

SCHEDULE 1

MODEL SUPPLEMENTAL FUNDING AGREEMENT

THIS AGREEMENT made

20[●]

BETWEEN

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

(2) [_____]

IS SUPPLEMENTAL TO THE MASTER FUNDING AGREEMENT made between the same parties and dated 20[●] (the “**Master Agreement**”).

1 DEFINITIONS AND INTERPRETATION

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

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

“the Alternative Provision Academy” means the [●] **Alternative Provision Academy** [to be] established at [●].

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

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

2 **THE ALTERNATIVE PROVISION ACADEMY**

2.1 The Company will establish and maintain, and carry on or provide for the carrying on of the Alternative Provision Academy in accordance with the Master Agreement and this Agreement.

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

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

2.4 The Company must ensure that the Alternative Provision Academy meets the requirements set out in section 1C of the Academies Act 2010, and that educational provision is made at the Alternative Provision Academy for children of compulsory school age who, by reason of illness, exclusion from school or otherwise, may not for any period receive suitable education unless alternative provision is made for them.

2.5 The requirements for the admission of pupils to the Alternative Provision Academy are set out at Annex 1.

3 **ALTERNATIVE PROVISION ACADEMY OPENING DATE**

3.1 The Alternative Provision Academy shall open as a school on [INSERT] [replacing [INSERT NAME OF THE PREDECESSOR PUPIL REFERRAL UNIT] which shall cease to be maintained by the Local Authority on that date, which date shall be the conversion date within the meaning of the Academies Act 2010¹].

4 **PUPILS**

4.1 The planned number of places at the Alternative Provision Academy is [INSERT] places in the age range [INSERT], [including [INSERT] places for

¹ Delete words in square brackets if the SFA is being used for an Alternative Provision Academy that is not replacing a Pupil Referral Unit.

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students of a sixth form of age], [including up to [INSERT] hospital education provision places²], [including [INSERT] places for pupils with a statement of special education needs naming the [INSERT NAME] Alternative Provision Academy³], [and a nursery unit of [INSERT] places]. The planned number of places [and the age ranges] is/are not determinative of GAG. GAG for each Academy Financial Year will be determined by the Secretary of State in accordance with clauses 54L and 54M of the Master Agreement.

4.2 Where the Company considers that there is a need to increase the planned number of places stated in clause 4.1, the Company must seek the approval of the Secretary of State and the requirements of this Agreement may be amended accordingly by agreement between the Secretary of State and the Company.

4A **COMPLAINTS**⁴

4A.1 If a complaint is made about matters arising in whole or in part prior to the opening of the Alternative Provision Academy, as referred to in clause 3.1 above, 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") of 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;

² See footnote to paragraph 7a) of the Admissions Annex 1.

³ This is the expected number of places where the Alternative Provision Academy is named in a statement. See paragraph 6 of the Admissions Annex 1.

⁴ Only include this clause if it is not already contained in the Master Funding Agreement. Otherwise mark as 'Not used'.

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- 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.

4A.2 If at the time of the opening of the Alternative Provision Academy the investigation of a complaint made to the governing body of the school the Alternative Provision Academy replaced (as referred to in clause 3.1 above) has not yet been completed, the Company shall continue to investigate that complaint in accordance with the complaints procedures established by that governing body.

4A.3 If a complaint is made to the Company about matters arising in whole or in part during the 12 months prior to the opening of the Alternative Provision Academy, the Company agrees to investigate that complaint as if the matter complained of had taken place after the opening of the Alternative Provision Academy.

4A.4 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 management committee of the Pupil Referral Unit the Alternative Provision Academy replaced (as referred to in clause 3.1 above) and that order and/or direction related to matters occurring within the 12 months immediately prior to conversion, the Company agrees:

- a) the Secretary of State may give orders and/or directions to the Company as though the 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.

5 **CAPITAL GRANT**

5.1 Pursuant to clause 38 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.

6 **GAG AND EAG**

6.1 The Secretary of State agrees to pay GAG and EAG to the Company in relation to the Alternative Provision Academy in accordance with the Master Agreement.

7 **TERMINATION**

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

Termination Warning Notice

7.2 The Secretary of State shall be entitled to issue to the Company a written notice of his intention to terminate this Agreement ("**Termination Warning Notice**") where he considers that:

- a) the Alternative Provision Academy is no longer meeting the requirements as set out in clause 2.2 and 2.3 of this Agreement (subject to clause 7.9 of this Agreement);
- b) the conditions and requirements set out in clauses 12B-34C of the Master Agreement are no longer being met;
- c) the standards of performance of pupils at the Alternative Provision Academy are unacceptably low;
- d) there has been a serious breakdown in the way the Alternative Provision Academy is managed or governed;

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- e) the safety of pupils or staff is threatened (whether by breakdown of discipline or otherwise); or
- f) the Company is otherwise in material breach of the provisions of this Agreement or the Master Agreement.

7.3 A Termination Warning Notice issued by the Secretary of State in accordance with clause 7.2 shall specify:

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

7.4 The Secretary of State shall consider any response and representations from the Company which are received by the date specified in accordance with clause 7.3(c) and shall confirm whether he considers that:

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

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specified timeframes; or

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

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

a) the Company has not, by the date specified in clause 7.3(c), responded to the Termination Warning Notice either confirming that it accepts and agrees to undertake the Specified Remedial Measures or providing its representations with regard to the Specified Remedial Measures; or

b) the Company has not carried out the Specified Remedial Measures and/or Further Remedial Measures within the specified timeframes;

provided that having considered any representations made by the Academy Trust pursuant to clause 7.3(c), the Secretary of State remains satisfied that it is appropriate to terminate the Agreement.

Notice of Intention to Terminate

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

a) special measures are required to be taken in relation to the Academy; or

b) the Academy requires significant improvement.

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7.7 Any notice issued by the Secretary of State in accordance with clause 7.6 shall invite the Company to respond with any representations within a specified timeframe.

7.8 Where the Secretary of State has given notice of his intention to terminate this Agreement in accordance with clauses 7.6 and 7.7 and –

- a) he has not received any representations from the Company within the timeframe specified in clause 7.7; or
- b) having considered the representations made by the Company pursuant to clause 7.7, the Secretary of State remains satisfied that it is appropriate to terminate this Agreement

he may by notice in writing terminate this Agreement with effect from a specified date.

Termination with Immediate Effect

7.9 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 Alternative Provision Academy shall be struck off the Register of Independent Schools, he may terminate this Agreement by notice in writing to the Company such termination to take effect on the date of the notice.

Notice of Intention to Terminate by Company

7.10 The Secretary of State shall, at a date preceding the start of each Academy Financial Year, provide to the Company an indication of the level of funding to be provided by the Secretary of State to the Company by way of GAG and EAG in the next following Academy Financial Year (the “**Indicative Funding**”). If the Company is of the opinion that, after receipt of the Indicative Funding for the next following Academy Financial Year (the “**Critical Year**”) and of the taking into account all other resources available and likely to be available to the Alternative Provision Academy, including such funds as are

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set out in clause 73 of the Master Agreement and such other funds as are and likely to be available to the Academy from other academies operated by the Company (“**All Other Resources**”), it is likely that the cost of running the Alternative Provision 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.

7.11 Any notice given by the Company under clause 7.10 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 7.10 above, within six weeks after the Secretary of State shall have done so. The notice must specify:

7.11.1. the grounds upon which the Company’s opinion is based and include the evidence of those grounds and any professional accounting advice the Company has received and including a detailed statement of steps which the Company proposes to take with a view to ensuring that as soon as reasonably practicable the costs of running the Alternative Provision 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

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

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

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7.12 Both parties undertake to use their best endeavours to agree whether or not the cost of running the Alternative Provision 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 Alternative Provision Academy and undertake to use their best endeavours to agree a practical solution to the problem.

7.13 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 Alternative Provision 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.

7.14 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 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.

7.15 If the Expert determines that the cost of running the Alternative Provision Academy during the Critical Year would cause the Company, on the basis of the Indicative Funding and All Other Resources, to become insolvent,

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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 Alternative Provision Academy to cover the Shortfall.

8 EFFECT OF TERMINATION

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

8.2 Subject to clause 8.3 and 8.4, if the Secretary of State terminates this Agreement pursuant to clause 7.1 of this Agreement, the Secretary of State shall indemnify the Company. If the Secretary of State terminates this Agreement otherwise than pursuant to clause 7.1 of this Agreement, the Secretary of State may in his absolute discretion indemnify or (to such extent if any as he may in his absolute discretion consider appropriate) compensate the Company.

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

8.4 The categories of expenditure incurred by the Company in consequence of the termination of the Agreement in respect of which the Secretary of State shall (where the Secretary of State terminates this Agreement pursuant to clause 7.1) indemnify the Company and may (where the Secretary of State terminates this Agreement otherwise than pursuant to clause 7.1) in his absolute discretion indemnify or compensate the Company include (but not by way of limitation), staff compensation and redundancy payments, compensation payments in respect of broken contracts, expenses

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of disposing of assets or adapting them for other purposes, legal and other professional fees, and dissolution expenses.

8.5 Subject to clause 8.6, on the termination of this Agreement however occurring, the Company shall in respect of any of its capital assets at the date of termination:

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

(b) if the Secretary of State confirms that a transfer under clause 8.5(a) is not required, promptly repay to the Secretary of State a sum equivalent to the percentage of the value of the assets at the date of termination, or, by agreement with the Secretary of State, at the date of subsequent disposal of those assets. Such percentage to be the same as the percentage of the capital contribution made by the Secretary of State to the original value of those assets, whether that contribution was made on the establishment of the Alternative Provision Academy or later.

8.6 The Secretary of State may waive in whole or in part the repayment due under clause 8.5(b) if:

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

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

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

9 **ANNEX**

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

10 **THE MASTER AGREEMENT**

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

10.2 Clauses [insert clause number(s)] of the Master Agreement do not apply to the Academy⁵.

11 **ENGLISH LAW GENERAL**

11.1 This Agreement shall not be assignable by the Company.

11.2 No delay, neglect or forbearance on the part of the Secretary of State in enforcing (in whole or in part) any provision of this Agreement or in exercising (in whole or in part) any right 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

⁵ This clause should be included where the Master Agreement contains a requirement for Academies to employ teachers with QTS. If the Master Agreement does not contain this requirement, clause 10.2 should be removed from this supplemental funding agreement and marked 'not used'. Provisions in the Master Agreement requiring the academy trust to employ only qualified teachers as the SENCO and as the designated teacher for looked after children should remain.

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remedy shall preclude or restrict the further exercise of that or any other right or remedy.

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

11.4 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 counterparts shall together constitute the one agreement.

11.5 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.

11.6 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).

This Agreement was executed as a Deed on
201[●]

Executed on behalf of by:

[Either

.....

Director

In the presence of:

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Witness.....

Address.....

Occupation.....]

[Or

.....

Director

.....]

Director/Secretary

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

.....

Duly Authorised

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ANNEX TO THIS SUPPLEMENTAL AGREEMENT

Requirements for the Admission for pupils at the
Alternative Provision Academy

Annex 1

APPENDIX OF

**ADDITIONAL OR ALTERNATIVE CLAUSES THAT MAY BE
NEEDED DEPENDING ON THE TYPE OF ACADEMY**

**A. LAND CLAUSES – FOR INSERTION WHERE FREEHOLD OR
LEASEHOLD LAND WILL BE HELD BY THE COMPANY**

Where a freehold interest in publicly funded land for use by the Alternative Provision Academy is to be transferred to the Company insert all of the following clauses (8A-8D and the definitions of “land” and “insured risks” at clause 1.2)

Where a leasehold interest in publicly funded land for use by the Alternative Provision Academy is to be transferred to the Company using one of the DfE’s model leases, insert only clauses 8A and the definition of “land” at clause 1.2 (the other land clauses can be left out as these overlap with what is covered by the lease)

Where the Company will have both freehold and leasehold interests in publicly funded land, (because it has been transferred more than one piece of land), then insert all the land clauses but the Company may include a clause saying that clauses 8B-8D do not apply to land in which the Company holds a leasehold interest only.

The following definitions are to be inserted into clause 1.2:

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

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exclusions or limitations as may from time to time be imposed by the insurers or underwriters.

“the Land” means the publicly funded land (including for the avoidance of doubt all buildings, structures landscaping and other erections) situated at and known as [insert address(es) of the land that is to be transferred to the Alternative Provision Academy] [and [if applicable] registered under [enter Title number of Land].

AND

Insert the following headings and paragraphs after clause 8.7 to become 8A):

LAND

Restrictions on Land transfer

8A Recognising that they are or will be receiving publicly funded land at nil consideration (which for the purposes of this transaction shall include leases granted at a peppercorn rent) the Company:

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

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

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- b) shall take any further steps required to ensure that the restriction referred to in clause 8A(a) is entered on the proprietorship register,
- c) shall provide the Secretary of State with confirmation of the entry of the restriction referred to in clause 8A(a) as soon as practicable after it receives notification from the Land Registry,
- d) in the event that it has not registered the restriction referred to in clause 8A(a), hereby consents to the entering of the restriction referred to in 8A(a) in the register by the Secretary of State (under s. 43(1)(b) of the Land Registration Act 2002),
- e) shall not, without the consent of the Secretary of State, apply to dis-apply, modify or remove (by cancellation or otherwise) a restriction entered in accordance with clause 8A(a) or 8A(d) above, whether by itself, a holding company, a subsidiary company, or a receiver, administrator or liquidator acting in the name of the Company.

Repair and Upkeep

8B) The Company shall keep the Land clean and tidy and make good any damage it causes to the Land and / or any deterioration to the condition of the Land that may arise from the date of this Agreement.

Insurance

8C) The Company shall:-

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

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and the like apply the proceeds of the policy of the insurance received for those purposes in rebuilding and reinstating the Land (provided that this clause should be satisfied if the Company provides premises not necessarily identical to the Land as the same existing prior to such damage or destruction occurring) as soon as may be reasonably practicable;

d) produce to the Secretary of State a copy of the insurance policy whenever reasonably requested and the receipt for the last or other evidence of renewal and up to date details of the amount of cover (but no more often than once in any period of 12 months in both cases);

e) not knowingly do anything whereby any policy of insurance relating to the Land may become void or voidable.

f) insure against liability in respect of property owners' and third party risks including occupiers liability.

Transfer of Land on Termination of Agreement

8D) In recognition by the Company that they are or will be taking a transfer of publicly-funded land for nil consideration (which for the purposes of this transaction shall include leases granted at a peppercorn rent), the Company hereby grants and the Secretary of State hereby accepts an option, exercisable by the Secretary of State or his nominee, to transfer the said land pursuant to Schedule 1 to the Academies Act 2010. The option hereby granted shall be exercisable (by notice in writing by or on behalf of the Secretary of State) on the termination of this Funding Agreement for whatever cause. On the exercise of this option, the Law Society's Standard Conditions of Sale for Commercial Property in force at the date of such exercise shall apply to the transaction and completion shall take place 28 days after such exercise.

8E) In further recognition by the Company that they are or will be taking a transfer of publicly-funded land for nil consideration, (which for the purposes

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of this transaction shall include leases granted at a peppercorn rent), to protect the option granted under clause 8D, the Company:

- a) shall, within 14 days from the transfer to it of the Land, apply to the Land Registry in Form AN1 as prescribed by Rule 81 of the Land Registration Rules 2003 for a notice to be entered in the register (under section 34(3)(a) of the Land Registration Act 2002) to protect the option granted under clause 8D 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 8E(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 8E(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 8E(a), hereby consents to the entering of the notice referred to in 8E(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 8E(a) or 8E(d) above, whether by itself, a holding company, a subsidiary company, or a receiver, administrator or liquidator acting in the name of the Company.
- f) in the case of previously unregistered land, for the further protection of the option granted in Clause 8D the Company shall within 14 days of the signing of this Agreement make application to register a Class C (iv) land charge in the Land Charges Registry and a Caution against First Registration in the Land Registry and shall provide the

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Secretary of State with copies of the entries secured thereby within 7 days of completing each registration, respectively. If the Secretary of State is of the view that the Company has failed to perform the registration obligations in this sub-clause he shall be at liberty to make his own applications to secure these registrations.

B. ALTERNATIVE PROVISION ACADEMIES WITH PFI ARRANGEMENTS

There are a number of PFI specific clauses that need to be inserted into Funding Agreements where there are PFI arrangements in existence relating to the land/property of the Academy.

Your Project Lead will provide you with the additional clauses that will be needed.

C. FOR ALTERNATIVE PROVISION ACADEMIES WITH SEN UNITS/PROVISION RESERVED FOR PUPILS WITH SEN

For Academies with SEN Units and/or Resourced Provision the following additional clauses should be inserted:

2.5A) Subject to Clause 2.5B), the Alternative Provision Academy will operate designated places reserved for pupils with special educational needs (SEN Unit and or Resourced Provision) with up to [Insert] planned places for pupils [with insert SEN category] in the age range [insert].

2.5B) The Secretary of State may at any time determine that the [SEN Unit/Resourced Provision] should cease to operate.

2.5C) In making any determination under clause 2.5B) the Secretary of State shall:

- (i) have regard to the views of the Alternative Provision Academy and local authorities in the area (in their strategic role in the commissioning of SEN provision); and

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- (ii) consider the impact of such a determination on the local authorities' ability to secure suitable SEN provision for all children within the area.

For Alternative Provision Academies with SEN Units and/or Resourced Provision clause 4.1 should be replaced with the following clause:

4.1) The planned number of places at the Alternative Provision Academy is [INSERT] places in the age range [INSERT], [including [INSERT] places for students of a sixth form of age], [including up to [INSERT] hospital education provision places⁶], [including [INSERT] places for pupils with a statement of special education needs naming the [INSERT NAME] Alternative Provision Academy⁷], [and a nursery unit of [INSERT] places] and will subject to Clause 2.5B) operate designated reserved provision for pupils with special educational needs (SEN Unit or Resourced Provision) for up to [insert] planned places for pupils with [insert SEN category] in the age range [insert].. The planned number of places [and the age ranges] is/are not determinative of GAG. GAG for each Academy Financial Year will be determined by the Secretary of State in accordance with clauses 54L and 54M of the Master Agreement.

D. FOR ALTERNATIVE PROVISION ACADEMIES WITH 16-19 PROVISION

For Academies with 16-19 provision the following clause should be inserted where it is not already included in the Master Funding Agreement:

2A 16 – 19 FUNDING GUIDANCE

2A.1 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

⁶ See footnote to paragraph 7a) of the Admissions Annex 1.

⁷ This is the expected number of places where the Alternative Provision Academy is named in a statement. See paragraph 6 of the Admissions Annex 1.

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Secretary of State as may from time to time be applicable, in respect of any of its provision at the Alternative Provision Academy for persons who are above compulsory school age until the academic year in which they reach the age of 19.