

SCHEDULE 1

SUPPLEMENTAL AGREEMENT FOR GATEWAY PRIMARY FREE SCHOOL

THIS AGREEMENT made 29 August 2012

BETWEEN

(1) THE SECRETARY OF STATE FOR EDUCATION ("the Secretary of State");

and

(2) GATEWAY LEARNING COMMUNITY ("the Company")

IS SUPPLEMENTAL TO THE MASTER FUNDING AGREEMENT made between the same parties and dated 30th March 2012 (the "Master Agreement").

1 DEFINITIONS AND INTERPRETATION

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

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

"the Academy" means the Gateway Primary Free School to be established at Marshfoot Road, Tilbury/Chadwell-St-Mary, Essex RM16 4LU;

"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;

"Academy Funding Year" means the year from 1st September to 31st August in any year;

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

"DfE" means Department for Education and any successor;

"Further Directors" means the Directors who may be appointed by the Secretary of State under the Articles of Association if a Special Measures Termination Event occurs;

“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, but excluding the second floor of the proposed new building within “the development area” edged in purple described as the Gateway Primary Free School Development Area (Project OJP, Document No 004) attached as Annex 2 to this Agreement, situated within the site, registered under Title Number EX821299, occupied by the Gateway Academy under the Lease;

“the Lease” means the lease dated 11th September 2008 made between Thurrock Borough Council (1) and the Company (2);

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

“relevant qualification” has the same meaning as that given to the expression in section 96 of the Learning and Skills Act 2000;

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

“start-up period” means up to a maximum of two Academy Funding Years and covers the period up to and including the first Academy Funding Year in which all age groups are present at the Academy (that is, all the pupil cohorts relevant to the age-range of the Academy will have some pupils present).

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

2 **THE ACADEMY**

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

2.2 Clause 11 of the Master Agreement shall have effect in relation to the Academy as if the words "meeting the requirements referred to in clause 12" were substituted for "having such characteristics as are referred to in clause 12".

2.3 Clause 12 of the Master Agreement shall not apply in relation to the Academy and shall be replaced with:

12) The Academy requirements are as set out in section 1A of the Academies Act 2010.

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

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

Academy opening date

2.6 The Academy shall open as a school on 1st September 2012.

2.7 The planned capacity of the Academy is 630 in the age range 4-11.

Conditions of grant

2.8 Clause 13 of the Master Agreement shall apply in relation to the Academy but as if the following were substituted for 13b) and d):

b) there will be assessments of pupils performance as they apply to maintained schools and the opportunity to study for relevant qualifications, subject to clause 30d); and

d) teachers' levels of pay and conditions of service for all employees will be the responsibility of the Company.

Criminal Records Bureau checks

- 2.9 In relation to the Academy only, the Company shall, on receipt of information from the Criminal Records Bureau in response to an application for an enhanced criminal record 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.

Teachers and other staff

- 2.10 Clauses 19 and 20 of the Master Agreement shall not apply in relation to the Academy and shall be replaced with:

19) Subject to clause 20, 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.

20) Clause 19 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 teacher for looked after children further to clause 18A.

- 2.11 Clauses 22 of the Master Agreement shall not apply in relation to the Academy and shall be replaced with:

22) 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.

Curriculum, curriculum development and delivery and RE and collective worship

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

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

2.13 In relation to the Academy only, the Company 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.

2.14 The Company:

- a) agrees that before making an application pursuant to the Religious Character of Schools (Designation Procedure) (Independent Schools) (England) Regulations 2003 for the Academy to be designated as a school with religious character it shall seek the prior written consent of the Secretary of State;
- b) hereby acknowledges that the Secretary of State may in his absolute discretion refuse or consent to the Company making such an application.

2.15 Clause 29 of the Master Agreement shall not apply in relation to the Academy and shall be replaced with:

29) The Company shall have regard to any guidance issued by the Secretary of State, further to section 403 of the Education Act 1996, on sex and relationship education to ensure that children at the Academy are protected from inappropriate teaching materials and they learn the nature of marriage and its importance for family life and for bringing up children. The Company

- 2.20 Clause 34 of the Master Agreement shall have effect in relation to the Academy as if the words “(including, for the avoidance of doubt, any secondary legislation made under those provisions)” were inserted after “Education Act 1996”.

International Education Surveys

- 2.21 Section 538A of the Education Act 1996 (power to direct participation in international surveys) shall be deemed to apply to the Academy with the following modifications:
- a) references to the governing body shall be treated as references to the Company; and
 - b) references to community, foundation voluntary school shall be treated as references to the Academy.

Pupil Premium

- 2.22 The Company shall publish, in each Academy Financial Year, information in relation to:
- a) the amount of Pupil Premium allocation that it will receive during that Academy Financial Year for the Academy;
 - b) on what it intends to spend the Pupil Premium allocation at the Academy;
 - c) on what it spent its Pupil Premium at the Academy in the previous Academy Financial Year;
 - d) the impact on educational attainment at the Academy, arising from expenditure of the previous Academy Financial Year’s Pupil Premium.

3 GRANTS TO BE PAID BY THE SECRETARY OF STATE

General

- 3.1 The Secretary of State shall pay grants towards Recurrent Expenditure and may pay grants towards Capital Expenditure for the Academy.

- 3.2 Clause 36 of the Master Agreement shall apply in relation to the Academy as if the words “and where appropriate funding under clause 70” were added at the end.
- 3.3 Clause 37 of the Master Agreement shall apply in relation to the Academy but as if the following were substituted for 37c) and g):
- c) the installation of electrical, mechanical or other services other than necessary replacements, repairs or maintenance due to normal wear and tear;
 - g) the provision and equipping of premises, including playing fields and other facilities for social activities and physical recreation other than necessary replacements, repairs or maintenance due to normal wear and tear.

Capital grant

- 3.4 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.
- 3.5 Clause 40 of the Master Agreement shall apply in relation to the Academy subject to the following addition:
- c) any other conditions that the Secretary of State may specify.
- 3.6 Clause 41 of the Master Agreement shall not apply in relation to the Academy and shall be replaced with:
- 41) Capital Grant will be paid by the Secretary of State to the Company on the basis of claims for grant submitted to the Secretary of State in the notified format with supporting invoices and certificates as required by the Secretary of State. If a dispute arises as to whether a claim is or is not acceptable both parties undertake to attempt to resolve it in good faith. In the event of such a dispute, the Secretary of State shall pay to the Company so much of the claim as shall not be in dispute.
- 3.7 Clauses 42 to 47 of the Master Agreement shall not apply in relation to the Academy.

GAG and EAG

3.8 The Secretary of State agrees to pay GAG and EAG to the Company in relation to the Academy in accordance with the Master Agreement subject to the following amendment:

- g) insurance, provided that the Secretary of State shall not be obliged to pay GAG in relation to insurance to the extent that insurance and/or comparable arrangements are made available to the Company (whether at a cost to the Company or otherwise and whether made available by and/or on behalf of the Secretary of State or otherwise) save that, to the extent that such insurance and/or comparable arrangements as may be made available constitute a cost for the Company, the Secretary of State shall provide a contribution through GAG in relation to such cost.

3.9 Clauses 49 to 57 of the Master Agreement shall not apply in relation to the Academy and shall be replaced with:

49) Subject to clauses 57-58, GAG for each Academy Funding Year for the Academy will include:

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

50) Not used.

51) Subject to clause 52, the basis of the pupil number count for the purposes of determining GAG for an Academy Funding Year will be the Company's most recent estimate provided in accordance with clause 51A.

51A) The Secretary of State shall in advance of each Academy Funding Year for the Academy, at such time or times as he shall determine, request that the Company provides an estimate of the number of pupils on roll in the following September for the Academy for the purposes of determining GAG for an Academy Funding Year, and the Company shall provide the requested estimate (such estimate to be based on an objective assessment of numbers) to the Secretary of State as soon as reasonably practicable.

52) Once the condition specified in clause 53) has been satisfied with respect to the Academy for the Academy Funding Year for which funding is being calculated, the basis of the pupil number count for the purpose of determining GAG for the Academy will be:

a) for the pupil number count for pupils in Year 11 and below, the Schools Census for the relevant month (determined at the discretion of the Secretary of State) preceding the Academy Funding Year in question;

and

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

53) For the purpose of clause 52), the condition is satisfied in the Academy Funding Year which immediately follows the Academy Funding Year in which all planned Year-groups will be present at the Academy (that is, all the pupil cohorts relevant to the age-range of the Academy will have some pupils present).

54) For any Academy Funding Year in which GAG for the Academy has been calculated in accordance with clauses 51) and 51A), an adjustment may be made to the following Academy Funding Year's formula funding element of GAG for the Academy to recognise any variation from that estimate greater

than or lower than 2.5%. The Secretary of State may for the purpose of calculating any adjustment to the formula funding element of GAG under this clause, use the Census for the relevant month (determined at the discretion of the Secretary of State) for the Academy Funding Year in question as a means of determining pupil numbers in an Academy Funding Year. The additional or clawed-back grant will be only that amount relevant to the number of pupils beyond the 2.5% variation.

55) For any Academy Funding Year in which GAG for the Academy is calculated in accordance with clause 52), no adjustment will be made to the equivalence funding element in the following Academy Funding Year's equivalence funding element of GAG unless the Company demonstrates to the satisfaction of the Secretary of State that there has been a significant impact on costs, such as an extra class. For any other element of GAG the Secretary of State may make adjustments to recognise a variation in pupil numbers from that used to calculate the element of grant in question; the basis of these will be set out in the Annual Letter of Funding or its equivalent.

56) Not used.

57) 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.

3.10 Clause 69 of the Master Agreement shall not apply in relation to the Academy.

Financial and accounting requirements

3.11 Clause 79 of the Master Agreement shall have effect in relation to the Academy as if the words "such percentage (if any) as the Secretary of State may specify by notice in writing to the Company prior to the beginning of that Academy Financial Year" were substituted for "12%".

3.12 If the Secretary of State pays 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:

- (a) in the same Academy Funding Year that such grant is paid to the Company; or
- (b) in the calculation and/or payment of any subsequent grant to the Company; or
- (c) by an adjustment to the GAG paid by the Secretary of State to the Company in the following Academy Funding Year or Academy Funding Years.

3.13 If the Secretary of State or his agents pay any grant to the Company in relation to the Academy which includes an amount to cover the VAT which will be payable by the Company in using any such grant for the purposes intended, the Company shall, having paid the VAT to a third party for any goods or services it has purchased from such a third party, where entitled, promptly and, in any event, as soon as is reasonably practicable, submit a VAT reclaim application to Her Majesty's Revenue and Customs (HMRC) in respect of such VAT payment. Any failure, on the part of the Company, to submit a VAT reclaim application to HMRC or repay the amount recouped to the Secretary of State as soon as reasonably practicable following the receipt of any such payment from HMRC may be taken into account by the Secretary of State either:

- (a) in the same Academy Funding Year that any such grant is paid to the Company; or
- (b) in the calculation and/or payment of any subsequent grant to the Company; or
- (c) by an adjustment to the GAG paid by the Secretary of State to the Company in the following Academy Funding Year or Academy Funding Years.

3.14 Clause 82 of the Master Agreement shall apply in relation to the Academy subject to the condition that the Company complies with all applicable requirements relating to the proper and regular use of funds in the Academies Handbook.

3.15 Clause 83b of the Master Agreement shall have effect in relation to the Academy as if the words "from time to time being specified by the Secretary

of State” were substituted for the words “to be set out in the annual letter of funding,”.

- 3.16 Clause 85 of the Master Agreement shall have effect in relation to the Academy as if the words “from time to time being specified by the Secretary of State” were substituted for the words “set out in the annual letter of funding,”.
- 3.17 In relation to the Academy, the Company shall abide by the requirements of and have regard to the Charity Commission’s guidance to charities and charity trustees and in particular the Charity Commission’s guidance in the Protecting Charities from Harm (‘the compliance toolkit’). Any references in this document which require charity trustees to report to the Charity Commission should instead be interpreted as references to report to the Principal Regulator.

Disposal of assets

- 3.18 Clause 90 of the Master Agreement shall apply in relation to the Academy but as if the following were substituted for 90a):
- a) the Secretary of State paid capital grant in excess of the value from time to time being specified by the Secretary of State for the asset.
- 3.19 Clause 91 of the Master Agreement shall have effect in relation to the Academy as if the words “the value from time to time being specified by the Secretary of State” were substituted for “£1,000,000”.

4 Notice affecting the Land

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

- 4.2 The Company will at its own cost provide all information reasonably required by the Secretary of State in respect of order, notice, proposal, demand or any other requirement affecting the Land as referred to in clause 4.1.
- 4.3 Following the receipt by the Secretary of State of the written notice under clause 4.1, if the Company fails to act, the Company shall permit the Secretary of State to take all steps in conjunction with or instead of the Company as may be necessary to comply with any order, notice, proposal, demand or other requirement affecting the Land referred to in the said notice. The Company shall, in such circumstances, use all reasonable endeavours to assist the Secretary of State to take the appropriate required steps.

5 TERMINATION

- 5.1 Either party may give not less than seven Academy Financial Years' written notice to terminate this Agreement, such notice to expire on 31 August or any subsequent anniversary of that date, save where the provisions of this Agreement otherwise provide.
- 5.2 If the Secretary of State is of the opinion that the Academy no longer meets the requirements set out in clause 12 of the Master Agreement or that the conditions and requirements set out in clauses 13-34 of the Master Agreement or clauses 2.2-2.5 and 2.8-2.22 of this 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 intention to terminate this Agreement.
- 5.3 Any such notice shall be in writing and shall:
- a) state the grounds on which the Secretary of State considers the Academy no longer meets the requirements set out in clause 12 of the Master Agreement or is not meeting the conditions and requirements of clauses 13-34 of the Master Agreement or clauses 2.2-2.5 and 2.8-2.22 of this Agreement or the Company is otherwise in material breach of the provisions of this Agreement or the Master Agreement;
 - b) specify the measures needed to remedy the situation or breach;
 - c) specify a reasonable date by which these measures are to be implemented; and

- d) state the form in which the Company is to provide its response and a reasonable date by which it must be provided.
- 5.4 If no response is received by the date specified in accordance with clause 5.3d, 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.
- 5.5 If a response is received by the date specified in accordance with clause 5.3d, the Secretary of State shall consider it, and any representations made by the Company, and shall, within three months of its receipt, indicate that:
- a) he is content with the response and/or that the measures which he specified are being implemented; or
 - b) 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
 - c) he is not satisfied, that he does not believe that he can be reasonably satisfied, and that he will proceed to terminate the Agreement.
- 5.6 In the circumstances of clause 5.5c 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 Local Governing Body of the Academy to discuss his concerns. If following such meeting he has good reasons for remaining satisfied that the Academy does not and will not meet the requirements set out in clause 12 of the Master Agreement or does not and will not meet the conditions and requirements set out in clauses 13-34 of the Master Agreement or clauses 2.2-2.5 and 2.8-2.22 of this 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.
- 5.7 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 5.6 may be shortened to a period deemed appropriate by the Secretary of State.

- 5.8 The Secretary of State shall, at a date preceding the start of each Academy Financial Year, provide to the 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 79 of the Master Agreement and such other funds as are and likely to be available to the Academy from other academies operated by the Company ("**All Other Resources**"), it is likely that the cost of running the Academy during the Critical Year would cause the Company, on the basis of the Indicative Funding, to become insolvent (and for this reason only) then the Company may give notice of its intention to terminate this Agreement at the end of the then current Academy Financial Year.
- 5.9 Any notice given by the Company under clause 5.8 shall be in writing and shall be served on the Secretary of State not later than 28 February preceding the Critical Year or, if the Secretary of State shall not have given notice of the Indicative Funding to the Company on or before the date specified in clause 5.8 above, within six weeks after the Secretary of State shall have done so. The notice must specify:
- a) 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

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

- 5.13 If the Expert determines that the cost of running the Academy during the Critical Year would cause the 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.
- 5.14 If the Company has given notice to terminate the Agreement under clause 5.13, the Secretary of State may by notice in writing to the Company require the Company to appoint up to two persons as directors of the Company in accordance with the Articles.
- 5.15 The Secretary of State may at any time by notice in writing terminate this Agreement forthwith if the Academy has ceased (except where such cessation occurs temporarily by reason of an event beyond the reasonable control of the Company) to operate as an Academy within the meaning of Section 1 of the Academies Act 2010.
- 5.16 A "Special Measures Termination Event Occurs" when:
- a) 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
 - b) 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
 - c) 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

- d) 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.

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

- a) by notice in writing to the Company terminate this Agreement forthwith; or
- b) subject to clause 108 of the Master Agreement, appoint such Further Directors to the Company as he thinks fit in accordance with the Articles and/or may provide up to 12 months' notice in writing to terminate this Agreement.

5.18 In the event that the Secretary of State appoints Further Directors in accordance with clause 5.17b, the Company must, upon the request of the Secretary of State, procure the resignation of the Directors appointed in accordance with Article 50 of the Articles of Association.

5.19 If the Secretary of State is satisfied that any Director or Member of the Company is not a suitable person he may:

- a) in relation to such a Director or Member, without giving any reasons, serve notice in writing on the Company requiring the Company to procure the resignation or removal of the person(s) within 42 days; and if the Company fails to procure the said resignation or removal within the time specified, the Secretary of State may by notice terminate this Agreement forthwith or may provide up to 12 months' notice in writing to terminate this Agreement; or
- b) appoint such Further Directors as he thinks fit and/or provide up to 12 months' notice in writing to terminate this Agreement; or
- c) by notice in writing terminate this Agreement forthwith or on such date as the Secretary of State may determine.

5.20 If the Company has not obtained full planning permission (including where relevant listed building consent), in respect of the site on which it is proposed that the Academy will be situated, by 31st August 2012, the Secretary of State may by notice terminate this Agreement forthwith or may provide such notice as he deems appropriate in the circumstances in writing to terminate this Agreement.

5.21 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:

- a) the Academy would, on opening, provide an unacceptably low standard of education; or
- b) the safety of pupils or staff at the Academy would, on opening, be threatened; or
- c) the staff employed at the Academy are unsuitable; or
- d) the buildings and other structures on the Land are unsuitable or the Company has not obtained Building Regulation approval;

he may in writing either:

- (i) 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 a to d above has or have been resolved to the Secretary of State's satisfaction; or
- (ii) terminate this Agreement forthwith or provide such notice as he deems appropriate in the circumstances to terminate this Agreement.

5.22 Clause 99 of the Master Agreement shall not apply in relation to the Academy and shall be replaced with:

99) Following the Members passing a resolution as described in clause 98, the Secretary of State's right to terminate this Agreement or, as the Secretary of State may in his absolute discretion decide, any of the Supplemental Funding Agreements under clause 98 shall cease if he removes one or more

Additional Directors or Further Directors and fails to replace at least one Additional Director or Further Director within the 30 days of their removal resulting in there being no remaining Additional Director or Further Director on the governing body of the Company.

Effect of termination

- 5.23 In the event of termination of this Agreement however occurring, the school shall cease to be an Academy within the meaning of Sections 1 and 1A of the Academies Act 2010.
- 5.24 Subject to clause 5.25, if the Secretary of State terminates this Agreement for reasons other than that a Special Measure Termination Event occurs, the Academy no longer meets the requirements set out in clause 12 of the Master Agreement, or is no longer meeting the conditions and requirements set out in clauses 13-34 of the Master Agreement or clauses 2.2-2.5 and 2.8-2.22 of this Agreement, or the Company is otherwise in material breach of the provisions of this Agreement or the Master Agreement, the Secretary of State may indemnify the Company.
- 5.25 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.
- 5.26 The categories of expenditure incurred by the Company in consequence of the termination of the Agreement in respect of which the Secretary of State may 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.
- 5.27 Subject to clause 5.28, on the termination of this Agreement however occurring, the Company shall in respect of any of its capital assets at the date of termination, including the Land (by way of grant of an underlease of the Land for the residue of the term of the Lease):
- a) promptly transfer a proportion of the assets to a person nominated by the Secretary of State, if the Secretary of State considers that all or some of those assets need to be used for educational purposes by

that nominee. The proportion of the assets to be transferred shall be the same as the proportion of the capital contribution made by the Secretary of State to the original value of those assets, whether that contribution was made on the establishment of the Academy or later; or

- b) if the Secretary of State confirms that a transfer under clause 5.27a) is not required, promptly repay to the Secretary of State a sum equivalent to the percentage of the value of the assets at the date of termination, or, by agreement with the Secretary of State, at the date of subsequent disposal of those assets. Such percentage to be the same as the percentage of the capital contribution made by the Secretary of State to the original value of those assets, whether that contribution was made on the establishment of the Academy or later.

5.28 The Secretary of State may waive in whole or in part the repayment due under clause 5.27b) if:

- a) the Company obtains his permission to invest the proceeds of sale for its charitable objects; or
- b) the Secretary of State directs all or part of the repayment to be paid to the L A.

5.29 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.

6 LAND

6.1 Not used.

Obligations of the Company

- 6.2i) 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 materially diminish the value of the Land or the land demised under the Lease as a school site or the ability of the Company to use the Land or the land

demised under the Lease in accordance with its objects and in accordance with the terms of the Funding Agreement save with the express written consent of the Secretary of State.

- 6.2ii) The Company agrees it shall seek and obtain the prior written consent of the Secretary of State, not to be unreasonably withheld or delayed before taking any steps to:
- a) 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

6.3 The Company shall:-

- a) keep the Land insured in accordance with the Lease;
- b) pay the premiums for insurance promptly as they become due and maintain in force the policies of insurance on the Land;
- c) following the incidence of damage to or destruction of the Land and subject to receipt of all necessary consents licences permissions and the like apply the proceeds of the policy of the insurance received for those purposes in rebuilding and reinstating the Land (provided that this clause should be satisfied if the Company provides premises not necessarily identical to the Land as the same existing prior to such damage or destruction occurring) as soon as may be reasonably practicable;
- d) produce to the Secretary of State a copy of the insurance policy whenever reasonably requested and the receipt for the last premium or other evidence of renewal and up to date details of the amount of

cover (but no more often than once in any period of 12 months in both cases);

- e) not knowingly do anything whereby any policy of insurance relating to the Land may become void or voidable.
- f) insure against liability in respect of property owners' and third party risks including occupiers liability.

Transfer of Land

6.4 The Company hereby grants and the Secretary of State hereby accepts an option, exercisable by the Secretary of State or his nominee, to re-acquire the said Land or any part thereof at nil consideration by way of grant of an underlease of the Land for the residue of the term of the Lease. 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 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.

6.5 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 6.4 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 6.5a) 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 6.5a) 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 6.5a), hereby consents to the entering of the notice referred to in 6.5a)

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 6.5a) or 6.5d) above, whether by itself, a holding company, a subsidiary company, or a receiver, administrator or liquidator acting in the name of the Trust, and
- f) in the case of previously unregistered land, for the further protection of the option granted in Clause 6.4 the Company shall within 14 days of the signing of this Agreement make application to register a Class C (iv) land charge in the Land Charges Registry and a Caution against First Registration in the Land Registry and shall provide the Secretary of State with copies of the entries secured thereby within 7 days of completing each registration, respectively. If the Secretary of State is of the view that the Company has failed to perform the registration obligations in this sub-clause he shall be at liberty to make his own applications to secure these registrations.

Sharing of the Land

6.6 The Company agrees that if:

- a) the Academy does not reach its planned capacity over a period of seven Academy Funding Years; or
- b) notice of termination is served by either the Company or the Secretary of State in accordance with clause 5.1 of this Agreement; or
- c) in the reasonable opinion of the Secretary of State the operation of the Academy at planned capacity does not require the use of the full extent of the Land,

it will share occupation of the Land with such other Academy as the Secretary of State deems appropriate in the circumstances and enter into such legal arrangements in respect of the same as are required by the Secretary of State.

Provision of information in respect of the Land

- 6.7 If the Company is in material breach of the provisions of the Lease or if it is reasonably foreseeable that the Company will be in material breach of the Lease, the Company shall forthwith give written notice to the Secretary of State specifying the exact nature of the material breach or reasonably foreseeable material breach and such notice shall set out the steps taken or to be taken by the Company to remedy the material breach or reasonably foreseeable material breach and, where appropriate, shall include the timescales relating to any remedial action.
- 6.8 The Company will at its own cost provide all information reasonably required by the Secretary of State in respect of any material breach or reasonably foreseeable material breach.
- 6.9 Following the receipt by the Secretary of State of the written notice under clause 6.7, if the Company fails to act then it shall permit the Secretary of State to take all such steps in conjunction with or instead of the Company as may be necessary to remedy or prevent the material breach referred to in the said notice. The Company shall, in such circumstances, use its best endeavours to assist the Secretary of State to remedy or prevent such material breach.

7 **ANNEX**

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

8 **GENERAL**

- 8.1 Clause 101 of the Master Agreement shall apply subject to the following amendments:

l) compliance with the requirements of the Charity Commission's guidance to charities and charity trustees and in particular the Charity Commission's guidance in the Protecting Charities from Harm ('the compliance toolkit') as amended from time to time;

m) membership and proceedings of the Governing Body together with 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 to this Agreement.

- 8.2 This Agreement shall not be assignable by the Company.
- 8.3 The Secretary of State and the Company agree that, notwithstanding the termination of this Agreement, any obligation upon the Company and/or the Secretary of State expressed as arising upon the termination of this Agreement shall continue to subsist.

9 **THE MASTER AGREEMENT**

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

10 **ENGLISH LAW**

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

This Agreement was executed as a Deed on 29 August 2012

K. Sade
.....
Director

E. Joel
.....
Director/Secretary

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

Mary Pooley
.....

Duly Authorised



ANNEX 1 TO THIS SUPPLEMENTAL AGREEMENT

REQUIREMENTS FOR THE ADMISSION OF PUPILS TO THE GATEWAY FREE SCHOOL

GENERAL

1. This Annex may be amended in writing at any time by agreement between the Secretary of State and the Company.
2. Except as provided in paragraphs 2A to 3 below the Company will act in accordance with, and will ensure that an Independent Appeal Panel is trained to act in accordance with, all relevant provisions of the School Admissions Code and the School Admission Appeals Code published by the Department for Education (“the Codes”) as they apply at any given time to maintained schools and with equalities law and the law on admissions as they apply to maintained schools. For this purpose, reference in the Codes or legislation to “admission authorities” shall be deemed to be references to the Directors of the Company.
 - 2A The Company is permitted to determine admission arrangements (subject to consultation in accordance with the School Admissions Code) that give priority for admission (but not above looked after children and previously looked after to children of staff employed by the Free School where;
 - (a) the member of staff has been employed at the school for two or more years at the time at which the application for admission is made; or
 - (b) the member of staff is recruited to fill a vacant post for which there is a demonstrable skill shortage
3. Notwithstanding the generality of paragraph 2 of this Annex, the Company will not participate in the co-ordinated admission arrangements operated by the LA for the first year of opening but will participate in such arrangements operated by the LA in subsequent years and the local Fair Access Protocol.
4. Notwithstanding any provision in this Annex, the Secretary of State may:
 - (a) direct the Company to admit a named pupil to the Gateway Free School on application from a LA. This will include complying with a School Attendance Order¹. Before doing so the Secretary of State will consult the Company.

¹ Local authorities are able to issue school attendance orders if a child is not attending school. These are legally binding upon parents. Such an order might, for instance, be appropriate where a child has a place at an Academy but his/her parents are refusing to send him/her to school. The order will require a parent to ensure his/her child attends a specified school.

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

5. The Company shall ensure that parents and 'relevant children'² will have the right of appeal to an Independent Appeal Panel if they are dissatisfied with an admission decision of the Company. The Independent Appeal Panel will be independent of the Company. The arrangements for appeals will comply with the School Admission Appeals Code published by the Department for Education as it applies to Foundation and Voluntary Aided schools. The determination of the appeal panel is binding on all parties.

Relevant Area

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

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

Requirement to admit pupils

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

9. The Academy will:

- a. subject to its right of appeal to the Secretary of State in relation to a named pupil, admit all pupils with a statement of special educational needs naming the Academy;

² relevant children' means:

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

- b. adopt admission oversubscription criteria that give highest priority to looked after children, in accordance with the relevant provisions of the School Admissions Code.

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

10. The Academy admission arrangements will include oversubscription criteria, and an admission number for each relevant age group³. The Academy will consult on its admission arrangements and determine them in line with the requirements within the School Admissions Code.

11. The Company must make it clear, when determining the Academy's admission arrangements, that objections should be submitted to the Schools Adjudicator.

12. A determination of an objection by the Schools Adjudicator will be binding upon the Academy.

³ 'Relevant age group' means 'normal point of admission to the school: for example, year R, Year7 and Year 12.