

Multi Academy Model
Mainstream

SCHEDULE 1

MODEL SUPPLEMENTAL AGREEMENT

THIS AGREEMENT made 31st January 2013

BETWEEN

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

(2) **SWALE ACADEMIES TRUST**

IS SUPPLEMENTAL TO THE MASTER FUNDING AGREEMENT made between the same parties and dated 1 September 2010 (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 Meopham School established at Wrotham Rd, Meopham, Kent DA13 0AH;

"Academy Financial Year" means the year from 1st September to 31st August 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;

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

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

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- (b) by virtue or any powers conferred by the articles of association or other document regulating that Entity or any other Entity or partnership including, without limitation, the power to appoint or remove a majority of the governing body thereof, or
- (c) by virtue of any agreement, understanding or arrangement between any person or persons,
that the affairs of the first-mentioned Entity are conducted in accordance with the wishes of A and 'Controls' shall be construed accordingly;

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

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

"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 Meopham School, Wrotham Road, Meopham, Kent DA13 0AH and registered under title numbers K759930 and K743010.

- 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.

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- 2.2 The curriculum provided by the Academy to pupils up to the age of 16 shall be broad and balanced,
- 2.3 The requirements for the admission of pupils to the Academy are set out at Annex 1.

ACADEMY OPENING DATE

- 2.4 The Academy shall open as a school on 1 February 2013 replacing Meopham School which shall cease to be maintained by the Local Authority on that date, which date shall be the conversion date within the meaning of the Academies Act 2010.
- 2.5 The planned capacity of the Academy is 832 in the age range 11-18, including a sixth form of 132 places and a special educational needs (SEN Unit) for up to 16 planned places for pupils in the age range 11 - 18 with an Autism Spectrum Disorder (including Aspergers and/or one or more of the following: Attention Deficit Hyperactivity Disorder, Semantic Pragmatic Language Disorder, Dyspraxia, Dyslexia, Dyscalculia).
- 2.6 The wording in Clause 12 of the Master Agreement shall not apply to the Academy and the following clauses shall apply to the Academy:
- 2.6.1. The requirements of a **Mainstream Academy** are as set down in Section 1A(1) of the Academies Act 2010:
- a) It is an independent school,
 - b) it has a curriculum satisfying the requirements of section 78 of the Education Act 2002 (balanced and broadly based curriculum),
 - c) it provides education for pupils of different abilities
 - d) it provides education for pupils who are wholly or mainly drawn from the area in which the school is situated, and
 - e) it is not an Alternative Provision Academy.
- 2.6.2. Subject to Clauses 2.6.3 and 2.6.4, the Academy will operate the SEN Unit with designated places reserved for pupils with an Autism Spectrum Disorder (including Aspergers and/or one or more of the

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following: Attention Deficit Hyperactivity Disorder, Semantic Pragmatic Language Disorder, Dyspraxia, Dyslexia, Dyscalculia).

2.6.3. The Secretary of State may at any time determine that the SEN Unit should cease to operate.

2.6.4. In making any determination under clause 2.6.3 the Secretary of State shall:

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

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

2.7 The wording in Clause 13 of the Master Agreement shall not apply to the Academy and the following clauses shall apply to the Academy;

2.7.1. Other conditions and requirements in respect of the Academy are that:

a) the school will be at the heart of its community, promoting community cohesion and sharing facilities with other schools and the wider community;

b) there will be assessments of pupils performance as they apply to maintained schools and the opportunity to study for relevant qualifications in accordance with clause 30 (d) (as amended by this Agreement), and this will also apply to **Alternative Provision Academies** unless there are exceptional reasons to do otherwise;

c) in respect of **Mainstream Academies**, the admissions policy and arrangements for the school will be in accordance with admissions law, and the DfE Codes of Practice, as they apply to maintained schools,;

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

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e) there will be an emphasis on the needs of the individual pupils including pupils with SEN, both those with and without statements of SEN;

f) there will be no charge to pupils (or their parents or guardians) in respect of admission to, or attendance at, the school and the school will only charge pupils where the law allows maintained schools to charge but this clause 13(f) shall not prevent the Company receiving funds from a local authority or a charity in respect of the admission of a pupil with special educational needs to an Academy;

g) the Company shall as soon as reasonably practicable establish an appropriate mechanism for the receipt and management of donations and shall use reasonable endeavours to procure that donations are received through that mechanism for the purpose of the objects specified in the Articles.

2.8 The wording in Clause 18, subclause (b) and (c) of the Master Agreement shall not apply to the Academy and the following clauses shall apply to the Academy;

2.8.1. Pupil exclusions are set out in regulations made by virtue of section 51A of the Education Act 2002 (as may be amended or modified from time to time, and includes any successor provisions);

2.8.2. the requirements for the admission to the Academy of and support for pupils with SEN and with disabilities (for pupils who have and who do not have statements of SEN) are set out in Annex 2 to this Agreement.

2.9 The wording in Clauses 19-20 of the Master Agreement shall not apply to the Academy and the following clauses shall apply to the Academy;

2.9.1. In respect of **Mainstream and Alternative Provision Academies**:

2.9.1.1 subject to clause 2.12.1.2 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

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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.

2.9.1.2 clause 2.9.1.1 does not apply to anyone who:

2.9.1.2.1 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

2.9.1.2.2 is appointed as a designated teacher for looked after children further to clause 18A of the Master Agreement (as amended by this Agreement).

2.9.2. In respect of **Special Academies**, subject to clause 2.9.3 the Company shall not employ anyone under a contract of employment or for services to carry out planning and preparing lessons and courses for pupils, delivering lessons to pupils, assessing the development, progress and attainment of pupils, and reporting on the development, progress and attainment of pupils ("specified work") who is not either:-

- a) a qualified teacher within the meaning of regulations made under section 132 of the Education Act 2002; or
- b) otherwise eligible to do specified work under the Education (Specified Work) (England) Regulations 2012 (SI 2012/762), which for the purpose of this clause shall be construed as if the relevant Academy were a maintained school.

2.9.3. Clause 2.9.2 does not apply to anyone who:

- a) was transferred to the employment of the Company by virtue of the Transfer of Undertakings (Protection of Employment) Regulations 2006 ("transferred staff member"); and
- b) immediately prior to the transfer, was employed to do specified work; and
- c) immediately prior to the transfer, was not;

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- i) a qualified teacher within the meaning of regulations made under section 132 of the Education Act 2002 and registered with full registration with the appropriate body, or
- ii) eligible to do specified work under the Education (Specified Work) (England) Regulations 2012 (SI 2012/762)

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

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

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

2.11 Subject to the requirements of clauses 23, 24, 25, and 27 of the Master Agreement and clauses 26, 28 and 29 of the Master Agreement as amended by clauses 2.13 and 2.15 of this Agreement, the curriculum will be the responsibility of the Company.

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

- a) each Academy shall be treated as falling within the meaning of "a

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school” under section 42A (2);

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

c) references to registered pupils shall be treated as references to registered pupils at each Academy.

- 2.13 The wording in Clause 26, subclause (a) of the Master Agreement shall not apply to the Academy and the following clauses shall apply to the Academy;

Subject to clause 2.15.1, and paragraph 4 of Schedule 19 to the School Standards and Framework Act 1998 which shall apply as if the Academy were a voluntary aided school with a religious character, the Company shall ensure that provision is made for religious education to be given to all pupils at the Academy in accordance with the tenets of the specified religion or religious denomination of the Academy;

- 2.14 Where the Academy has not been designated with a religious character in accordance with 124B of the School Standards and Framework Act 1998 or further to Section 6(8) of the Academies Act 2010, the Company¹;

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

2.14.2. hereby acknowledges that the Secretary of State may in his absolute discretion refuse or consent to the Company making such an application.

- 2.15 The wording in Clauses 28-29 of the Master Agreement shall not apply to the Academy and the following clauses shall apply to the Academy;

¹ This is required in order to ensure that the process by which an Academy becomes designated as a school with a religious character is comparable to that which applies for maintained schools.

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2.15.1. Section 71(1) – (6) and (8) of the School Standards and Framework Act 1998 shall apply as if each Academy were a community, foundation or voluntary school, and as if references to “religious education” and to “religious worship” in that section were references to the religious education and religious worship provided by each Academy in accordance with clauses 26 or 27 (as amended by this Agreement) as appropriate.

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

2.15.3. 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:

2.15.3.1 references to any maintained school shall be treated as references to each Academy;

2.15.3.2 references to registered pupils shall be treated as references to registered pupils at each Academy;

2.15.3.3 references to the governing body or the local authority shall, in each case, be treated as references to the Company; and

2.15.3.4 references to the head teacher shall, in each case, be treated as references to the Principal of each Academy.

2.16 The following shall apply in addition to Clause 30 dealing with “Assessment” under the Master Agreement:

2.16.1. Subject to clause 2.16.2 the Company shall ensure that the following information is published on the website for the **Academy**:

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2.16.1.1 The school's most recent key stage 2 results as published by the Secretary of State under the following column headings in the School Performance Tables published on the Department for Education's website:

2.16.1.1.1 % achieving Level 4 or above in English and Maths;

2.16.1.1.2 % making expected progress;

2.16.1.1.3 in relation to English, % achieving Level 5 or above; and

2.16.1.1.4 in relation to Maths, % achieving Level 5 or above.

2.16.1.2 The school'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:

2.16.1.2.1 % achieving 5 + A* - C GCSEs (or equivalent) including English and Maths GCSEs;

2.16.1.2.2 % achieving the English Baccalaureate; and

2.16.1.2.3 % of pupils making expected progress.

2.16.1.3 Information as to where and by what means the most recent report about the school published by her Majesty's Chief Inspector of Education, Children's Services and Skills may be accessed.

2.16.1.4 Information as to where and by what means the School Performance Tables published by the Secretary of State on the Department for Education's website may be accessed..

2.16.2. There is no requirement to publish information under clause 2.16.1 if to do so would be in breach of the Company's obligations under the Data Protection Act 1998.

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2.17 The wording in Clause 34 of the Master Agreement shall not apply to the Academy and the following clauses shall apply to the Academy;

2.17.1. Sections 402 (Obligation to enter pupils for public examinations), 450 - 457 (charges), 459 (regulations about information about charges and school hours) and 460 (voluntary contributions), 461 (recovery of sums as civil debt) - 462 (Interpretation re charges) of the Education Act 1996 (including, for the avoidance of doubt, any secondary legislation made further to those provisions) shall be deemed to apply to the Academy with the following modifications:

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

2.17.1.2 references to registered pupils shall be treated as references to registered pupils at the Academy;

2.17.1.3 references to the governing body or the local education authority shall, in each case, be treated as references to the Company;

2.17.1.4 the charging and remissions policies required to be determined under section 457, and any amendment thereto, shall require the approval of the Secretary of State; and

2.17.1.5 the Company may charge persons who are not registered pupils at the Academy for education provided or for facilities used by them at the Academy.

International Education Surveys

2.18 The Secretary of State may, by notice in writing to the Company, require the Academy to participate in an international education survey and the Company shall, upon receipt of such notice, procure that the Academy shall 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.

Pupil Premium

2.19 The Academy shall publish in each Academy Financial Year information in relation to:

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- 2.19.1. the amount of Pupil Premium allocation that it will receive during the Academy Financial Year;
- 2.19.2. on what it intends to spend the Pupil Premium allocation;
- 2.19.3. on what it spent its Pupil Premium in the previous Academy Financial Year;
- 2.19.4. the impact on educational attainment, arising from expenditure of the previous Academy Financial Year's Pupil Premium.

DURATION OF SCHOOL DAY AND YEAR

- 2.20 The duration of the school day and year will be the responsibility of the Company.²

² In respect of **Special Academies**, regulations made under section 551 of the Education Act 1996 apply (currently the Education (School Day and School Year) (England) Regulations 1999).

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3 CAPITAL GRANT

- 3.1 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.
- 3.2 The payment of any Capital Grant to the Company in connection with the Academy shall be subject to any other conditions that the Secretary of State may specify.
- 3.3 .The wording in Clause 41 of the Master Agreement shall not apply to the Academy and Capital Grant will be paid by the Secretary of State to the Company in connection with the Academy 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.
- 3.4 .Clauses 42-47 of the Master Agreement shall not apply to the Academy.

3 GAG AND EAG

- 4.1 The Secretary of State agrees to pay GAG and EAG to the Company in relation to the Academy in accordance with the Master Agreement.
- 4.2 **The wording in Clause 49 of the Master Agreement shall not apply to the Academy and** subject to clauses to 57-58 of the Master Agreement (as amended by this Agreement), GAG for each Academy Financial Year for the Academy will include;
- 4.2.1 funding equivalent to that which would be received by a maintained school with similar characteristics, determined by the Secretary of State and notified in the Annual Letter of Funding or its equivalent, taking account of the number of pupils at each Academy;
- 4.2.2 funding in respect of functions which would be carried out by the LA if each Academy was a maintained school.

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4.3 The wording in Clause 52 of the Master Agreement shall not apply to the Academy and subject to clause 4.4 **Error! Reference source not found.**, below the basis of the pupil number count for the purpose of determining GAG for the Academy for Academy Financial Years after the Academy Financial Year in which the Academy opens will be:

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

4.3.2 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.

4.4 The wording in Clause 53 of the Master Agreement shall not apply to the Academy and where either of the following conditions applies in respect of an Academy Financial Year, the basis of the pupil count for the Academy shall be determined by the Secretary of State, taking account of any diseconomies of scale that the Academy will be under as a result of such condition(s) applying. The conditions are:

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

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

4.5 Clause 68 of the Master Agreement shall not apply to the Academy.

4.6 Clause 75, subclause (c) of the Master Agreement shall not apply to the Academy and in addition to the obligation to fulfil the statutory requirements referred to in Clause 75 sub-clause (f) of the Master Agreement (as amended by this Agreement), the Company shall prepare its financial statements, Directors'

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report, Annual Accounts and its Annual Return regarding the Academy for each Academy Financial Year in accordance with the Statement of Recommended Practice as if the Company was a non-exempt Charity and/or in such form or manner and by such date as the Secretary of State may reasonably direct and shall file these with the Secretary of State and the Principal Regulator each Academy Financial Year..

4.7 Clause 79 of the Master Agreement shall not apply to the Academy and at the beginning of any Academy Financial Year the Company may hold unspent GAG for the Academy from previous Academy Financial Years amounting to such percentage (if any) as the Secretary of State may specify by notice in writing to the Company 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 Company shall use such carried forward amount for such purpose, or subject to such restriction on its use, as the Secretary of State may, in respect of the funds for The Academy, specify by notice in writing to the Company.

4.8 Clause 83, subclause (b) of the Master Agreement shall not apply to the Academy and subject to the remainder of clause 83 of the Master Agreement the Academy shall not write off any debts or liabilities owed to it above a value for the time being specified by the Secretary of State nor offer to make any ex gratia payments.

4.9 Clause 85 of the Master Agreement shall not apply to the Academy and each discovered loss of an amount exceeding the amount for the time being specified by the Secretary of State and arising from suspected theft or fraud, shall be reported by the Company to the Secretary of State at the earliest opportunity

4.10 Any references in the Master Agreement which require charity trustees to report to the Charity Commission in connection with the Academy should instead be interpreted as references to report to the Principal Regulator.

4.11 In relation to this 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 reference in this document

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which require charity trustees to report to the Charity Commission should instead be interpreted as references to report to the Principal Regulator.

4.12 Clause 90 of the Master Agreement shall not apply to the Academy and the sale or disposal by other means, or reinvestment of proceeds from the disposal, of a capital asset by the Company shall require the consent of the Secretary of State, such consent not to be unreasonably withheld or delayed, where:

4.12.1 the Secretary of State paid capital grant in excess of the value for the time being specified by the Secretary of State for the asset; or

4.12.2 the asset was transferred to the Company from an LA for no or nominal consideration.

4.13 Clause 91 of the Master Agreement shall not apply to the Academy and any reinvestment of a percentage of the proceeds of disposal of a capital asset paid for with a capital grant from the Secretary of State shall require the Secretary of State's consent in the circumstances set out above and reinvestment exceeding the value for the time being specified by the Secretary of State or with other special features will be subject to Parliamentary approval. The percentage of the proceeds for which consent is needed is the percentage of the initial price of the asset which was paid by capital grant from the Secretary of State

4.14 The Secretary of State may at any time by notice in writing, subject to clause 4.16 below, terminate this Agreement forthwith (or on such other date as he may in his absolute discretion determine) in the event that there is a change:

4.14.1 In the Control of the Company;

4.14.2 in the Control of a legal entity that Controls the Company;

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

4.15 The Company shall, as soon as it is reasonably practicable to do so after it has become aware of any change or proposed change of Control within the

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meaning of clause 4.14, give written notice to the Secretary of State of such change or proposed change of Control.

4.16 When notifying the Secretary of State further to clause 4.15, the Company may seek the Secretary of State's agreement that, if he is satisfied that the person assuming Control is suitable, he will not in those circumstances exercise his right to terminate this Agreement further to clause 4.14

4.17 This Agreement and those clauses of the Master Agreement that apply to the Academy shall not be assignable by the Company.

4A COMPLAINTS

4A.1 If a complaint is made about matters arising in whole or in part prior to the opening of any Academy, as referred to in clause 2.4 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') or that complaint in whole or in part could have been investigated under Part III had the school the Academy replaced remained a maintained school, the Company:

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

4A.2) If the Secretary of State could have given an order and/or a direction under section 496 and/or section 497 of the Education Act 1996 to the governing body of the school the Academy replaced (as referred to in clause 2.4 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

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though the Academy were a maintained school and sections 496 and 497 applied to the governing body of that maintained school;

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

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 2020 or any subsequent anniversary of that date.

5.2 If the Secretary of State is of the opinion that the Academy no longer has the characteristics set out in clause 2.6 above or that the conditions and requirements set out in clauses 13–34B 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.

5.3 Any such notice shall be in writing and shall:

- 5.3.1 state the grounds on which the Secretary of State considers the Academy no longer has the characteristics set out in clause 2.6 above or is not meeting the conditions and requirements of clauses 13–34B of the Master Agreement or the Company is otherwise in material breach of the provisions of this Agreement or the Master Agreement;

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

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

- 5.3.4 state the form in which the 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 5.3.4, the Secretary of State may give the Company 12 months, or such lesser period

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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 5.3.4, the Secretary of State shall consider it, and any representations made by the Company, and shall, within three months of its receipt, indicate that:

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

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

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

5.6 In the circumstances of clause 5.5.3 the Secretary of State shall notify the 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 have the characteristics set out in clause 2.6 above or does not and will not meet the conditions and requirements set out in clauses 13-34B 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.

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.

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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 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 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:

5.9.1 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 Academy are reduced sufficiently to ensure that such costs are less than the Indicative Funding and All Other Resources and the period of time within which such steps will be taken; and

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

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

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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

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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 shall have given notice to terminate the Agreement under 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:

5.16.1 the Chief Inspector gives 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

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

5.16.3 the Secretary of State shall have requested the 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

5.16.4 the Secretary of State, having considered the Further Action Statement, is not satisfied that any action proposed to be taken by the 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:

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

5.17.2 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 5.17.2, 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.

6 EFFECT OF TERMINATION

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

6.2 Subject to clause 6.3, if the Secretary of State terminates this Agreement for reasons other than that a Special Measure Termination Event occurs, the Academy no longer has the characteristics set out in clause 2.6 above, or is no longer meeting the conditions and requirements set out in clauses 13-34B 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.

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

6.4 The categories of expenditure incurred by the 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.

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- 6.5 Subject to clause 6.6, 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 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 6.5(a) is not required, promptly repay to the Secretary of State a sum equivalent to the percentage of the value of the assets at the date of termination, or, by agreement with the Secretary of State, at the date of subsequent disposal of those assets. Such percentage to be the same as the percentage of the capital contribution made by the Secretary of State to the original value of those assets, whether that contribution was made on the establishment of the Academy or later.
- 6.6 The Secretary of State may waive in whole or in part the repayment due under clause 6.5(b) if:
- a) The 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.
- 6.7 The sale or disposal by other means of publicly funded land held for the purposes of an Academy is now governed by Part 3 of Schedule 1 to the Academies Act 2010.

Restrictions on Land transfer

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

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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

b) shall take any further steps required to ensure that the restriction referred to in clause 6A(a) is entered on the proprietorship register,

c) shall provide the Secretary of State with confirmation of the entry of the restriction referred to in clause 6A(a) as soon as practicable after it receives notification from the Land Registry,

d) in the event that it has not registered the restriction referred to in clause 6A(a), hereby consents to the entering of the restriction referred to in 6A(a) in the register by the Secretary of State (under s. 43(1)(b) of the Land Registration Act 2002),

e) shall not, without the consent of the Secretary of State, apply to dis-apply, modify or remove (by cancellation or otherwise) a restriction entered in accordance with clause 6A(a) or 6A(d) above, whether by itself, a holding company, a subsidiary company, or a receiver, administrator or liquidator acting in the name of the Company.

Repair and Upkeep

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

Insurance

6C) The Company shall:-

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- 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 and the like apply the proceeds of the policy of the insurance received for those purposes in rebuilding and reinstating the Land (provided that this clause should be satisfied if the Company provides premises not necessarily identical to the Land as the same existing prior to such damage or destruction occurring) as soon as may be reasonably practicable;
- d) produce to the Secretary of State a copy of the insurance policy whenever reasonably requested and the receipt for the last or other evidence of renewal and up to date details of the amount of cover (but no more often than once in any period of 12 months in both cases);
- e) not knowingly do anything whereby any policy of insurance relating to the Land may become void or voidable.
- f) insure against liability in respect of property owners' and third party risks including occupiers liability.

Transfer of Land on Termination of Agreement

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

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6E) In further recognition by the Company that they are or will be taking a transfer of publicly-funded land for nil consideration, (which for the purposes of this transaction shall include leases granted at a peppercorn rent), to protect the option granted under clause 6D, the Company:

a) shall, within 14 days from the transfer to it of the Land, apply to the Land Registry in Form AN1 as prescribed by Rule 81 of the Land Registration Rules 2003 for a notice to be entered in the register (under section 34(3)(a) of the Land Registration Act 2002) to protect the option granted under clause 6D and including a copy of this Agreement as evidence of that option.

b) shall take any further steps required to ensure that the notice referred to in clause 6E(a) is entered on the proprietorship register,

c) shall provide the Secretary of State with confirmation of the entry of the notice referred to in clause 6E(a) as soon as practicable after it receives notification from the Land Registry,

d) in the event that it has not registered the notice referred to in clause 6E(a), hereby consents to the entering of the notice referred to in 6E(a) in the register by the Secretary of State (by application in Form UN1 under s. 34(3)(b) of the Land Registration Act 2002),

e) shall not, without the consent of the Secretary of State, apply to dis-apply, modify or remove (by cancellation or otherwise) a notice entered in accordance with clause 6E(a) or 6E(d) above, whether by itself, a holding company, a subsidiary company, or a receiver, administrator or liquidator acting in the name of the Company.

f) in the case of previously unregistered land, for the further protection of the option granted in Clause 6D the Company shall within 14 days of the signing of this Agreement make application to register a Class C (iv) land charge in the Land Charges Registry and a Caution against First Registration in the Land Registry and shall provide the Secretary of State with copies of the entries secured thereby within 7 days of completing each registration, respectively. If the Secretary of State is of the view that the Company has

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failed to perform the registration obligations in this sub-clause he shall be at liberty to make his own applications to secure these registrations.

7 ANNEXES

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

8 THE MASTER AGREEMENT

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

8.2 In respect of the Academy, Clause 18, sub-clause (b) of the Master Agreement shall not apply and the requirements for the admission to the Academy of and support for pupils with SEN and with disabilities (for pupils who have and who do not have statements of SEN) are set out in Annex 2 to this Agreement. For the avoidance of doubt, Annex B of the Master Agreement shall not apply in respect of this the Academy.

9 ENGLISH LAW

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

This Agreement was executed as a Deed on 31st January 2013

Executed on behalf of Swale Academies Trust by:

[Redacted Signature]

In the presence of:

Witness

[Redacted Name]

Address

[Redacted Address]

Occupation

[Redacted Occupation]

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



Duly Authorised



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ANNEXES TO THIS SUPPLEMENTAL AGREEMENT

Requirements for the Admission for pupils at the
Academy Annex 1

Requirements for the admission of pupils with SEN and with disabilities Annex 2

Annex 1

REQUIREMENTS FOR THE ADMISSION OF PUPILS TO MEOPHAM 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 2B 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 children¹) to other children attracting the pupil premium, including the service premium ('the pupil premium admission criterion'). Where a Company exercises this freedom it will provide information in its admission arrangements of eligibility for the premiums.

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

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

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

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

- (a) direct the Company to admit a named pupil to Meopham School on application from an LA. This will include complying with a School

¹ As defined in the School Admissions Code.

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Attendance Order². Before doing so the Secretary of State will consult the Company;

- (b) direct the Company to admit a named pupil to Meopham 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 School Admission Appeals Code.

5. The Company shall ensure that parents and 'relevant children'³ 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 Company 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 Company 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 Company will:

² 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.

³ 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.

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

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

10. The Academy admission arrangements will include oversubscription criteria, and an admission number for each relevant age group⁴. The Company will consult on the Academy's admission arrangements and determine them in line with the requirements within the School Admissions Code.

11. The Office of the School's Adjudicator (OSA) will consider objections to the Academy's admission arrangements⁵. The Company should therefore make it clear, when determining the Academy's admission arrangements, that objections should be submitted to the OSA.

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

⁴ 'Relevant age group' means 'normal point of admission to the school, for example, year R, Year 7 and Year 12.

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

**Arrangements for pupils with Special Educational Needs
(‘SEN’) and disabilities at Meopham Academy**

Duties in relation to pupils with SEN¹

1. The Directors of the Company must, in respect of **Meopham Academy**, comply with all of the duties imposed upon the governing bodies of maintained schools in;
 - Part 4 of the Education Act 1996 as amended from time to time²;
 - 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 time³.
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 **Meopham Academy**, those concerned with making special educational provision for the child must secure that the child engages in the activities of the school together with children who do not have SEN, so far as is reasonably practicable and is compatible with:
 - (a) the child receiving the special educational provision which his learning difficulty calls for,
 - (b) the provision of efficient education for the children with whom he will be educated, and
 - (c) the efficient use of resources.
4. In addition to complying with the duties imposed upon the governing bodies of maintained schools set out in The Education (Special Educational Needs) (Information) Regulations 1999 (as amended from time to time) the Company must ensure that the website for the Academy includes details of the implementation of its policy for pupils with special educational needs; 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

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

² 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).

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

2010¹).

Admissions²

5. The Company must ensure that for the **Meopham Academy** pupils with SEN are admitted on an equal basis with others in accordance with the Academy's admissions policy.
6. Where a local authority ("LA") proposes to name **Meopham Academy** 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 Company that it does not agree with the Company's response, and names the Academy in the child's statement, then 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 consider 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.

¹ For the meaning of 'disabled', see section 6 of the Equality Act 2010.

² SEN Admissions requirements for special academies are set out in the Special Academy Supplemental Funding Agreement Annex 1.

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 Company, the Secretary of State or the First-tier Tribunal (Special Educational Needs and Disability) have determined that it should be named, the Company shall admit the child to the Academy notwithstanding any provision of Annex 1 of the Supplemental Agreement of the Academy.

