEMY**

- 2.1 The Company will establish and maintain, and carry on or provide for the carrying on of the Academy in accordance with the Master Agreement and this Agreement.
- 2.2 The curriculum provided by the Academy to pupils up to the age of 16 shall be broad and balanced.
- 2.3 The Company shall ensure that the broad and balanced curriculum includes English and mathematics.
- 2.3A) The Company must ensure that so far as is reasonably practicable and consistent with clause 27 of the Master Agreement, of this Agreement and the Equality Act 2010, the policies and practices adopted by the Academy (in particular regarding curriculum, uniform and school food) enable pupils of all faiths and none to play a full part in the life of the Academy, and do not disadvantage pupils or parents of any faith or none. For the avoidance of doubt, this requirement applies irrespective of the proportion of pupils of any faiths or none currently attending or predicted to join the school.
- 2.4 The Company must ensure that the alternative provision Academy meets the requirements set out in section 1C of the Academies Act 2010, and that educational provision is made at the alternative provision Academy for children of compulsory school age who, by reason of illness, exclusion from school or otherwise, may not for any period receive suitable education unless alternative provision is made for them.
- 2.5 The requirements for the admission of pupils to the Academy are set out at Annex 1.

## **RUNNING OF THE ACADEMY**

### **School meals**

[Clauses 32 and 33 of the Master Agreement are disapplied and replaced with the following clauses 2.6, 2.7 and 2.8].

- 2.6 The Company must provide school lunches and free school lunches in accordance with the provisions of sections 512(3) and 512ZB(1) of the Education Act 1996 as if references in sections 512 and 512ZB to a local authority were to the Company and as if references to a school maintained by a local authority were to any of its Academies.
- 2.7 The Company must comply with school food standards legislation as if its Academies were maintained schools.
- 2.8 Where the Company provides milk to pupils, it must be provided free of charge to pupils who would be eligible for free milk if they were pupils at a maintained school.

### **Governance**

- 2.9 The Company must provide to the Secretary of State the names of all new or replacement Governors and members of the Company, stating whether they have been appointed or elected, the date of their appointment or election and, where applicable, the name of the Governor or member they replaced as soon as is practicable and in any event within 14 days of their appointment or election.
- 2.10 The Company must not appoint any new or replacement Governors or members until it has first informed them, and they have agreed, that their names will be shared with the Secretary of State to enable him to assess their suitability.

### **ACADEMY OPENING DATE**

- 2.11 The Academy shall open as a school on 02 September 2014.
- 2.12 The planned number of places at the Academy is 153 places in the age range 4-19, including a sixth form of 19 places.

### **3 CAPITAL GRANT**

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

**4     GAG AND EAG**

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

**4A    **ADDITIONAL FUNDING****

4A.1   Not used.

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

**4B    **LEASE****

- 4B.1   If the Company is in material breach of the provisions of the Lease or if it is reasonably foreseeable that the Company will be in material breach of the Lease, the Company shall forthwith give written notice to the Secretary of State specifying the exact nature of the material breach or reasonably foreseeable material breach and such notice shall set out the steps taken or to be taken by the Company to remedy the material breach or reasonably foreseeable material breach and, where appropriate, shall include the timescales relating to any remedial action.
- 4B.2   The Company will at its own cost provide all information reasonably required by the Secretary of State in respect of any material breach or reasonably foreseeable material breach.
- 4B.3   Following the receipt by the Secretary of State of the written notice under clause 4B.1, the Company shall permit the Secretary of State to take all such steps in conjunction with or instead of the Company as may be necessary to remedy or prevent the material breach referred to

in the said notice. The Company shall, in such circumstances, use its best endeavours to assist the Secretary of State to remedy or prevent such material breach.

4B.4 The Company shall, within 14 days of receiving any order, notice, proposal, demand or any other requirement materially affecting the ability of the Company to use the Land for the purposes of the Academy from any competent authority (including the Landlord), give full particulars by written notice to the Secretary of State and deliver to the Secretary of State copies of such documents as he may require. Such notice shall state what steps, if any actions are required, the Company intends to take in response to the order, notice, proposal, demand or other requirement affecting the Land.

4B.5 The Company will at its own cost provide all information reasonably required by the Secretary of State in respect of an order, notice, proposal, demand or any other requirement affecting the Land as referred to in clause 4B.4.

4B.6 Following the receipt by the Secretary of State of the written notice under clause 4B.4, the Company shall permit the Secretary of State to take all steps in conjunction with or instead of the Company as may be necessary to comply with any order, notice, proposal, demand or other requirement affecting the Land referred to in the said notice. The Company shall, in such circumstances, use all reasonable endeavours to assist the Secretary of State to take the appropriate required steps.

## **5 TERMINATION**

5.1 Either party may give not less than seven Academy Financial Years' written notice to terminate this Agreement, such notice to expire on 31 August 2021 or any subsequent anniversary of that date.

### **Notice of Intention to Terminate by Company**

5.2 The Secretary of State shall, at a date preceding the start of each



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

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

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



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

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

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

#### **Termination Warning Notice**

- 5.7A The Secretary of State shall be entitled to issue to the Company a written notice of his intention to terminate this Agreement ("Termination Warning Notice") where he considers that:
- a) the Academy is no longer meeting the requirements set out in clause 12 of the Master Agreement and clauses 2.1 to 2.10 of this Agreement (subject to clause 5.11);
  - b) the conditions and requirements set out in clauses 2.2 and 2.3 of this Agreement and 13-34C of the Master Agreement (where applicable to an alternative provision Free School) are no longer being met;
  - c) the standards of performance of pupils at the Academy are unacceptably low;

- d) there has been a serious breakdown in the way the Academy is managed or governed;
- e) the safety of pupils is threatened (whether by breakdown of discipline or otherwise); or
- f) the Company is otherwise in material breach of the provisions of this Agreement.

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

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

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

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

such measures has been or will be successfully completed within the specified timeframes; or

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

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

- a) the Company has not by the date specified in clause 5.7Bc) responded to the Termination Warning Notice either confirming that it accepts and agrees to undertake the Specified Remedial Measures or providing its representations with regard to the Specified Remedial Measures; or
- b) the Company has not carried out the Specified Remedial Measures and/or Further Remedial Measures within the specified timeframes;

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

#### **Notice of Intention to Terminate**

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

- (a) special measures are required to be taken in relation to the Academy; or
- (b) the Academy requires significant improvement.

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

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

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

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

#### **Termination with Immediate Effect**

5.7H For the purposes of clauses 5.7I and 5.7J, “prospective pupils” means those pupils who have been referred to the Academy and accepted a place.

5.7I If on or after 31 August 2014 and before the Academy opens, the total number of prospective pupils is fewer than 94, the Secretary of State may by written notice to the Company:-

- (a) require the Company not to open the Academy until the number of prospective pupils has reached 94; or
- (b) terminate this Agreement such termination to take effect on the date specified in the notice.

5.7J If at any time after signing this Agreement and after the Academy has opened, the Secretary of State is of the opinion that, by virtue of low



pupil numbers, the Academy is not financially viable, then the Secretary of State may:-

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

For the purposes of this clause a "Warning Notice" means a notice in writing by the Secretary of State to the Company requiring that the Company admits a sufficient number of pupils by such date as he deems appropriate in the circumstances and setting out the consequences if the Company has not admitted a sufficient number of pupils by the date specified in such Warning Notice.

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

5.8 Not used.

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

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

he may in writing either:

- (a) require the Company (i) not to open the Academy; and/or (ii) not to admit pupils of a particular age range, to be determined by the Secretary of State; and/or (iii) not to use any building or other structure on the Land until such time as the relevant matter or matters listed in 1. to 5. above has or have been resolved to the Secretary of State's satisfaction; or
- (b) terminate this Agreement by notice in writing to the Company such termination to take effect on the date of the notice.

5.10 Not used.

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

5.12 If

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

the Secretary of State may:

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

ii. serve a Termination Notice.

5.13 For the purposes of clause 5.12 a Governor or member of the Company will be “unsuitable” if that Governor or member:

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

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

5.14 For the purposes of clause 5.13:

- a) a Governor or member of the Company will be subject to a “relevant finding” in respect of an offence if:
  - i. that Governor or member has been found not guilty of the offence by reason of insanity;
  - ii. that Governor or member has been found to be under a disability and to have done the act charged against them in respect of the offence; or
  - iii. a court outside the United Kingdom has made a finding equivalent to that described in paragraphs (i) and (ii) above.
- b) “relevant conduct” is conduct by a Governor or member of the Company which is:
  - i. aimed at undermining the fundamental British values of democracy, the rule of law, individual liberty and mutual

respect and tolerance of those with different faiths and beliefs; or

- ii. found to be in breach of professional standards by a professional body; or
- iii. so inappropriate that, in the opinion of the Secretary of State, it makes that Governor or member unsuitable to take part in the management of the Academy.

## **6 EFFECT OF TERMINATION**

- 6.1 In the event of termination of this Agreement however occurring, the school shall cease to be an Academy within the meaning of Sections 1 and 1C of the Academies Act 2010.
- 6.2 Subject to clause 6.3 and 6.4, if the Secretary of State terminates this Agreement pursuant to clause 5.1 of this Agreement, the Secretary of State shall indemnify the Company. If the Secretary of State terminates this Agreement other than pursuant to clause 5.1 of this Agreement, the Secretary of State may in his absolute discretion indemnify or (to such extent if any as he may in his absolute discretion consider appropriate) compensate the Company.
- 6.3 The amount of any such indemnity or compensation shall be determined by the Secretary of State having regard to any representations made to him by the Company, and shall be paid at such times and in such manner as the Secretary of State may reasonably think fit.
- 6.4 The categories of expenditure incurred by the Company in consequence of the termination of the Agreement in respect of which the Secretary of State shall (where the Secretary of State terminates this Agreement pursuant to clause 5.1) indemnify the Company and may (where the Secretary of State terminates this Agreement

otherwise than pursuant to clause 5.1) in his absolute discretion indemnify or compensate the Company include (but not by way of limitation), staff compensation and redundancy payments, compensation payments in respect of broken contracts, expenses of disposing of assets or adapting them for other purposes, legal and other professional fees, and dissolution expenses.

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

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

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

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

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



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

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

## **7 ANNEX**

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

## **8 GENERAL**

8.1 This Agreement shall not be assignable by the Company.

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

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

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

## **9 THE MASTER AGREEMENT**

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

## **10 ENGLISH LAW**

- 10.1 This Agreement and any dispute or claim arising out of or in connection with it or its subject matter or formation (including non-contractual disputes or claims) shall be governed by and construed in accordance with the law of England and Wales.
- 10.2 The parties irrevocably agree that the courts of England and Wales shall have exclusive jurisdiction to settle any dispute or claim that arises out of or in connection with this agreement or its subject matter or formation (including non-contractual disputes or claims).

## **10A LAND CLAUSES**

### **Debt**

10A) Not used.

### **Restrictions on Land transfer**

- 10B) In consideration that it has or will be obtaining a legal interest in the Land, such acquisition being financed by the Secretary of State, the Company: a) shall, within 28 days from the acquisition of the legal interest in the Land or the signing of this Agreement, whichever is the latter, apply to the Land Registry for restrictions in the proprietorship register (under section 43(1)(a) of the Land Registration Act 2002 in Form RX1 as prescribed by Rule 91 and Schedule 4 of the Land Registration Rules 2003) ('LRR 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.]*

- b) shall take any further steps reasonably required to ensure that the restriction referred to in clause 10B(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 10B(a) as soon as reasonably practicable after it receives notification from the Land Registry,
- d) in the event that it has not registered the restriction referred to in clause 10B(a), hereby consents to the entering of the restriction referred to in 10B(a) in the register by the Secretary of State (under s. 43(1)(b) of the Land Registration Act 2002); and
- 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 10B(a) or 10B(d) above, whether by itself, a holding company, a subsidiary company, or a receiver, administrator or liquidator acting in the name of the Company.

### **Obligations of the Company**

10C)(i) 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, save that

the Company shall ensure that any actions undertaken in compliance with this clause shall be consistent with the terms of the Lease. In compliance with this clause, the Company shall not do or cause or permit to be done anything to lessen the value or marketability of the Land save with the express written consent of the Secretary of State.

10C)(ii) The Company shall observe and comply with its obligations under the Lease and shall promptly enforce its rights against the Landlord.

10C)(iii) The Company agrees it shall seek and obtain the prior written consent of the Secretary of State, not to be unreasonably withheld or delayed before taking any steps to:

- a) terminate, vary, surrender or dispose of the Lease; and / or
- b) grant any consent or licence in respect of the Land or any part of it; and / or
- c) create or permit to arise or continue any encumbrance affecting the Land or any part of it; and / or
- d) part with or share possession or occupation of the Land or any part of it; and / or
- e) enter into any onerous or restrictive obligations affecting the Land or any part of it.

10C)(iv) The Company agrees that prior to taking any steps, including but not limited to the service of any notice or waiver of any condition, under any contractual arrangement entered into in respect of the acquisition of the legal interest in the Land, it shall seek and obtain the written consent of the Secretary of State, not to be unreasonably withheld or delayed.

## **Insurance**

10D) The Company shall, save where the terms of the Lease provide for the Landlord to obtain insurance in respect of the Land:-

- a) keep the Land insured as in accordance with the terms of the Lease and in any event 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 or opt in to the Department's arrangements as set out in the Academies Financial Handbook;
- 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 premium or other evidence of renewal and up to date details of the amount of cover (but no more often than once in any period of 12 months in both cases);
- e) not knowingly do anything whereby any policy of insurance relating to the Land may become void or voidable.
- f) insure against liability in respect of property owners' and third party risks including occupiers liability or opt in to the Department's arrangements as set out in the Academies Financial Handbook.



## Transfer of Land

- 10E) The Company hereby grants and the Secretary of State hereby accepts an option, exercisable by the Secretary of State or his nominee, to acquire the said Land or any part thereof at nil consideration. 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 or in circumstances where the Company is unable to use all or part of the Land as the permanent site of the Academy in accordance with clause 10H. 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.
- 10F) The Company:
- a) shall, within 14 days from the transfer to it of the Land or the signing of this Agreement, whichever is the latter, 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 10E 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 10F(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 10F(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 10F(a), hereby consents to the entering of the notice referred to in 10F(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 10F(a) or 10F(d) above, whether by itself, a holding company, a subsidiary company, or a receiver, administrator or liquidator acting in the name of the Company, and
- f) in the case of previously unregistered land, for the further protection of the option granted in Clause 10E the Company shall within 14 days of the acquisition of the legal interest in the Land or the signing of this Agreement, whichever is the latter, 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.

#### **Legal Charge**

10G) Not used.

#### **Failure to use the Land for the purposes of the Academy**

10H) If the Company is unable to use the Land or any part thereof as the permanent site of the Academy but the Secretary of State agrees not to terminate this Agreement on that basis, the Secretary of State may give notice to the Company that:-

a) he intends to exercise the option granted under clause 10E) to transfer the Land or the relevant part thereof for nil consideration to himself or his nominee;

and/or

b) the Company shall dispose of the Land or the relevant part thereof and that, pursuant to clause 86 of the Master Agreement, the Company may retain some or all of the proceeds of sale of the Land or the relevant part thereof in order to fulfil its charitable purposes by funding the purchase of an alternative permanent site for the Academy, save that any proceeds not used to fund the purchase of an alternative permanent site shall be accounted for to the Secretary of State or his nominee.

### **Sharing of the Land**

10I) The Company agrees that if:

- a) the Academy does not fill its planned number of places (as set down in clause 2.12) over a period of three Academy Funding Years; or
- b) notice of termination is served by either the Company or the Secretary of State in accordance with clause 5.1 of this Agreement; or
- c) in the reasonable opinion of the Secretary of State the operation of the Academy at its planned number of places (as set down in clause 2.13) does not require the use of the full extent of the

Land,

- i. it will share occupation of the Land with such other Academies as the Secretary of State deems appropriate in the circumstances and enter into such legal arrangements in respect of the same as are required by the Secretary of State; or
- ii. it will dispose of part of the Land as required by the Secretary of State and account for any proceeds of such disposal to the Secretary of State or his nominee.

This Agreement was executed as a Deed  
on 26 August 2014

Executed on behalf of School Partnership Trust Academies by:

.....  
**Director**

In the presence of:

Witness.....

Address.....

Occupation.....

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

.....  
*Kim Sibley*

**Duly Authorised**





# Annex 1

## Requirements for the Admission of pupils at SPTA Alternative Provision Academy ("the Academy")

### General

1. This Annex may be amended in writing at any time by agreement between the Secretary of State and School Partnership Alternative Provision Academies ("the Company").
2. The Company will act in accordance with equalities law.
3. Except where paragraphs 4 or 5 applies, the Company may not admit a child of compulsory school age unless it is by way of a referral from a Commissioner through one of the referral routes set out in paragraph 6 below.
4. Notwithstanding any provision in this Annex, the Secretary of State may:
  - (a) direct the Company to admit a named pupil to the SPTA Alternative Provision Academy ("the Academy") on application from a local authority. This will include complying with a School Attendance Order<sup>1</sup>. Before doing so the Secretary of State will consult the Company.
  - (b) direct the Company to admit a named pupil to the Academy if the Company has failed to act in accordance with this Annex or has otherwise failed to comply with applicable equalities legislation.

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<sup>1</sup> 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 alternative provision 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.

- (c) direct the Company to amend its admission arrangements where the Company fails to comply with relevant legislation or where the Secretary of State is concerned that because of its admissions arrangements the Academy is no longer meeting the requirements at 1C of the Academies Act 2010.
5. Pupils on roll in any predecessor provider will transfer automatically to the Academy on opening. All children already offered a place at any predecessor provider will be admitted.

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; and
- b) Adopt admission oversubscription criteria<sup>2</sup> that give highest priority to looked after children.

#### **Admission arrangements**

6. The Company may only admit a child of compulsory school age:
- a) referred by a local authority where the local authority has a duty to that child under section 19 of the Education Act 1996.<sup>3</sup>
  - b) referred by a maintained school or Academy where the maintained school or Academy has a duty under Section 100 of the Education and Inspections Act 2006.<sup>4</sup>

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<sup>2</sup> Over subscription criteria means how the Company will distinguish/prioritise between pupils where it has more referrals than places currently available.

<sup>3</sup> Section 19 of the Education Act 1996, and regulations made under that section, require a local authority to make arrangements (from the sixth day of exclusion where a pupil has been permanently excluded) for the provision of suitable, full time (unless there are medical reasons as to why this would not be appropriate) education at school or otherwise for a child of compulsory school age who, for a range of reasons, would otherwise be without such education.

- c) referred by a maintained school under powers set out in section 29(A) of the Education Act 2002<sup>5</sup>.
  - d) referred by an Academy which, under general powers in the Articles of the Company may send pupils off-site to an alternative provision Academy as part of early intervention measures to address behaviour. However, as with a maintained school there is an expectation in law that a pupil will be educated at the school where he is registered, so placements would generally be relatively short and subject to review<sup>6</sup>.
7. The Company shall have admission arrangements agreed with the Department which will include oversubscription criteria, a fair, transparent and objective process for considering whether the education provided will be appropriate for prospective pupils and an admission number for each relevant key stage. The Company will consult on its admission arrangements.
8. Any changes to admission arrangements proposed by the Company should be discussed with Commissioners and must be agreed with the Secretary of State.

### **Pupil registration and information sharing**

9. The pupil numbers of an alternative provision Academy will fluctuate throughout the academic year.

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<sup>4</sup> Section 100 of the Education and Inspections Act 2006 requires maintained schools and Academies to arrange full-time education for pupils on a fixed period exclusion of more than five days from the sixth day of the exclusion.

<sup>5</sup> Section 29A of the Education Act 2002 provides that governing bodies of maintained schools may direct a pupil off-site for the purpose of receiving educational provision which is intended to improve the behaviour of the pupil.

<sup>6</sup> It is possible that some off-site directions may become longer term placements in cases where the referring school and local authority agree that the provision in an alternative provision Academy is meeting the pupil's needs, and that a mainstream school place cannot meet that pupil's needs. These pupils could fall within the terms of section 19 of the Education Act.

10. The Company must ensure that pupils are appropriately registered<sup>7</sup>. In the case of a fixed period exclusion or an off site direction, the excluded pupil should remain on the register of the excluding school as they are expected to return when the exclusion period is completed and should also be registered with the Academy (dual registered). In the case of a permanent exclusion, the excluded pupil should be removed from the excluding school's register and be registered with the Academy.
11. As far as reasonably practicable, in agreeing contractual arrangements with Commissioners the Company shall request appropriate information on the needs and prior attainment of pupils who will attend the Academy.
12. The Company will provide regular feedback to a Commissioner (and in any event when requested by the Commissioner to do so) on progress made by the pupil, the pupil's needs and attainment.

#### **Objections and determinations**

13. The Company must make clear when determining the Academy's admission arrangements, that objections should be submitted to the EFA or any successor to it.
14. A determination of an objection, by the EFA or any successor to it on behalf of the Secretary of State, or by the Secretary of State, will be binding upon the Academy.

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<sup>7</sup> The requirements of section 434 of the Education Act 1996 (registration of pupils) and regulations made under that section apply to schools (which includes alternative provision Academies)

