

## DEED OF VARIATION

The parties to this Deed are:

(1) The Secretary of State for Education (“**the Secretary of State**”),

- and –

(2) The David Ross Education Trust, a charitable company incorporated in England and Wales with registered company number 06182612 (“**the Company**”),

together referred to as the “**Parties**”.

### INTRODUCTION

- A. The Company currently maintains and operates Havelock Academy, Malcolm Arnold Academy, Humberston Academy and Cedar Road Primary Academy (the “**Existing Academies**”).
- B. The Parties have entered into a master funding agreement dated 27 August 2010 and subsequently amended in relation to the Existing Academies, a copy of which is attached as Annex A to this Deed (“**the Master Funding Agreement**”).
- C. The Parties now wish to vary and amend the terms of the Master Funding Agreement and wish to record their agreement as to such variations/amendments by this Deed.

### LEGAL AGREEMENT

- 1. Any word or phrase used in this Deed shall, if that word or phrase is defined in the Master Funding Agreement, bear the meaning given to it in the Master Funding Agreement.
- 2. The Secretary of State and the Company agree that with effect from the date of this Deed the Master Funding Agreement shall be amended in accordance with the Schedule to this Deed.
- 3. Except as amended by this Deed, the Master Funding Agreement shall remain in full force and effect.



## **Schedule Amendments to the Master Funding Agreement**

1. In the Contents, “Serious incidents of misbehaviour leading to fixed period or permanent exclusion. Annex C” shall be deleted.

2. The wording in Clause 22 of the Master Funding Agreement is replaced with the following:

“22) Subject to each Supplemental Funding Agreement, each Academy will be an all ability and inclusive school. The arrangements for:

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

3. The wording in Clause 56 of the Master Funding Agreement is replaced with the following:

“56) Where a pupil at an Academy is provided with board and lodging, there shall be payable in respect of the board and lodging by the parent of the pupil concerned to the Academy Trust charges not exceeding the cost to the Academy Trust of providing the board and lodging. Sections 402 (Obligation to enter pupils for public examinations), 450 - 457 (charges), 459 (regulations about information about charges and school hours) and 460 (voluntary contributions), 461 (recovery of sums as civil debt) - 462 (Interpretation re charges) of the Education Act 1996 shall be deemed to apply to each Academy with the following modifications:

- (a) references to any maintained school shall be treated as references to an Academy;
- (b) references to registered pupils shall be treated as references to registered pupils at an Academy;
- (c) references to the governing body or the local education authority shall, in each case, be treated as references to the governing body of the Academy Trust;

- (d) the charging and remissions policies required to be determined under section 457, and any amendment thereto, shall require the approval of the Secretary of State; and
- (e) the Academy Trust may charge persons who are not registered pupils at an Academy for education provided or for facilities used by them at that Academy.”

4. The wording in Clause 94 of the Master Funding Agreement is replaced with the following:

“94) In relation to the use of grant paid to the Academy Trust by the Secretary of State, the Academy Trust shall abide by the requirements of and have regard to the guidance in the Academies Financial Handbook, as published by the Department for Education and amended from time to time and as modified to take account of the fact that the Academy Trust manages more than one Academy, which sets out in detail provisions for the financial management of each Academy including guidance on financial systems and controls and accounting and reporting requirements, in so far as these are not inconsistent with any accounting and reporting requirements and guidance that it may be subject to by virtue of its being a charity.”

5. The wording in Clause 98 of the Master Funding Agreement is replaced with the following:

“98) The books and accounts and all relevant records, files and reports of the Academy including those relating to financial controls, shall be open at all reasonable times to officials of the Department for Education and the National Audit Office and to contractors retained by the Department for Education or the National Audit Office for inspection or the carrying out of value for money studies; and the Academy Trust shall secure that those officials and contractors are given reasonable assistance with their enquiries. For the purposes of this clause, ‘relevant’ means in any way relevant to the provision and use of grants provided by the Secretary of State under this Agreement.”

6. The wording in Clause 104A of the Master Funding Agreement is replaced with the following:

“104A) The Academy Trust shall provide 30 days’ notice to the Secretary of State, whether or not the circumstances require the Secretary of State’s consent, of its intention to:

- a) give any guarantees, indemnities or letters of comfort;
- b) write off any debts owed to it or offer to make any ex gratia payments;
- c) make any sale or purchase of freehold property; or
- d) grant or take up any leasehold or tenancy agreement for a term exceeding three years.”

7. After Clause 104A of the Master Funding Agreement, insert the following new Clause 104B:

“104B) Grants paid by the Secretary of State shall only be used by the Academy Trust for purposes listed in Article 4(a) of the Articles. Such funds shall not be used by the Academy Trust for purposes listed in Article 4(b) of the Articles without the prior written consent of the Secretary of State except where the use of such funds for a charitable purpose set out in Article 4(b) is merely incidental to their use for the purposes set out in Article 4(a) of the Articles.”

8. The wording in Clause 121 of the Master Funding Agreement is replaced with the following:

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

9. Annex B of the Master Funding Agreement is replaced with the Annex B attached to this Deed.

## **ANNEX A Master Funding Agreement**

## ANNEX B

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

#### **Duties in relation to pupils with SEN<sup>1</sup>**

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

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

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

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

disabled pupils; the steps taken to prevent disabled pupils from being treated less favourably than other pupils; and the facilities provided to assist access to the Academy by disabled pupils (disabled pupils meaning pupils who are disabled for the purposes of the Equality Act

2010<sup>4</sup>).

### **Admissions**<sup>5</sup>

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

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<sup>4</sup> For the meaning of 'disabled', see section 6 of the Equality Act 2010.

<sup>5</sup> SEN Admissions requirements for special academies are set out in the Special Academy Supplemental Funding Agreement Annex 1.



been named in a child's statement, they may ask the Secretary of State to determine that the LA has acted unreasonably in naming the Academy and to make an order directing the LA to reconsider.

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

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**SUPPLEMENTAL AGREEMENT**

**THIS AGREEMENT** made

2012

**BETWEEN**

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

(2) **THE DAVID ROSS EDUCATION TRUST**

**IS SUPPLEMENTAL TO THE MASTER FUNDING AGREEMENT** made between the same parties and dated 27<sup>th</sup> August 2010 and subsequently amended and further amended on or around the date of this agreement (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 Skegness Grammar School established at Vernon Road, Skegness, Lincolnshire PE25 2QS.

“Academy Financial Year” means the year from 1<sup>st</sup> September to 31<sup>st</sup> August or such other period as the Secretary of State may from time to time specify by notice in writing to the Academy Trust;

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

“Control” in relation to a body corporate (‘Entity’) means either the legal or beneficial ownership of 30 per cent or more of the issued shares in the Entity ordinarily having voting rights or the power of a person (‘A’) otherwise to secure –

(a) either by means of the holding of shares in that Entity or having an interest conferring voting rights at general meetings of the membership of the Entity or of any other body corporate;

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(b) by virtue or any powers conferred by the articles of association or other document regulating that Entity or any other Entity or partnership including, without limitation, the power to appoint or remove a majority of the governing body thereof, or

(c) by virtue of any agreement, understanding or arrangement between any person or persons,

that the affairs of the first-mentioned Entity are conducted in accordance with the wishes of A and 'Controls' shall be construed accordingly;

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

"the Land" means the publicly funded land (including for the avoidance of doubt all buildings, structures landscaping and other erections) situated at and known as:

- Skegness Grammar School, Vernon Road, Skegness, Lincolnshire PE25 2QS; and
- Wainfleet Hall, Low Road, Skegness, Lincolnshire, PE24 4JG.

"SEN" means special educational needs, and the expressions "special educational needs" and "special educational provision" have the meaning set out in section 312 of the Education Act 1996.

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

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**2 THE ACADEMY**

- 2.1 The Academy Trust will establish and maintain, and carry on or provide for the carrying on of the Academy in accordance with this Agreement<sup>1</sup>. This Agreement incorporates by reference the terms of the Master Agreement, save as otherwise expressly varied or supplemented hereunder. For the avoidance of doubt, this Agreement shall apply only in respect of the Academy and shall not operate so as to amend the terms of the Master Agreement as they may apply to other academies operated by the Academy Trust.
- 2.2 The curriculum provided by the Academy to pupils up to the age of 16 shall be broad and balanced,
- 2.3 The requirements for the admission of pupils to the Academy are set out at Annex 1. The procedure for the removal of the Academy's selective admission arrangements is set out at Annex 2.

**ACADEMY OPENING DATE**

- 2.4 The Academy shall open as a school on 1 September 2012 replacing Skegness Grammar School which shall cease to be maintained by the Local Authority on that date, which date shall be the conversion date within the meaning of the Academies Act 2010<sup>2</sup>.
- 2.5 The planned capacity of the Academy is 898 in the age range 11-18, including a sixth form of 179 places and 49 boarding places
- 2.6 Clause 10 of the Master Agreement is deleted and replaced with the following for the purpose of this Agreement:

"10) Section 1 (3) of the Academies Act 2010 states that -

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<sup>1</sup> If the Academy is to be a "selective school" then insert the following wording at the end of paragraph 2.1 – "...save that clause 12(c) of the Master Agreement does not apply as the Academy is a "selective school" within the meaning of Section 6(4) of the Academies Act 2010 and additionally clause 19 does not apply in so far as it provides for the Academy to be an all ability inclusive school".

<sup>2</sup> Delete words in square brackets if the SFA is being used for an Academy that is replacing a maintained school following school closure under the Education and Inspections Act 1996.

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(3) An Academy agreement is an agreement between the Secretary of State and the other party under which-

- (a) the other party gives the undertakings in subsection (5), and
- (b) the Secretary of State agrees to make payments to the other party in consideration of those undertakings."

### **CHARACTERISTICS OF THE ACADEMY**

2.7 For the purpose of this Agreement, Clause 12 of the Master Agreement is replaced with the following;

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

- (a) It is an independent school;
- (b) It has a curriculum satisfying the requirements of section 78 of the Education Act 2002 (balanced and broadly based curriculum);
- (c) It provides education for pupils who are wholly or mainly drawn from the area in which the Academy is situated; and
- (d) It is not an alternative provision Academy.

### **CONDITIONS OF GRANT**

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

"b) there will be assessments of pupils performance as they apply to maintained schools and the opportunity to study for relevant qualifications in accordance with clause 30;"

2.9 After clause 13 of the Master Agreement (as amended by this Agreement) insert the following new clause 13A:

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“13A Clause 13(f) does not prevent the Academy Trust receiving funds from a local authority or a charity in respect of the admission of a pupil with special educational needs to an Academy.”

- 2.10 Clause 15, sub-clause (a) of the Master Agreement is deleted and replaced with the following for the purposes of this Agreement:

“15a) A minimum of two parents of pupils at the Academy (to be elected by the parents of registered pupils of the Academy) shall be members of the Advisory Body;”

**PUPILS**

- 2.11 Clause 22 of the Master Agreement is deleted and replaced with the following for the purposes of this Agreement:

“22) The Academy will be a school whose requirements for:

- a) the admission of pupils to the Academy are set out in Annex 1 to the Supplemental Agreement for the Academy; and
- b) pupil exclusions are set out in regulations made by virtue of section 51A of the Education Act 2002 (as may be amended or modified from time to time, and includes any successor provisions).

**TEACHERS AND OTHER STAFF**

- 2.12 Clause 23 of the Master Agreement is deleted and replaced with the following for the purposes of this Agreement:

“23) Subject to clause 24, the Academy Trust shall not employ anyone under a contract of employment or for services to carry out planning and preparing lessons and courses for pupils, delivering lessons to pupils, assessing the development, progress and attainment of pupils, and reporting on the development, progress and attainment of pupils (“specified work”) who is not either:-

- a) a qualified teacher within the meaning of regulations made under section 132 of the Education Act 2002; or

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b) otherwise eligible to do specified work under the Education (Specified Work and Registration) (England) Regulations 2012 (SI 2012/762), which for the purpose of this clause shall be construed as if the relevant Academy were a maintained school.”

- 2.13 Clauses 27 of the Master Agreement shall be deleted for the purpose of this Agreement.

### **CURRICULUM, CURRICULUM DEVELOPMENT AND DELIVERY AND RE AND COLLECTIVE WORSHIP**

- 2.14 Clauses 29-42 of the Master Agreement are deleted and replaced with the following for the purposes of this Agreement:

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

30) The Academy Trust shall publish information in relation to the current curriculum provision at the Academy. Such information shall include details relating to:

- a) the content of the curriculum;
- b) its approach to the curriculum;
- c) the GCSE option (and other Key Stage 4 qualifications) offered by the Academy;
- d) the names of any phonics or reading schemes in operation for Key Stage 1; and
- e) how parents (including prospective parents) can obtain further information in relation to the curriculum at the Academy.

31) Subject to the requirements of clauses 29 to 39, the curriculum will be the responsibility of the Academy Trust.

32) The Academy Trust shall ensure that the broad and balanced curriculum includes English, Mathematics and Science.

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

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

34) The Academy Trust shall make provision for the teaching of religious education and for a daily act of collective worship at the Academy.

35) Where the Academy is designated with a religious character<sup>4</sup> in accordance with section 124B of the School Standards and Framework Act 1998 or further to section 6(8) of the Academies Act 2010:

- a) subject to clause 37, and paragraph 4 of Schedule 19 to the School Standards and Framework Act 1998 which shall apply as if the Academy were a voluntary aided school with a religious character, the Academy Trust shall ensure that provision is made for religious education to be given to all pupils at the Academy in accordance with the tenets of the specified religion or religious denomination of the Academy;
- b) subject to clause 37, the Academy Trust shall comply with the requirements of section 70(1) of, and Schedule 20 to, the School Standards and Framework Act 1998 as if the Academy were a foundation school with a religious character or a voluntary school, and as if references to ' the required collective worship'

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<sup>3</sup> NB This clause should be disapplied for primary schools as S42A is only applicable where secondary education is provided.

<sup>4</sup> Alternative provisions are available and would be potentially appropriate for non-denominational faith schools.



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were references to collective worship in accordance with the tenets and practices of the specified religion or religious denomination of the Academy;

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

36) Where the **Academy** has not been designated with a religious character in accordance with section 124B of the School Standards and Framework Act 1998 or further to Section 6(8) of the Academies Act 2010:

- a) subject to clause 37, the Academy Trust shall ensure that provision shall be made for religious education to be given to all pupils at the Academy in accordance with the requirements for agreed syllabuses in section 375(3) of the Education Act 1996 and paragraph 2(5) of Schedule 19 to the School Standards and Framework Act 1998;

- b) subject to clause 37, the Academy Trust shall ensure that the Academy complies with the requirements of section 70(1) of, and Schedule 20 to, the School Standards and Framework Act 1998 as if it were a community, foundation or voluntary school which does not have a religious character, except that the provisions of paragraph 4 of that Schedule do not apply. The Academy may apply to the Secretary of State for consent to be relieved of the requirement imposed by paragraph 3(2) of that Schedule, the Secretary of State's consent to such an application not to be unreasonably withheld or delayed.

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c) the Academy Trust<sup>5</sup>:

(1) agrees that before making an application pursuant to the Religious Character of Schools (Designation Procedure) (Independent Schools) (England) Regulations 2003 for the Academy to be designated as a school with religious character it shall seek the prior written consent of the Secretary of State;

(2) hereby acknowledges that the Secretary of State may in his absolute discretion refuse or consent to the Academy Trust making such an application.

37) Section 71(1) – (6) and (8) of the School Standards and Framework Act 1998 shall apply as if the Academy were a community, foundation or voluntary school, and as if references to “religious education” and to “religious worship” in that section were references to the religious education and religious worship provided by the Academy in accordance with clauses 35 or 36 as appropriate.

38) The Academy Trust shall have regard to any guidance issued by the Secretary of State, further to section 403 of the Education Act 1996, on sex and relationship education to ensure that children at the Academy are protected from inappropriate teaching materials and they learn the nature of marriage and its importance for family life and for bringing up children. The Academy Trust shall also have regard to the requirements set out in section 405 of the Education Act 1996 which shall apply to the Academy as if it were a maintained school.

39) The Academy Trust agrees to act in accordance with Sections 406 (Political Indoctrination) and 407 (Duty to secure balance treatment of political issues) of the Education Act 1996 as if it were a maintained school, subject to the following modifications:

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

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<sup>5</sup> This is required in order to ensure that the process by which an Academy becomes designated as a school with a religious character is comparable to that which applies for maintained schools.

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

40)– 42). NOT USED.”

2.15 The following provisions shall apply to the Academy in place of Clauses 43-51 (inclusive) of the Master Agreement:

#### **“Assessment**

43) The Secretary of State will notify the appropriate body for assessment purposes about the Academy.

a) The Academy Trust shall ensure that the Academy complies with any guidance issued by the Secretary of State from time to time to ensure that pupils take part in assessments and in teacher assessments of pupil's performance as they apply to maintained schools.

b) The Academy Trust shall report to any body on assessments as the Secretary of State shall prescribe and shall provide such information as may be required by that body as applies to maintained schools.

c) In respect of all Key Stages, the Academy Trust will submit the Academy to monitoring and moderation of its assessment arrangements as prescribed by the Secretary of State.

d) The Academy Trust may not offer courses at any Academy which lead to relevant qualifications, as defined in section 96 of the Learning and Skills Act 2000, unless the Secretary of State gives specific approval for such courses.

44) The Academy Trust shall ensure that the following information is published on the website for the Academy:

a) The Academy's most recent key stage 2 results as published by the Secretary

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of State under the following column headings in the School Performance Tables published on the Department for Education's website:

- (i) "% achieving Level 4 or above in English and Maths";
- (ii) "% making expected progress";
- (iii) in relation to English, "% achieving Level 5 or above"; and
- (iv) in relation to Maths, "%achieving Level 5 or above".

b) The Academy's most recent key stage 4 results as published by the Secretary of State under the following column headings in the School Performance Tables published on the Department for Education's website:

- (i) "% achieving 5 + A\* - C GCSEs (or equivalent) including English and Maths GCSEs";
- (ii) "% achieving the English Baccalaureate"; and
- (iii) "% of pupils making expected progress".<sup>6</sup>

c) Information as to where and by what means parents (including prospective parents) may access the most recent report about the Academy published by her Majesty's Chief Inspector of Education, Children's Services and Skills.

d) Information as to where and by what means parents (including prospective parents) may access the School Performance Tables published by the Secretary of State on the Department for Education's website.

45-51 NOT USED."

2.16 Clause 52 of the Master Agreement is replaced with the following for the purposes of this Agreement:

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<sup>6</sup> [NB not applicable for primary schools.]

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**Exclusions Agreement**

“52) In respect of the Academy, the Academy Trust shall, if invited to do so by an LA, enter into an agreement in respect of an Academy with that LA, which has the effect that where:

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

b) the Academy Trust permanently excludes a pupil from the Academy payment will flow between the Academy Trust and the LA in the same direction and for the same amount that it would, were the Academy a maintained school, under Regulations made under section 47 of the School Standards and Framework Act 1998 relating to the addition or deduction of a maintained school’s budget following a permanent exclusion or the admission of a permanently excluded pupil. At the date of this Agreement, the applicable Regulation is Regulation 23 of the School Finance (England) Regulations 2012.”

2.17 Clauses 57 to 59B (inclusive) of the Master Agreement are replaced with the following for the purpose of this Agreement:

“57) – 59B) NOT USED.”

**3 CAPITAL GRANT**

3.1 Pursuant to clause 60 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.

3.2 In Clause 62 of the Master Agreement, at the end of both sub-clauses c) and g) the words “other than necessary replacements, repairs and maintenance due to normal wear and tear;” shall be inserted for the purposes of this Agreement.

3.3 Clause 63 of the Master Agreement is deleted and replaced with the following for the purposes of this Agreement:

”63) Where an Academy is to open in new premises, or where existing premises are to be substantially refurbished or remodelled to enable the

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Academy to open in such premises, the Secretary of State, may, in his absolute discretion be responsible for meeting the incurred Capital Expenditure for that Academy. To that end, the Secretary of State will consider providing funding in accordance with any arrangements as he considers appropriate.”

3.4 The following shall read as though it were Clause 65(c) of the Master Agreement for the purposes of this Agreement:

“65(c) Any other conditions that the Secretary of State may specify”

3.5 Clause 66 of the Master Agreement is deleted and replaced with the following for the purposes of this Agreement:

“66) Capital Grant will be paid by the Secretary of State to the Academy Trust on the basis of claims for grant submitted to the Secretary of State in the notified format with supporting invoices and certificates as required by the Secretary of State. If a dispute arises as to whether a claim is or is not acceptable both parties undertake to attempt to resolve it in good faith. In the event of such a dispute, the Secretary of State shall pay to the Academy Trust so much of the claim as shall not be in dispute.

3.6 Clauses 67-68D of the Master Agreement are deleted and do not apply for the purposes of this Agreement.

#### **4 GAG AND EAG**

4.1 The Secretary of State agrees to pay GAG and EAG to the Academy Trust in relation to the Academy in accordance with the Master Agreement as amended by this Agreement.

4.2 Clause 69, paragraph (g), of the Master Agreement is deleted and replaced with the following for the purposes of this Agreement:

“(g) insurance, provided that the Secretary of State shall not be obliged to pay GAG in relation to insurance to the extent that insurance and/or comparable arrangements are made available to the Academy Trust (whether at a cost to the Academy Trust or otherwise and whether made available by and/or on behalf of

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the Secretary of State or otherwise) save that, to the extent that such insurance and/or comparable arrangements as may be made available constitute a cost for the Academy Trust, the Secretary of State shall provide a contribution through GAG in relation to such cost;"

- 4.2 In respect of this Agreement, Clause 70 of the Master Agreement will be deleted and replaced with the following:

"70) Subject to clauses 77 and 78, GAG for each Academy Financial Year for the Academy will include;

a) funding equivalent to that which would be received by a maintained school with similar characteristics, determined by the Secretary of State and notified in the Annual Letter of Funding or its equivalent, taking account of the number of pupils at each Academy;

b) funding in respect of functions which would be carried out by the LA if each Academy was a maintained school."

- 4.3 In respect of this Agreement Clauses 72-81 of the Master Agreement shall not apply and shall be replaced with the following provisions:

72) Subject to clause 74, the basis of the pupil number count for the purposes of determining GAG for the Academy Financial Year in which the Academy opens shall be the same basis as that used by the Local Authority for determining the budget share of the predecessor maintained school as adjusted by numbers counted in any subsequent Schools Census, as determined by the Secretary of State. In subsequent years the basis of the pupil count will be determined in accordance clauses 73 and 74.

73) Subject to clause 74, the basis of the pupil number count for the purpose of determining GAG for a Academy for Academy Financial Years after the Academy Financial Year in which the Academy opens will be:

a) for the pupil number count for pupils in Year 11 and below, the Schools Census which is used to fund maintained schools for the financial year overlapping with the Academy Financial Year in question; and

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b) for the pupil number count for pupils in Year 12 and above, the formula which for the time being is in use for maintained schools for the calculation of pupil numbers for pupils in Year 12 and above for the purpose of calculating their level of funding.

74) Where either of the following conditions applies in respect of an Academy Financial Year, the basis of the pupil count shall be determined by the Secretary of State, taking account of any diseconomies of scale that the Academy will be under as a result of such condition(s) applying. The conditions are:

a) not all planned Year-groups will be present at the Academy (that is, not all the pupil cohorts relevant to the age-range of the Academy will have some pupils present); or

b) the total number of pupils as measured in the Schools Census which is used to fund maintained schools for the financial year overlapping with the Academy Financial Year in question is less than 90% of the planned final size of the Academy, as specified in the Academy's Supplemental Agreement, and has not at any previous time been greater than 90% of that number.

75) For any Academy Financial Year in which GAG for the Academy has been calculated in accordance with clause 72, no adjustment shall be made to the following Academy Financial Year's formula funding element of GAG for that Academy to recognise variation from the pupil count basis used.

76) For any Academy Financial Year in which GAG for a Academy is calculated in accordance with clause 73, no adjustment will be made to the formula funding element in the following Academy Financial Year's formula funding element of GAG unless the Academy Trust demonstrates to the satisfaction of the Secretary of State that there has been a significant impact on costs, such as an extra class. For any other element of GAG the Secretary of State may make adjustments to recognise a variation in pupil numbers from that used to calculate the element of grant in question; the basis of these will be set out in the annual letter of funding.

77) The Secretary of State recognises that:

a) in relation to an Academy which opens with intakes representing only a proportion of the final planned size of the Academy, payments based simply upon the number of pupils present are unlikely to be



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sufficient to meet the Academy's needs in the Academy Financial Years before all age groups are present at their planned size (the "Start-up Period") because of a lack of economies of scale. The Secretary of State may pay an appropriately larger GAG in the Start-up Period than would be justified solely on the basis of the methods set out in clauses 70-76, in order to enable the Academy to operate effectively<sup>7</sup>;

- b) in relation to an Academy which opens with pupils transferred from one or more maintained schools which have closed, additional GAG resources may be required to take account of transitional costs including any costs associated with supporting the integration of pupils from the closed schools and, where necessary, to offer a dual curriculum. If the Secretary of State has indicated that such additional GAG will be payable, the Academy Trust will make a bid for this addition to GAG based upon need and providing appropriate supporting evidence.

78) During the Start-up Period or during the period when year groups are present who have transferred from a predecessor school or schools, the Secretary of State will pay a further element of GAG additional to that calculated in accordance with the methods set out in clauses 70-76, to allow the relevant to the Academy to:

- a) purchase a basic stock of teaching and learning materials (including library books, text books, software, stationery, science equipment and equipment for physical education) and other consumable materials;
- b) meet the costs associated with the recruitment and induction of additional teaching and other staff.

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

79) The Secretary of State recognises that if he serves notice of intention to terminate a Supplemental Agreement under that agreement the intake of new

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<sup>7</sup> Note that a larger GAG for the Start-Up Period is only applicable to Academies with approved Expressions of Interest.

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pupils during the notice period is likely to decline and that in such circumstances payments based simply upon the number of pupils attending the relevant Academy are unlikely to be sufficient to meet the Academy's needs during the notice period. The Secretary of State undertakes to pay a reasonable and appropriately larger GAG with respect to that Academy in the notice period than would be justified solely on the basis of the methods set out in clauses 43-49 (as set out in this Agreement), in order to enable the Academy to operate effectively.

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

81) Subject to clause 99, GAG paid by the Secretary of State in respect of the Academy shall only be spent by the Academy Trust towards the normal running costs of that Academy.”

4.4 In respect of this Agreement Clauses 93-106 of the Master Agreement shall not apply and shall be replaced with the following provisions:

### **“FINANCIAL AND ACCOUNTING REQUIREMENTS**

#### **General**

93) The Academy Trust shall appoint an Accounting Officer and shall notify the Secretary of State of that appointment.

94) In relation to the use of grant paid to the Academy Trust by the Secretary of State, the Academy Trust shall abide by the requirements of and have regard to the guidance in the Academies Financial Handbook published by the DfE and amended from time to time and as modified to take account of the fact that the Academy Trust manages more than one Academy, which sets out in detail provisions for the financial management of the Academy including guidance on financial systems and controls and accounting and reporting requirements, in so far as these are not inconsistent with any accounting and reporting requirements and guidance that it may be subject to by virtue of its being a charity.

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94) The formal budget plan must be approved each Academy Financial Year by the Directors of the Academy Trust.

95) Any payment of grant by the Secretary of State in respect of the Academy is subject to his being satisfied as to the fulfilment by the Academy Trust of the following conditions:

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

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

a) in addition to the obligation to fulfil the statutory requirements referred to in sub-clause f) below, the Academy Trust shall prepare its financial statements, Directors' report, Annual Accounts and its Annual Return for each Academy Financial Year in accordance with the Statement of Recommended Practice as if the Academy Trust was a non-exempt Charity and/or in such form or manner and by such date as the Secretary of State may reasonably direct and shall file these with the Secretary of State and the Principal Regulator each Academy Financial Year;

b) a statement of the accounting policies used should be sent to the Secretary of State with the financial statements and should carry an audit report stating that, in the opinion of the auditors, the statements show a true and fair view of the Academy Trust's affairs and that the grants were used for the purposes intended;

c) the Academy Trust shall ensure that its accounts are audited annually by independent auditors appointed under arrangements approved by the Secretary of State;

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

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- e) the Academy Trust shall publish on its website its Annual Accounts, Annual Report, Memorandum and Articles of Association, Funding Agreement and a list of the names of the Directors of the Academy Trust;
- f) the Academy Trust insures or procures insurance by another person of its assets in accordance with normal commercial practice or under the terms of any subsisting leases in respect of the leasehold interest of the site upon which each Academy is situated;

96) In addition, and at his expense, the Secretary of State may instruct auditors to report to him on the adequacy and effectiveness of the accounting systems and internal controls maintained by the Academy Trust to standards determined by the Secretary of State and to make recommendations for improving the financial management of the Academy Trust.

97) The books of accounts and all relevant records, files and reports of the Academy Trust including those relating to financial controls, shall be open at all reasonable times to officials of the DfE and the National Audit Office and to contractors retained by the DfE or the National Audit Office for inspection or the carrying out of value for money studies; and the Academy Trust shall secure that those officials and contractors are given reasonable assistance with their enquiries. For the purposes of this clause 'relevant' means in any way relevant to the provision and use of grants provided by the Secretary of State under this Agreement.

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

- a) a statement of expected income for that Academy Financial Year including cash donations and gifts in kind from sources other than GAG, EAG and grants from the Secretary of State towards capital and revenue expenditure, distinguishing between income from public funds including the national lottery and income from other sources. Income from cash donations and gifts in kind from sources other than GAG, EAG and grants from the Secretary of State

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towards capital expenditure will not be taken into account by the Secretary of State in the calculation of GAG;

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

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

99) At the beginning of any Academy Financial Year the Academy Trust may hold unspent GAG for any Academy from previous Academy Financial Years amounting to such percentage (if any) as the Secretary of State may specify by notice in writing to the Academy Trust prior to the beginning of that Academy Financial Year of the total GAG payable for the Academy in the Academy Financial Year just ended or such higher amount as may from time to time be agreed. The Academy Trust shall use such carried forward amount for such purpose, or subject to such restriction on its use, as the Secretary of State may specify by notice in writing to the Academy Trust.

100) Notwithstanding clause 99, any additional grant provided over and above that set out in clauses 70-76, and made in accordance with clauses 77-79, may be carried forward without limitation or deduction until the Start-up Period or the circumstances set out in clause 79, come to an end.

101) Any savings of GAG not allowed to be carried forward under clauses 99-100, will be taken into account in the payment of subsequent grant.

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

103) The Academy Trust shall not, in relation to assets or property funded (whether in whole or in part) by the Secretary of State, without the prior written consent of the Secretary of State which shall not be unreasonably withheld or delayed:

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

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b) write off any debts or liabilities owed to it above a value for the time being specified by the Secretary of State nor offer to make any ex gratia payments;

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

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

104) The Academy Trust shall provide 30 days notice to the Secretary of State, whether or not the circumstances require the Secretary of State's consent, of its intention to:

a) give any guarantees, indemnities or letters of comfort;

b) write off any debts owed to it or offer to make any ex gratia payments;

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

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

105) Each discovered loss of an amount exceeding the amount for the time being specified by the Secretary of State and arising from suspected theft or fraud, shall be reported by the Academy Trust to the Secretary of State at the earliest opportunity.

106) It is the responsibility of the Academy Trust to ensure that the Academy balances its budget from Academy Financial Year to Academy Financial Year. For the avoidance of doubt, this does not prevent the Academy Trust from:

a) carrying a surplus from one Academy Financial Year to the next; or

b) carrying forward from a previous Academy Financial Year or Academy Financial Years a sufficient surplus or sufficient cumulative surpluses on grants from the Secretary of State to meet an in-year deficit on such grants in a subsequent financial year; or

c) incurring an in-year deficit on funds from sources other than grants from the Secretary of State in any Academy Financial Year, provided it does not affect the Academy Trust's responsibility to ensure that the Academy Trust

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balances its overall budget from Academy Financial Year to Academy Financial Year.

106A The Academy Trust shall abide by the requirements of and have regard to the Charity Commission's guidance to charities and charity trustees and in particular the Charity Commission's guidance in the Protecting Charities from Harm ('the compliance toolkit'). Any references in this document which require charity trustees to report to the Charity Commission should instead be interpreted as references to report to the Principal Regulator."

- 4.5 Clauses 82 – 88 of the Master Agreement are deleted and replaced with the following for the purpose of this Agreement:

#### **"Earmarked Annual Grant**

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

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

#### **Arrangements for Payment of GAG and EAG**

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

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

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

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

86) If GAG or EAG is calculated incorrectly because the Academy Trust provides incorrect information to the Secretary of State then;

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

87) The amounts of GAG for an Academy Financial Year will be determined annually by the Secretary of State. The amount of GAG for the Academy for the initial Academy Financial Year will be notified to the Academy Trust in a funding letter at a date preceding that year. For subsequent years the amount of GAG will be notified to the Academy Trust in a funding letter preceding that Academy Financial Year (the "Annual Letter of Funding"). The Annual Letter of Funding will not include the amount that the Academy Trust will receive in respect of grants for which information to enable timely calculation is not available or is incomplete, such grants will be notified as soon as practicable later in the year. Amounts of EAG will be notified to the Academy Trust wherever possible in the Annual Letter of Funding or as soon as practicable thereafter.

88) The Secretary of State undertakes to pay GAG in monthly instalments on or before the twenty fifth day of each month, each such instalment to fund the salaries and other payroll costs for the relevant month of all monthly paid employees and all other costs payable during the next following month. The detailed arrangements for payment will be set out in the Annual Letter of Funding."

#### 4.6 Termination



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If, following the exercise of the Secretary of State's powers to appoint Additional Trustees or Further Trustees pursuant to the Articles of Association, the Members pass an ordinary or special resolution to remove one or more of those Additional or Further Trustees appointed by the Secretary of State, the Secretary of State may give the Academy Trust 12 months, or such lesser period as he considers appropriate in the circumstances, written notice to terminate this Agreement.

#### 4A COMPLAINTS<sup>8</sup>

4A.1 If a complaint is made about matters arising in whole or in part prior to the opening of the Academy, as referred to in clause 2.4 of this Agreement, and all or part of that complaint was being or had been investigated by the Local Government Ombudsman under Part III or the Local Government Act 1974 ('Part III') or that complaint in whole or in part could have been investigated under Part III had the school the Academy replaced remained a maintained school, the Academy Trust:

- a) will abide by the provisions of Part III as though the Academy were a maintained school;
- b) agrees that the Secretary of State shall have the power to investigate the matter complained of as if it had taken place after conversion;
- c) agrees to act in accordance with any recommendation from the Secretary of State as though that recommendation had been made under Part III and the Academy were a maintained school.

4A.2) If the Secretary of State could have given an order and/or a direction under section 496 and/or section 497 of the Education Act 1996 to the governing body of the school the Academy replaced (as referred to in clause 2.4 of this Agreement) and that order and/or direction related to matters occurring within the 12 months immediately prior to conversion, the Academy Trust agrees:

- a) the Secretary of State may give orders and/or directions to the Academy Trust as though the Academy were a maintained school and sections 496 and

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<sup>8</sup> Only include this clause if it is not already contained in the Master Funding Agreement. Otherwise mark as 'Not used'.

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497 applied to the governing body of that maintained school;

- b) to act in accordance with any such order and/or direction from the Secretary of State.

**4 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 2019 or any subsequent anniversary of that date.

5.2 If the Secretary of State is of the opinion that the Academy no longer has the characteristics set out in clause 12 of the Master Agreement (as amended by this Agreement) or that the conditions and requirements set out in clauses 13-59B of the Master Agreement (as amended by this Agreement) are not being met, or that the Academy Trust is otherwise in material breach of the provisions of this Agreement or the Master Agreement, the Secretary of State may give notice of his provisional intention to terminate this Agreement.

5.3 Any such notice shall be in writing and shall:

5.3.1 state the grounds on which the Secretary of State considers the Academy no longer has the characteristics set out in clause 12 of the Master Agreement (as amended by this Agreement) or is not meeting the conditions and requirements of clauses 13-59B of the Master Agreement (as amended by this Agreement) or the Academy Trust is otherwise in material breach of the provisions of this Agreement or the Master Agreement;

5.3.2 specify the measures needed to remedy the situation or breach;

5.3.3 specify a reasonable date by which these measures are to be implemented; and

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

5.4 If no response is received by the date specified in accordance with clause 5.3.4, the Secretary of State may give the Academy Trust 12 months, or such lesser period as he considers appropriate in the circumstances, written notice to terminate this Agreement.

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5.5 If a response is received by the date specified in accordance with clause 5.3.4, the Secretary of State shall consider it, and any representations made by the Academy Trust, and shall, within three months of its receipt, indicate that:

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

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

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

5.6 In the circumstances of clause 5.5.3 the Secretary of State shall notify the Academy Trust why he believes that he cannot be reasonably satisfied and, if so requested by the Academy Trust within thirty days from such notification, he shall meet a deputation including representatives from directors of the Academy Trust and the Local Governing Body of the Academy to discuss his concerns. If following such meeting he has good reasons for remaining satisfied that the Academy does not and will not have the characteristics set out in clause 12 of the Master Agreement (as amended by this Agreement) or does not and will not meet the conditions and requirements set out in clauses 13-59B of the Master Agreement (as amended by this Agreement) or the Academy Trust is in material breach of the provisions of this Agreement or the Master Agreement and such breach will not be remedied to his reasonable satisfaction, he shall give the Academy Trust twelve months written notice to terminate this Agreement.

5.7 If the Secretary of State has cause to serve a notice on the Academy Trust under section 165 of the Education Act 2002 and a determination (from which all rights of appeal have been exhausted) has been made that the Academy shall be struck off the Register of Independent Schools, the period of twelve months notice referred to in clause 5.6 may be shortened to a period deemed appropriate by the Secretary of State.

5.8 The Secretary of State shall, at a date preceding the start of each Academy Financial Year, provide to the Academy Trust an indication of the level of funding to be provided by the Secretary of State to the Academy Trust by way of GAG

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and EAG in the next following Academy Financial Year (the “**Indicative Funding**”). If the Academy Trust 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 this Agreement and such other funds as are and likely to be available to the Academy from other academies operated by the Academy Trust (“**All Other Resources**”), it is likely that the cost of running the Academy during the Critical Year would cause the Academy Trust, on the basis of the Indicative Funding, to become insolvent (and for this reason only) then the Academy Trust may give notice of its intention to terminate this Agreement at the end of the then current Academy Financial Year.

5.9 Any notice given by the Academy Trust under clause 5.8 shall be in writing and shall be served on the Secretary of State not later than 28 February preceding the Critical Year or, if the Secretary of State shall not have given notice of the Indicative Funding to the Academy Trust on or before the date specified in clause 5.8 above, within six weeks after the Secretary of State shall have done so. The notice must specify:

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

5.9.2 the shortfall in the Critical Year between the Indicative Funding and All Other Resources expected to be available to the Academy Trust to run the Academy and the projected expenditure on the Academy; and

5.9.3 a detailed budget of income and expenditure for the Academy during the Critical Year (the “**Projected Budget**”).

5.10 Both parties undertake to use their best endeavours to agree whether or not the cost of running the Academy during the Critical Year would cause the Academy Trust, on the basis of the Indicative Funding and All Other Resources,

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to become insolvent. Both parties recognise that they will need to engage in a constructive dialogue at the time about how best to provide education for the pupils at the Academy and undertake to use their best endeavours to agree a practical solution to the problem.

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

5.12 The Expert shall be required in reaching his determination to take account of advice from an educational specialist who is professionally familiar with the issues arising from the budget management of large schools. If the parties fail to agree upon the appointment of the educational specialist then the educational specialist shall be appointed by the Chairman for the time being of the Specialist Schools and Academies Trust. The educational specialist’s fees shall be borne equally between the parties.

5.13 If the Expert determines that the cost of running the Academy during the Critical Year would cause the Academy Trust, 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 Academy Trust 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.

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5.14 If the Academy Trust shall have given notice to terminate the Agreement under 0, the Secretary of State may by notice in writing to the Academy Trust require the Academy Trust to appoint up to two persons as directors of the Academy Trust in accordance with the Articles.

5.15. The Secretary of State may at any time by notice in writing terminate this Agreement forthwith if the Academy has ceased (except where such cessation occurs temporarily by reason of an event beyond the reasonable control of the Academy Trust) to operate as an Academy within the meaning of Section 1 of the Academies Act 2010.

5.16. A “Special Measures Termination Event Occurs” when:

5.16.1 the Chief Inspector gives a notice to the Academy Trust in accordance with section 13(3) of the Education Act 2005 (the “Special Measures Notice”) stating that in his opinion special measures are required to be taken in relation to the Academy; and

5.16.2 the Chief Inspector carries out a subsequent inspection of the Academy in accordance with the Education Act 2005 and makes a report in accordance with the Education Act 2005 stating that the Academy has made inadequate progress since the date of the Special Measures Notice; and

5.16.3 the Secretary of State shall have requested the Academy Trust to deliver within 10 Business Days a written statement (a “Further Action Statement”) of the action the Academy Trust proposes to take, and the period within which it proposes to take such action, or, if it does not propose to take any action, the reasons for not doing so; and

5.16.4 the Secretary of State, having considered the Further Action Statement, is not satisfied that any action proposed to be taken by the Academy Trust is sufficient in all the circumstances, or, if no Further Action Statement shall have been given to the Secretary of State within the requested timeframe or otherwise.

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

5.17.1 by notice in writing to the Academy Trust terminate this Agreement forthwith; or

5.17.2 subject to clause 102 of the Master Agreement, appoint such Further Trustees to the Academy Trust as he thinks fit in accordance with the Articles

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and/or may provide up to 12 months' notice in writing to terminate this Agreement.

5.18 In the event that the Secretary of State appoints Further Trustees in accordance with clause 5.17.2, the Academy Trust must, upon the request of the Secretary of State, procure the resignation of the Directors appointed in accordance with Article 46 of the Articles of Association.

**5 EFFECT OF TERMINATION**

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

6.2 Subject to clause 6.3, if the Secretary of State terminates this Agreement for reasons other than that a Special Measure Termination Event occurs, the Academy no longer has the characteristics set out in clause 12 of the Master Agreement (as amended by this Agreement), or is no longer meeting the conditions and requirements set out in clauses 13-59B of the Master Agreement (as amended by this Agreement) or that the Academy Trust is otherwise in material breach of the provisions of this Agreement or the Master Agreement, the Secretary of State shall indemnify the Academy Trust.

6.3 The amount of any such indemnity shall be determined by the Secretary of State having regard to any representations made to him by the Academy Trust, 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 Academy Trust in consequence of the termination of the Agreement in respect of which the Secretary of State shall indemnify the Academy Trust 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 Academy Trust shall in respect of any of its capital assets at the date of termination:

- (a) promptly transfer a proportion of the assets to a person nominated by the Secretary of State, if the Secretary of State considers that all or some of those assets need to be used for educational purposes by that nominee. The

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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 Academy Trust obtains his permission to invest the proceeds of sale for its charitable objects; or

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

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

## **LAND**

### **Restrictions on Land transfer**

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

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



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

- b) shall take any further steps required to ensure that the restriction referred to in clause 6A(a) is entered on the proprietorship register,
- c) shall provide the Secretary of State with confirmation of the entry of the restriction referred to in clause 6A(a) as soon as practicable after it receives notification from the Land Registry,
- d) in the event that it has not registered the restriction referred to in clause 6A(a), hereby consents to the entering of the restriction referred to in 6A(a) in the register by the Secretary of State (under s. 43(1)(b) of the Land Registration Act 2002),
- e) shall not, without the consent of the Secretary of State, apply to dis-apply, modify or remove (by cancellation or otherwise) a restriction entered in accordance with clause 6A(a) or 6A(d) above, whether by itself, a holding company, a subsidiary company, or a receiver, administrator or liquidator acting in the name of the Company.

**Repair and Upkeep**

6B) The Company shall keep the Land clean and tidy and make good any damage it causes to the Land and / or any deterioration to the condition of the Land that may arise from the date of this Agreement.

**Insurance**

6C) The Company shall:-

- a) keep the Land insured with a reputable insurance office against loss or damage by the Insured Risks in the sum the Company is advised represents the reinstatement value of the Land from time to time;
- b) pay the premiums for insurance promptly as they become due and maintain in force the policies of insurance on the Land;

## Multi Academy Model

### Mainstream

- c) following the incidence of damage to or destruction of the Land and subject to receipt of all necessary consents licences permissions and the like apply the proceeds of the policy of the insurance received for those purposes in rebuilding and reinstating the Land (provided that this clause should be satisfied if the Company provides premises not necessarily identical to the Land as the same existing prior to such damage or destruction occurring) as soon as may be reasonably practicable;
- d) produce to the Secretary of State a copy of the insurance policy whenever reasonably requested and the receipt for the last or other evidence of renewal and up to date details of the amount of cover (but no more often than once in any period of 12 months in both cases);
- e) 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.

### **Transfer of Land on Termination of Agreement**

- 6D) In recognition by the Company that they are or will be taking a transfer of publicly-funded land for nil consideration (which for the purposes of this transaction shall include leases granted at a peppercorn rent), the Company hereby grants and the Secretary of State hereby accepts an option, exercisable by the Secretary of State or his nominee, to transfer the said land pursuant to Schedule 1 to the Academies Act 2010. The option hereby granted shall be exercisable (by notice in writing by or on behalf of the Secretary of State) on the termination of this Funding Agreement for whatever cause. On the exercise of this option, the Law Society's Standard Conditions of Sale for Commercial Property in force at the date of such exercise shall apply to the transaction and completion shall take place 28 days after such exercise.
- 6E) In further recognition by the Company that they are or will be taking a transfer of publicly-funded land for nil consideration, (which for the purposes of this transaction shall include leases granted at a peppercorn rent), to protect the option granted under clause 6D, the Company:

## Multi Academy Model

### Mainstream

- a) shall, within 14 days from the transfer to it of the Land, apply to the Land Registry in Form AN1 as prescribed by Rule 81 of the Land Registration Rules 2003 for a notice to be entered in the register (under section 34(3)(a) of the Land Registration Act 2002) to protect the option granted under clause 6D 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 6E(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 6E(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 6E(a), hereby consents to the entering of the notice referred to in 6E(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 6E(a) or 6E(d) above, whether by itself, a holding company, a subsidiary company, or a receiver, administrator or liquidator acting in the name of the Company.
- f) in the case of previously unregistered land, for the further protection of the option granted in Clause 6D the Company shall within 14 days of the signing of this Agreement make application to register a Class C (iv) land charge in the Land Charges Registry and a Caution against First Registration in the Land Registry and shall provide the Secretary of State with copies of the entries secured thereby within 7 days of completing each registration, respectively. If the Secretary of State is of the view that the Company has failed to perform the registration obligations in this sub-clause he shall be at liberty to make his own applications to secure these registrations.

Multi Academy Model  
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**7 ANNEXES**

7.1 The Annexes to this Agreement form part of and are incorporated into this Agreement.

**8 THE MASTER AGREEMENT**

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

**9 ENGLISH LAW**

9.1 This Agreement shall be governed by and interpreted in accordance with English law.

Multi Academy Model  
Mainstream

This Agreement was executed as a Deed on 31 August 2012

Executed on behalf of The David Ross Education Trust by:

  
.....

**Director**

In the presence of:



Witness.....*Hannah Aubie*

Address.....*16 St John's Lane EC1M 4BJ*

Occupation.....*Solicitor*.....

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

  
.....

**Duly Authorised**

Multi Academy Model  
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**ANNEXES TO THIS SUPPLEMENTAL AGREEMENT**

Requirements for the Admission for pupils at the  
Academy      Annex 1

The procedure for the removal of the Academy's selective admission arrangements  
at the Academy      Annex 2

## Annex 1

### **REQUIREMENTS FOR THE ADMISSION OF PUPILS TO SKEGNESS GRAMMAR SCHOOL**

#### **GENERAL**

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

2A The Academy Trust is permitted to determine admission arrangements (subject to consultation in accordance with the School Admissions Code) that give priority for admission (but not above looked after children and previously looked after children<sup>1</sup>) to other children attracting the pupil premium, including the service premium (‘the pupil premium admission criterion’). Where an Academy Trust exercises this freedom it will provide information in its admission arrangements of eligibility for the premiums.

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

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

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

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

- (a) direct the Academy Trust to admit a named pupil to Skegness Grammar School on application from an LA. This will include

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<sup>1</sup> As defined in the School Admissions Code.

## Single Academy Model

complying with a School Attendance Order<sup>2</sup>. Before doing so the Secretary of State will consult the Academy Trust;

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

### 4A

Skegness Grammar School is a former maintained grammar school designated as such under section 104 of the School Standards and Framework Act 1998 and the Education (Grammar School Designation) Order 1998. As such it is permitted to continue to select its intake by reference to ability.

Annex 2 to the funding agreement will set out the procedures for removing selective arrangements.

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

### Relevant Area

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

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<sup>2</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 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.

<sup>3</sup> relevant children’ means:

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



## Single Academy Model

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

### **Requirement to admit pupils**

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

9. The Academy will:

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

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

10. The Academy admission arrangements will include oversubscription criteria, and an admission number for each relevant age group<sup>4</sup>. The Academy will consult on its admission arrangements and determine them in line with the requirements within the School Admissions Code.

11. The Office of the School's Adjudicator (OSA) will consider objections to the Academy's admission arrangements<sup>5</sup>. The Academy Trust should therefore make it clear, when determining the Academy's admission arrangements, that objections should be submitted to the OSA.

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

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

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

## Annex 2

### **Removal of selection at wholly selective Academies.**

1. This annex applies to any Academy which was designated as a grammar school under the Education (Grammar School Designation) Order 1998 – or subsequent designation orders made under section 104 of the School Standards and Framework Act 1998- prior to their entering into Academy arrangements with the Secretary of State under section 1 of the Academies Act 2010.

#### **Proposals by the Company to remove selection**

2. Where a Company for a wholly selective Academy wishes to remove the Academy's selective admission arrangements they will follow the process set out below.

3. The Company will ballot all parents of registered pupils at the school on the question 'are you in favour of the Academy removing selection by ability and introducing admission arrangements which admit children of all abilities?'

4. If a simple majority of parents vote to remove selection, the Academy will determine admission arrangements that do not provide for selection by ability.

5. The ballot must allow parents a minimum of five weeks within which to vote. The ballot must be initiated prior to 25 January and the ballot result must be declared by 1 March in the determination year<sup>1</sup>.

6. If a ballot is in favour of the removal of selection, non selective admission arrangements must be determined by 15 April in the determination year.

7. If a ballot does not vote in favour of the removal of selection the Company must retain the Academy's selective admission arrangements.

#### **Parental Ballots to remove selection.**

8. There are three ways of removing selection at wholly selective Academies via a parental ballot.

9. The arrangements are changed as result of a whole area ballot<sup>2</sup>, ("area ballot"), the Academy in question is subject to a stand alone ballot<sup>3</sup> or

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<sup>1</sup> A 'determination year' is the Academy Financial Year beginning two years before the Academy Financial Year which the admissions arrangements will be for e.g. consultation to end in March 2011 and determination to be in April 2011 for admissions in September 2012

<sup>2</sup> A "whole area ballot" has the same meaning as an "area ballot" (as defined by regulation 11(2) of the Ballot Regulations: a ballot which relates to all grammar schools within a relevant area.)

<sup>3</sup> A "stand alone ballot" is a ballot which relates to a stand alone grammar school as defined in

## Annex to Supplemental Funding Agreement

where the school is subject to a group ballot<sup>4</sup>.

10. The moratorium period set out in regulation 16 of the Ballots Regulations will apply. That is, where the result of a ballot is that the grammar schools in a selective area, or the Academy in a stand-alone ballot to which the ballot relates should retain selective admission arrangements, no further ballot shall be held or petition raised within the period of 5 years from the ballot result date. This moratorium does not apply to the procedures in paragraphs 2-7 of this annex.

11. Skegness Grammar School is subject to the result of a whole-area ballot concerning the grammar schools in Lincolnshire.

### **Academies subject to the result of whole area ballots.**

12. Where the Academy is located within the local authority areas set out under regulation 2(1) and schedule 1 to the Ballots Regulations (Bexley, Buckinghamshire, Kent, Lincolnshire, Medway, Slough, Southend, Torbay, Trafford or Sutton and Nonsuch Ward) and would thus, prior to becoming an Academy, have been subject to any ballot on selective admission arrangements in that area, if there is a ballot of parents, under the provisions of the Ballot Regulations, within those areas, the Academy must abide by the result of the ballot .

13. Where the result of the whole area ballot is to remove selection, the Academy will determine non-selective admission arrangements by the date set out in paragraph 14 of this Annex. If the ballot does not vote in favour of removal of selection the Company must retain the Academy's selective admission arrangements.

### **Implementation of decision that an Academy should cease to have selective admission arrangements**

14. In the case of a successful ballot, the Company will secure that their admission arrangements are revised so that the Academy no longer has selective admission arrangements.

- a. where the ballot result date is on or before 31st December in any school year – or where the Secretary of State has chosen not to declare a ballot void -, it will determine non selective admission arrangements by the date in paragraph 6 of this annex; and
- b. where the ballot result date is after 31st December in any school year, it will determine non selective admission arrangements in the following determination year, by the 15 April

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regulation 11(1)(c) of the Ballots Regulations.

<sup>4</sup> A 'group ballot' is a ballot which relates to a prescribed group of schools as set out in Schedule 2 to the Education (Grammar School Ballots) Regulations 1998