

DATED

2013

(1) THE SECRETARY OF STATE FOR EDUCATION

(2) HARRIS FEDERATION

SUPPLEMENTAL AGREEMENT
Relating to HARRIS ASPIRE ACADEMY



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

GRD/096602/0008
23 August 2013

THIS AGREEMENT made

2013

BETWEEN

(1) THE SECRETARY OF STATE FOR EDUCATION; and

(2) HARRIS FEDERATION

IS SUPPLEMENTAL TO THE MASTER FUNDING AGREEMENT made between the Secretary of State for Education and Skills and the Company dated 31st August 2007 (the “**Master Agreement**”).

DEFINITIONS AND INTERPRETATION

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

The following words and expressions shall have the following meanings:

“the Academy” means the Harris Aspire Academy to be established at Lennard Road, Bromley BR3 1QR

"Academy Financial Year" means the year from 1st September to 31st August in any year or such other period as the Secretary of State may from time to time specify by notice in writing to the Company;

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

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

“the Land” means the land (including for the avoidance of doubt all buildings, structures landscaping and other erections on the Land) situated at Lennard Road, Bromley, BR3 1QR delineated in red on the plan annexed as Annex 1A to this Agreement and consisting of that part of the ground floor hatched red together with shared use of the area hatched black on the plan annexed at Annex 1B to this Agreement plus all of the first floor; all such land being part of the land registered under title number SGL719680;

“SENCO” means Special Educational Needs Co-ordinator; and

“Start-up Period” means the two Academy Financial Years commencing 1 September 2013.

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

2 THE ACADEMY

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

The Company will establish and maintain, and carry on or provide for the carrying on of the Academy in accordance with the Master Agreement and this Agreement except insofar as any provisions in this Agreement conflict with any provisions in the Master Agreement, in which case the provisions of this Agreement shall prevail over the relevant provisions in the Master Agreement.

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

The Company shall ensure that the broad and balanced curriculum includes English and Mathematics.

The Company must ensure that the alternative provision Academy meets the requirements set out in section 1C of the Academies Act 2010 and that, subject to the admissions arrangements for the Academy as set out at Annex 1 and as contained in the Academy's admissions criteria, educational provision is made at the alternative provision Academy for children of compulsory school age who, by reason of illness, exclusion from school or otherwise, may not for any period receive suitable education unless alternative provision is made for them.

The requirements for the admission of pupils to the Academy are set out in Annex 2 to this Agreement.

THE ACADEMY

The Academy shall open as an Academy on 1st September 2013.

The planned capacity of the Academy is 90 places in the age range 11-18,

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

“b) there will be assessments of pupils’ performance as they apply to maintained schools and the opportunity to study for relevant qualifications unless there are exceptional reasons to do otherwise”

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

the Academy shall be treated as falling within the meaning of “a school” under section 42A (2);

the Academy Trust shall be deemed to be the “responsible authorities” for the purposes of subsection 42A(3); and

references to registered pupils shall be treated as references to registered pupils at the Academy.

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

Subject to clause 2.13, and in relation to the Academy only, 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.

Clause 2.12 does not apply to anyone who (a) 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 (b) is appointed as a designated person for looked after children further to clause 19 of the Master Agreement.

The Company shall comply with the requirements of the Education (Independent School Standards) (England) Regulations 2010 (SI 2010/1997) (or such other regulations as may for the time being be applicable) in relation to requiring enhanced disclosure and barring service checks, obtaining disclosure and barring service certificates and making any further checks, as required and appropriate for members of staff, supply staff, individual Governors and the Chair of the Governing Body.

The Company Trust shall, on receipt of a copy of a disclosure and barring service certificate, on request from the Secretary of State or his agents, as soon as possible thereafter submit such information to the Secretary of State in accordance with section 124 of the Police Act 1997.

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

- (a) advise in writing whether or not, in the preceding two years, there has been any formal consideration of that teacher's capability to perform their role at the Academy; 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.

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

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

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

The Secretary of State will notify the appropriate body for assessment purposes about the Academy:

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

are exceptional reasons to do otherwise.

- (b) The Company shall report to any body on assessments in respect of the Academy as the Secretary of State shall prescribe and shall provide such information as may be required by that body as applies to maintained schools.
- (c) In respect of all Key Stages, the Company will submit the Academy to monitoring and moderation of its assessment arrangements as prescribed by the Secretary of State.
- (d) The Company may offer:
 - (i) any course of education or training at an Academy 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.

The Company shall ensure that the following information is published on the Academy's website:

- (a) 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:
 - “% achieving 5 + A* - C GCSEs (or equivalent) including English and Maths GCSEs”;
 - “% achieving the English Baccalaureate”; and
 - “% of pupils making expected progress”.
- (b) Information as to where and by what means parents (including prospective parents) may access the most recent report about the Academy published by the Chief Inspector.
- (c) Information as to where and by what means parents (including prospective parents) of pupils at the Academy may access the School

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

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

- (a) the content of the curriculum;
- (b) its approach to the curriculum;
- (c) any GCSE options (and other Key Stage 4 qualifications) offered by the Academy;
- (d) how parents (including prospective parents) can obtain further information in relation to the Academy's curriculum.

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

- (a) the amount of Pupil Premium allocation that it will receive during that 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.

In respect of the Academy, 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 the Academy;
- (b) references to registered pupils shall be treated as references to registered pupils at the Academy;

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

The Company, in relation to the Academy, shall not 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.

The Academy Trust shall make provision for the teaching of evolution as a comprehensive, coherent and extensively evidenced theory.

The Company shall, in relation to the Academy, ensure that principles are promoted which support fundamental British values, including: respect for the basis on which the law is made and applied in England; respect for democracy and support for participation in the democratic processes; support for equality of opportunity for all; support and respect for the liberties of all within the law; and respect for and tolerance of different faiths and religious and other beliefs.

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

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

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

CAPITAL GRANT

Pursuant to clauses 45-59 of the Master Funding Agreement, the Secretary of State may, in his absolute discretion provide Capital Expenditure funding in accordance with any arrangements he considers appropriate.

GAG AND EAG

The Secretary of State agrees to pay GAG and EAG to the Company in relation to the Academy in accordance with the Master Agreement, save that clauses 65-74 of the Master Agreement are disapplied and replaced with clauses 4.2 to 4.9 below.

GAG will be paid by the Secretary of State to the Company as a contribution² to the normal running costs of the Academy. These will include, but are not limited to:

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

² The extent of any such contribution to be within the absolute discretion of the Secretary of State.

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.

GAG for each Academy Financial Year for the 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 Academy;
- (b) funding for the cost of functions which would be carried out by the local authority if the Academy 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 Academy 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 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.

The Secretary of State will determine GAG for the Academy 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.

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 Academy 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.

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

The Secretary of State recognises that if he serves notice of intention to terminate this Agreement, the intake of new pupils during the notice period is likely to decline and that in such circumstances payments based simply upon the number of pupils attending the Academy are unlikely to be sufficient to meet the Academy'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 Academy in the notice period than would be justified solely on the basis of the methods set out in clauses 4.3-4.5, in order to enable the Academy to operate effectively.

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

For the avoidance of doubt, the Secretary of State will not, in relation to the Academy, pay Implementation Grant pursuant to clauses 42-47 of the Master Agreement.

ADDITIONAL FUNDING

Not used.

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

5A RECOVERY OF GRANT

5A.1 If the Secretary of State or his agents pay grant not including GAG to the Company in relation to the Academy 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 either:

- (i)** in the same Academy Financial Year that such grant is paid to the Company in relation to the Academy; or
- (ii)** in the calculation and/or payment of any subsequent grant to the Company in relation to the Academy; or
- (iii)** by an adjustment to the GAG paid by the Secretary of State to the Company in relation to the Academy in the following Academy Financial Year or Academy Financial Years.

TERMINATION

Either party may give not less than seven Academy Financial Years' written notice to terminate this Agreement, such notice to expire on 31 August 2020 or any subsequent anniversary of that date.

If the Secretary of State is of the opinion that the Academy no longer has the characteristics set out in clause 12 of the Master Agreement or that the conditions and requirements set out in clauses 13-42 (other than 17,18,19,20,22,27,28 (except in relation to provide a broad and balanced curriculum (including English, Maths and Science) to pupils up to the age of 11), 37,41 and 42) of the Master Agreement are not being met, or that the Company is otherwise in material breach of the provisions of this Agreement or the Master Agreement, the Secretary of State may give notice of his provisional intention to terminate this Agreement.

Any such notice shall be in writing and shall:

state the grounds on which the Secretary of State considers the Academy no longer has the characteristics set out in clause 12 of the Master Agreement or is not meeting the conditions and requirements of clauses 13-42 (other than 17,18,19,20,22,27,28 (except in relation to provide a broad and balanced curriculum (including English, Maths and Science) to pupils up to the age of 11), 37,41 and 42) of the Master Agreement or the Company is otherwise in material breach of the provisions of this Agreement or the Master Agreement;

specify the measures needed to remedy the situation or breach;

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

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

If no response is received by the date specified in accordance with clause 6.3.4, the Secretary of State may give the Company 12 months, or such lesser period as he considers appropriate in the circumstances, written notice to terminate this Agreement.

If a response is received by the date specified in accordance with clause 6.3.4, the Secretary of State shall consider it, and any representations made by the Company, and shall, within three months of its receipt, indicate that:

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

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

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

In the circumstances of clause 6.5.3 the Secretary of State shall notify the Company why he believes that he cannot be reasonably satisfied and, if so requested by the Company within thirty days from such notification, he shall meet a deputation including representatives from directors of the Company and the Academy Governing Body of the Academy to discuss his concerns. If following such meeting he has good reasons for remaining satisfied that the Academy does not and will not have the characteristics set out in clause 12 of the Master Agreement or does not and will not meet the conditions and requirements set out in clauses 13-42 (other than 17,18,19,20,22,27,28 (except in relation to provide a broad and balanced curriculum (including English, Maths and Science) to pupils up to the age of 11), 37,41 and 42) of the Master Agreement or the Company is in material breach of the provisions of this Agreement or the Master Agreement and such breach will not be remedied to his reasonable satisfaction, he shall give the Company twelve months written notice to terminate this Agreement.

If the Secretary of State has cause to serve a notice on the Company under section 165 of the Education Act 2002 and a determination (from which all rights of appeal have been exhausted) has been made that the Academy shall be struck off the Register of Independent Schools, the period of twelve months notice referred to in clause 6.6 may be shortened to a period deemed appropriate by the Secretary of State.

The Secretary of State shall, at a date preceding the start of each Academy Financial Year (but using his best endeavours to do so by the end of December), provide to the Company an indication of the level of funding to be provided by the Secretary of State to the Company by way of GAG and EAG in the next following Academy Financial Year (the “Indicative Funding”). If the Company is of the opinion that, after receipt of the Indicative Funding for the next following Academy Financial Year (the “Critical Year”) and of the taking into account all other resources available and likely to be available to the Academy, including such funds as are set out in clause 77 of the Master Agreement and such other funds as are and likely to be available to the Academy from other academies operated by the Company (“All Other Resources”), it is likely that the cost of running the Academy during the Critical Year would cause the Company, on the basis of the Indicative Funding, to become insolvent (and for this reason only) then the Company may give notice of its intention to terminate this Agreement at the end of the then current Academy Financial Year.

Any notice given by the Company under clause 6.8 shall be in writing and shall be served on the Secretary of State not later than 28 February preceding the Critical Year or, if the Secretary of State shall not have given notice of the Indicative Funding to the Company on or before the date specified in clause 6.8 above, within six weeks after the Secretary of State shall have done so.

The notice must specify:

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

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

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

Both parties undertake to use their best endeavours to agree whether or not the cost of running the Academy during the Critical Year would cause the Company, on the basis of the Indicative Funding and All Other Resources, to become insolvent. Both parties recognise that they will need to engage in a constructive dialogue at the time about how best to provide education for the pupils at the Academy and undertake to use their best endeavours to agree a practical solution to the problem.

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

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

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

If the Company shall have given notice to terminate the Agreement under 6.13, the Secretary of State may by notice in writing to the Company require the Company to appoint up to two persons as members of the Advisory Governing Body.

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

6.15A A “Special Measures Termination Event Occurs” when:

6.15A.1 the Chief Inspector has given a notice to the Company in accordance with section 13(3) of the Education Act 2005 (the “Special Measures Notice”) stating that in his opinion special measures are required to be taken in relation to the Academy; and

6.15A.2 the Chief Inspector has carried out a subsequent inspection of the Academy in accordance with the Education Act 2005 and has made a report in accordance with the Education Act 2005 stating that the Academy has made inadequate progress since the date of the Special Measures Notice; and

6.15A.3 the Secretary of State has requested the Company to deliver within 10 Business Days a written statement (a “Further Action Statement”) of the action the Company proposes to take, and the period within which it proposes to take such action, or, if it does not propose to take any action, the reasons for not doing so; and

6.15A.4 the Secretary of State, having considered the Further Action Statement, is not satisfied that any action proposed to be taken by the Company is sufficient in all the circumstances, or, if no Further Action Statement shall have been given to the Secretary of State within the requested timeframe or otherwise.

6.15B If a Special Measures Termination Event occurs, the Secretary of State may:

6.15B.1 terminate this Agreement forthwith by notice in writing to the Company; or

6.15B.2 subject to clause 109 of the Master Agreement, appoint such members of the Advisory Governing Body as he thinks fit and/or may give up to 12 months’ notice in writing to terminate this Agreement.

6.15C In the event that the Secretary of State appoints members of the Advisory Governing Body in accordance with clause 6.15.2 the Company must, as requested by the Secretary of State, procure the resignation of the relevant members of the Advisory Governing Body.]

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

the Academy would, on opening, provide an unacceptably low standard of education;

or

the safety of pupils or staff at the Academy would, on opening, be threatened; or

the staff employed at the Academy are unsuitable; or

the buildings and other structures on the Land are unsuitable or the Company has not obtained Building Regulation approval;

he may in writing either:

- (a) require the Company (i) not to open the Academy; and/or (ii) not to admit pupils of a particular age range, to be determined by the Secretary of State; and/or (iii) not to use any building or other structure on the Land until such time as the relevant matter or matters listed in 6.16.1 to 6.16.4. above has or have been resolved to the Secretary of State's satisfaction; or
- (b) terminate this Agreement forthwith or give such notice as he deems appropriate in the circumstances to terminate this Agreement.

If the Secretary of State is satisfied that any member of an Advisory Governing Body is not a suitable person he may:

in relation to a member of an Advisory Governing Body who has been appointed by the Company serve notice in writing on the Company requiring the Company to procure the resignation or removal of the person(s) within 21 days. If the Company fails to procure the said resignation or removal of such a member within the time specified, the Secretary of State may by notice terminate this Agreement forthwith or may provide at least 12 months' notice in writing to terminate this Agreement (such notice to take effect at the end of an Academy term); or

by notice in writing to the Company direct that the Company appoint additional Advisory Governing Body members as specified by the Secretary of State and whom the Company has the power to appoint under its Articles. If the Company fails to procure such appointments of such additional members of the Advisory Governing Body, the Secretary of State may by notice terminate this Agreement forthwith and/or provide at least 12 months' notice in writing to terminate this Agreement (such notice to take effect at the end of an Academy term); and

in relation to a member of the Advisory Governing Body who has not been appointed by the Company, serve notice in writing on the Company directing the Company invoke its powers under its Articles to revoke the delegation of powers to the Advisory Governing Body. If the Company fails to invoke its powers in such manner within 21 days of service of the notice, the Secretary of State may by notice in writing terminate this Agreement forthwith or may provide at least 12 months written notice to terminate this Agreement (such notice to take effect at the end of an Academy

term).

EFFECT OF TERMINATION

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

Subject to clause 7.3, if the Secretary of State terminates this Agreement for reasons other than that a Special Measure Termination Event occurs, the Academy no longer has the characteristics set out in clause 12 of the Master Agreement, or is no longer meeting the conditions and requirements set out in clauses 13-42 (other than 17,18,19,20,22,27,28 (except in relation to provide a broad and balanced curriculum (including English mathematics and science) to pupils up to the age of 11), 37,41 and 42) of the Master Agreement or that the Company is otherwise in material breach of the provisions of this Agreement or the Master Agreement, the Secretary of State shall indemnify the Company.

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

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

On the termination of this Agreement however occurring, the Company shall in respect of any of its capital assets solely used by the Academy at the date of termination:

- (a) promptly transfer its interest in a proportion of such assets to a person nominated by the Secretary of State, if the Secretary of State considers**

that all or some of those assets need to be used for educational purposes by that nominee The proportion of the assets to be transferred shall be the same as the proportion of the capital contribution made by the Secretary of State to the original cost of those assets, whether that contribution was made on the establishment of the Academy or later; or

- (b) if the Secretary of State confirms that a transfer under clause 7.5 a) is not required, promptly repay to the Secretary of State a percentage of the assets at the date of disposal of those assets. Such percentage to be the same as the percentage of the capital contribution made by the Secretary of State to the original cost of those assets, whether that contribution was made on the establishment of the Academy or later. For the purposes of this clause “Net Proceeds of Sale” shall mean the amount received by the Company on the disposal of such assets after deducting VAT and all costs (including legal and other fees) incurred in relation to such disposal.

The Secretary of State may waive in whole or in part the repayment due under clause 7.5 b) if:

- (a) the Company obtains his permission to invest the proceeds of sale for its charitable objects; or
- (b) The Company obtains his permission to use the assets for the benefit of another Academy within the Company’s operation;
- (c) the Secretary of State directs all or part of the repayment to be paid to the L A.

ANNEX

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

GENERAL

This Agreement shall not be assignable by the Company.

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

Further to clause 100(I) of the Master Agreement and without prejudice to any other provision of this Agreement, the Secretary of State acting reasonably may from time to time call for any other relevant information concerning the management or governance of the Academy which, subject to clause 105 of the Master Agreement, is reasonably necessary for the Secretary of State to carry out his functions generally and in relation this Agreement.

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

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

THE MASTER AGREEMENT

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

ENGLISH LAW

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.

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).

LAND CLAUSES

Debt

12A Not used

Restrictions on Land transfer

12B) Not used.

Obligations of the Company

12C) (i) The Company shall keep the Land clean and tidy and make good any damage it causes to the Land and/or any deterioration to the condition of the Land that may arise from the date of this Agreement. In compliance with this clause, the Company shall not do or cause or permit to be done anything to lessen the value or marketability of the Land save with the express written consent of the Secretary of State.

12C) (ii) [Not used].

12C) (iii) The Company agrees it shall seek and obtain the prior written consent of the Secretary of State or as permitted in the Academies Financial Handbook for the time being in force, not to be unreasonably withheld or delayed before taking any steps to:

- a) save in the ordinary course of business of the Company grant any consent or licence in respect of the Land or any part of it; and/or
- b) create or permit to arise or continue any encumbrance affecting the Land

- or any part of it; and/or
- c) part with or share possession or occupation of the Land or any part of it; and/or
 - d) enter into any onerous or restrictive obligations affecting the Land or any part of it.

Insurance

12D) The Company shall:-

- a) keep the buildings on the Land insured with a reputable insurance office against loss or damage by the Insured Risks in the sum the Company is advised represents the reinstatement value of the Land from time to time;
- b) pay the premiums for insurance promptly as they become due and maintain in force the policies of insurance on the buildings on the Land;
- c) following the incidence of damage to or destruction of the buildings on the Land and subject to receipt of all necessary consents licences permissions and the like apply the proceeds of the policy of the insurance received for those purposes in rebuilding and reinstating the buildings on the Land (provided that this clause should be satisfied if the Company provides premises not necessarily identical to the buildings on the Land as the same existing prior to such damage or destruction occurring) as soon as may be reasonably practicable;
- d) produce to the Secretary of State a copy of the insurance policy whenever reasonably requested and the receipt for the last premium or other evidence of renewal and up to date details of the amount of cover (but no more often than once in any period of 12 months in both cases);
- e) not knowingly do anything whereby any policy of insurance relating to the Land may become void or voidable.
- f) insure against liability in respect of property owners' and third party risks including occupiers liability.

Option over the Land

12E) (a) In the event that the Company intends to cease to operate the Academy but the Academy is to continue to operate as a school the Company shall serve written notice on the Secretary of State to that effect and stating the date by which the Company proposes to cease to operate or terminate its

involvement with the alternative provision Academy.

(b) In the event that the Secretary of State intends that a third party should operate the alternative provision Academy in place of the Company, the Secretary of State shall serve written notice on the Company to that effect and stating the date on which it is intended that the third party should start to operate the alternative provision Academy.

(c) The Company hereby grants and the Secretary of State hereby accepts an option, exercisable by the Secretary of State or his nominee, to take a lease ("the New Lease") of the Land from the Company at nil consideration for such duration of up to 125 years as the Secretary of State shall specify. The option hereby granted shall be exercisable (by notice in writing by or on behalf of the Secretary of State) upon the service of either of the notices referred to in clause 12E) (a) and 12E) (b). On the exercise of this option, the Law Society's Standard Conditions of Sale for Commercial Property in force at the date of such exercise shall apply to the transaction and completion shall take place 28 days after the later of such exercise and the date upon which the Big Lottery Fund shall have given its written consent to the grant of the New Lease and the release by the Big Lottery Fund of the Company from all and any liability arising in respect of the grants made by the Big Lottery Fund.

12F) The Company:

- (a) shall, within 14 days from the signing of this Agreement, apply to the Land Registry in Form AN1 as prescribed by Rule 81 of the Land Registration Rules 2003 for a notice to be entered in the register (under section 34(3)(a) of the Land Registration Act 2002) to protect the option granted under clause 12E and including a copy of this Agreement as evidence of that option,
- (b) shall take any further steps required to ensure that the notice referred to in clause 12F(a) is entered on the proprietorship register,
- (c) shall provide the Secretary of State with confirmation of the entry of the notice referred to in clause 12F(a) as soon as practicable after it receives notification from the Land Registry,
- (d) in the event that it has not registered the notice referred to in clause 12F(a), hereby consents to the entering of the notice referred to in 10F(a) in the register by the Secretary of State (by application in Form

- UN1 under s. 34(3)(b) of the Land Registration Act 2002),
- (e) shall not, without the consent of the Secretary of State, apply to dis-apply, modify or remove (by cancellation or otherwise) a notice entered in accordance with clause 12F(a) or 12F(d) above, whether by itself, a holding company, a subsidiary company, or a receiver, administrator or liquidator acting in the name of the Company.

Legal Charge

12G) Not used.

Failure to use the Land for the purposes of the Academy

12H) Not used;

Sharing of the Land

12I) Not used

Exercise of Rights

12J)-12M) Not Used.

Payment of Debt

12N)-12O) Not used.

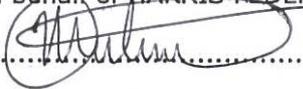
Deed of Variation

12P)The Company acknowledges that it will be necessary for it to acquire a legal interest in land for use as the permanent site of the Upper School (“the Upper School Land”). The Company agrees that in advance of the acquisition by the Company of any legal interest in the Upper School Land, the Company shall enter into negotiations in good faith with the Secretary of State in respect of agreeing a deed of variation to this Agreement in order to apply such additional clauses as the Secretary of State shall specify (including where requested clauses in substantially the same form as those appearing at **Annex 4** to this Agreement) to the Upper School Land. Should the Company fail to enter into such negotiations in good faith and / or fail to enter into a deed of variation in respect of the application of the said additional clauses to the Upper School Land following such negotiations, the Secretary of State may by notice terminate this Agreement by notice in writing to the Company such termination to take effect on the date specified in the notice.

This Agreement was signed on the day and year first before mentioned

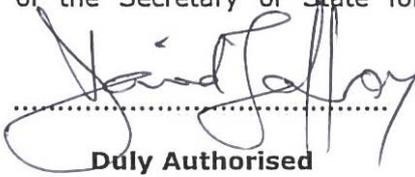
Signed on behalf of by MIKE ANTONIOU

on behalf of HARRIS FEDERATION


.....

Director *Company Secretary*

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


.....
Duly Authorised



ANNEXES TO THIS SUPPLEMENTAL AGREEMENT

Plan showing overall site of the Academy Annex 1

A

Plan showing that part of the ground floor which is within the demise of Harris Aspire Academy (with areas hatched red being within such demise and areas hatched black shared with Harris Academy Bromley)

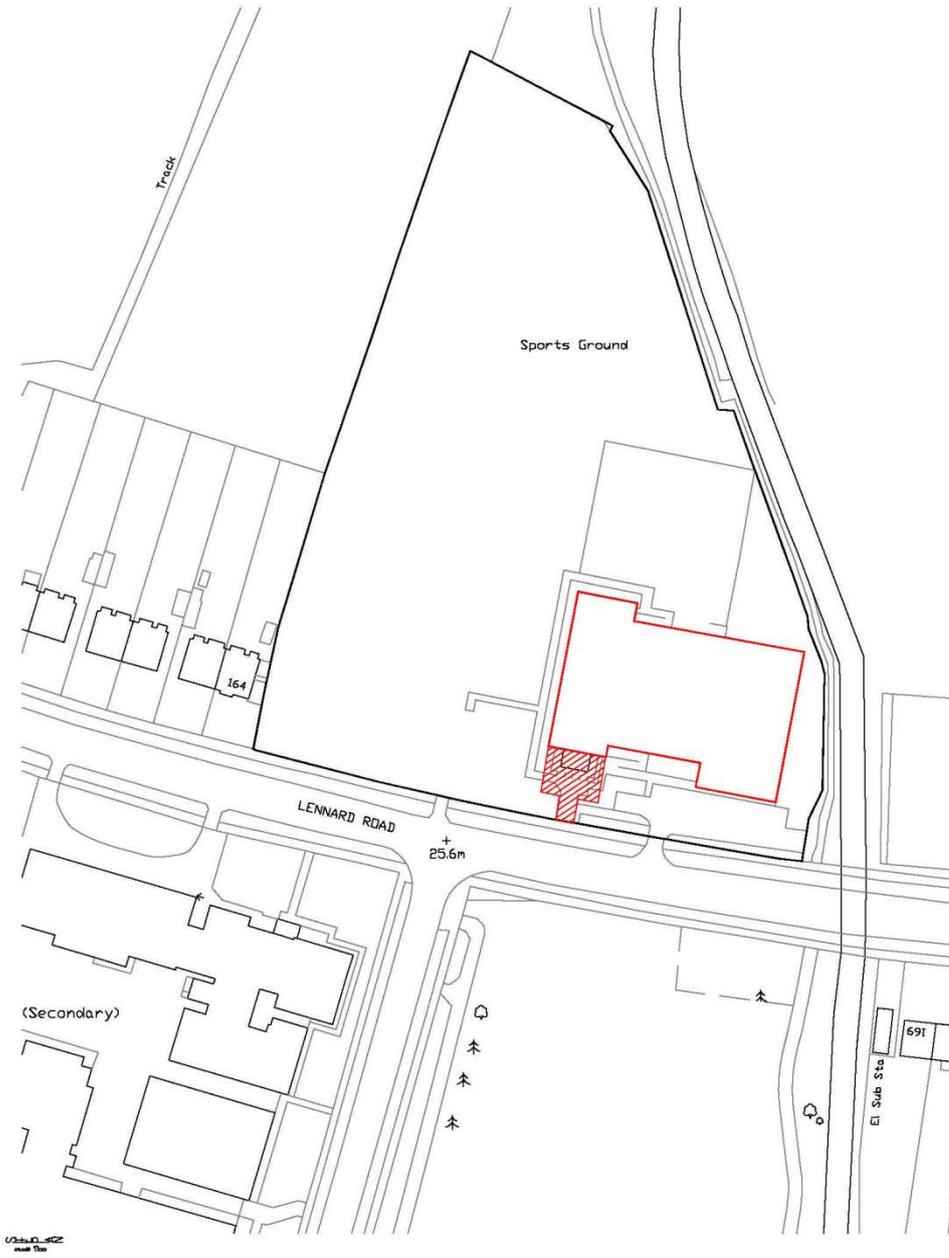
Annex 1 B

Requirements for the Admission for pupils at the Academy Annex 2

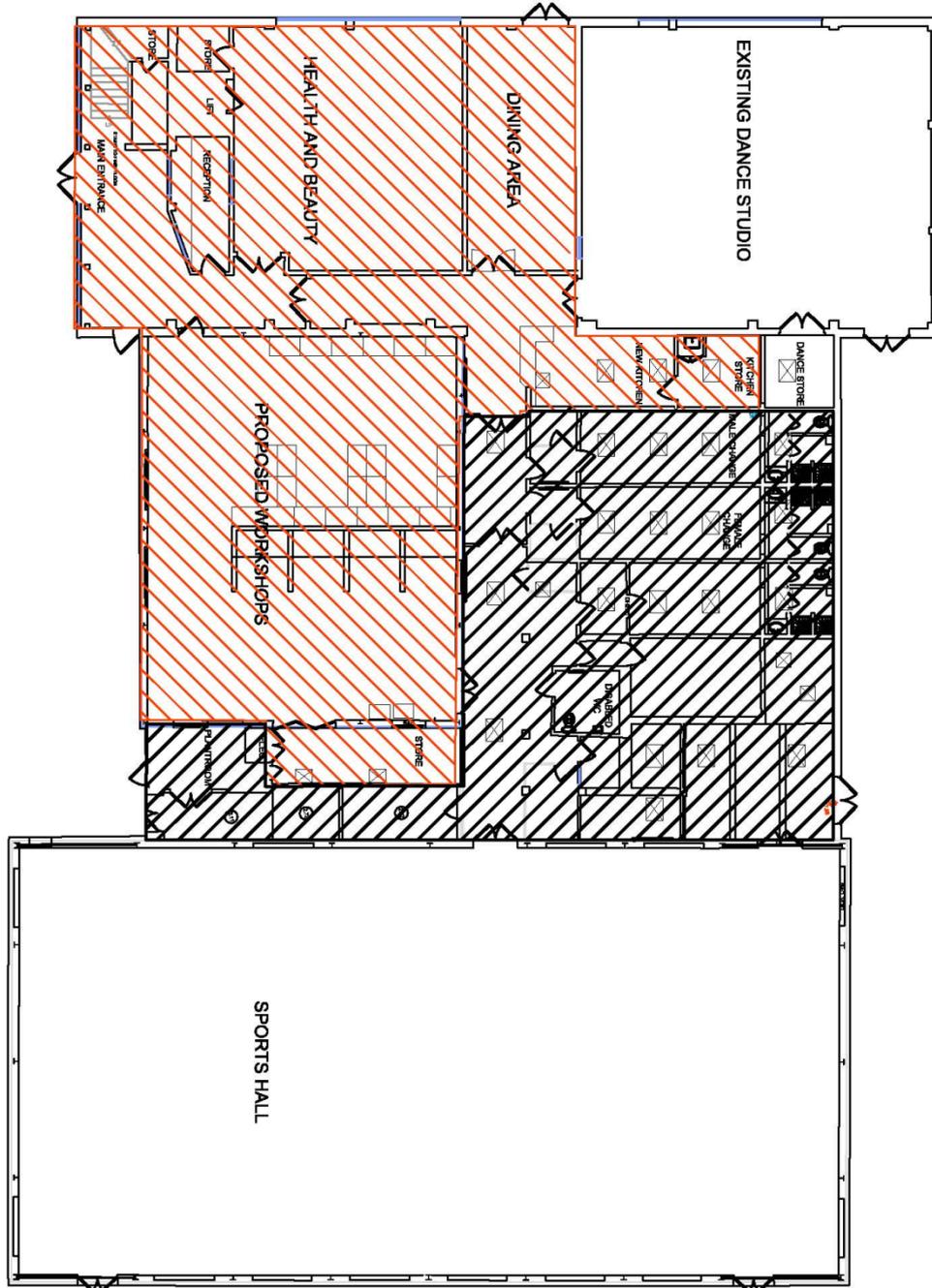
Arrangements for pupils with SEN and disabilities Annex 3

Additional clause relating to the Upper School land to be acquired
by the Company Annex 4

Annex 1A



ANNEX 1B



Annex 2

Requirements for the admission of pupils to the Harris Aspire alternative provision Academy

General

1. This Annex may be amended in writing at any time by agreement between the Secretary of State and the Academy Trust.
2. The Academy Trust will act in accordance with equalities law.
3. Except where paragraphs 4 or 5 applies, the Academy Trust may not admit a child of compulsory school age unless it is by way of a referral from a Commissioner through one of the referral routes set out in paragraph 6 below.
4. Notwithstanding any provision in this Annex, the Secretary of State may:
 - (a) direct the Academy Trust to admit a named pupil to the Harris Aspire alternative provision Academy on application from a local authority. This will include complying with a School Attendance Order³. Before doing so the Secretary of State will consult the Academy Trust.
 - (b) direct the Academy Trust to admit a named pupil to the Harris Aspire alternative provision Academy if the Academy Trust has failed to act in accordance with this Annex or has otherwise failed to comply with applicable equalities legislation.
 - (c) direct the Academy Trust to amend its admission arrangements where the Academy Trust fails to comply with relevant legislation or where the Secretary of State is concerned that because of its admissions arrangements the Academy Trust is no longer meeting the requirements at 1C of the Academies Act 2010.
5. Pupils on roll in any predecessor provider will transfer automatically to the alternative provision Academy on opening. All children already offered a place at any predecessor provider will be admitted.

The Academy Trust will :

- a) Subject to its right of appeal to the Secretary of State in relation to a named pupil, admit all pupils with a statement of special educational needs naming the alternative provision Academy; and
- b) Adopt admission oversubscription criteria⁴ that give highest priority to looked after

³ Local authorities are able to issue school attendance orders if a child is not attending school. These are legally binding upon parents. Such an order might, for instance, be appropriate where a child has a place at an alternative provision Academy but his/her parents are refusing to send him/her to school. The order will require a parent to ensure his/her child attends a specified school.

⁴ Over subscription criteria means how the Academy Trust will distinguish/prioritise

children.

Admission arrangements

6. The Academy Trust may only admit a child of compulsory school age:

a) referred by a local authority where the local authority has a duty to that child under section 19 of the Education Act 1996.⁵

b) referred by a maintained school or Academy where the maintained school or Academy has a duty under Section 100 of the Education and Inspections Act 2006.⁶

c) referred by a maintained school under powers set out in section 29(A) of the Education Act 2002⁷.

d) referred by an Academy which, under general powers in the Articles of the Academy Trust may send pupils off-site to an alternative provision Academy as part of early intervention measures to address behaviour. However, as with a maintained school there is an expectation in law that a pupil will be educated at the school where he is registered, so placements would generally be relatively short and subject to review⁸.

7. The Academy Trust shall have admission arrangements agreed with the Department which will include oversubscription criteria, a fair, transparent and objective process for considering whether the education provided will be appropriate for prospective pupils and an admission number for each relevant key stage. The Academy Trust will consult on its admission arrangements.

8. Any changes to admission arrangements proposed by the Academy Trust should be discussed with Commissioners and must be agreed with the Secretary of State.

between pupils where it has more referrals than places currently available.

⁵ Section 19 of the Education Act 1996, and regulations made under that section, require a local authority to make arrangements (from the sixth day of exclusion where a pupil has been permanently excluded) for the provision of suitable, full time (unless there are medical reasons as to why this would not be appropriate) education at school or otherwise for a child of compulsory school age who, for a range of reasons, would otherwise be without such education.

⁶ Section 100 of the Education and Inspections Act 2006 requires maintained schools and Academies to arrange full-time education for pupils on a fixed period exclusion of more than five days from the sixth day of the exclusion.

⁷ Section 29A of the Education Act 2002 provides that governing bodies of maintained schools may direct a pupil off-site for the purpose of receiving educational provision which is intended to improve the behaviour of the pupil.

⁸ It is possible that some off-site directions may become longer term placements in cases where the referring school and local authority agree that the provision in an alternative provision Academy is meeting the pupil's needs, and that a mainstream school place cannot meet that pupil's needs. These pupils could fall within the terms of section 19 of the Education Act.

Pupil registration and information sharing

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

10. The Academy Trust must ensure that pupils are appropriately registered⁹. In the case of a fixed period exclusion or an offsite direction, the excluded pupil should remain on the register of the excluding school as they are expected to return when the exclusion period is completed and should also be registered with the alternative provision Academy (dual registered). In the case of a permanent exclusion, the excluded pupil should be removed from the excluding school's register and be registered with the alternative provision Academy.

11. As far as reasonably practicable, in agreeing contractual arrangements with Commissioners the Academy Trust shall request appropriate information on the needs and prior attainment of pupils who will attend the alternative provision Academy.

12. The Academy Trust will provide regular feedback to a Commissioner (and in any event when requested by the Commissioner to do so) on progress made by the pupil, the pupil's needs and attainment.

Objections and determinations

13. The Academy Trust must make clear when determining the alternative provision Academy's admission arrangements, that objections should be submitted to the EFA or any successor to it.

14. A determination of an objection, by the EFA or any successor to it on behalf of the Secretary of State, or by the Secretary of State, will be binding upon the alternative provision Academy.

⁹ The requirements of section 434 of the Education Act 1996 (registration of pupils) and regulations made under that section apply to schools (which includes alternative provision Academies)

ANNEX 3

Arrangements for pupils with Special Educational Needs ('SEN') and disabilities at mainstream Free Schools or alternative provision **Free Schools**

Duties in relation to pupils with SEN

1. The Governing Body of the Company must comply with all of the duties imposed upon the governing bodies of maintained schools in:
 - Part 4 of the Education Act 1996 as amended from time to time¹⁰;
 - The Education (Special Educational Needs) (Information) Regulations 1999 as amended from time to time;
 - The Education (Special Educational Needs Co-ordinators) (England) (Amendment) Regulations 2008 as amended from time to time¹¹.
2. Notwithstanding any provision in this Agreement, the Secretary of State may (whether following a complaint made to him or otherwise) direct the Company to comply with an obligation described in this Annex where the Company has failed to comply with any such obligation.
3. Where a child who has SEN is being educated in the Academy, those concerned with making special educational provision for the child must secure that the child engages in the activities of the school together with children who do not have SEN, so far as is reasonably practicable and is compatible with:
 - (a) the child receiving the special educational provision which his learning difficulty calls for, the provision of efficient education for the children with whom he will be educated, and
 - (b) the efficient use of resources.
4. In addition to complying with the duties imposed upon the governing bodies of maintained schools set out in The Education (Special Educational Needs) (Information) Regulations 1999 (as amended from time to time), the Company must ensure that the 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; and the facilities provided to assist access to the Academy by disabled pupils (disabled pupils meaning pupils who are disabled for the purposes of the Equality Act 2010¹²).

¹⁰ Currently these duties are in sections 313 (Duty to have regard to the Special Educational Needs Code of Practice 2001); 317 (Duties in relation to pupils with special educational needs), 317A (Duty to advise parents that special educational provision is being made); and 324(5)(b) (Duty to admit the child where a school is named in the statement).

¹¹ These Regulations are amended by The Education (Special Educational Needs Co-ordinators) (England) (Amendment) Regulations 2009 (SI 2009 No 1387).

¹² For the meaning of 'disabled', see section 6 of the Equality Act 2010.

Admissions

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

