

**SUPPLEMENTAL FUNDING AGREEMENT**

**THIS AGREEMENT** made 27 March 2013

**BETWEEN**

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

(2) **TBAP TRUST**

IS SUPPLEMENTAL TO THE MASTER FUNDING AGREEMENT made between the same parties and dated [ 27 March ]2013 (the "Master Agreement").

1 **DEFINITIONS AND INTERPRETATION**

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

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

"the Alternative Provision Academy" means The Courtyard AP Academy established at Gilstead Road, London, SW6 2LG.

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

"the Land" means the land (including for the avoidance of doubt all buildings, structures landscaping and other erections) situated at and known as Primary Pupil Referral Unit, The Courtyard, Langford Primary School, Gilstead Road, Fulham, London, SW6 2LG, and registered under title number BGL75932.

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

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2 **THE ALTERNATIVE PROVISION ACADEMY**

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

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

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

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

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

2.5A) Subject to Clause 2.5B), the Alternative Provision Academy will operate designated places reserved for pupils with special educational needs (SEN Unit and or Resourced Provision) with up to 8 planned places for pupils social, emotional and behavioural difficulties in the age range 5-11.

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

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

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

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

3 **ALTERNATIVE PROVISION ACADEMY OPENING DATE**

3.1 The Alternative Provision Academy shall open as an independent school on 1 April 2013 replacing The Primary Pupil Referral Unit (a pupil referral unit) which shall cease to be maintained by the Local Authority on that date, which date shall be the conversion date within the meaning of the Academies Act 2010.

4 **PUPILS**

4.1 The planned number of places at the Alternative Provision Academy is 16 places in the age range 5-11 including 8 places for pupils with a statement of special education needs naming the Alternative Provision Academy. The planned number of places is not determinative of GAG. GAG for each Academy Financial Year will be determined by the Secretary of State in accordance with clauses 54L and 54M of the Master Agreement.

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

5 **CAPITAL GRANT**

5.1 Pursuant to clause 38 of the Master Funding Agreement, the Secretary of State may, in his absolute discretion provide Capital Expenditure funding in accordance with any arrangements he considers appropriate.

6 **GAG AND EAG**

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



## 7 **TERMINATION**

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

### **Termination Warning Notice**

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

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

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

- a) reasons for the Secretary of State's issue of the Termination Warning Notice;

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b) the remedial measures which the Secretary of State requires the Company to carry out, with associated deadlines, in order to rectify the defaults identified (“**Specified Remedial Measures**”); and

c) the date by which the Company must respond to the Termination Warning Notice providing its representations with regard thereto or confirm that it accepts and agrees to undertake the Specified Remedial Measures.

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

a) in the light of the Company’s representations in response to the Termination Warning Notice, some or all of the Specified Remedial Measures are not required to be implemented (and if so which) and/or the Specified Remedial Measures are being or will be implemented within the specified timeframe; or

b) subject to any further measures he reasonably requires (“Further Remedial Measures”) being implemented by a specified date or any evidence he requires being provided, the implementation of such measures has been or will be successfully completed within the specified timeframes; or

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

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

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

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

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

**Notice of Intention to Terminate**

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

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

b) the Academy requires significant improvement.

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

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

a) he has not received any representations from the Company within the timeframe specified in clause 7.7; or

b) having considered the representations made by the Company



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pursuant to clause 7.7, the Secretary of State remains satisfied that it is appropriate to terminate this Agreement

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

**Termination with Immediate Effect**

7.9 If the Secretary of State has cause to serve a notice on the Company under section 165 of the Education Act 2002 and a determination (from which all rights of appeal have been exhausted) has been made that the Alternative Provision Academy shall be struck off the Register of Independent Schools, he may terminate this Agreement by notice in writing to the Company such termination to take effect on the date of the notice.

**Notice of Intention to Terminate by Company**

7.10 The Secretary of State shall, at a date preceding the start of each Academy Financial Year, provide to the Company an indication of the level of funding to be provided by the Secretary of State to the Company by way of GAG and EAG in the next following Academy Financial Year (the "**Indicative Funding**"). If the Company is of the opinion that, after receipt of the Indicative Funding for the next following Academy Financial Year (the "**Critical Year**") and of the taking into account all other resources available and likely to be available to the Alternative Provision Academy, including such funds as are set out in clause 73 of the Master Agreement and such other funds as are and likely to be available to the Academy from other academies operated by the Company ("**All Other Resources**"), it is likely that the cost of running the Alternative Provision Academy during the Critical Year would cause the Company, on the basis of the Indicative Funding, to become insolvent (and for this reason only) then the Company may give notice of its intention to terminate this Agreement at the end of the then current Academy Financial Year.

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7.11 Any notice given by the Company under clause 7.10 shall be in writing and shall be served on the Secretary of State not later than 28 February preceding the Critical Year or, if the Secretary of State shall not have given notice of the Indicative Funding to the Company on or before the date specified in clause 7.10 above, within six weeks after the Secretary of State shall have done so. The notice must specify:

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

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

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

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



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

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

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

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**8 EFFECT OF TERMINATION**

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

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

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

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

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

- (a) promptly transfer a proportion of the assets to a person nominated by



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

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

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

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

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

## **LAND**

### **Restrictions on Land transfer**



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

a) shall in respect of all registrable interests in the Land, 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 8A(a) is entered on the proprietorship register,

c) shall provide the Secretary of State with confirmation of the entry of the restriction referred to in clause 8A(a) as soon as practicable after it receives notification from the Land Registry,

d) in the event that it has not registered the restriction referred to in clause 8A(a), hereby consents to the entering of the restriction referred to in 8A(a) in the register by the Secretary of State (under s. 43(1)(b) of the Land Registration Act 2002),

e) shall not, without the consent of the Secretary of State, apply to dis-apply, modify or remove (by cancellation or otherwise) a restriction entered in accordance with clause 8A(a) or 8A(d) above, whether by itself, a holding company, a subsidiary company, or a receiver, administrator or liquidator acting in the name of the Company.

9 **ANNEX**

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

10 **THE MASTER AGREEMENT**

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

11 **ENGLISH LAW GENERAL**

11.1 This Agreement shall not be assignable by the Company.

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

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

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

11.5 This Agreement and any dispute or claim arising out of or in connection with it or its subject matter or formation (including non-contractual disputes or

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claims) shall be governed by and construed in accordance with the law of England and Wales.

11.6 The parties irrevocably agree that the courts of England and Wales shall have exclusive jurisdiction to settle any dispute or claim that arises out of or in connection with this agreement or its subject matter or formation (including non-contractual disputes or claims).

This Agreement was executed as a Deed on 27 March 2013

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**ANNEX TO THIS SUPPLEMENTAL AGREEMENT**

Requirements for the Admission for pupils at the  
Alternative Provision Academy

Annex 1

## **Annex 1**

### **Requirements for the admission of pupils to The Courtyard AP Academy**

#### **GENERAL**

1. This Annex may be amended in writing at any time by agreement between the Secretary of State and the Company.
2. The Company will act in accordance with equalities law.
3. Except where paragraphs 4, 5 or 6 apply, the Company may not admit a child of compulsory school age unless it is by way of a referral from a Commissioner through one of the referral routes set out in paragraph 7 below.
4. Notwithstanding any provision in this Annex, the Secretary of State may:
  - (a) direct the Company to admit a named pupil to The Courtyard AP Academy on application from a local authority. This will include complying with a School Attendance Order<sup>1</sup>. Before doing so the Secretary of State will consult the Company.
  - (b) direct the Company to admit a named pupil to The Courtyard AP Academy if the Company has failed to act in accordance with this Annex or has otherwise failed to comply with applicable equalities legislation.
  - (c) direct the Company to amend its admission arrangements where the Company fails to comply with relevant legislation or where the Secretary of State is concerned that because of its admissions arrangements the Company is no longer meeting the requirements at 1C of the Academies Act.
5. Pupils on roll in any predecessor provider will transfer automatically to the Alternative Provision Academy on opening. All children already offered a place at any predecessor Maintained Pupil Referral Unit will be admitted.
6. The Company will:
  - a) Subject to its right of appeal to the Secretary of State in relation to a named pupil, admit all pupils with a statement of special educational needs naming the Alternative Provision Academy; and

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

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b) Adopt admission oversubscription criteria<sup>2</sup> that give highest priority to looked after children.

### ADMISSION ARRANGEMENTS

7. The Company may only admit a child of compulsory school age:

a) referred by a local authority where the local authority has a duty to that child under section 19 of the Education Act 1996.<sup>3</sup>

b) referred by a maintained school or Academy where the maintained school or Academy has a duty under Section 100 of the Education and Inspections Act 2006.<sup>4</sup>

c) referred by a maintained school under powers set out in section 29(A) of the Education Act 2002<sup>5</sup>.

d) referred by an Academy which, under general powers in the Articles of the Company may send pupils off-site to an Alternative Provision Academy as part of early intervention measures to address behaviour. Academies have the power to do this within their general powers under the Articles of an Company to advance education. However, as with a maintained school there is an expectation in law that a pupil will be educated at the school where he is registered, so placements would generally be relatively short and subject to review<sup>6</sup>.

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

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<sup>2</sup> Over subscription criteria means how the Company will distinguish/prioritise between pupils where it has more referrals than places currently available.

<sup>3</sup> Section 19 of the Education Act 1996, and regulations made under that section, requires a local authority to make arrangements (from the sixth day of exclusion where a pupil has been permanently excluded) for the provision of suitable, full time (unless there are medical reasons as to why this would not be appropriate) education at school or otherwise who, for a range of reasons, would otherwise be without such education. Referrals under section 19 would include for hospital education provision for example where the AT obtains a report from an educational psychologist, or from a medical expert or specialist, recommending that the child be admitted to the alternative provision Academy.

<sup>4</sup> Section 100 of the Education and Inspections Act 2006 requires maintained schools and Academies to arrange full-time education for pupils on a fixed period exclusion of more than five days from the sixth day of the exclusion

<sup>5</sup> Section 29A of the Education Act 2002 provides that governing bodies of maintained schools may direct a pupil off-site "for the purpose of receiving educational provision which is intended to improve the behaviour of the pupil,

<sup>6</sup> It is possible that some off-site directions may become longer term placements in cases where the referring school and local authority agree that the provision in an Alternative Provision Academy is meeting the pupil's needs, and that a mainstream school place cannot meet that pupil's needs. These pupils could fall within the terms of section 19 of the Education Act.



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

### **Pupil registration and information sharing**

10. The pupil numbers of an Alternative Provision Academy will fluctuate throughout the academic year.

11. The Company must ensure that pupils are appropriately registered<sup>7</sup>. In the case of a fixed period exclusion or an off site direction, the excluded pupil should remain on the register of the excluding school as they are expected to return when the exclusion period is completed and should also be registered with the Alternative Provision Academy (dual registered). In the case of a permanent exclusion, the excluded pupil should be removed from the excluding school's register and be registered with the Alternative Provision Academy.

12. In the case of a permanent exclusion, for schools situated in local authorities that are taking part in the exclusion trial area, the expectation is that pupils will be dual registered until such time as the trial has concluded.

13. As far as reasonably practicable, in agreeing contractual arrangements with Commissioners the Company shall request appropriate information on the needs and prior attainment of pupils who will attend the Alternative Provision Academy.

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

### **Objections and determinations**

15. The Company must make clear when determining the Alternative Provision Academy's admission arrangements, that objections should be submitted to the EFA or any successor to it.

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

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<sup>7</sup> The requirements of section 434 of the Education Act 1996 (registration of pupils) and regulations made under that section apply to schools (which includes Academy schools and alternative provision Academies)