

**DATED**

**2013**

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

**(2) OASIS COMMUNITY LEARNING**

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**AMENDMENT AND RESTATEMENT AGREEMENT**

Re: Funding Arrangements for Academies and Free Schools  
operated by Oasis Community Learning

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Stone King LLP  
16 St John's Lane  
London EC1M 4BS

GRD/108045/0004  
14 November 2013

**BETWEEN:-**

- (1) **THE SECRETARY OF STATE FOR EDUCATION** of Sanctuary Buildings, Great Smith Street, Westminster, London, SW1P 3BT ("the Secretary of State" which expression shall include successors of the Secretary of State);
- (2) **OASIS COMMUNITY LEARNING** a company limited by guarantee and registered in England under number 5398529 whose registered office is at 75 Westminster Bridge Road, London SE1 7HS ("the Company")

**WHEREAS:**

- (A) This agreement is supplemental to and amends a master funding agreement dated 15 March 2007 made between the Secretary of State for Education and Skills ("the Previous Secretary of State") and the Company ("the Original Master Agreement" which expression shall refer to that agreement as amended prior to the date of this agreement) and a further Master Funding Agreement dated 7 March 2013 made between the Secretary of State and the Company ("the Further Master Agreement") and the agreements supplemental to the Original Master Agreement and the Further Master Agreement particulars of which are set out in schedule 1 to this agreement ("the Original Supplemental Agreements");
- (B) By virtue of the orders particulars of which are set out in schedule 2 to this agreement the functions of the Previous Secretary of State are now vested in and to be performed by the Secretary of State;
- (C) The parties have agreed to amend and re-state the Original Master Agreement and the Further Master Agreement and to amend the Original Supplemental Agreements on the terms set out in this agreement.

**IT IS HEREBY AGREED** as follows:-

**1 DEFINITIONS AND CONSTRUCTION**

- 1.1 Words and expressions defined in the Original Master Agreement (as amended and re-stated by this agreement) and where applicable the Original Supplemental Agreements (as amended by this agreement) shall have the same meanings in this agreement other than Schedule 3 unless they are expressly defined in it and, in addition, in this agreement;

**"Effective date"** means 1 September, 2013; and

**"Parties"** means the parties to this agreement.

- 1.2 The principles of construction set out in clauses 7 and 8 of the Original Master Agreement (but not to schedule 3) will apply to this agreement, insofar as they are relevant to it, as they apply to the Original Master Agreement.
- 1.3 The Parties do not intend that any term of this agreement or any supplemental agreements entered into pursuant to this agreement or of the Original Master Agreement, the Further Master Agreement or any of the Original Supplemental Agreements shall be enforceable solely by virtue of the Contracts (Rights of Third Parties) Act 1999 by any person who is not a party to this agreement.
- 1.4 The schedules, appendices and annexes to this agreement form part of and are incorporated into this agreement.

## **2 AMENDMENT AND RESTATEMENT OF ORIGINAL MASTER AGREEMENT AND FURTHER MASTER AGREEMENT**

With effect from and on the Effective Date the Original Master Agreement and the Further Master Agreement shall be amended and restated in the form set out in schedule 3 to this agreement.

## **3 AMENDMENT OF ORIGINAL SUPPLEMENTAL AGREEMENTS**

With effect from and on the Effective Date the Original Supplemental Agreements shall be amended and restated in the manner set out in schedule 4 to this agreement.

## **4 ORIGINAL MASTER AGREEMENT, FURTHER MASTER AGREEMENT AND ORIGINAL SUPPLEMENTAL AGREEMENTS**

- 4.1 The provisions of the Original Master Agreement, the Further Master Agreement and the Original Supplemental Agreements shall up until the Effective Date continue in full force and effect.
- 4.2 Notwithstanding clauses 2 and 3 of this agreement the provisions of clauses 43 to 57 of the Original Master Agreement and the clause 3 in the Original Supplemental Agreements relating to Capital Expenditure shall in connection with the Academies referred to in the Original Supplemental Agreements numbered 1 to 8, 10 and 12 in Schedule 1 of this Agreement continue in full force and effect both before and after the Effective Date.

## **5 ENGLISH LAW**

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

## **SCHEDULE 1**

### **THE ORIGINAL SUPPLEMENTAL AGREEMENTS**

1. Dated 15th March 2007 between (1) The Secretary of State for Education and Skills and (2) the Company relating to Oasis Academy Immingham.
2. Dated 15th March 2007 between (1) The Secretary of State for Education and Skills and (2) the Company relating to the Oasis Academy Enfield.
3. Dated 15th March 2007 between (1) The Secretary of State for Education and Skills and (2) the Company relating to the Oasis Academy Wintringham.
4. Dated 21st December 2007 between (1) The Secretary of State for Education and Skills and (2) the Company relating to Oasis Academy Bristol (now called Oasis Academy John Williams).
5. Dated 21st August 2008 between (1) The Secretary of State for Children, Schools and Families and (2) the Company relating to Oasis Academy Mediacity-UK.
6. Dated 21st August 2008 between (1) The Secretary of State for Children, Schools and Families and (2) the Company relating to Oasis Academy Lords Hill.
7. Dated 21st August 2008 between (1) The Secretary of State for Children, Schools and Families and (2) the Company relating to Oasis Academy Mayfield.
8. Dated 21st August 2008 between (1) The Secretary of State for Children, Schools and Families and (2) the Company relating to Oasis Academy Coulsdon.
9. Dated 29th August 2008 between (1) The Secretary of State for Children, Schools and Families and (2) the Company relating to Oasis Academy Brightstowe.
10. Dated 20th August 2009 between (1) The Secretary of State for Children, Schools and Families and (2) the Company relating to Oasis Academy Hadley.
11. Dated 1<sup>st</sup> September 2009 between (1) The Secretary of State for Children, Schools and Families and (2) the Company relating to Oasis Academy Shirley Park.
12. Undated between (1) The Secretary of State for Education and Skills and (2) the Company relating to Oasis Academy Oldham.
13. Dated 1st September 2011 between (1) The Secretary of State for Education and (2) the Company relating to Johanna Primary, Oasis Academy Waterloo.
14. Dated 1<sup>st</sup> September 2011 between (1) The Secretary of State for Education and (2) the Company relating to Oasis Academy Limeside.
15. Dated 30<sup>th</sup> August 2012 between (1) The Secretary of State for Education and (2)

- the Company relating to Oasis Academy Nunsthorpe
16. Dated 31<sup>st</sup> August 2012 between (1) The Secretary of State for Education and (2) the Company relating to Oasis Academy Bank Leaze.
  17. Dated 31<sup>st</sup> August 2012 between (1) The Secretary of State for Education and (2) the Company relating to Oasis Academy Byron.
  18. Dated 31<sup>st</sup> August 2012 between (1) The Secretary of State for Education and (2) the Company relating to Oasis Academy Connaught.
  19. Dated 31<sup>st</sup> August 2012 between (1) The Secretary of State for Education (2) the Company relating to Oasis Academy New Oak.
  20. Dated 30<sup>th</sup> November 2012 between (1) The Secretary of State for Education and (2) the Company relating to Oasis Academy Henderson Avenue.
  21. Dated 30<sup>th</sup> November 2012 between (1) The Secretary of State for Education and (2) the Company relating to Oasis Academy Parkwood.
  22. Dated 14<sup>th</sup> December 2012 between (1) The Secretary of State for Education and (2) the Company relating to Oasis Academy Harpur Mount.
  23. Dated 31<sup>st</sup> January 2013 between (1) The Secretary of State for Education and (2) the Company relating to Oasis Academy Blakenhale Junior.
  24. Dated 31<sup>st</sup> January 2013 between (1) The Secretary of State for Education (2) the Company relating to Oasis Academy Woodview.
  25. Dated 1<sup>st</sup> February 2013 between (1) The Secretary of State for Education and (2) the Company relating to Oasis Academy Blakenhale Infants.
  26. Dated 1<sup>st</sup> February 2013 between (1) The Secretary of State for Education and (2) the Company relating to Oasis Academy Short Heath.
  27. Dated 13<sup>th</sup> March 2013 between (1) The Secretary of State for Education and (2) the Company relating to Oasis Academy Southbank.
  28. Dated 22<sup>nd</sup> March 2013 between (1) The Secretary of State for Education and (2) the Company relating to Oasis Academy Longmeadow.
  29. Dated 26<sup>th</sup> March 2013 between (1) The Secretary of State for Education and (2) the Company relating to Oasis Academy Boulton.
  30. Dated 23<sup>rd</sup> August 2013 between (1) The Secretary of State for Education and (2) the Company relating to Oasis Academy Lister Park.
  31. Dated 23<sup>rd</sup> August 2013 between (1) The Secretary of State for Education and (2)

the Company relating to Oasis Academy Hobmoor.

32. Dated 27<sup>th</sup> August 2013 between (1) The Secretary of State for Education and (2) the Company relating to Oasis Academy Skinner Street.
33. Dated 29 August 2013 between (1) The Secretary of State for Education and (2) the Company relating to Oasis Academy Aspinal.
34. Dated 30<sup>th</sup> August 2013 between (1) The Secretary of State for Education and (2) the Company relating to Oasis Academy Hextable.
35. Dated 23<sup>rd</sup> September 2013 between (1) The Secretary of State for Education and (2) the Company relating to Oasis Academy Pinewood.
36. Dated 26<sup>th</sup> September 2013 between (1) The Secretary of State for Education and (2) the Company relating to Oasis Academy Warndon.

## **SCHEDULE 2**

### **ORDERS TRANSFERRING THE FUNCTIONS OF THE PREVIOUS SECRETARY OF STATE TO THE SECRETARY OF STATE**

Secretaries of State for Children, Schools and Families, for Innovation, Universities and Skills and for Business, Enterprise and Regulatory Reform Order 2007

The Secretary of State for Business Innovation and Skills Order 2009

The Secretary of State for Education Order 2010

**SCHEDULE 3**  
**AMENDED AND RESTATED MASTER FUNDING AGREEMENT**

**OASIS COMMUNITY LEARNING**  
**ACADEMIES**  
**MASTER FUNDING AGREEMENT**  
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## **INTRODUCTION**

- 1) This Agreement is made under Section 1 of the Academies Act 2010, between **THE SECRETARY OF STATE FOR EDUCATION** ("the Secretary of State" which expression shall include successors of the Secretary of State) and **OASIS COMMUNITY LEARNING** (the "Company").
- 2) The Company is a company incorporated in England and Wales, limited by guarantee with registered Company number 5398529.
- 3) The Company intends to establish and maintain, and to carry on or provide for the carrying on of a number of Academies in accordance with this Agreement and the Supplemental Agreements.
- 4) This Agreement and the Supplemental Agreements will apply in respect of an Academy from such time as a Supplemental Agreement relating to that Academy shall have been entered into between the Secretary of State and the Company.
- 5) The following expressions used in this Agreement have the respective meanings assigned to them by the numbered clauses of this Agreement referred to immediately after the reference to the expressions -
  - a) "Academies Financial Handbook" - clause 67;
  - b) "Accounting Officer" - clause 66;
  - c) "Annual Letter of Funding" - clause 60;
  - d) "GAG" - clause 36;
  - e) "Capital Expenditure" - clause 37;
  - f) "Capital Grant" - clause 37;
  - g) "EAG" - clause 36;
  - h) "Recurrent Expenditure" - clause 36;
- 6) In this Agreement the following words and expressions shall have the following meanings:-

"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 Company;

"Academy" means a Mainstream Academy, an Alternative Provision Academy or a Special Academy in respect of which a Supplemental Agreement shall have been entered into between the Secretary of State (or a predecessor of the Secretary of

State) and the Company and the expression "Academies" shall refer to all or any of such Academies;

"admission requirements" are annexed to the relevant Supplemental Agreement;

"Alternative Provision Free School" means an Academy which is a Free School and which meets the requirements set out in section 1C of the Academies Act 2010;

"Alternative Provision Academy" means an Academy which meets the requirements set out in section 1C of the Academies Act 2010 or where the context so permits an Alternative Provision Free School;

the "Articles" means the Articles of Association of the Company for the time being in force;

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

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

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

"Commissioner" means local authorities and/or schools referring children/pupils to the Alternative Provision Academy for admission under the legal powers set out in the relevant annex to the Supplemental Agreement;

"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') 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; or
- (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 directors thereof, or
- (c) by virtue of any agreement, understanding or arrangement between any person or persons,

(d) that the affairs of the Entity are conducted in accordance with the wishes of A and 'Controls' shall be construed accordingly;

"DfE" means Department for Education and any successor;

"Existing Academy" means an Academy whose current name is listed in Schedule A Parts 1 or 2;

"Free School" means an academy designated as a Free School in the Supplemental Agreement applicable to that academy;

"Further Master Agreement" means the agreement dated 7 March 2013 made between (1) the Secretary of State and (2) the Company which is amended and restated by this Agreement;

"LA" means the Local Authority in the area in which the relevant Academy is situated;

"Local Governing Body" means a committee of the Board of Directors of the Company to which certain powers and functions in relation to the operation of an Academy shall have been delegated by the board of directors of the Company;

"Mainstream Academy" means an Academy meeting the requirements referred to in clause 12 or where the context so permits a Mainstream Free School, a Studio School and a 16-19 Free School;

"Mainstream Free School" means an Academy which is a Free School and which meets the requirements set out in section 1A of the Academies Act 2010;

"Memorandum" means the memorandum of association of the Company for the time being in force;

"Original Master Agreement" means the agreement dated 15 March 2007 made between (1) the Secretary of State for Education and Skills and (2) the Company which is amended and restated by this Agreement;

"Original Supplemental Agreements" means the Supplemental Agreements relating to the Existing Academies entered into pursuant to the Original Master Agreement or the Further Master Agreement;

"parents" means parents or guardians;

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

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

"Principal" means the head teacher of an Academy;

“Principal Regulator” means the body or person appointed as the Principal Regulator of the Company under the Charities Act 2011;

“Pupil Referral Unit” means any school established in England and maintained by a local authority which is specially organised to provide education for children falling within section 19(1) of the Education Act 1996;

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

“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;

“SENCO” means Special Educational Needs Co-ordinator;

“Special Academy” means an Academy specially organised to make special educational provision for pupils with SEN or where the context so permits a Special Free School;

“Special Free School” means an Academy which is a Free School and which is specially organised to make special educational provision for pupils with SEN;

“Sponsored Academy” means each Existing Academy which is designated as a Sponsored Academy in the Supplemental Agreement applicable to that Academy;

“Start-Up Period” means in relation to a Mainstream Academy the period specified in clause 50 (a) and in relation to a Special Academy the period specified in the Annual Letter of funding referred to in clause 54E;

“Statement of SEN” means a statement made under section 324 of the Education Act 1996; and

“Studio School” means a Mainstream Academy principally for pupils and students aged between 14 and 19, which places an emphasis on such pupils and students obtaining employability skills through project based learning;

“Supplemental Agreement” means an agreement substantially in the form set out in the relevant appendix to this Agreement supplemental to this Agreement pursuant to which the Company agrees to establish and maintain, and to carry on or provide for the carrying on, and the Secretary of State agrees to fund, an Academy in accordance with the terms and conditions of that Supplemental Agreement and this Agreement;

“Transitional Academy” means an Academy listed in Schedule A Part 1;

"Transitional Period" means the period commencing on the date upon which the amendment to the Original Master Agreement becomes effective and ending on 31 August 2016;

"16 to 19" Free School" means an Academy which is a Free School which meets the requirements set out in section 1B of the Academies Act 2010.

- 7) The Interpretation Act 1978 shall apply for the interpretation of this Agreement and any Supplemental Agreement as it applies for the interpretation of an Act of Parliament. Any reference to a particular statute, statutory provision or subordinate legislation is a reference to it as it is in force from time to time taking account of any amendment or re-enactment and includes any statute, statutory provision or subordinate legislation which it amends or re-enacts and subordinate legislation for the time being in force under it;
- 8) Expressions defined in this Agreement shall have the same meaning where used in any Annex to this Agreement or Supplemental Agreement. References to clauses, schedules, appendices and annexes are to clauses, schedules, appendices and annexes of this Agreement.
- 9) Questions arising on the interpretation of the arrangements in this Agreement shall be resolved by the Secretary of State after consultation with the Company.
- 10) Section 1 (3) of the Academies Act 2010 states that -
  - "(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."

## **LEGAL AGREEMENT**

- 11) In consideration of the Company undertaking to establish and maintain, and to carry on or provide for the carrying on of a number of independent schools in England specially organised to make special educational provision for pupils with SEN or meeting the requirements referred to in clause 12, or meeting such requirements as referred to in clause 12B, the Secretary of State agrees to make payments to the Company in accordance with the conditions and requirements set out in this Agreement and Supplemental Agreements. If it is agreed between the Secretary of State and the Company that the Company will establish and maintain, and to carry on or provide for the carrying on of an Academy, the parties will enter into a Supplemental Agreement in relation to that Academy. For

the avoidance of doubt, any obligations imposed upon or rights or powers given to an Academy by this Agreement or a Supplemental Agreement shall be imposed upon and may be enforced by the Company.

### **REQUIREMENTS OF A MAINSTREAM ACADEMY**

- 12) The requirements of a Mainstream Academy which is not a 16-19 Free School are those set down in Section 1A of the Academies Act 2010<sup>1</sup>.

### **THE SEN OBLIGATIONS**

- 12A) In respect of **Special Academies**:

- (a) The Company must comply with all of the obligations imposed upon the governing bodies of maintained special schools in Chapter 1 of Part 4 of the Education Act 1996 and in regulations in force at the date of this agreement or made from time to time under any provision in that Chapter (as amended from time to time<sup>2</sup>).
- (b) Notwithstanding any provision in this Agreement, the Secretary of State may (whether following a complaint made to him or otherwise) direct the Company to comply with an obligation imposed by this Agreement where the Company has failed to comply with any such obligation.
- (c) The Company must ensure that each Academy's website includes details of the arrangements for the admission of disabled pupils; the steps taken to prevent disabled pupils from being treated less favourably than other pupils; the facilities provided to assist access to the Academy by disabled pupils; and the plan prepared by the Company under paragraph 3 of Schedule 10 to the Equality Act 2010. Disabled pupils in this paragraph mean pupils who are disabled for the purposes of the Equality Act 2010<sup>3</sup>.

### **ALTERNATIVE PROVISION ACADEMY REQUIREMENTS**

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<sup>1</sup> Any Supplemental Funding Agreement entered into in relation to an Academy which is a "selective school" within the meaning of Section 6(4) of the Academies Act 2010 will clarify that section 1A(1)(c) (requirement to provide education for pupils of different abilities) will not apply.

<sup>2</sup> Currently these duties are in section 313 (Duty to have regard to the Special Educational Needs Code of Practice 2001); section 317(5), (6) and (6A) (Duties in relation to the publication of information relating to arrangements and facilities for disabled pupils at the school); and 324(5)(b) (Duty to admit the child where a school is named in the statement); and the Education (Special Educational Needs)(Information)(England) Regulations 1999 (S.I. 1999/2506). For the avoidance of doubt, the obligations in clause 12A of this agreement are in addition to any obligations imposed upon Academy proprietors directly in legislation or regulations.

<sup>3</sup> This obligation is in addition to the obligation to comply with the duties to publish information imposed upon the governing bodies of maintained special schools set out in the Education (Special Educational Needs) (Information) Regulations 1999 (as amended from time to time) which clause 12A has the effect of imposing.

12B) The Alternative Provision Academy requirements are those set down in Section 1C of the Academies Act 2010.

### **FREE SCHOOLS**

12C) The provisions contained in Schedule B Part 1 to this Agreement shall apply to Free Schools.

### **16-19 FREE SCHOOLS**

12D) The requirements of a 16-19 Free School are those set out in Section 1B of the Academies Act 2010.

### **CONDITIONS OF GRANT**

#### **General**

- 13) Other conditions and requirements in respect of an Academy, unless specified otherwise in a Supplemental Agreement, are that:
- (a) the school will be at the heart of its community, promoting community cohesion and sharing facilities with other schools and the wider community;
  - (b) there will be assessments of pupils' performance as they apply to maintained schools (this will also apply to Alternative Provision Academies unless there are exceptional reasons to do otherwise), and the opportunity to study for qualifications in accordance with clause 30 (d);
  - (c) in respect of Mainstream Academies, the admissions policy and arrangements for the school will be in accordance with admissions law, and the DfE Codes of Practice, as they apply to maintained schools, and in respect of Alternative Provision Academies the admissions policy and arrangements for the school will be set out in the relevant annex to the Supplemental Agreement;
  - (d) teachers' levels of pay and conditions of service will be the responsibility of the Company;
  - (e) there will be an emphasis on the needs of the individual pupils including pupils with SEN, both those with and without statements of SEN;
  - (f) there will be no charge to pupils (or their parents or guardians) in respect of admission to, or attendance at, the school and the school will only charge pupils where the law allows maintained schools to charge;
  - (g) the Company shall as soon as reasonably practicable establish an appropriate mechanism for the receipt and management of donations and

shall use reasonable endeavours to procure donations through that mechanism for the purpose of the objects specified in the Articles.

- 13A) Clause 13(f) does not prevent the Company receiving funds from a local authority or a charity in respect of the admission of a pupil with special educational needs to an Academy.
- 13B) Clause 13 (f) does not prevent the Company receiving funds/income from Commissioners in respect of the admission and attendance of a pupil at an Alternative Provision Academy.

### **Governance**

- 14) Each Academy will be governed by the Company. The Company shall have regard to (but for the avoidance of doubt shall not be bound by) any guidance as to the governance of Academies that the Secretary of State may publish.
- 15) The Company shall establish, for each Academy, an Advisory Body, whose role shall be to provide advice to the Company in relation to the functioning of that Academy. The role of the Advisory Body and the membership of it shall be for the Company to decide, but the Company will, as a minimum, ensure that any advice of the Advisory Body is brought to the attention of the Directors of the Company. If the Company shall have established a Local Governing Body, the Academy's Local Governing Body shall be treated as the Advisory Body for that Academy.

### **Conduct**

- 16) Each Academy shall be operated in accordance with:
  - (a) the Articles;
  - (b) all provisions by or under statute which confer rights or impose obligations on proprietors of Academies including, without limitation, the independent schools standards prescribed under section 157 of the Education Act 2002 to the extent they apply to the Academy;
  - (c) the terms of this Agreement and the relevant Supplemental Agreement.

### **Disclosure and Barring Service Checks**

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

Directors and the Chair of any Local Governing Body.

- 17A) The Company shall, on receipt of a copy of an enhanced criminal record certificate, on request from the Secretary of State or his agents, as soon as possible thereafter submit information contained in the certificate to the Secretary of State in accordance with section 124 of the Police Act 1997.

## **Pupils**

- 18) Each Mainstream Academy will (unless otherwise specified in the relevant Supplemental Agreement) be an all ability inclusive<sup>4</sup> school whose requirements for:

- (a) the admission of pupils to the Academy are set out in the relevant annex to the Supplemental Agreement;
- (b) the admission to the Academy of and support for pupils with SEN and with disabilities (for pupils who have and who do not have statements of SEN) are set out in Annex B to this Agreement;
- (c) pupil exclusions are set out in regulations made by virtue of section 51A of the Education Act 2002.

- 18AAA) Each Special Academy will be a special school whose requirements for:

- (a) the admission of pupils to the Academy are set out in the relevant annex to the Supplemental Agreement;
- (b) pupil exclusions are set out in regulations made by virtue of section 51A of the Education Act 2002.

- 18AA) Each Alternative Provision Academy will provide education for the cohort of pupils whose characteristics are set out in the requirements at section 1C of the Academies Act 2010 and whose requirements for:

- (a) the admission of pupils to the Alternative Provision Academy are set out in the relevant annex to the Supplemental Agreement;
- (b) the admission to the Alternative Provision Academy of and support for pupils with SEN and with disabilities (for pupils who have and who do not have statements of SEN) are set out in Annex B to this Agreement;

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<sup>4</sup> If one of the Mainstream Academies is a “selective school” within the meaning of Section 6(4) of the Academies Act 2010 then the Supplemental Funding Agreement for that Academy will provide that that Academy is not required to be an all ability inclusive school.

- (c) 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 provision(s)).

### **Designated Teacher for Looked after Children**

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

### **Teachers and other staff**

- 19) In respect of Mainstream and Alternative Provision Academies:
  - (a) subject to clause 19(b), the Company shall, in accordance with any guidance which the Secretary of State may issue on the qualifications of teaching and other staff in Academies, employ anyone it deems is suitably qualified or is otherwise eligible under a contract of employment or for services to carry out planning and preparing lessons and courses for pupils, delivering lessons to pupils, assessing the development, progress and attainment of pupils, and reporting on the development, progress and attainment of pupils.
  - (b) clause 19(a) does not apply to anyone who:
    - i) is appointed as the SENCO by the Company under section 317(3A) of the Education Act 1996, who must meet the requirements set out in Regulation 3 of the Education (Special Educational Needs Co-ordinators) (England) Regulations 2008 (SI 2008/2945); or
    - ii) is appointed as a designated teacher for looked after children further to clause 18A.
- 20) In respect of Special Academies, subject to clause 20A, the Company shall not employ anyone under a contract of employment or for services to carry out planning and preparing lessons and courses for pupils, delivering lessons to pupils, assessing the development, progress and attainment of pupils, and

reporting on the development, progress and attainment of pupils ("specified work") who is not either:-

- (a) a qualified teacher within the meaning of regulations made under section 132 of the Education Act 2002; or
- (b) otherwise eligible to do specified work under the Education (Specified Work) (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.

20A) Clause 20 does not apply to anyone who:

- (a) was transferred to the employment of the Company by virtue of the Transfer of Undertakings (Protection of Employment) Regulations 2006; and
- (b) immediately prior to the transfer, was employed to do specified work; and
- (c) immediately prior to the transfer, was not;
  - i) a qualified teacher within the meaning of regulations made under section 132 of the Education Act 2002 and registered with full registration with the appropriate body, or
  - ii) eligible to do specified work under the Education (Specified Work) (England) Regulations 2012 (SI 2012/762)

(a "transferred staff member"). The Company shall use its best endeavours to ensure that any transferred staff member who undertakes specified work and does not meet the requirements of either clause 20(a) or clause 20(b) meets such requirements as soon as possible.

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

22) The Company shall ensure that all employees at each Academy other than teachers ("non teaching staff") have access to the Local Government Pension Scheme in accordance with the Local Government Pension Scheme (Administration) Regulations 2008 (SI 2008/239) where the said Regulations require this, or, in relation to each Academy and Free School, such other pension benefits as such Regulations required for non teaching staff.

22A) Where a teacher employed at an Academy applies for a teaching post at another academy, 16 to 19 academy, maintained school, school maintained by a local

authority or institution within the further education sector, the Company must at the request of the governing body or proprietor of that other educational institution:

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

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

- 23) The curriculum provided by each Academy to pupils up to the age of 16 shall be broad and balanced.
- 23A) Not used.
- 23B) The Company shall publish information in relation to the current curriculum provision at each Academy. Such information shall include details relating to:
  - (a) the content of the curriculum;
  - (b) its approach to the curriculum;
  - (c) the GCSE options (and other Key Stage 4 qualifications) or other future qualifications, as specified by the Secretary of State, offered by each Academy;
  - (d) the names of any phonics or reading schemes in operation for Key Stage 1; and
  - (e) how parents (including prospective parents) and Commissioners can obtain further information in relation to the curriculum at each Academy.
- 23C) Subject to the requirements of clauses 23, 23B and 24 to 29A, the curriculum will be the responsibility of the Company.
- 24) In respect of Mainstream and Special Academies, the Company shall ensure that the broad and balanced curriculum includes English, mathematics and science, and in respect of Alternative Provision Academies shall ensure that the broad and balanced curriculum includes English and mathematics.
- 24A) 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 each Academy with the following modifications:

- (a) each Academy shall be treated as falling within the meaning of “a school” under section 42A(2);
  - (b) the Company shall be deemed to be the “responsible authorities” for the purposes of subsection 42A(3); and
  - (c) references to registered pupils shall be treated as references to registered pupils at the Academy.
- 25) The Company shall make provision for the teaching of religious education and for a daily act of collective worship at each Mainstream Academy.
- 25A) The Company shall not in any Free School make provision in the context of any subject for the teaching, as an evidence-based view or theory, of any view or theory that is contrary to established scientific and/or historical evidence and explanations.
- 25B) The Company shall in each Free School make provision for the teaching of evolution as a comprehensive, coherent and extensively evidenced theory.
- 26) Where a Mainstream Academy is designated with a religious character<sup>5</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 28, 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 Company shall ensure that provision is made for religious education to be given to all pupils at the Academy in accordance with the tenets of the specified religion or religious denomination of the Academy;
  - (b) subject to clause 28, the Company shall comply with the requirements of section 70(1) of, and Schedule 20 to, the School Standards and Framework Act 1998 as if the Academy were a foundation school with a religious character or a voluntary school, and as if references to 'the required collective worship' were references to collective worship in accordance with the tenets and practices of the specified religion or religious denomination of the Academy;
  - (c) the Company shall ensure that the quality of religious education given to pupils at the Academy and the contents of the Academy’s collective worship given in accordance with the tenets and practice of the specific

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<sup>5</sup> Alternative provisions are available and would be potentially appropriate for non-denominational faith schools.

religion or religious denomination are inspected. Such inspection shall be conducted by a person chosen by the Company and the Academy shall secure that such inspection shall comply with the requirements set out in any statutory provision and regulations as if the Academy were a foundation or voluntary school which has been designated under section 69(3) of the School Standards and Framework Act 1998 as having a religious character.

- 27) Where a Mainstream 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 28, the Company shall ensure that provision shall be made for religious education to be given to all pupils at the Academy in accordance with the requirements for agreed syllabuses in section 375(3) of the Education Act 1996 and paragraph 2(5) of Schedule 19 to the School Standards and Framework Act 1998;
  - (b) subject to clause 28, the Company 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;
  - (c) the Company<sup>6</sup>:
    - (1) agrees that before making an application pursuant to the Religious Character of Schools (Designation Procedure) (Independent Schools) (England) Regulations 2003 for each Academy to be designated as a school with religious character it shall seek the prior written consent of the Secretary of State<sup>7</sup>;
    - (2) hereby acknowledges that the Secretary of State may in his absolute discretion refuse or consent to the Company making such an application.

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<sup>6</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.

<sup>7</sup> The Company must undertake consultation on the proposal for designation prior to seeking the Secretary of State's consent.

- 27AAA) Where a Mainstream Academy is listed in the Register of Independent Schools as having a religious ethos, but 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, paragraph 5(b) of Schedule 11 of the Equality Act 2010 shall not apply to the Academy.
- 27AA) The Company may make provision for the teaching of religious education and for a daily act of collective worship at each Alternative Provision Academy.
- 27A) Where an Alternative Provision Academy does (at its discretion in accordance with clause 27AA) make provision for the teaching of religious education and/or for a daily act of collective worship at the Alternative Provision Academy then:
- (a) subject to clause 28, the Company shall ensure that any such provision shall be made for religious education to be given to all pupils at the Alternative Provision 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 28, the Company shall ensure that the Alternative Provision 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 Alternative Provision 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.
- 28) Section 71(1) – (6) and (8) of the School Standards and Framework Act 1998 shall apply as if each Academy were a community, foundation or voluntary school, and as if references to "religious education" and to "religious worship" in that section were references to the religious education and religious worship provided by each Academy in accordance with clauses 26 or 27 as appropriate.
- 28A) The Company shall, so far as practical, make provision for the teaching of religious education and for acts of collective worship at each Special Academy.
- 28B) In respect of religious education and collective worship at Special Academies:

- (a) subject to clause 28B(c), the Company shall ensure that provision shall be made for religious education to be given to all pupils at the Academy in accordance with the requirements for agreed syllabuses in section 375(3) of the Education Act 1996 and paragraph 2(5) of Schedule 19 to the School Standards and Framework Act 1998;
  - (b) The Company shall ensure that each Special Academy complies with the requirements of regulation 5A of the Education (Special Educational Needs) (England) (Consolidation) Regulations 2001 as if it were a maintained special school;
  - (c) Regulation 5A of the Education (Special Educational Needs) (England) (Consolidation) Regulations 2001 shall apply as if the Academy were a community or foundation special 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 this clause.
- 28C) Where a Special Academy is listed in the Register of Independent Schools as having a religious ethos, paragraph 5(b) of Schedule 11 of the Equality Act 2010 shall not apply to the Academy.
- 29) The Company 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 each Academy are protected from inappropriate teaching materials and they learn the nature of marriage and its importance for family life and for bringing up children. The Company shall also have regard to the requirements set out in section 405 of the Education Act 1996 which shall apply to each Academy as if it were a maintained school.
- 29A) The Company 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 each Academy;
  - (b) references to registered pupils shall be treated as references to registered pupils at each Academy;
  - (c) references to the governing body or the local authority shall, in each case, be treated as references to the Company; and

- (d) references to the head teacher shall, in each case, be treated as references to the Principal of each Academy<sup>8</sup>.

## **Assessment**

- 30) The Secretary of State will, if he has not already done so, notify the appropriate body for assessment purposes about each Academy.
  - (a) The Company shall ensure that each Mainstream Academy and each Special 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 pupils' performance as they apply to maintained schools; and the Company shall also do so for each Alternative Provision Academy unless there are exceptional reasons to do otherwise.
  - (b) The Company shall report to any body on assessments under clause 30 as the Secretary of State shall require and shall provide such information as may be required by that body as applies to maintained schools.
  - (c) In respect of all Key Stages, the Company will submit each Academy to monitoring and moderation of its assessment arrangements as required by the Secretary of State.
  - (d) In relation to courses of education or training at an Academy which are funded from its GAG, the Company may offer:
    - (i) any course of education or training which leads to a qualification that is approved by the Secretary of State for the purposes of section 96 of the Learning and Skills Act 2000; and
    - (ii) any course of education or training not falling within paragraph (i) if the Secretary of State gives his specific written approval for it.
- 30A) Subject to clause 30B, the Company shall ensure that the following information is published on the website for each Mainstream Academy, for each Alternative Provision Academy, and where relevant for each Special Academy:
  - (a) If applicable the Academy's most recent Key Stage 2 results as published by the Secretary of State under the following column headings in the School Performance Tables published on the Department for Education's website:
    - (i) "% achieving Level 4 or above in English and maths";

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<sup>8</sup> Please also see the Charity Commission guidance (CC9): "Speaking out: Guidance on Campaigning and Political Activities by Charities" <http://www.charity-commission.gov.uk/Publications/cc9.aspx>

- (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) If applicable 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:
- (v) "% achieving 5 + A\* - C GCSEs (or equivalent) including English and maths GCSEs";
  - (vi) "% achieving the English Baccalaureate"; and
  - (vii) "% of pupils making expected progress".
- (c) Information as to where and by what means the most recent report about the school published by the Chief Inspector may be accessed.
- (d) Information as to where and by what means the School Performance Tables published by the Secretary of State on the DfE's website may be accessed.

30B) There is no requirement to publish information under clause 30A if to do so would be in breach of the Company's obligations under the Data Protection Act 1998.

### **Exclusions Agreement**

31) In respect of Mainstream Academies, the Company shall, if invited to do so by a local authority, enter into an agreement in respect of an Academy with that local authority, which has the effect that where:

- (a) the Company admits a pupil to the Academy who has been permanently excluded from a maintained school, the Academy itself or another Academy with whom the local authority has a similar agreement; or
- (b) the Company permanently excludes a pupil from the Academy;

payment will flow between the Company and the local authority 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 and Early Years Finance (England) Regulations 2012.

## **School Meals**

- 32) The Company shall, if requested to do so by or on behalf of any pupils at any Academy, provide school lunches for those pupils unless it would be unreasonable for it to do so. Subject to the provisions of clause 33 charges may be levied for lunches, but the Company shall otherwise fund the cost of such school lunches from its GAG for Mainstream Academies, or from its resources for Special Academies and for Alternative Provision Academies.
- 33) In relation to a pupil who is himself or whose parents are in receipt of benefits mentioned in section 512ZB of the Education Act 1996 (or equivalent provision governing the entitlement to free school lunches of pupils at maintained schools), the Company shall ensure that a school lunch is provided for such a pupil free of charge to be funded by the Company. This clause shall not apply to 16-19 Free Schools.

## **Charging**

- 34) Sections 402 (obligation to enter pupils for public examinations), 450 - 457 (charges), 459 (regulations about information about charges and school hours), 460 (voluntary contributions), 461 (recovery of sums as civil debt) and 462 (interpretation re charges) of the Education Act 1996 (including, for the avoidance of doubt, any secondary legislation made further to those provisions) 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 authority shall, in each case, be treated as references to the Company; and
  - (d) the Company may charge persons who are not registered pupils at an Academy for education provided or for facilities used by them at that Academy<sup>9</sup>.

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<sup>9</sup> For clarification, such charging is separate and distinct from any arrangement that the Company may make with Commissioners concerning the referral of pupils to the **Alternative Provision Academy**.

## **International Education Surveys**

34A) Section 538A of the Education Act 1996 (power to direct participation in international surveys) shall be deemed to apply to each Academy with the following modifications:

- (a) references to the governing body shall be treated as references to the Company; and
- (b) references to a community, foundation or voluntary school shall be treated as references to the Academy.

## **Pupil Premium**

34B) For Mainstream Academies, and those Special Academies that receive Pupil Premium Funding<sup>10</sup>, the Company shall publish in each Academy Financial Year information in relation to:

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

## **DURATION OF SCHOOL DAY AND YEAR**

34C) In respect of Mainstream Academies and Alternative Provision Academies, the duration of the school day and year will be the responsibility of the Company.<sup>11</sup>

## **GRANTS TO BE PAID BY THE SECRETARY OF STATE**

### **General**

35) The Secretary of State shall pay grants towards Recurrent Expenditure and may pay grants towards Capital Expenditure for each Academy. The Company should not enter into commitments which are likely to have substantial implications for

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<sup>10</sup> The Pupil Premium is additional funding for schools to support pupils from low-income families. In instances when those pupils are in special settings, the funding can either be allocated to the setting where they are being educated, or held by the local authority to spend specifically on additional educational support to raise the standard of attainment for these pupils. The authority must consult non-mainstream settings about how the Premium for these pupils should be used. Where Pupil Premium is allocated to the Special Academy by the Local Authority, the company must publish information as set out in clause 34B. There is no requirement for Alternative Provision settings to publish such information.

<sup>11</sup> In respect of **Special Academies**, regulations made under section 551 of the Education Act 1996 apply (currently the Education (School Day and School Year) (England) Regulations 1999).

future levels of grant for the period for which grant may be required. No decision by the Company shall commit the Secretary of State to paying any particular amount of grant for any particular period. Except with the Secretary of State's consent the Company shall not budget for its expenditure in any Academy Financial Year to exceed its expected income and reserves.

- 36) "Recurrent Expenditure" means any expenditure on the establishment, conduct, administration and maintenance of the Academy which does not fall within the categories of capital expenditure set out at clause 37. The Secretary of State shall pay two separate and distinct grants in respect of Recurrent Expenditure: General Annual Grant ("GAG") and Earmarked Annual Grant ("EAG").

### **Capital Grant**

- 37) "Capital Expenditure" means expenditure on:
- (a) the acquisition of land and buildings;
  - (b) the erection, enlargement, improvement or demolition of any building including fixed plant, installation, wall, fence or other structure, or any playground or hard standing;
  - (c) the installation of electrical, mechanical or other services other than necessary replacements, repairs and maintenance due to normal wear and tear;
  - (d) the purchase of vehicles and other self-propelled mechanical equipment;
  - (e) the installation and equipping of premises with furnishings and equipment, other than necessary replacements, repairs and maintenance due to normal wear and tear;
  - (f) the installation and equipping of premises with computers, networking for computers, operating software and information and communication technology equipment, other than necessary updates or necessary replacements, repairs and maintenance due to normal wear and tear;
  - (g) the provision and equipping of premises, including playing fields and other facilities for social activities and physical recreation other than necessary replacements, repairs and maintenance due to normal wear and tear;
  - (h) works of a permanent character other than the purchase or replacement of minor day-to-day items;
  - (i) any major repairs or replacements which are specified as constituting capital expenditure in any grant letter relating to them;

- (j) such other items (whether of a like or dissimilar nature to any of the foregoing) of a substantial or enduring nature as the Secretary of State may agree shall constitute capital expenditure for the purposes of this Agreement;
- (k) all professional fees properly and reasonably incurred in connection with the provision of any of the above;
- (l) VAT and other taxes payable on any of the above.

“Capital Grant” means grant paid to the Company in respect of Capital Expenditure.

- 38) Where an Academy is to open in new premises, or where existing premises are to be substantially refurbished or remodelled to enable the Academy to 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.
- 39) Any Capital Expenditure in respect of an Academy which is funded by Capital Grant made by the Secretary of State will require the specific prior written agreement of the Secretary of State, which agreement shall not be unreasonably withheld or delayed.
- 40) Any payment of Capital Grant to the Company under this Agreement is subject to the fulfilment of the following conditions:
  - (a) such grants are used solely to defray expenditure approved by the Secretary of State;
  - (b) the Company certifying and providing evidence that all planning and other consents necessary for the development and all related infrastructure to be completed have been obtained;
  - (c) Any other conditions that the Secretary of State may specify.

#### **Arrangements for Payment of Capital Grant**

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

### **General Annual Grant**

- 41A) GAG paid by the Secretary of State in respect of an Academy shall only be spent by the Company towards the normal running costs or Capital Expenditure of the Academies.

### **Transitional Period**

- 42) Clauses 45A, 45AA, 46A, 47A, 48A, 49A, 57 and 60 shall apply in respect of Transitional Academies only after the expiration of the Transitional Period. During the Transitional Period the provisions of clauses 66, 67, 76 and 77 of the Original Master Agreement (as amended in respect of any particular Academy by the relevant Original Supplemental Agreement) shall continue in full force and effect but without regard to the amendments made in this Agreement. The provisions of clauses 42A to 53 shall apply in respect of Mainstream Academies which are not Transitional Academies from the Effective Date.

### **GAG for all Mainstream Academies**

- 42A) GAG will be paid by the Secretary of State to the Company in order to cover the normal running costs of each Mainstream Academy. These will include, but are not limited to:
- (a) teachers' salaries and related costs (including full and part time teaching staff and seconded teachers);
  - (b) non-teaching staff salaries and related costs (including pension contributions, educational support staff, administrative and clerical staff and manual and premises related staff);
  - (c) employees' expenses;
  - (d) the purchase, maintenance, repair and replacement:
    - (i) of teaching and learning materials and other educational equipment, including books, stationery and ICT equipment and software, sports equipment and laboratory equipment and materials;
    - (ii) of other supplies and services;
  - (e) examination fees;
  - (f) repairs, servicing and maintenance of buildings (including redecoration, heating, plumbing, lighting etc); maintenance of grounds (including boundary fences and walls); cleaning materials and contract cleaning; water and sewage; fuel and light (including fuel oil, solid and other fuel,

electricity and gas); rents; rates; purchase, maintenance, repairs and replacement of furniture and fittings;

- (g) insurance;
  - (h) medical equipment and supplies;
  - (i) staff development (including in-service training);
  - (j) curriculum development;
  - (k) the costs of providing school meals for pupils (including the cost of providing free school meals to pupils who are eligible to receive them), and discretionary grants to pupils to meet the cost of pupil support, including support for pupils with special educational needs or disabilities (taking account of the fact that separate additional money will be available for pupils with statements of special educational needs);
  - (l) administration; and
  - (m) establishment expenses and other institutional costs.
- 43) Subject to clauses to 51-52, GAG for each Academy Financial Year for each Mainstream 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.
- 44) The GAG for each Academy Financial Year for each Mainstream Academy will also include, payable on a basis equivalent to that applied to maintained schools:
- (a) funding for matters for which it is necessary for that Academy to incur extra costs, for as long as those costs are deemed necessary by the Secretary of State; and
  - (b) payments in respect of further, specific grants made available to maintained schools, where the relevant Academy meets the requisite conditions and criteria necessary for a maintained school to receive these grants, such payments to be at the discretion of the Secretary of State.

**GAG for Mainstream Academies which are not Sponsored Academies**

- 45) Subject to clause 47, the basis of the pupil number count for the purposes of

determining GAG for the Academy Financial Year in which a Mainstream Academy which is not a Sponsored Academy opens shall be the same basis as that used by the LA 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.

- 46) Subject to clause 47 the basis of the pupil number count for the purpose of determining GAG for a Mainstream Academy which is not a Sponsored 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
  - (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.
- 47) Where in relation to a Mainstream Academy which is not a Sponsored Academy 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 90% or more of that number.
- 48) For any Academy Financial Year in which GAG for a Mainstream Academy has been calculated in accordance with clause 45, 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.
- 49) For any Academy Financial Year in which GAG for a Mainstream Academy is

calculated in accordance with clause 46, no adjustment will be made to the formula funding element in the following Academy Financial Year's formula funding element of GAG unless the Company demonstrates to the satisfaction of the Secretary of State that there has been a significant impact on the Academy's and the Company's financial position. 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 adjustments will be set out in the Annual Letter of Funding.

### **GAG for Mainstream Academies which are Sponsored Academies**

- 45A) Subject to clause 46A, the basis of the pupil number count for the purposes of determining GAG for the first Academy Financial Year in which a Mainstream Academy which is a Sponsored Academy opens and the following four Academy Financial Years (the "Initial Five Year Term") will be the Company's most recent estimate of the numbers of pupils on the roll provided in accordance with clause 45AA. However, the Secretary of State may make adjustments to the GAG for the following Academy Financial Year to recognise any variation between the number of pupils that were actually on the roll in the previous September and the Company's estimate provided in accordance with clause 45AA. The basis of these adjustments will be set out in the Annual Letter of Funding.
- 45AA) The Secretary of State shall in advance of each Academy Financial Year for a Mainstream Academy which is a Sponsored Academy, at such time or times as he shall determine, request that the Company provides an estimate of the number of pupils on roll in the following September for the Academy for the purposes of determining GAG for an Academy Financial Year. The Company shall provide the requested estimate (such estimate to be based on an objective assessment of numbers) to the Secretary of State as soon as reasonably practicable.
- 46A) If in relation to a Mainstream Academy which is a Sponsored Academy the Conditions (as defined in Clause 47A below) have been met then the basis of the pupil number count for the purpose of determining GAG for the Academy Financial Year in question will be determined in accordance with Clause 47A and Clause 45A will no longer apply.
- 47A) After: (i) all planned Year-groups are present at the Academy (that is, all the pupil cohorts relevant to the age-range of the Academy will have some pupils present); and (ii) the total number of pupils as measured in the Schools Census which is used to fund maintained schools for the financial year overlapping with

the Academy Financial Year in question is 90% or more of the planned final size of the Academy, as specified in the Academy's Supplemental Agreement (together the "**Conditions**") the basis of the pupil number count for the purpose of determining GAG for the Academy for Academy Financial Years will be:

- (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
- (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.

48A) If either of the Conditions set out in clause 47A have not been met in respect of an Academy Financial Year and the Initial Five Year Term has come to an end, the basis of the pupil count for a Mainstream Academy shall be determined by the Secretary of State, taking account of any diseconomies of scale that the Academy will be under as a result of such Condition(s) not applying.

49A) For any Academy Financial Year in which GAG for a Mainstream Academy is calculated in accordance with clause 46A, no adjustment will be made to the formula funding element in the following Academy Financial Year's formula funding element of GAG unless the Company demonstrates to the satisfaction of the Secretary of State that there has been a significant impact on the Academy's and the Company's financial position. 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.

50) The Secretary of State recognises that:

- (a) in relation to Mainstream Academies which are Sponsored Academies which open with intakes representing only a proportion of the final planned size of the Academy, payments based simply upon the number of pupils present are unlikely to be sufficient to meet the Academy's needs in the Academy Financial Years before all age groups are present at their planned size 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 43-49A, in order to enable the Academy to operate effectively<sup>12</sup>;

- (b) in relation to Mainstream Academies which open 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 Company will make a bid for this addition to GAG based upon need and providing appropriate supporting evidence.

### **All Mainstream Academies**

- 51) 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 43-49 to allow the relevant Mainstream 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.

- 52) The Secretary of State recognises that if he serves notice to terminate a Supplemental Agreement or of his intention to do so the intake of new pupils during the notice period is likely to decline and that in such circumstances payments based simply upon the number of pupils attending the relevant Mainstream Academy are unlikely to be sufficient to meet the Academy's needs during the notice period. The Secretary of State may undertake 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, in order to enable the Academy to operate effectively.
- 53) 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

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<sup>12</sup> Note that a larger GAG for the Start-Up Period is only applicable to Academies with approved Academy Action Plans.

the relevant Mainstream Academy or Mainstream Academies is likely to decline. In these circumstances both parties undertake to attempt to resolve issues arising from such termination in good faith and with the aim of protecting the interests and the education of the pupils at the Academy.

54) Not used.

### **GAG for Special Academies**

54AAA) Clauses 54AA to 54H apply in respect of Special Academies only.

54AA) GAG will be paid by the Secretary of State to the Company as a contribution towards the normal running costs of each Special Academy. These will include, but are not limited to:

- (a) teachers' salaries and related costs (including full and part time teaching staff and seconded teachers);
- (b) non-teaching staff salaries and related costs (including pension contributions, educational support staff, administrative and clerical staff and manual and premises related staff);
- (c) employees' expenses;
- (d) the purchase, maintenance, repair and replacement:
  - (i) of teaching and learning materials and other educational equipment, including books, stationery and ICT equipment and software, sports equipment and laboratory equipment and materials;
  - (ii) of other supplies and services;
- (e) examination fees;
- (f) repairs, servicing and maintenance of buildings (including redecoration, heating, plumbing, lighting etc); maintenance of grounds (including boundary fences and walls); cleaning materials and contract cleaning; water and sewage; fuel and light (including fuel oil, solid and other fuel, electricity and gas); rents; rates; purchase, maintenance, repairs and replacement of furniture and fittings;
- (g) insurance;
- (h) medical equipment and supplies;
- (i) staff development (including in-service training);
- (j) curriculum development;

- (k) the costs of providing school meals for pupils (including the cost of providing free school meals to pupils who are eligible to receive them), and discretionary grants to pupils to meet the cost of pupil support, including support for pupils with special educational needs or disabilities (taking account of the fact that separate additional money will be available for pupils with statements of special educational needs);
  - (l) administration; and
  - (m) establishment expenses and other institutional costs.
- 54A) Subject to clauses 54E – 54F, GAG for each Financial Year for each Special Academy will include:
- (a) funding equivalent to that which would be received by a maintained special 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 special school.
- 54B) The GAG for each Academy Financial Year for each Special Academy will also include, payable on a basis equivalent to that applied to maintained special schools:
- (a) funding for matters for which it is necessary for that Academy to incur extra costs, for as long as those costs are deemed necessary by the Secretary of State; and
  - (b) payments in respect of further, specific grants made available to maintained special schools, where the relevant Academy meets the requisite conditions and criteria necessary for a maintained school to receive these grants, such payments to be at the discretion of the Secretary of State.
- 54C) The Secretary of State will determine GAG for each Special Academy for each Academy Funding Year. The determinations will be made taking into account relevant factors. Arrangements for this will be set out in the Annual Letter of funding or its equivalent.
- 54D) The Secretary of State may make provision, within his absolute discretion, for GAG for a Special Academy to be adjusted in-year if the number of pupils attending the relevant academy at specified dates exceeds or falls below thresholds

specified by letter. Arrangements for this will be specified in the Annual Letter of Funding.

- 54E) The Secretary of State recognises that a larger GAG may be appropriate to meet additional costs and may pay Start-up Grant, on a basis determined by him, during the period stipulated in the Annual Letter of Funding<sup>13</sup>.
- 54F) The Secretary of State recognises that if he serves notice to terminate a Supplemental Agreement or of his intention to do so, the intake of new pupils during the notice period is likely to decline and that in such circumstances payments based on a number of places related to the number of pupils attending the relevant Special Academy are unlikely to be sufficient to meet the Academy's needs during the notice period. The Secretary of State may undertake 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 54A-54D, in order to enable the Academy to operate effectively.
- 54G) 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 Special Academy or Special Academies is likely to decline. In these circumstances both parties undertake to attempt to resolve issues arising from such termination in good faith and with the aim of protecting the interests and the education of the pupils at the Academy.
- 54H) Not used.

#### **GAG for Alternative Provision Academies**

- 54I) Clauses 54J to 54P apply in respect of Alternative Provision Academies only.
- 54J) GAG will be paid by the Secretary of State to the Company as a contribution<sup>14</sup> to the normal running costs of the Alternative Provision Academy. These will include, but are not limited to:
- (a) teachers' salaries and related costs (including full and part time teaching staff and seconded teachers);
  - (b) non-teaching staff salaries and related costs (including pension contributions, educational support staff, administrative and clerical staff and manual and premises related staff);

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<sup>13</sup> Note that a larger GAG for the Start-Up Period is only applicable to Academies with approved Academy Action Plans.

<sup>14</sup> The extent of any such contribution to be within the absolute discretion of the Secretary of State.

- (c) employees' expenses;
- (d) the purchase, maintenance, repair and replacement:
  - (i) of teaching and learning materials and other educational equipment, including books, stationery and ICT equipment and software, sports equipment and laboratory equipment and materials;
  - (ii) of other supplies and services;
- (e) examination fees;
- (f) repairs, servicing and maintenance of buildings (including redecoration, heating, plumbing, lighting etc); maintenance of grounds (including boundary fences and walls); cleaning materials and contract cleaning; water and sewage; fuel and light (including fuel oil, solid and other fuel, electricity and gas); rents; rates; purchase, maintenance, repairs and replacement of furniture and fittings;
- (g) insurance;
- (h) medical equipment and supplies;
- (i) staff development (including in-service training);
- (j) curriculum development;
- (k) the costs of providing school meals for pupils (including the cost of providing free school meals to pupils who are eligible to receive them), and discretionary grants to pupils to meet the cost of pupil support, including support for pupils with special educational needs or disabilities (taking account of the fact that separate additional money will be available for pupils with statements of special educational needs);
- (l) administration; and
- (m) establishment expenses and other institutional costs.

54K) Subject to clause 54M, GAG for each Academy Financial Year for each Alternative Provision Academy will include:

- (a) funding determined by the Secretary of State and notified in the Annual Letter of Funding or its equivalent, taking account of the number of pupils and/or places at the Alternative Provision Academy;
- (b) funding in respect of functions which would be carried out by the local authority if the Alternative Provision Academy were a maintained school;

- (c) funding for matters for which it is necessary for the Alternative Provision Academy to incur extra costs, for as long as those costs are deemed necessary by the Secretary of State; and
  - (d) payments in respect of further, specific grants made available to Pupil Referral Units maintained by the local authority, where the Alternative Provision Academy meets the requisite conditions and criteria necessary for a Pupil Referral Unit maintained by the local authority to receive these grants.
- 54L) For each Alternative Provision Academy, the Secretary of State will determine GAG for each Academy Financial Year. The determination will be made taking into account relevant factors. Arrangements for this will be set out in the Annual Letter of Funding or its equivalent.
- 54M) For each Alternative Provision Academy, the Secretary of State may make provision, within his absolute discretion, for GAG to be adjusted in-year if the number of pupils attending the relevant Alternative Provision Academy at specified dates exceeds or falls below thresholds specified by the Annual Letter of Funding or its equivalent.
- 54N) The Secretary of State recognises that if he serves notice to terminate this Agreement or of his intention to do so, the intake of new pupils during the notice period is likely to decline and that in such circumstances the total income of the relevant Alternative Provision Academy is unlikely to be sufficient. In such circumstances payments based simply upon the number of pupils attending that Academy are unlikely to be sufficient to meet the Academy's needs during the notice period. The Secretary of State may undertake to pay a reasonable and appropriately larger GAG with respect to the Alternative Provision Academy in the notice period than would be justified solely taking into account factors at clause 54J in order to enable the Alternative Provision Academy to operate effectively.
- 54O) The Secretary of State also recognises that if this Agreement is terminated for any reason by either party the number of pupils at the relevant Alternative Provision 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 Alternative Provision Academy.

### **GAG for Free Schools**

- 55A) The provisions contained in Schedule B Part 2 shall apply in relation to the payment of GAG for Free Schools.

### **Earmarked Annual Grant**

- 55) Earmarked Annual Grant ("EAG") may be paid by the Secretary of State to the Company in respect of either Recurrent Expenditure or Capital Expenditure for such specific purposes as may from time to time be agreed between the Secretary of State and the Company and as described in the relevant funding letter. The Company shall only spend EAG in accordance with the scope, terms and conditions of the grant set out in the relevant funding letter.
- 56) Where the Company is seeking a specific EAG in relation to any Academy Financial Year, it shall submit a letter outlining its proposals and the reasons for its request to the DfE.

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

- 57) The Secretary of State shall notify the Company by not later than 30 April preceding the start of each Academy Financial Year of the GAG and EAG figures in respect of each Academy which, subject to Parliamentary approval, the Secretary of State plans for that Academy Financial Year and of the assumptions and figures on which these are based.
- 58) If GAG or EAG is calculated incorrectly due to a mistake of the Secretary of State then:
- (a) if this leads to an underpayment of GAG, the Secretary of State will correct the underpayment in subsequent Academy Financial Years;
  - (b) if this leads to an overpayment of GAG, the Secretary of State reserves the right to recover any overpaid grant in subsequent Academy Financial Years, as appropriate, having considered all the relevant circumstances and taking into account any representations from the Company.
- 59) If GAG or EAG is calculated incorrectly because the Company provides incorrect information to the Secretary of State then:
- (a) if this leads to an underpayment of GAG, the Secretary of State may correct the underpayment in subsequent Academy Financial Years;
  - (b) if this leads to an overpayment of GAG, the Secretary of State reserves the right to recover any overpaid grant in subsequent Academy Financial Years, as appropriate, having considered all the relevant circumstances and taking into account any representations from the Company.
- 60) The amounts of GAG for an Academy Financial Year will be determined annually by the Secretary of State. The amount of GAG for each Academy for the initial Academy Financial Year will be notified to the Company in a funding letter at a

date preceding the start of that year. For subsequent years the amount of GAG will be notified to the Company 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 Company will receive in respect of grants for which information to enable timely calculation is not available or is incomplete, such grants will be notified as soon as practicable later in the year. Amounts of EAG will be notified to the Company wherever possible in the Annual Letter of Funding or its equivalent as soon as practicable thereafter.

- 61) 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 or its equivalent.

#### **Other relevant funding**

- 62) With regards to a Mainstream Academy or a Special Academy which is in either case a Sponsored Academy or a Transitional Academy, the Company may apply to the Secretary of State for financial assistance in relation to proposed redundancies that it may make. On an application to the Secretary of State, he may (at his absolute discretion) agree to meet a proportion of the Company's costs arising from the inclusion of Academies in the Schedules to the Redundancy Payments (Continuity of Employment in Local Government)(Modification) Order 1999. In response to an application for financial assistance, the Secretary of State may agree to meet the costs of the employees' prior eligible service, being service prior to opening of the Academy, but the Company will be required to meet the costs of service after the opening of the Academy.
- 62A) With regards to an Alternative Provision Academy, the Company may apply to the Secretary of State for financial assistance in relation to proposed redundancies that it may make. On an application to the Secretary of State, he may (at his absolute discretion) agree to meet a proportion of the Company's costs arising from the inclusion of Academies in the Schedules to the Redundancy Payments (Continuity of Employment in Local Government) (Modification) Order 1999. In response to an application for financial assistance, the Secretary of State may agree to meet the costs of the employees' prior eligible service, being service prior to the opening of the Alternative Provision Academy, but the Company will be required to meet the costs of service after the opening of the Academy.

- 63) The Secretary of State may meet costs incurred by the Company in connection with the transfer of employees from any predecessor school under the Transfer of Undertakings (Protection of Employment) Regulations 2006. Payment of grant in respect of such costs is to be agreed between the parties on a case by case basis and the Company shall not budget on the basis that it will receive any grant in respect of such costs unless it is specifically notified that such grant will be paid.
- 64) The Company may also receive funding from an LA in respect of the provision detailed in statements of SEN for pupils attending an Academy in accordance with the provisions of Section 483A of the Education Act 1996 and regulations made under that section. The Company shall ensure that all provision detailed in statements of SEN is provided for such pupils.

#### **Bank Accounts for receipt of Secretary of State funding relating to PFI Academies**

- 65) Subject always to Clauses 73 and 73A, the Company shall, in relation to each PFI Academy, establish and maintain separate bank accounts to be used solely in respect of any monies provided by the Secretary of State pursuant to this Agreement for that PFI Academy. Monies provided by the Secretary of State will be paid into such accounts and will remain in those accounts until required. The Company agrees that such monies will be applied in accordance with the requirements of this Agreement.

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

##### **General**

- 66) The Company shall appoint an Accounting Officer and shall notify the Secretary of State of that appointment.
- 66A) The Company shall ensure that it has and continues to have sufficient capacity and expertise to manage the finances of all Academies. The Company shall ensure, notwithstanding any other provision of this Agreement, but subject to clauses 73 and 73A, that any funding which relates to the PFI Academy shall be accounted for separately.
- 67) In relation to the use of grant paid to the Company by the Secretary of State, the Company 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 Company manages more than one Academy which sets out in detail provisions for the financial management of each Academy including guidance on financial systems and

controls and accounting and reporting requirements, 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.

- 67A) The Company shall abide by the requirements of the current 16 to 19 Funding Guidance published by the Secretary of State and as amended from time to time, or such other guidance on 16 to 19 funding issued by the Secretary of State as may from time to time be applicable, in respect of any of its provision for persons who are above compulsory school age until the academic year in which they reach the age of 19.
- 68) The formal budget plan must be approved each Academy Financial Year by the Directors of the Company.
- 69) Any payment of grant by the Secretary of State in respect of each Academy is subject to his being satisfied as to the fulfilment by the Company of the following conditions:
- (a) in its conduct and operation it shall apply financial and other controls which conform to the requirements both of propriety and of good financial management;
  - (b) arrangements have been made to maintain proper accounting records and that statements of income and expenditure and balance sheets may be produced in such form and frequency as the Secretary of State may from time to time reasonably direct;
  - (c) in addition to the obligation to fulfil the statutory requirements referred to in sub-clause (f) below, the Company 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 issued by the Charity Commission and updated from time to time as if the Company 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 after each Academy Financial Year;
  - (d) 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 Company's affairs and that the grants were used for the purposes intended;

- (e) the Company shall ensure that its accounts are audited annually by independent auditors appointed under arrangements approved by the Secretary of State;
  - (f) the Company prepares and files with the Companies Registry such annual accounts as are required by the Companies Act 2006;
  - (g) the Company shall publish on its website its Annual Accounts, Annual Report, Memorandum, Articles, Funding Agreement and a list of the names of the Directors of the Company; and
  - (h) the Company insures or procures insurance by another person of its assets in accordance with normal commercial practice or under the terms of any subsisting leases in respect of the leasehold interest of the site upon which each Academy is situated.
- 70) In addition, and at his expense, the Secretary of State may instruct auditors to report to him on the adequacy and effectiveness of the accounting systems and internal controls maintained by the Company to standards determined by the Secretary of State and to make recommendations for improving the financial management of the Company.
- 71) The books of accounts and all relevant records, files and reports of the Company including those relating to financial controls, shall be open at all reasonable times to officials of the 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 Company shall secure that those officials and contractors are given reasonable assistance with their enquiries. For the purposes of this clause 'relevant' means in any way relevant to the provision and use of grants provided by the Secretary of State under this Agreement.
- 72) The Company shall submit information in relation to the finances of each Academy to the Secretary of State in accordance with the requirements of the Academies Financial Handbook as amended from time to time, or as otherwise specified from time to time by the Secretary of State.
- 73) At the beginning of any Academy Financial Year, unless otherwise agreed by the Secretary of State, the Company may carry forward to subsequent academy Financial Years unspent GAG for any Academy from previous Academy Financial Years amounting to such percentage (if any) of the total GAG payable for the Academy in the Academy Financial Year just ended as shall be specified in the Academies Financial Handbook or otherwise as the Secretary of State may specify by notice in writing to the Company prior to the beginning of that Academy

Financial Year. The Company shall use such carried forward amount for such purpose, or subject to such restriction on its use, as for the time being specified in the Academies Financial Handbook or otherwise as the Secretary of State may specify by notice in writing to the Company.

- 73A) Notwithstanding clause 73 it is hereby agreed that the percentage of the GAG payable for the Academy in the Academy Financial Year just ended which may be carried forward shall not be less than 12 percent, of which sum not less than 83 percent shall be capable only of being utilised by the Company for Capital Expenditure, the upkeep and improvement of premises and repairs and maintenance.
- 74) Notwithstanding clause 73 any additional grant provided over and above that:
- (a) set out in clauses 43-49 in relation to Mainstream Academies and made in accordance with clauses 50-52 may be carried forward without limitation or deduction until the Start-up Period or the circumstances set out in clause 52 come to an end.
  - (b) set out in clauses 54A-54D in relation to Special Academies and made in accordance with clauses 54E-54F may be carried forward without limitation or deduction until the Start-up Period or the circumstances set out in clause 54F come to an end.
  - (c) set out in clauses 54K-54M in relation to Alternative Provision Academies and made in accordance with clauses 54N may be carried forward without limitation or deduction until the circumstances set out in clause 54N come to an end.
- 75) Any unspent GAG not allowed to be carried forward under clauses 73-74 may be taken into account in the payment of subsequent grant.
- 75A) If the Secretary of State pays in relation to a Free School grant other than GAG to the Company on condition either that such grant be used for a particular purpose or purposes or that such grant be used by a certain date, any failure on the part of the Company to use such grant for such a purpose or purposes or by such date may be taken into account by the Secretary of State in the calculation and payment of grant either:
- (a) in the same Academy Financial Year that such grant is paid to the Company; or
  - (b) in the following Academy Financial Year or Academy Financial Years.

- 75B) If the Secretary of State pays in relation to a Free School any grant to the Company which includes an amount to cover the VAT which will be payable by the Company in using any such grant for the purposes intended, the Company shall, having paid the VAT to a third party for any goods or services it has purchased from such a third party, where entitled, promptly and, in any event, as soon as is reasonably practicable, submit a VAT reclaim application to Her Majesty's Revenue and Customs ("HMRC") in respect of such VAT payment. Any failure, on the part of the Company, to submit a VAT reclaim application to HMRC or repay the amount recouped to the Secretary of State as soon as reasonably practicable following the receipt of any such payment from HMRC may be taken into account by the Secretary of State in the calculation and payment of grant either:
- (a) in the same Academy Financial Year that any such grant is paid to the Company; or
  - (b) in the following Academy Financial Year or Academy Financial Years.
- 75C) GAG paid by the Secretary of State shall only be used by the Company for the educational charitable purpose of advancing for the public benefit education in the United Kingdom, in particular but without prejudice to the generality of the foregoing by establishing, maintaining, carrying on, managing and developing Academies offering a broad and balanced curriculum. Such funds shall not be used by the Company for any other charitable purpose without the prior written consent of the Secretary of State, except where the use of such funds for that charitable purpose is merely incidental to their use for the educational charitable purpose of advancing for the public benefit education in the United Kingdom.
- 76) The Company may also spend or accumulate funds from private sources or public sources other than grants from the Secretary of State for application to the benefit of an Academy as it sees fit. Any surplus arising from private sources or public sources other than grants from the Secretary of State shall be separately identified in the Company's balance sheet.
- 77) The Company shall not, in relation to assets or property funded (whether in whole or in part) by the Secretary of State or otherwise coming within the meaning of publicly funded land as defined by paragraph 22(3) of Schedule 1 to the Academies Act 2010, without the prior written consent of the Secretary of State which consent 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 above a value as for the time being specified in the Academies Financial Handbook or otherwise as the Secretary of State may specify by notice in writing to the Company from time to time;
  - (b) write off any debts or liabilities owed to it, nor offer to make any ex gratia payments (in lieu of staff severance or compensation) above a value as for the time being specified in the Academies Financial Handbook or otherwise as the Secretary of State may specify by notice in writing to the Company from time to time;
  - (c) except as may be permitted in the Academies Financial Handbook or otherwise as the Secretary of State may specify by notice in writing to the Company, make any sale or purchase of or otherwise dispose of freehold or leasehold property including entering into a contract to dispose of land or granting an option to acquire an interest in land; or
  - (d) take up any leasehold or tenancy agreement for a term exceeding three years.
- 78) The Company shall provide 30 days' prior written 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 or otherwise dispose of freehold or leasehold property including entering into a contract to dispose of land or granting an option to acquire an interest in land; or
  - (d) take up any leasehold or tenancy agreement for a term exceeding three years.
- 79) 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 Company to the Secretary of State at the earliest opportunity.
- 80) It is the responsibility of the Company to ensure that each Academy balances its budget from Academy Financial Year to Academy Financial Year. For the avoidance of doubt, this does not prevent the Company from:

- (a) subject to clauses 73 and 73A, 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 Company's responsibility to ensure that the Company balances its overall budget from Academy Financial Year to Academy Financial Year; or
  - (d) utilising GAG made available by the Secretary of State for one Academy to fund the operations of another Academy.
- 80A) The Company 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 "Protecting Charities from Harm" ('the compliance toolkit') and in CC9: "Speaking Out, Campaigning and Political Activities by Charities". Any references in this Agreement which require charity trustees to report to the Charity Commission should instead be interpreted as references to reporting to the Principal Regulator.

### **Borrowing Powers**

- 81) Except as may be permitted by the Academies Financial Handbook (as amended from time to time) or otherwise as the Secretary of State may specify by notice in writing to the Company, the Company shall not charge or grant any security interest over property or assets funded (whether in whole or in part) by the Secretary of State without specific approval of the Secretary of State, such approval may only be granted in limited circumstances. The Company shall not operate an overdraft except to cover irregularities in cash flow. Such an overdraft, and the maximum amount to be borrowed, shall require approval in writing by the Secretary of State, and shall be subject to any conditions which the Secretary of State may reasonably impose.
- 82) The Company shall provide 30 days' written notice to the Secretary of State of its intention to borrow, whether or not such borrowing requires the Secretary of State's approval under clause 81 above.

## **Disposal of Assets**

- 83) Where the Company acquires assets for a nil consideration or at an under value it shall be treated for the purpose of this Agreement as having incurred expenditure equal to the market value of those assets at the time that they were acquired. This provision shall not apply to assets transferred to the Company at nil or nominal consideration and which were previously used for the purposes of another academy or a maintained school and/or were transferred from an LA, the value of which assets shall be disregarded.
- 84) The sale or disposal by other means, or reinvestment of proceeds from the disposal, of a capital asset by the Company shall require the consent of the Secretary of State, such consent not to be unreasonably withheld or delayed, where:
- (a) the Secretary of State paid capital grant in excess of the value for the time being specified by the Secretary of State for the asset; or
  - (b) the asset was transferred to the Company from an LA for no or nominal consideration.
- 85) Furthermore, reinvestment of a percentage of the proceeds of disposal of a capital asset paid for with a capital grant from the Secretary of State shall require the Secretary of State's consent in the circumstances set out above and reinvestment exceeding the value for the time being specified by the Secretary of State or with other special features will be subject to Parliamentary approval. The percentage of the proceeds for which consent is needed is the percentage of the initial price of the asset which was paid by capital grant from the Secretary of State.
- 86) This clause applies in the event, during the lifetime of this Agreement, of the disposal of a capital asset for which Capital Grant of any amount was paid by the Secretary of State, where the asset was acquired by the Company. In this event, the Company shall repay to the Secretary of State the same proportion of the proceeds of the disposal as equates with the proportion of the original cost met by the Secretary of State, unless the Secretary of State agrees to some or all of the proceeds being retained by the Company for its charitable purposes.
- 87) This clause applies in the event, during the lifetime of this Agreement, that the Secretary of State consents to the disposal of an asset which was transferred to the Company from an LA for no or nominal consideration. In this event the Secretary of State may give consent on the basis that all or part of the proceeds of the disposal should be made over to the LA from which the asset was

transferred, taking into account the amount of the proceeds to be reinvested by the Company. The Secretary of State will have regard to any representations from the Company and the LA from which the asset was transferred before giving consent under this clause.

- 88) Except with the consent of the Secretary of State, the Company shall not dispose of assets funded (whether in whole or in part) by the Secretary of State for a consideration less than the best price that can reasonably be obtained, such consent not to be unreasonably withheld or delayed.
- 89) The Company shall provide 30 days' written notice to the Secretary of State of its intention to dispose of assets for a consideration less than the best price that can reasonably be obtained, whether or not such disposal requires the Secretary of State's consent under clause 88 above.
- 89A) In complying with clauses 66-89 (inclusive), the Company shall (where relevant) be obliged to provide information which relates to each PFI Academy in addition to information which relates to the Company and any combined information which relates to all of the Academies that the Company operates.

## **TERMINATION**

### **General**

- 90) This Agreement shall commence on the date hereof and continue until terminated in accordance with clause 91 or until all Supplemental Agreements have terminated.
- 91) The Secretary of State may at any time by notice in writing terminate this Agreement (with effect from the date of service of such notice) and each of the Supplemental Agreements in any of the following events:-
  - (a) the Company calls a meeting of its creditors (whether formal or informal) or enters into any composition or arrangement (whether formal or informal) with its creditors; or
  - (b) the Company proposes a voluntary arrangement within Section 1 of the Insolvency Act 1986 (as amended); or
  - (c) the Company is unable to pay its debts within the meaning of Section 123 of the Insolvency Act 1986 provided that, for the purposes of this Clause, Section 123 (1)(a) of the Insolvency Act 1986 shall have effect as if the amount of £10,000 was substituted for £750. The Company shall not be deemed unable to pay its debts for the purposes of this clause if any such

demand as is mentioned in the said Section is being contested in good faith by the Company; or

- (d) the Company has a receiver and manager (with the exception of Receivers and Managers or Interim Managers appointed by the Charity Commission under the Charities Act 2011) administrator or administrative receiver appointed over all or any part of its undertakings, assets or income; or
  - (e) any distraint, execution or other process is levied or enforced on any of the Company's property and is not paid out, withdrawn or discharged within fifteen Business Days; or
  - (f) the Company has passed a resolution for its winding up; or
  - (g) an order is made for the winding up or administration of the Company; or
  - (h) the Secretary of State shall determine in his reasonable opinion that one or more of the events specified in sub clauses (a) to (g) above is likely to occur.
- 92) The Company shall notify the Secretary of State as soon as possible after receiving any petition which may result in an order for the winding up or administration of the Company and shall provide an explanation to the Secretary of State of the circumstances giving rise to the service of such a petition.
- 93) Not used.

### **Change of Control**

- 93A) The Secretary of State may at any time, subject to clause 93C) below, terminate this Agreement by notice in writing to the Company (such termination to take effect on the date of the notice) in the event that there is a change:
- (a) in the Control of the Company;
  - (b) in the Control of a legal entity that Controls the Company.

Provided that where a person ('P') is a member or director of the body corporate (as a corporation sole or otherwise) by virtue of an office, no change of Control arises merely by P's successor becoming a member or director in P's place.

- 93B) The Company shall notify the Secretary of State in writing of any change or proposed change of Control within the meaning of clause 93A) above, as soon as reasonably practicable after it has become aware of any such change, or proposed change, of Control.

93C) When notifying the Secretary of State further to clause 93B), the Company may seek the Secretary of State's agreement that, if he is satisfied that the person assuming Control is suitable, he will not in those circumstances exercise his right to terminate this Agreement further to clause 93A).

94) Not used.

## **GENERAL**

### **Information**

95) Without prejudice to any other provision of this Agreement, the Secretary of State acting reasonably may from time to time call for information on any Mainstream Academy or Special Academy relating to, but not restricted to, the following matters:

- (a) curriculum;
- (b) arrangements for the assessment of pupils;
- (c) teaching staff including numbers, qualifications, experience, salaries, and teaching loads;
- (d) class sizes;
- (e) outreach work with other schools and the local community;
- (f) operation of the admission criteria and over subscription arrangements for the Academy including numbers of applications for places and the number and characteristics of pupils accepted for admission – for Mainstream Academies only;
- (g) numbers of pupils excluded (including permanent and fixed term exclusions);
- (h) levels of authorised and unauthorised attendance;
- (i) charging and remissions policies and the operation of those policies;
- (j) organisation, operation and building management;
- (k) financial controls;
- (l) compliance with the requirements of 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') and in CC9: Speaking Out, Campaigning and Political Activities by Charities, as amended from time to time; and

- (m) membership and proceedings of the Company and the Local Governing Body together with any other relevant information concerning the management or governance of the Academy which, subject to clause 99), is reasonably necessary for the Secretary of State to carry out his functions generally and in relation to this Agreement or the relevant Supplemental Agreement.

95A) Without prejudice to any other provision of this Agreement, the Secretary of State acting reasonably may from time to time call for information on any Alternative Provision Academy relating to, but not restricted to, the following matters:

- (a) curriculum and the provision generally (including specifically for SEN pupils);
- (b) arrangements for the assessment of pupils and any information about pupil progress, achievement and attainment;
- (c) staff including numbers, qualifications, experience, salaries, and teaching loads;
- (d) class sizes and pupil organisation;
- (e) outreach work with other schools and the local community;
- (f) operation of the referral and reintegration processes for the Alternative Provision Academy including numbers of requested referrals, the number of referrals that have been refused and the reasons for the refusal in each case and the number and characteristics of pupils accepted for admission and destinations/outcomes of pupils/former pupils;
- (g) numbers of pupils excluded (including permanent and fixed term exclusions), characteristics of pupils excluded, reasons for exclusions, outcomes of any independent review panels;
- (h) levels of authorised and unauthorised absence;
- (i) charging and remissions policies and the operation of those policies;
- (j) organisation, operation and building management;
- (k) financial controls;
- (l) compliance with the requirements of 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') and in (CC9): "Speaking Out: Guidance on Campaigning and Political Activities by Charities", as amended from time to time; and

(m) membership and proceedings of the Company and Local Governing Body together with any other relevant information concerning the management or governance of the Academy which, subject to clause 99), is reasonably necessary for the Secretary of State to carry out his functions generally and in relation to this Agreement or the relevant Supplemental Agreement.

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

**Access by the Secretary of State's Officers**

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

98) The Company shall ensure that:

- (a) the agenda for every meeting of any Local Governing Body and the Company's directors;
- (b) the draft minutes of every such meeting, if they have been approved by the person acting as chairman of that meeting;
- (c) the signed minutes of every such meeting; and
- (d) any report, document or other paper considered at any such meeting,

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

99) There may be excluded from any item required to be made available for inspection by any interested party and to be sent to the Secretary of State by virtue of clause 98, any material relating to:

- (a) a named teacher or other person employed, or proposed to be employed, at any Academy;
- (b) a named pupil at, or candidate for admission to, any Academy; and
- (c) any matter which, by reason of its nature, the Company is satisfied should remain confidential.

99A) Any information of a secret or confidential nature obtained by the Secretary of State or by any officials or advisers or contractors to such person, shall be kept confidential by such persons, as the Secretary of State shall procure, and shall not (except as required by law or under the Freedom of Information legislation) be disclosed to any third party (including without limitation any LA) without the prior written approval of the Company, such approval not to be unreasonably withheld or delayed

**Notices**

100) A notice or communication given to a party under or in connection with this Agreement:

- (a) shall be in writing and in English;
- (b) shall be sent to the party for the attention of the contact and at the address listed in clause 100A;
- (c) shall be sent by a method listed in clause 100C; and
- (d) is deemed received as set out in clause 100C if prepared and sent in accordance with this clause.

100A) The parties' addresses and contacts are:

Name of Party	Position of Contact	Address
Secretary of State	Head of Academies Division	Department for Education, Sanctuary Buildings, Great Smith Street, London SW1P 3BT
The Company	The Chief Executive	Oasis Community Learning at its registered office for the time being

100B) A party may change its details given in the table in clause 100A) by giving notice, the change taking effect for the party notified of the change at 9.00 am on the date five Business Days after deemed receipt of the notice.

- 100C) Any notice or other communication required to be given to a party under or in connection with this Agreement shall be delivered by hand or sent by pre-paid first-class post or other next working day delivery service. Any notice or communication shall be deemed to have been received if delivered by hand, on signature of a delivery receipt or at the time the notice is left at the address specified in Clause 100A, or otherwise at 9.00 am on the second Business Day after posting.
- 100D) This clause does not apply to the service of any proceedings or other documents in any legal action. For the purposes of clause 100, "writing" shall not include e-mail.
- 101) The service by the Secretary of State of a notice of termination of a Supplemental Agreement shall not prejudice the ability of the Company (if it wishes to do so) during the notice period to admit pupils to the relevant Academy in accordance with the provisions of this Agreement and the relevant Supplemental Agreement and to receive GAG and EAG in respect of them.

### **Complaints**

- 102) If a complaint is made about matters arising in whole or in part prior to the opening of any Mainstream Academy or any Special Academy, 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 Company:
- (a) will abide by the provisions of Part III as though the Academy were a maintained school;
  - (b) agrees that the Secretary of State shall have the power to investigate the matter complained of as if it had taken place after conversion;
  - (c) agrees to act in accordance with any recommendation from the Secretary of State as though that recommendation had been made under Part III and the Academy were a maintained school.
- 102A) If a complaint is made about matters arising in whole or in part prior to the opening of any Alternative Provision Academy, and all or part of that complaint was being or had been investigated by the Local Government Ombudsman under Part III of the Local Government Act 1974 ("Part III") or that complaint in whole or in part could have been investigated under Part III had the Pupil Referral Unit

the Alternative Provision Academy replaced remained a Pupil Referral Unit, the Company:

- (a) will abide by the provisions of Part III as though the Alternative Provision Academy were a Pupil Referral Unit;
- (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 Alternative Provision Academy were a Pupil Referral Unit.

102B) If at the time of the opening of any Mainstream Academy or any Special Academy the investigation of a complaint made to the governing body of the school that Mainstream Academy or any Special Academy replaced has not yet been completed, the Company shall in so far as it is able to do so continue to investigate that complaint in accordance with the complaints procedures established by that governing body.

102C) If a complaint is made to the Company about matters arising in whole or in part during the 12 months prior to the opening of any Mainstream Academy or any Special Academy the Company agrees in so far as it is able to do so to investigate that complaint as if the matter complained of had taken place after the opening of that Mainstream Academy or any Special Academy.

102D) If a complaint is made about matters arising in whole or in part during the 12 months prior to the opening of any Alternative Provision Academy, the Company agrees to investigate that complaint as if the matter complained of had taken place after the opening of that Alternative Provision Academy.

102E) With regards to a Mainstream Academy or a Special Academy, 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 and that order and/or direction related to matters occurring within the 12 months immediately prior to conversion, the Company agrees:

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

102F) With regards to an Alternative Provision Academy 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<sup>15</sup> to the management committee of the Pupil Referral Unit the Alternative Provision Academy replaced and that order and/or direction related to matters occurring within the 12 months immediately prior to conversion, the Company agrees:

- (a) the Secretary of State may give orders and/or directions to the Company as though the Alternative Provision Academy were a Pupil Referral Unit and sections 496 and 497 applied to the management committee of that Pupil Referral Unit;
- (b) to act in accordance with any such order and/or direction from the Secretary of State.

### **General**

103) This Agreement shall not be assignable by the Company.

103A) No delay, neglect or forbearance on the part of the Secretary of State in enforcing (in whole or in part) any provision of this Agreement or in exercising (in whole or in part) any right or remedy conferred on him by this Agreement shall be or be deemed to be a waiver of such provision or right or remedy or a waiver of any other provision or right or remedy or shall in any way prejudice any right or remedy of the Secretary of State under this Agreement or shall amount to an election not to enforce such provision or exercise such right or remedy (including, for the avoidance of doubt, any right to terminate this Agreement). No single or partial exercise of such right or remedy shall preclude or restrict the further exercise of that or any other right or remedy.

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

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

106) This deed may be executed in any number of counterparts, each of which when executed and delivered shall constitute a duplicate original, but all the

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<sup>15</sup> Section 496/7 of the Education Act 1996 applies to Pupil Referral Units by virtue of the Education (PRU)(Application of Enactments)(England) Regulations 2007

counterparts shall together constitute the one agreement.

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

## **SCHEDULE A**

### **Transitional Academies and Existing Academies**

#### **Part 1**

##### **Existing Academies which are Transitional Academies**

1. Oasis Academy Immingham
2. Oasis Academy Enfield
3. Oasis Academy Wintringham
4. Oasis Academy John Williams (formerly Oasis Academy Bristol )
5. Oasis Academy Mediacity UK
6. Oasis Academy Lords Hill
7. Oasis Academy Mayfield
8. Oasis Academy Coulsdon
9. Oasis Academy Brightstowe
10. Oasis Academy Hadley
11. Oasis Academy Shirley Park
12. Oasis Academy Oldham
13. Oasis Academy Johanna
14. Oasis Academy Limeside

#### **Part 2**

##### **Existing Academies**

15. Oasis Academy Nunsthorpe
16. Oasis Academy Bank Leaze
17. Oasis Academy Byron
18. Oasis Academy Connaught
19. Oasis Academy New Oak
20. Oasis Academy Henderson Avenue
21. Oasis Academy Parkwood

22. Oasis Academy Harpur Mount.
23. Oasis Academy Blakenhale Junior
24. Oasis Academy Woodview
25. Oasis Academy Blakenhale Infants
26. Oasis Academy Short Heath
27. Oasis Academy Southbank
28. Oasis Academy Longmeadow
29. Oasis Academy Boulton
30. Oasis Academy Lister Park
31. Oasis Academy Hobmoor
32. Oasis Academy Skinner Street
33. Oasis Academy Aspinal
34. Oasis Academy Hextable
35. Oasis Academy Pinewood
36. Oasis Academy Warndon

## **SCHEDULE B**

### **FREE SCHOOLS**

References to paragraphs in this Schedule are to paragraphs of this Schedule

#### **Part 1**

##### **Specific Obligation Relating to Free Schools**

###### **Disclosure and Barring Service Checks**

- 1) In respect of each Mainstream Free School, Alternative Provision Free School, and Special Free School, the Company shall comply with the requirements of the Education (Independent School Standards) (England) Regulations 2010 (or such regulations as may for some time being be applicable) in relation to carrying out enhanced criminal records checks, obtaining enhanced criminal records certificates and making any further checks, as required and appropriate for members of staff, supply staff, individual Directors and the Chair of any Local Governing Body.
- 2) In respect of each 16 to 19 Free School, the Company agrees to comply with any obligations that apply to it by virtue of provisions in the Safeguarding and Vulnerable Groups Act 2006 in respect of, but not limited to, the performance of barred list checks.
- 3) Further, in respect of each 16 to 19 Free School, the Company agrees to act in accordance with the Further Education (Providers of Education) (England) Regulations 2006 (SI 2006/3199) as if the 16 to 19 Free School were a further education institution and subject to the following modifications:
  - (a) references to "the governing body of a further education institution" or to "the governing body" shall be treated as references to the Company;
  - (b) references to "a further education institution" or "the institution" shall be treated as references to the 16 to 19 Free School, except in regulations 9(1)(b) and 19(2)(a)(ii) where they shall have their normal meaning;
  - (c) the Company shall not have to comply with any of the requirements in relation to relevant staff qualifications specified in regulation 3(2), namely: regulations 5(3); regulation 17(1) only in so far as it relates to regulation 18(3); regulation 22 only in so far as it relates to paragraph 4 of Part 1 of the Schedule; and regulation 23 only in so far as it relates to paragraph 2(3) of Part 2 of the Schedule. For the avoidance of doubt, the relevant

staff qualification requirements do not need to be met by members of staff at the 16 to 19 Free School; and

- (d) references to "new member of staff" shall include individual Directors and the Chair of the Directors and in respect of them:
  - (i) the obligation to carry out an enhanced criminal record check as provided for at regulation 5(5) will apply whether or not their position will involve a relevant activity;
  - (ii) the reference in regulation 6 to "considering his suitability for a position that will involve a relevant activity" will be treated as a reference to considering his suitability for a position as a Director or Chair of the Directors as appropriate;
  - (iii) references to "beginning work at the further education institution" shall be treated as references to beginning work as a Director or Chair of the Directors as appropriate.
- 4) The Company shall, on receipt of a copy of an enhanced criminal record certificate, on request from the Secretary of State or his agents, as soon as possible thereafter submit information contained in the certificate to the Secretary of State in accordance with section 124 of the Police Act 1997.

#### **Secondary education provided to persons of compulsory school age**

- 5) Where secondary education is provided to persons of compulsory school age by a Free School, the Company shall secure that, except in such circumstances described in paragraph 6, no education is provided to a person who has attained the age of nineteen years in a room in which any persons of compulsory school age are for the time being receiving secondary education.
- 6) (a) The circumstances referred to in paragraph 5 shall be that a teacher is present in the room.
  - (b) For the purposes of paragraph (a) a teacher shall be considered to be present in the room at a particular time even though no teacher is present if—
    - (i) it would be impracticable to secure the presence of a teacher in a room at that time, and
    - (ii) the absence of a teacher at that time has not lasted more than five minutes.

- 7) The planned number of Statemented Pupil places and the age ranges at each Special Free School (as set out in the Supplemental Agreement for each Special Free School (if applicable)) are not determinative of GAG. GAG at each Special Free School for each Academy Financial Year in respect of Statemented Pupils will be determined by the Secretary of State in accordance with paragraphs 30 and 31.
- 8) The maximum number of Non-Statemented Pupils at each Special Free School and as set out in the Supplemental Agreement for each Special Free School (if applicable) is not determinative of GAG. GAG at each Special Free School for each Academy Year in respect of Non-Statemented Pupils will be determined by the Secretary of State in accordance with paragraphs 30 to 36.
- 9) Each Special Free School will be a special school whose requirements for:
  - (a) the admission of pupils to the Academy are set out in the relevant annex to the Supplemental Agreement;
  - (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).
- 10) Where the Company considers that there is a need to increase the planned number of places (as referred to in paragraph 7 and as set out in the Supplemental Agreement for the relevant Special Free School (if applicable) or the maximum number of pupils referred to in the Supplemental Agreement for the relevant Special Free School (if applicable)), the Company must seek the approval of the Secretary of State and the requirements of this Agreement and the Supplemental Agreement for the relevant Special Free School may be amended accordingly by agreement between the Secretary of State and the Company.
- 11) The planned number of places and the age ranges at each Alternative Provision Free School (as set out in the Supplemental Agreement for each alternative provision Free School) are not determinative of GAG. GAG at each alternative provision Free School for each Academy Financial Year will be determined by the Secretary of State in accordance with paragraphs 42 and 43. Each Alternative Provision Free School will provide education for the cohort of pupils whose characteristics are set out in the requirements at section 1C of the Academies Act and whose requirements for:

- (a) the admission of pupils to the Alternative Provision Free School are set out in the relevant annex to the Supplemental Agreement;
  - (b) the admission to the Alternative Provision Free School of and support for pupils with SEN and with disabilities (for pupils who have and who do not have statements of SEN) are set out in Annex B to this Agreement;
  - (c) pupil exclusions are set out in regulations made by virtue of section 51A of the Education Act 2002 and includes any successor provision(s).
- 12) Each 16 to 19 Free School will be an educational institution principally concerned with providing full-time or part-time education suitable to the requirements of persons over compulsory school age but under 19 whose requirements for:
- (a) the admission of students to the 16 to 19 Free School;
  - (b) the admission to the 16 to 19 Free School of and support for students with learning difficulties and with disabilities; and
  - (c) student exclusions;
- are set out in written policies to be agreed with the Secretary of State prior to the signing of this Agreement. Such policies will be fair, objective and transparent, and will be formulated in accordance with the Company's legal powers and duties in relation to 16 to 19 provision and for the avoidance of doubt adherence to those policies forms part of this Agreement.
- 13) In respect of any policies agreed in accordance with paragraph 12:
- (i) The Secretary of State agrees that the Company may vary the policies subject to the Company informing the Secretary of State of any variation to the policies in writing as soon as reasonably practicable.
  - (ii) The Company agrees to vary the policies as may become necessary to comply with changes to future legislation and/or as the Secretary of State may require.
- 14) The Company shall charge fees for the full cost of the education provided at an Academy to non-European Economic Area pupils who:-
- (i) have a valid United Kingdom visa the terms of which state that the relevant pupil cannot access non-fee paying education; or
  - (ii) no longer have a valid United Kingdom visa allowing them to enter or remain in the United Kingdom but who are applying to renew such a visa; and in each case.
  - (iii) transferred to the Academy from a predecessor fee paying school.

If the Academy fails to charge these pupils, or is unable to recover fees by the end of the term for which they are due, it shall report this to the Secretary of State who may inform the UK Border Agency.

15) Each 16 to 19 Free School shall:

- (a) only be permitted to make charges in the circumstances that institutions within the further education sector are permitted to as set in the current 16 to 19 Funding Guidance published by the Secretary of State, as amended from time to time, or such other guidance on 16 to 19 funding issued by the Secretary of State as may from time to time be applicable; and
- (b) charge fees for the full cost of the education provided at the 16 to 19 Free School to non-European Economic Area students who:-
  - (i) have a valid United Kingdom visa the terms of which state that the relevant student cannot access non-fee paying education; or
  - (ii) no longer have a valid United Kingdom visa allowing them to enter or remain in the United Kingdom but are applying to renew such a visa; and in each case
  - (iii) transferred to the 16 to 19 Free School from a predecessor fee paying institution.

If the Academy fails to charge these students, or is unable to recover fees by the end of the term for which they are due, it shall report this to the Secretary of State who may inform the UK Border Agency.

## **Part 2**

### **Financial Provisions Relating to Free Schools**

#### **Mainstream Free Schools**

- 16) Paragraphs 17 to 26 apply in respect of Mainstream Free Schools only.
- 17) GAG will be paid by the Secretary of State to the Company in order to cover the normal running costs of each Mainstream Free School. These will include, but are not limited to:
  - (a) teachers' salaries and related costs (including full and part time teaching staff and seconded teachers);
  - (b) non-teaching staff salaries and related costs (including pension contributions, educational support staff, administrative and clerical staff and manual and premises related staff);
  - (c) employees' expenses;
  - (d) the purchase, maintenance, repair and replacement:
    - (i) of teaching and learning materials and other educational equipment, including books, stationery and ICT equipment and software, sports equipment and laboratory equipment and materials;
    - (ii) of other supplies and services;
  - (e) examination fees;
  - (f) repairs, servicing and maintenance of buildings (including redecoration, heating, plumbing, lighting etc); maintenance of grounds (including boundary fences and walls); cleaning materials and contract cleaning; water and sewage; fuel and light (including fuel oil, solid and other fuel, electricity and gas); rents; rates; purchase, maintenance, repairs and replacement of furniture and fittings;
  - (g) insurance;
  - (h) medical equipment and supplies;
  - (i) staff development (including in-service training);
  - (j) curriculum development;
  - (k) the costs of providing school meals for pupils (including the cost of providing free school meals to pupils who are eligible to receive them), and discretionary grants to pupils to meet the cost of pupil support,

including support for pupils with special educational needs or disabilities (taking account of the fact that separate additional money will be available for pupils with statements of special educational needs);

- (l) administration; and
- (m) establishment expenses and other institutional costs.

18) Subject to paragraph 25 and the Supplemental Agreement for the relevant Mainstream Free School, GAG for each Academy Financial Year for each Mainstream Free School 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 Mainstream Free School;
- (b) funding for the cost of functions which would be carried out by the local authority if each Mainstream Free School were a maintained school, such funding to be determined at the discretion of the Secretary of State;
- (c) funding for matters for which it is necessary for the relevant Mainstream Free School to incur extra costs, to the extent that those costs are deemed in the discretion of the Secretary of State to be necessary; and
- (d) payments equivalent to further, specific grants made available to maintained schools, where the relevant Mainstream Free School meets the requisite conditions and criteria\_necessary for a maintained school to receive these grants, such payments to be at the discretion of the Secretary of State.

19) Subject to paragraph 21, the basis of the pupil number count for the purposes of determining GAG at each Mainstream Free School for an Academy Financial Year will be the Company's most recent estimate in respect of such Mainstream Free Schools provided in accordance with paragraph 20.

20) The Secretary of State shall in advance of each Academy Financial Year for each Mainstream Free School, at such time or times as he shall determine, request that the Company provides an estimate of the number of pupils on roll in the following September at each Mainstream Free School for the purposes of determining GAG for an Academy Financial Year at each Mainstream Free School, and the Company shall provide the requested estimate (such estimate to be based on an objective assessment of numbers) in respect of each Mainstream Free School to the Secretary of State as soon as reasonably practicable.

- 21) Once the condition specified in paragraph 22 has been satisfied with respect to the relevant Mainstream Free School for the Academy Financial Year for which funding is being calculated, the basis of the pupil number count for the purpose of determining GAG for the relevant Mainstream Free School will be:
- (a) for the pupil number count for pupils in Year 11 and below, the Schools Census for the relevant month (determined at the discretion of the Secretary of State) preceding the Academy Financial Year in question; and
  - b) for the pupil number count for pupils in Year 12 and above, the formula which for the time being is in use for maintained schools for the calculation of pupil numbers for pupils in Year 12 and above for the purpose of calculating their level of funding.
- 22) For the purpose of paragraph 21, the condition is satisfied in the Academy Financial Year which immediately follows the Academy Financial Year in which all planned Year-groups will be present at the relevant Mainstream Free School (that is, all the pupil cohorts relevant to the age-range of the relevant Mainstream Free School will have some pupils present).
- 23) For any Academy Financial Year in which GAG for the relevant Mainstream Free School has been calculated in accordance with paragraphs 19 and 20, an adjustment may be made to the following Academy Financial Year's formula funding element of GAG for the relevant Mainstream Free School to recognise any variation from that estimate. The Secretary of State may for the purpose of calculating any adjustment to the formula funding element of GAG under this clause, use the Census for the relevant month (determined at the discretion of the Secretary of State) for the Academy Financial Year in question as a means of determining pupil numbers in an Academy Financial Year. The additional or clawed-back grant will be only that amount relevant to the number of pupils above or below that estimate.
- 24) For any Academy Financial Year in which GAG for the relevant Mainstream Free School is calculated in accordance with paragraph 21, no adjustment will be made to the equivalence funding element in the following Academy Financial Year's equivalence funding element of GAG for the relevant Mainstream Free School unless the Company demonstrates to the satisfaction of the Secretary of State that there has been a significant impact on costs, such as an extra class. For any other element of GAG for the relevant Mainstream Free School 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 or its equivalent.

- 25) The Secretary of State recognises that if he serves notice to terminate the relevant Supplemental Agreement or of his intention to do so, the intake of new pupils during the notice period is likely to decline and that in such circumstances payments based simply upon the number of pupils attending the relevant Mainstream Free School or Mainstream Free Schools are unlikely to be sufficient to meet the Mainstream Free School's or Mainstream Free Schools' needs during the notice period. In those circumstances, the Secretary of State may undertake to pay a reasonable and appropriately larger GAG with respect to that Mainstream Free School or those Mainstream Free Schools in the notice period than would be justified solely on the basis of the methods set out in paragraphs 18 to 24, in order to enable the Mainstream Free School or Mainstream Free Schools to operate effectively.
- 26) The Secretary of State also recognises that if this Agreement or the relevant Supplemental Agreement is terminated for any reason by either party the number of pupils at the relevant Mainstream Free School or Mainstream Free Schools 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 relevant Mainstream Free School or Mainstream Free Schools.

### **Special Free Schools**

- 27) Paragraphs 28 to 38 apply in respect of Special Free Schools only.
- 28) GAG will be paid by the Secretary of State to the Company as a contribution towards the normal running costs of each Special Free School. These will include, but are not limited to:
- (a) teachers' salaries and related costs (including full and part time teaching staff and seconded teachers);
  - (b) non-teaching staff salaries and related costs (including pension contributions, educational support staff, administrative and clerical staff and manual and premises related staff);
  - (c) employees' expenses;
  - (d) the purchase, maintenance, repair and replacement:
    - (i) of teaching and learning materials and other educational equipment, including books, stationery and ICT equipment and

software, sports equipment and laboratory equipment and materials;

- (ii) of other supplies and services;
  - (e) examination fees;
  - (f) repairs, servicing and maintenance of buildings (including redecoration, heating, plumbing, lighting etc); maintenance of grounds (including boundary fences and walls); cleaning materials and contract cleaning; water and sewage; fuel and light (including fuel oil, solid and other fuel, electricity and gas); rents; rates; purchase, maintenance, repairs and replacement of furniture and fittings;
  - (g) insurance;
  - (h) medical equipment and supplies;
  - (i) staff development (including in-service training);
  - (j) curriculum development;
  - (k) the costs of providing school meals for pupils (including the cost of providing free school meals to pupils who are eligible to receive them), and discretionary grants to pupils to meet the cost of pupil support, including support for pupils with special educational needs or disabilities (taking account of the fact that separate additional money will be available for pupils with statements of special educational needs);
  - (l) administration;
  - (m) establishment expenses and other institutional costs.
- 29) Subject to paragraph 37 of this Agreement and the relevant Supplemental Agreement for the relevant Special Free School, GAG for each Financial Year for each Special Free School will include:
- (a) funding determined by the Secretary of State and notified in the Annual Letter of Funding or its equivalent, taking account of the number of pupils/and or places at the Special Free School;
  - (b) funding for the cost of functions which would be carried out by the local authority if the Special Free School were a maintained school, such funding to be determined at the discretion of the Secretary of State .

- (c) funding for matters for which it is necessary for the Special Free School to incur extra costs, to the extent that those costs are deemed in the discretion of the Secretary of State to be necessary; and
  - (d) Payments equivalent to further, specific grants made available to maintained schools, where the Special Free School meets the requisite conditions and criteria necessary for a maintained school to receive these grants, such payments to be at the discretion of the Secretary of State;
- 30) The Secretary of State will determine GAG for each Special Free School for each Academy Financial Year. The determination will be made taking into account relevant factors. Arrangements for this will be set out in the Annual Letter of Funding or its equivalent.
- 31) The Secretary of State may make provision, within his absolute discretion, for GAG to be adjusted in-year if the number of Pupils and Statemented Pupils attending one of the Special Free Schools at specified dates exceeds or falls below thresholds specified by letter. Arrangements for this will be set out in the Annual Letter of Funding.
- 32) Subject to paragraph 34, the basis of the number count for Non-Statemented Pupils for the purposes of determining GAG for an Academy Financial Year for each Special Free School will be the Company's most recent estimate for each Special Free School provided in accordance with paragraph 33.
- 33) The Secretary of State shall in advance of each Academy Financial Year for each Special Free School, at such time or times as he shall determine, request that the Company provides an estimate of the number of Non-Statemented pupils on roll in the following September for each Special Free School for the purposes of determining GAG for an Academy Financial Year, and the Company shall provide the requested estimate for each Special Free School (such estimates to be based on an objective assessment of numbers at each Special Free School) to the Secretary of State as soon as reasonably practicable.
- 34) Once the condition specified in paragraph 35 has been satisfied with respect to the relevant Special Free School for the Academy Financial Year for which funding is being calculated, the basis of the number count for Non-Statemented Pupils for the purpose of determining GAG for the relevant Special Free School will be the actual number of Non-Statemented Pupils on roll in the relevant month of the previous Academy Financial Year. The relevant month shall be a month determined by the Secretary of State.

- 35) For the purpose of paragraph 34, the condition is satisfied when the number of Non-Statemented Pupils on roll is 90% or more of the number stated in the relevant Supplemental Agreement.
- 36) For any Academy Financial Year in which GAG for Non-Statemented Pupils has been calculated in accordance with paragraph 32 for the relevant Special Free School, an adjustment will be made to the following Academy Financial Year's GAG for the relevant Special Free School to recognise any variation from that estimate. The additional or clawed-back grant will be only that amount relevant to the number of pupils above or below that estimate.
- 37) The Secretary of State recognises that if he serves notice to terminate the relevant Supplemental Agreement or of his intention to do so, the intake of new pupils during the notice period is likely to decline and that in such circumstances payments based on a number of places related to the number of pupils attending the relevant Special Free School are unlikely to be sufficient to meet the Special Free School's needs during the notice period. The Secretary of State may undertake to pay a reasonable and appropriately larger GAG with respect to that Special Free School in the notice period than would be justified solely on the basis of the methods set out in paragraphs 29 to 31, in order to enable the Special Free School to operate effectively.
- 38) The Secretary of State also recognises that if this Agreement or the relevant Supplemental Agreement is terminated for any reason by either party the number of pupils at the relevant Special Free School or Special Free Schools 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 Special Free School.

#### **Alternative Provision Free Schools**

- 39) Clauses 40 to 45 apply in respect of Alternative Provision Free Schools only.
- 40) GAG will be paid by the Secretary of State to the Company as a contribution<sup>16</sup> to the normal running costs of the Alternative Provision Free School. These will include, but are not limited to:

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<sup>16</sup> The extent of any such contribution to be within the absolute discretion of the Secretary of State.

- (a) teachers' salaries and related costs (including full and part time teaching staff and seconded teachers);
- (b) non-teaching staff salaries and related costs (including pension contributions, educational support staff, administrative and clerical staff and manual and premises related staff);
- (c) employees' expenses;
- (d) the purchase, maintenance, repair and replacement:
  - (i) of teaching and learning materials and other educational equipment, including books, stationery and ICT equipment and software, sports equipment and laboratory equipment and materials;
  - (ii) of other supplies and services;
- (e) examination fees;
- (f) repairs, servicing and maintenance of buildings (including redecoration, heating, plumbing, lighting etc); maintenance of grounds (including boundary fences and walls); cleaning materials and contract cleaning; water and sewage; fuel and light (including fuel oil, solid and other fuel, electricity and gas); rents; rates; purchase, maintenance, repairs and replacement of furniture and fittings;
- (g) insurance;
- (h) medical equipment and supplies;
- (i) staff development (including in-service training);
- (j) curriculum development;
- (k) the costs of providing school meals for pupils (including the cost of providing free school meals to pupils who are eligible to receive them), and discretionary grants to pupils to meet the cost of pupil support, including support for pupils with special educational needs or disabilities (taking account of the fact that separate additional money will be available for pupils with statements of special educational needs);
- (l) administration;
- (m) establishment expenses and other institutional costs.

- 41) Subject to paragraph 44 of this Agreement and of the Supplemental Agreement for the relevant Alternative Provision Free School, GAG for each Academy Financial Year for each Alternative Provision Free School will include:
- (a) funding determined by the Secretary of State and notified in the Annual Letter of Funding or its equivalent, taking account of the number of pupils and/or places at the Alternative Provision Free School;
  - (b) funding for the cost of functions which would be carried out by the local authority if the Alternative Provision Free School were a maintained school, such funding to be determined at the discretion of the Secretary of State.
  - (c) funding for matters for which it is necessary for the Alternative Provision Free School to incur extra costs, to the extent that those costs are deemed in the discretion of the Secretary of State to be necessary; and
  - (d) payments equivalent to further, specific grants made available to maintained schools, where the Alternative Provision Free School meets the requisite conditions and criteria necessary for a maintained school to receive these grants, such payments to be at the discretion of the Secretary of State.
- 42) The Secretary of State will determine GAG for each alternative provision Free School for each Academy Financial Year. The determination will be made taking into account relevant factors. Arrangements for this will be set out in the Annual Letter of Funding or its equivalent.
- 43) The Secretary of State may make provision, within his absolute discretion, for GAG to be adjusted in-year if the number of pupils attending one of the alternative provision Free Schools at specified dates exceeds or falls below thresholds specified by letter. Arrangements for this will be set out in the Annual Letter of Funding or its equivalent.
- 44) The Secretary of State recognises that if he serves notice to terminate the relevant Supplemental Agreement or of his intention to do so, the intake of new pupils during the notice period is likely to decline and that in such circumstances payments based simply upon the number of pupils attending the Alternative Provision Free School are unlikely to be sufficient to meet the Alternative Provision Free School's needs during the notice period. In those circumstances, the Secretary of State may undertake to pay a reasonable and appropriately larger GAG with respect to the Alternative Provision Free School in the notice period than

would be justified solely on the basis of the methods set out in paragraphs 41-43, in order to enable the Alternative Provision Free School to operate effectively.

- 45) The Secretary of State also recognises that if this Agreement or the relevant Supplemental Agreement is terminated for any reason by either party the number of pupils at the relevant Alternative Provision Free School 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 alternative provision Free School.

### **16-19 Free Schools**

- 46) Paragraphs 47 to 56 apply in respect of 16 to 19 Free Schools only.
- 47) GAG will be paid by the Secretary of State to the Company in order to cover the normal running costs of each 16 to 19 Free School. These will include, but are not limited to:
- (a) teachers' salaries and related costs (including full and part time teaching staff and seconded teachers);
  - (b) non-teaching staff salaries and related costs (including pension contributions, educational support staff, administrative and clerical staff and manual and premises related staff);
  - (c) employees' expenses;
  - (d) the purchase, maintenance, repair and replacement:
    - (i) of teaching and learning materials and other educational equipment, including books, stationery and ICT equipment and software, sports equipment and laboratory equipment and materials;
    - (ii) of other supplies and services;
  - (e) examination fees;
  - (f) repairs, servicing and maintenance of buildings (including redecoration, heating, plumbing, lighting etc); maintenance of grounds (including boundary fences and walls); cleaning materials and contract cleaning; water and sewage; fuel and light (including fuel oil, solid and other fuel, electricity and gas); rents; rates; purchase, maintenance, repairs and replacement of furniture and fittings;
  - (g) insurance;

- (h) medical equipment and supplies;
  - (i) staff development (including in-service training);
  - (j) curriculum development;
  - (k) discretionary grants to students to meet the cost of student support, including support for students with learning difficulties or disabilities (taking account of the fact that separate additional money will be available for students with learning difficulties or disabilities);
  - (l) administration;
  - (m) establishment expenses and other institutional costs.
- 48) Subject to paragraphs 54 and 55 and the Supplemental Agreement for the relevant 16 to 19 Free School, GAG for each Academy Financial Year for each 16 to 19 Free School will include:
- (a) funding in accordance with the national funding formula for the education and training of 16-19 year olds, determined by the Secretary of State and notified in the Annual Letter of Funding or its equivalent, taking account of the number of students at the 16 to 19 Free School;
  - (b) funding for matters for which it is necessary for the 16 to 19 Free School to incur extra costs, to the extent that those costs are deemed in the discretion of the Secretary of State to be necessary; and
  - (c) payments equivalent to further, specific grants made available to institutions within the further education sector, where the 16 to 19 Free School meets the requisite conditions and criteria necessary for an institution within the further education sector to receive these grants, such payments to be at the discretion of the Secretary of State.
- 49) During the start-up period defined in the relevant Supplemental Agreement for each 16 to 19 Free School the basis of the student number count for the purposes of determining GAG for an Academy Financial Year for the 16 to 19 Free School will be the Company's estimate each year for numbers on roll in the following September for the 16 to 19 Free School, such estimate to be based on an objective assessment of student numbers and agreed with the Secretary of State.
- 50) The Secretary of State shall in advance of each Academy Financial Year for the 16 to 19 Free School, at such time or times as he shall determine, request that the Company provides an estimate of the number of students on roll in the following

September for the 16 to 19 Free School for the purposes of determining GAG for an Academy Financial Year, and the Company shall provide the requested estimate (such estimate to be based on an objective assessment of numbers) to the Secretary of State as soon as reasonably practicable.

- 51) After the start-up period defined in the relevant Supplemental Agreement for each 16 to 19 Free School the arrangements for calculating the student number count for the purpose of determining GAG for the 16 to 19 Free School shall be those provided for in guidance on the national funding system published by the Secretary of State under section 15ZD of the Education Act 1996 for the relevant Academy Financial Year, in respect of persons who have reached the age of 16 but have not reached the age of 19, or are aged 19-24 and have a learning difficulty and/or disability and are the subject of a learning difficulty assessment.
- 52) For any Academy Financial Year in which GAG for the 16 to 19 Free School has been calculated in accordance with paragraph 49, an adjustment may be made to the following Academy Financial Year's formula funding element of GAG for the 16 to 19 Free School to recognise any variation from that estimate. The Secretary of State may for the purpose of calculating any adjustment to the formula funding element of GAG under this clause, use the Individualised Learner Record for the Academy Financial Year in question as a means of determining student numbers in an Academy Financial Year. The additional or clawed-back grant will be only that amount relevant to the number of students above or below that estimate.
- 53) For any Academy Financial Year in which GAG for the 16 to 19 Free School is calculated in accordance with paragraph 51, no adjustment will be made to the equivalence funding element in the following Academy Financial Year's equivalence funding element of GAG. For any other element of GAG the Secretary of State may make adjustments to recognise a variation in student numbers from that used to calculate the element of grant in question; the basis of these will be set out in guidance on the national funding system published by the Secretary of State under section 15ZD of the Education Act 1996 for the relevant Academy Financial Year.
- 54) The Secretary of State may pay further grant in the start-up period defined in the relevant Supplemental Agreement, as determined and specified by him, for costs which cannot otherwise be met from GAG.
- 55) The Secretary of State recognises that if he serves notice to terminate the relevant Supplemental Agreement or of his intention to do so, the intake of new students during the notice period is likely to decline and that in such circumstances payments based simply upon the number of students attending the relevant 16 to

16 to 19 Free School are unlikely to be sufficient to meet the Free School's needs during the notice period. In those circumstances, the Secretary of State may undertake to pay a reasonable and appropriately larger GAG with respect to the relevant 16 to 19 Free School in the notice period than would be justified solely on the basis of the methods set out in paragraphs 48 to 52, in order to enable the relevant 16 to 19 Free School to operate effectively.

- 56) The Secretary of State also recognises that if this Agreement or the Relevant Supplemental Agreement is terminated for any reason by either party the number of students at the relevant 16 to 19 Free School 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 students at the relevant 16 to 19 Free School.

## **SCHEDULE 4**

### **AMENDMENTS TO THE ORIGINAL SUPPLEMENTAL AGREEMENTS**

1. The Original Supplemental Agreement relating to Oasis Academy Immingham shall be amended and restated in the manner set out in Appendix 1 to this agreement.
2. The Original Supplemental Agreement relating to Oasis Academy Enfield shall be amended and restated in the manner set out in Appendix 2 to this agreement.
3. The Original Supplemental Agreement relating to Oasis Academy Wintringham shall be amended and restated in the manner set out in Appendix 3 to this agreement.
4. The Original Supplemental Agreement relating to Oasis Academy John Williams (formerly Oasis Academy Bristol) shall be amended and restated in the manner set out in Appendix 4 to this agreement.
5. The Original Supplemental Agreement relating to Oasis Academy Mediacity UK shall be amended and restated in the manner set out in Appendix 5 to this agreement.
6. The Original Supplemental Agreement relating to Oasis Academy Lords Hill shall be amended and restated in the manner set out in Appendix 6 to this agreement.
7. The Original Supplemental Agreement relating to Oasis Academy Mayfield shall be amended and restated in the manner set out in Appendix 7 to this agreement.
8. The Original Supplemental Agreement relating to Oasis Academy Coulsdon shall be amended and restated in the manner set out in Appendix 8 to this agreement.
9. The Original Supplemental Agreement relating to Oasis Academy Brightstowe shall be amended and restated in the manner set out in Appendix 9 to this agreement.
10. The Original Supplemental Agreement relating to Oasis Academy Hadley shall be amended and restated in the manner set out in Appendix 10 to this agreement.
11. The Original Supplemental Agreement relating to Oasis Academy Shirley Park shall be amended and restated in the manner set out in Appendix 11 to this agreement.
12. The Original Supplemental Agreement relating to Oasis Academy Oldham shall be amended and restated in the manner set out in Appendix 12 to this agreement.

13. The Original Supplemental Agreement relating to Oasis Academy Waterloo shall be amended and restated in the manner set out in Appendix 13 to this agreement.
14. The Original Supplemental Agreement relating to Oasis Academy Limeside shall be amended and restated in the manner set out in Appendix 14 to this agreement.
15. The Original Supplemental Agreement relating to Oasis Academy Nunsthorpe shall be amended and restated in the manner set out in Appendix 15 to this agreement.
16. The Original Supplemental Agreement relating to Oasis Academy Bank Leaze shall be amended and restated in the manner set out in Appendix 16 to this agreement.
17. The Original Supplemental Agreement relating to Oasis Academy Byron shall be amended and restated in the manner set out in Appendix 17 to this agreement.
18. The Original Supplemental Agreement relating to Oasis Academy Connaught shall be amended and restated in the manner set out in Appendix 18 to this agreement.
19. The Original Supplemental Agreement relating to Oasis Academy New Oak shall be amended and restated in the manner set out in Appendix 19 to this agreement.
20. The Original Supplemental Agreement relating to Oasis Academy Henderson Avenue shall be amended and restated in the manner set out in Appendix 20 to this agreement.
21. The Original Supplemental Agreement relating to Oasis Academy Parkwood shall be amended and restated in the manner set out in Appendix 21 to this agreement.
22. The Original Supplemental Agreement relating to Oasis Academy Harpur Mount shall be amended and restated in the manner set out in Appendix 22 to this agreement.
23. The Original Supplemental Agreement relating to Oasis Academy Blakenhale Junior shall be amended and restated in the manner set out in Appendix 23 to this agreement.
24. The Original Supplemental Agreement relating to Oasis Academy Woodview shall be amended and restated in the manner set out in Appendix 24 to this agreement.

25. The Original Supplemental Agreement relating to Oasis Academy Blakenhale Infants shall be amended and restated in the manner set out in Appendix 25 to this agreement.
26. The Original Supplemental Agreement relating to Oasis Academy Short Heath Connaught shall be amended and restated in the manner set out in Appendix 26 to this agreement.
27. The Original Supplemental Agreement relating to Oasis Academy Southbank shall be amended and restated in the manner set out in Appendix 27 to this agreement.
28. The Original Supplemental Agreement relating to Oasis Academy Longmeadow shall be amended and restated in the manner set out in Appendix 28 to this agreement.
29. The Original Supplemental Agreement relating to Oasis Academy Boulton shall be amended and restated in the manner set out in Appendix 29 to this agreement.
30. The Original Supplemental Agreement relating to Oasis Academy Lister Park shall be amended and restated in the manner set out in Appendix 30 to this agreement.
31. The Original Supplemental Agreement relating to Oasis Academy Hobmoor shall be amended and restated in the manner set out in Appendix 31 to this agreement.
32. The Original Supplemental Agreement relating to Oasis Academy Skinner Street shall be amended and restated in the manner set out in Appendix 32 to this agreement.
33. The Original Supplemental Agreement relating to Oasis Academy Aspinal shall be amended and restated in the manner set out in Appendix 33 to this agreement.
34. The Original Supplemental Agreement relating to Oasis Academy Hextable shall be amended and restated in the manner set out in Appendix 34 to this agreement.
35. The Original Supplemental Agreement relating to Oasis Academy Pinewood shall be amended and restated in the manner set out in Appendix 35 to this agreement.
36. The Original Supplemental Agreement relating to Oasis Academy Warndon shall be amended and restated in the manner set out in Appendix 36 to this agreement.

**EXECUTED** and **DELIVERED** as a **DEED** )

)

By ..... )

a director of **OASIS COMMUNITY LEARNING** )

in the presence of: )

Signature of witness .....

Print name .....

Address .....

.....

.....

Occupation .....

The **COMMON SEAL** of THE SECRETARY OF STATE  
for EDUCATION hereunto affixed is authenticated  
by:

.....

Duly Authorised