

## SUPPLEMENTAL AGREEMENT FOR A FREE SCHOOL

**THIS AGREEMENT** made 31 August 2012

### **BETWEEN**

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

(2) **DERBY PRIDE TRUST** a company incorporated in England and Wales with company number 7109892 whose registered office is at Derby Moor Community Sports College, Moorway Lane, Littleover, Derby DE23 2FS.

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

### 1 **DEFINITIONS AND INTERPRETATION**

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

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

"the Alternative Provision Academy" means Derby Pride Academy to be established at No.20 and 22 (Plots 26 & 27) Orient Way, Pride Park, Derby, DE24 8BY;

"Academy Financial Year" means the year from 1<sup>st</sup> September to 31<sup>st</sup> August in any year;

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

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

"Debt" means the amount equal to 100% of the Land Value;

"Discharge Process" means the removal of:-

- i. the Legal Charge registered with Companies House as against the Company;

- ii. the Legal Charge from the charges register at the Land Registry against the title for the Land;
- iii. the restriction in the proprietorship register as referred to in 10B(a);  
and
- iv. the notice in the proprietorship register as referred to in 10F(a).

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

“the Land” means the land (including for the avoidance of doubt all buildings, structures landscaping and other erections) situated at and known as No.20 and 22 (Plots 26 & 27) Orient Way, Pride Park, Derby, DE24 8BY and registered under making up the permanent site of the Alternative Provision Academy or the part of such land remaining in the ownership of the Company, following any disposal in accordance with clause 10I(c) ii or clause 10K;

“Land Value” means, at any time:-

- (a) where there has been a disposal of the Land as a result of the enforcement of the Legal Charge by the Secretary of State, the proceeds of that disposal after payment of any necessary and reasonable costs incurred by the seller in connection with such disposal; or
- (b) in any other case, the Market Value of the Land;

“Lease” means the leasehold agreement or its equivalent between the Academy Trust and (“the Landlord”) in respect of the Temporary Site;

“Legal Charge” means the legal charge to be entered upon the acquisition of the Land by the Company in favour of the Secretary of State over the Land, in a form and substance satisfactory to the Secretary of State;

“Market Value” the market value of the relevant part of the Land (as that term is defined or referred to in the RICS Appraisal and Valuation Manual (current edition) published by RICS), as determined by a professionally qualified independent valuer;

“School Premises” means the site upon which the Alternative Provision Academy is situated from time to time, including the Land and the Temporary Site for such time as each acts as the site for the Alternative Provision Academy;

“the Temporary Site” means the land (including for the avoidance of doubt all buildings, structures landscaping and other erections), upon which the Alternative Provision Academy is to be situated on a temporary basis from the date of opening at St Paul’s House, Jubilee Business Park, Stores Road, Derby DE21 4XF until occupation of the Land can commence.

- 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 Alternative Provision Academy in accordance with the Master Agreement and this Agreement.
- 2.2 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.
- 2.3 The requirements for the admission of pupils to the Alternative Provision Academy are set out at Annex 1.

## **ACADEMY OPENING DATE**

- 2.4 The Alternative Provision Academy shall open as a school on 1 September 2012.

## **PUPILS**

2.5 The planned capacity of the Alternative Provision Academy is 50 FTE places in the age range 11 - 16. The planned number of places and the age ranges are not determinative of GAG. GAG for each Academy Financial Year will be determined by the Secretary of State in accordance with clauses 54J to 54P (inclusive) of the Master Agreement.

2.6 Where the company considers that there is a need to increase the planned number of places stated in clause 2.5, 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.

## **3 CAPITAL GRANT**

3.1 Pursuant to clause 35 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.

## **4 GAG AND EAG**

4.1 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.

## **4A OTHER RELEVANT FUNDING**

Not used

## **4B LEASE**

4B.1.1 If the Company is in material breach of the provisions of the Lease or if it is reasonably foreseeable that the Company will be in material breach of the Lease, the Company shall forthwith give written notice to the Secretary of State specifying the exact nature of the material breach or reasonably foreseeable material breach and such notice shall set out the steps taken or to be taken by the Company to remedy the material breach or reasonably foreseeable material breach and, where appropriate, shall include the timescales relating to any remedial action.

4B.1.2 The Company will at its own cost provide all information reasonably required by the Secretary of State in respect of any material breach or reasonably foreseeable material breach.

4B.2 Following the receipt by the Secretary of State of the written notice under clause 4B.1), the Company shall permit the Secretary of State to take all such steps in conjunction with or instead of the Company as may be necessary to remedy or prevent the material breach referred to in the said notice. The Company shall, in such circumstances, use its best endeavours to assist the Secretary of State to remedy or prevent such material breach.

4B.3.1 The Company shall, within 14 days of receiving any order, notice, proposal, demand or any other requirement affecting the ability of the Company to use the Land for the purposes of the Academy from any competent authority, give full particulars by written notice to the Secretary of State and deliver to the Secretary of State copies of such documents as he may require. Such notice shall state what steps, if any actions are required, the Company intends to take in response to the order, notice, proposal, demand or other requirement affecting the Land.

4B.3.2 The Company will at its own cost provide all information reasonably required by the Secretary of State in respect of order, notice, proposal, demand or any other requirement affecting the Land as referred to in clause 4B.3.1.

4B.3.3 Following the receipt by the Secretary of State of the written notice under clause 4B.3.1, the Company shall permit the Secretary of State to take all steps in conjunction with or instead of the Company as may be necessary to comply with any order, notice, proposal, demand or other requirement affecting the Land referred to in the said notice. The Company shall, in such circumstances, use all reasonable endeavours to assist the Secretary of State to take the appropriate required steps.

## 5 **TERMINATION**

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

- 5.2 If the Secretary of State is of the opinion that the Alternative Provision Academy no longer meets the requirements set out in clause 12 of the Master Agreement or that the conditions and requirements set out in clauses 13-34B 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 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 Alternative Provision Academy no longer meets the requirements set out in clause 12 of the Master Agreement or is not meeting the conditions and requirements of clauses 13-34A 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 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 or Advisory Body, whichever is appropriate from time to time, of the Alternative Provision Academy to discuss his concerns. If following such meeting he has good reasons for remaining satisfied that the Alternative Provision Academy does not and will not meet the requirements set out in clause 12 of the Master Agreement or does not and will not meet the conditions and requirements set out in clauses 13-34A 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 Alternative Provision Academy shall be struck off the Register of Independent Schools, the period of twelve months notice referred to in clause 5.6 may be shortened to a period deemed appropriate by the Secretary of State.

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

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.

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 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

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 Alternative Provision Academy and the projected expenditure on the Alternative Provision Academy; and

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

5.10 Both parties undertake to use their best endeavours to agree whether or not the cost of running the 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.

- 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 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.
- 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 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.

- 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 Alternative Provision 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 which meets the requirements set out in Section 1C of the Academies Act 2010.
- 5.16 A “Special Measures Termination Event Occurs” when:
- 5.16.1. the Chief Inspector has given a notice to the Company in accordance with section 13(3) of the Education Act 2005 (the “Special Measures Notice”) stating that in his opinion special measures are required to be taken in relation to the Alternative Provision Academy; and
  - 5.16.2. the Chief Inspector has carried out a subsequent inspection of the Alternative Provision Academy in accordance with the Education Act 2005 and has made a report in accordance with the Education Act 2005 stating that the Alternative Provision Academy has made inadequate progress since the date of the Special Measures Notice; and
  - 5.16.3. the Secretary of State has requested the Company to deliver within 10 Business Days a written statement (a “Further Action Statement”) of the action the Company proposes to take, and the period within which it proposes to take such action, or, if it does not propose to take any action, the reasons for not doing so; and
  - 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:
- 5.17.1. by notice in writing to the Company terminate this Agreement forthwith; or
  - 5.17.2. subject to clause 102 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 62 of the Articles of Association.

5.19 Not used.

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

1. the Alternative Provision Academy would, on opening, provide an unacceptably low standard of education; or
2. the safety of pupils or staff at the Alternative Provision Academy would, on opening, be threatened; or
3. the staff employed at the Alternative Provision Academy are unsuitable; or
4. the buildings and other structures on the Land are unsuitable or the Company has not obtained Building Regulation approval;

he may in writing either:

- (a) require the Company (i) not to open the Alternative Provision Academy; and/or (ii) not to admit pupils of a particular age range, to be determined by the Secretary of State; and/or (iii) not to use any building or other structure on the Land until such time as the relevant matter or matters listed in 1. to 4. above has or have been resolved to the Secretary of State's satisfaction; or
- (b) terminate this Agreement forthwith or provide such notice as he deems appropriate in the circumstances to terminate this Agreement.

5.21 Not used.

5.22 If at any time after the opening of the Academy but prior to the Academy relocating to the Land or any alternative permanent site, the Secretary of State is of the view that:

1. the safety of pupils or staff at the Academy would, on relocation to the Land or any alternative permanent site, be threatened; or
2. the buildings and other structures on the Land or any alternative permanent site are unsuitable including, but not limited to the requirement for any Building Regulations approval to have been obtained;

he may in writing either:

- (a) require the Academy Trust not to use any building or other structure on the Land or any alternative permanent site until such time as the relevant matter or matters listed in 1. to 2. above has or have been resolved to the Secretary of State's satisfaction; or
- (b) terminate this Agreement forthwith or provide such notice as he deems appropriate in the circumstances to terminate this Agreement.

5.23 If the Academy Trust has not entered into the Lease by 1/09/2012, the Secretary of State may:

- (a) require the Academy Trust not to open the Academy until such time as an alternative temporary and / or permanent site for the Academy has been acquired / obtained; or
- (b) by notice terminate this Agreement forthwith; or
- (c) provide such notice as he deems appropriate in the circumstances in writing to terminate this Agreement.

5.24 If the Academy Trust has not acquired a permanent site by 31/12/2012, the Secretary of State may by notice terminate this Agreement forthwith or may provide such notice as he deems appropriate in the circumstances in writing to terminate this Agreement.

5.25 If by 30/09/2012, it becomes clear that the Academy Trust will not acquire the Land, the Secretary of State may direct the Academy Trust to enter into negotiations in respect of securing an alternative permanent site the Secretary of State considers suitable for the needs of the Academy.

5.26 If having been directed under 5.25 to enter into negotiations, the Academy Trust has not secured an interest in an alternative permanent site to the satisfaction of the Secretary of State by 31/12/2012, the Secretary of State may:

- a) by notice terminate this Agreement forthwith or may provide such notice as he deems appropriate in the circumstances in writing to terminate this Agreement; or
- b) appoint such Further Governors as he thinks fit and/or provide up to 12 months' notice in writing to terminate this Agreement.

## 6 **EFFECT OF TERMINATION**

6.1 In the event of termination of this Agreement however occurring, the school shall cease to be an alternative provision academy within the meaning of Sections 1 and 1C 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 Alternative Provision Academy no longer meets the requirements set out in clause 12 of the Master Agreement, or is no longer meeting the conditions and requirements set out in clauses 13-34A 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 may 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 may indemnify the Company include (but not by way of limitation), staff compensation and redundancy payments, compensation payments in respect of broken contracts, expenses of disposing of assets or adapting them for other purposes, legal and other professional fees, and dissolution expenses.

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 Alternative Provision 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 Alternative Provision 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.

7 **ANNEX**

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

7A **GENERAL**

7A.1 This Agreement shall not be assignable by the Company.

7A.2 The Secretary of State and the Company agree that, notwithstanding the termination of this Agreement, any obligation upon the Company and/or the Secretary of State expressed as arising upon the termination of this Agreement shall continue to subsist.

8 **THE MASTER AGREEMENT**

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

9 **ENGLISH LAW**

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

**10 LAND**

10A **DEBT**

10A) a) The Secretary of State has agreed to make payments of Capital Grant to the Company pursuant to Clause 38 of the Master Agreement;

10A) b) The payments referred to at 10A(a) are made available to the Company on an interest free basis;

10A) c) In consideration of the Secretary of State making the payments referred to at 10A(a) and financing the acquisition of the Land, the Company shall pay the Debt upon termination of this Agreement or in accordance with clauses 10H(b) or 10K(a) or upon any disposition by way of sale of the whole or part of the Land, whether or not such sale has been consented to by the Secretary of State; and

10A) d) The Debt shall be secured by the Legal Charge.

10B) **RESTRICTIONS ON LAND TRANSFER**

In consideration that it has or will be obtaining a legal interest in the Land, such acquisition being financed by the Secretary of State, the Company:

- a)i) shall, within 28 days from the transfer of the Land to the Company, should the Company be a non-exempt charity at that time, apply to the Land Registry for restrictions 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) ('LRR 2003')) in the following terms:

*No disposition of the registered estate by the proprietor of the registered estate to which section 36 or section 38 of the Charities Act 1993 applies is to be registered unless the instrument contains a certificate complying with section 37(2) or section 39(2) of that Act, as appropriate.*

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

- a)ii) shall, within 28 days from the transfer of the Land to the Company, should the Company be an exempt charity at that time, 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) ('LRR 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 proprietor for the Secretary of State for Education of Sanctuary Buildings, Great Smith Street, London SW1P.*

- b) shall take any further steps reasonably required to ensure that the restriction referred to in clause 10B(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 10B(a) as soon as reasonably practicable after it receives notification from the Land Registry,
- d) in the event that it has not registered the restriction referred to in clause 10B(a), hereby consents to the entering of the restriction referred to in 10B(a) in the register by the Secretary of State (under s. 43(1)(b) of the Land Registration Act 2002); and
- 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 10B(a) or 10B(d) above, whether by itself, a holding company, a subsidiary company, or a receiver, administrator or liquidator acting in the name of the Company.

10C) **OBLIGATIONS OF THE COMPANY**

10C) (i) The Company shall keep the School Premises clean and tidy and make good any damage it causes to the School Premises and / or any deterioration to the condition of the School Premises that may arise from the date of this Agreement save that the Academy Trust shall ensure that any actions undertaken in compliance with this clause shall be consistent with the terms of the Lease. In compliance with this clause, the Company shall not do or cause or permit to be done anything to lessen the value or marketability of the School Premises save with the express written consent of the Secretary of State.

10C)(ii) Not used

10C)(iii) The Company agrees it shall seek and obtain the prior written consent of the Secretary of State, not to be unreasonably withheld or delayed before taking any steps to:

- a) terminate, vary, surrender or dispose of the Lease; and / or
- b) grant any consent or licence in respect of the School Premises or any part of it; and / or
- c) create or permit to arise or continue any encumbrance affecting the School Premises or any part of it; and / or

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

10D) **INSURANCE**

The Company shall, save where the terms of the Lease provide for the Landlord to obtain insurance, in respect of the School Premises:-

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

**TRANSFER OF LAND**

10E) In consideration that it has or will be obtaining a legal interest in the Land, such acquisition being financed by the Secretary of State, the Company hereby grants

and the Secretary of State hereby accepts an option, exercisable by the Secretary of State or his nominee, to re-acquire the said Land or any part thereof at nil consideration. The option hereby granted shall be exercisable (by notice in writing by or on behalf of the Secretary of State) on the termination of this Agreement for whatever cause or in circumstances where the Company is unable to use all or part of the Land as the permanent site of the Alternative Provision Academy in accordance with clauses 10H or 10K. 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.

10F) In consideration that it has or will be obtaining a legal interest in the Land, such acquisition being financed by the Secretary of State, 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 10E 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 10F(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 10F(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 10F(a), hereby consents to the entering of the notice referred to in 10F(a) in the register by the Secretary of State (by application in Form UN1 under s. 34(3)(b) of the Land Registration Act 2002),
- e) shall not, without the consent of the Secretary of State, apply to dis-apply, modify or remove (by cancellation or otherwise) a notice entered in accordance with clause 10F(a) or 10F(d) above, whether by itself, a holding company, a subsidiary company, or a receiver, administrator or liquidator acting in the name of the Trust, and

f) in the case of previously unregistered land, for the further protection of the option granted in Clause 10E the Company shall within 14 days of the signing of this Agreement make application to register a Class C (iv) land charge in the Land Charges Registry and a Caution against First Registration in the Land Registry and shall provide the Secretary of State with copies of the entries secured thereby within 7 days of completing each registration, respectively. If the Secretary of State is of the view that the Company has failed to perform the registration obligations in this sub-clause he shall be at liberty to make his own applications to secure these registrations.

10G) **LEGAL CHARGE**

In consideration that it has or will be obtaining a legal interest in the Land, such acquisition being financed by the Secretary of State, the Company:

- a. shall enter into the Legal Charge upon completion of the acquisition of said interest;
- b. shall, within 21 days from the entry into of the Legal Charge, register the Legal Charge with Companies House or if required by the Secretary of State shall use all reasonable endeavours to assist the Secretary of State to register the Legal Charge at Companies House, including signing and executing any documents, deeds and/or forms as required;
- c. shall, within 28 days from the date of the Legal Charge, apply to the Land Registry for the Legal Charge to be entered on the charges register, using forms AP1 (Rule 13 LRR 2003) and CH1 (Rule 103 LRR 2003) or such form as may be required by the Secretary of State;
- d. shall take any further steps required to ensure that the Legal Charge is entered on the charges register;
- e. shall provide the Secretary of State with confirmation of the registration of the Legal Charge as soon as reasonably practicable after it receives notification from the Land Registry; and

- f. in the event that it has not registered the Legal Charge, hereby consents to the registration of the Legal Charge by the Secretary of State. To enable the Secretary of State to do so, the Company shall use all reasonable endeavours to assist the Secretary of State to register the Legal Charge, including signing and executing any documents, deeds and/or forms as required, specifically but not limited to providing the Secretary of State with the executed Legal Charge and completed AP1/CH1 forms, and dealing with any requisitions raised by the Land Registry.

10H) **FAILURE TO USE THE LAND FOR THE PURPOSES OF THE ACADEMY**

If the Company is unable to use the Land or any part thereof as the permanent site of the Alternative Provision Academy but the Secretary of State agrees not to terminate this Agreement on that basis, the Secretary of State may give notice to the Company that:-

- a) he intends to exercise the option granted under clause 10E) to transfer the Land or the relevant part thereof for nil consideration to himself or his nominee;
- b) the Company pays the Debt or the Market Value; and/or
- c) the Company shall dispose of the Land or the relevant part thereof and that, pursuant to clause 86 of the Master Agreement, the Company may retain some or all of the proceeds of sale of the Land or the relevant part thereof in order to fulfil its charitable purposes by funding the purchase of an alternative permanent site for the Company, save that any proceeds not used to fund the purchase of an alternative permanent site shall be accounted for to the Secretary of State or his nominee.

10I) **SHARING OF THE LAND**

The Company agrees that if:

- a) the Alternative Provision Academy does not reach its planned capacity over a period of five Academy Funding Years; or

- b) notice of termination is served by either the Company or the Secretary of State in accordance with clause 5.1 of this Agreement; or
- c) in the reasonable opinion of the Secretary of State the operation of the Alternative Provision Academy at planned capacity does not require the use of the full extent of the Land,
  - i. it will share occupation of the Land with such other academy as the Secretary of State deems appropriate in the circumstances and enter into such legal arrangements in respect of the same as are required by the Secretary of State; or
  - ii. it will dispose of part of the Land as required by the Secretary of State and account for any proceeds of such disposal to the Secretary of State or his nominee as part payment of the Debt. Upon such disposal and part payment of the Debt, the Secretary of State will discharge the Legal Charge in respect of the part of the Land that has been disposed of.

10J) **EXERCISE OF RIGHTS**

10J) On the termination of this Agreement, the Secretary of State may give notice of his intention to exercise the rights conferred upon the Secretary of State pursuant to clauses 6.5 and 6.6 of this Agreement, 10E and the Legal Charge:

- a) any such notice shall be in writing and shall confirm which clause of this Agreement the Secretary of State intends to exercise without prejudice to the Secretary of State's right to exercise all and any other rights available to him;
- b) in the event that upon termination of this Agreement for whatever reason, the Secretary of State exercises his option granted and the legal interest in the Land is transferred to the Secretary of State or his nominee for nil consideration by the Company pursuant to clause 10E, the Company's obligation to pay the Debt shall be deemed to have been satisfied in full, the obligation on the Company to pay a proportion of the proceeds of sale of the Land to the Secretary of State under clause 6.5(b) shall be deemed to be complied with, and the Secretary of State shall take all steps reasonably required to carry out the Discharge Process;

- c) in the event that upon termination of this Agreement for whatever reason the Secretary of State enforces the Legal Charge, the Company's obligation to pay the Debt shall be deemed to have been satisfied in full following the realisation of the Debt by any receiver, the obligation on the Company to pay a proportion of the proceeds of sale of the Land to the Secretary of State under clause 6.5(b) shall be deemed to have been complied with, and the Secretary of State shall take all steps reasonably required to carry out the Discharge Process;
- d) in the event that upon termination of this Agreement for whatever reason, the Secretary of State exercises his rights under clause 6.5, the Company's obligations to pay the Debt shall be deemed to have been satisfied in full and the Secretary of State shall take all steps reasonably required to carry out the Discharge Process; and
- e) in the event that upon termination of this Agreement for whatever reason, the Secretary of State agrees that pursuant to clause 6.6 the Company may invest the proceeds of the sale of the Land for its charitable objects or directs the Company to pay all or part of the proceeds of sale of the Land to the LA, the Company's obligations to pay the Debt shall be deemed to have been satisfied in full and the Secretary of State shall take all steps reasonably required to carry out the Discharge Process.

10K) On the Company applying to the Secretary of State for consent to the disposal of all or part of the Land during the lifetime of this Agreement, the Secretary of State shall, should he agree that the Land is no longer required or cannot be used for the purposes of the Alternative Provision Academy, subject to clause 84 of the Master Agreement,

- a) consent to the disposal subject to any one or a combination of the following conditions:-
  - i. that (notwithstanding the provisions of clause 86 of the Master Agreement the Company pays the Debt in full or, in the event of a proposed disposal of part, repays to the Secretary of State the Market Value;
  - ii. that pursuant to clause 86 of the Master Agreement, the Company may retain some or all proceeds of the disposal for its charitable

purposes, subject to the Company accounting to the Secretary of State for any remaining proceeds of sale that the Secretary of State does not agree that the Company may retain for such charitable purposes; or

- iii. that pursuant to clause 87 of the Master Agreement, the Company pays all or some of the proceeds of sale to the LA and / or may reinvest all or some of the proceeds of sale for its charitable purposes,

and any such notice of consent and conditions shall be in writing; or

- b) exercise the option granted to him pursuant to clause 10E to transfer the relevant part of the Land to him or his nominee for nil consideration.

10L) In the event that the Secretary of State consents to the disposal of the Land during the lifetime of this Agreement, subject to any of the conditions set out in clause 10K(a):

- a) if the Secretary of State enforces the Legal Charge, the Company's obligation to pay the Debt shall be deemed to have been satisfied in full following the realisation of the Debt by any receiver, the obligations on the Company to pay a proportion of the proceeds of sale of the Land to the Secretary of State under clause 86 of the Master Agreement shall be deemed to have been complied with, and the Secretary of State shall take all steps reasonably required to carry out the Discharge Process.
- b) if the Secretary of State agrees that the Company may retain some or all proceeds of the disposal for its charitable purposes, subject to the Company accounting to the Secretary of State for any remaining proceeds of sale that the Secretary of State does not agree that the Company may retain for such charitable purposes, the Company's obligations to pay the Debt shall be deemed to have been satisfied in full, the obligations on the Company to pay a proportion of the proceeds of sale of the Land to the Secretary of State under clause 86 of the Master Agreement shall be deemed to have been complied with and the Secretary of State shall take all steps reasonably required to carry out the Discharge Process, provided that in the event of a disposal of part of the Land, the Company's obligation to pay the Debt shall be deemed to have



been satisfied to the extent of the Market Value, the Company's obligation under clause 86 of the Master Agreement shall be deemed to have been satisfied in relation to the relevant part of the Land, the Legal Charge shall be released and the restriction and the notice shall be removed in relation to such part and the Legal Charge, the restriction and the notice shall remain in place in relation to the balance of the Land.

- c) if the Secretary of State directs the Company to pay all or part of the proceeds of sale of the Land to the LA pursuant to clause 87 of the Master Agreement or agrees that the Company may reinvest the proceeds of the sale for its charitable purposes, the Secretary of State shall take all steps reasonably required to carry out the Discharge Process, provided that in the event of a disposal of part of the Land the restriction and notice shall remain in place in relation to the balance of the Land.

10M) In the event that the Secretary of State exercises his option during the lifetime of this Agreement under clause 10K(b) and the legal interest in the Land is transferred to the Secretary of State or his nominee for nil consideration by the Company pursuant to clause 10E, the Company's obligation to pay the Debt shall be deemed to have been satisfied in full, the obligations on the Company to pay a proportion of the proceeds of sale of the Land to the Secretary of State under clause 86 of the Master Agreement shall be deemed to have been complied with, and the Secretary of State shall take all steps reasonably required to carry out the Discharge Process, provided that in the event of the exercise of the option in relation to part of the Land, the Company's obligation to pay the Debt shall be deemed to have been satisfied to the extent of the Market Value, the Company's obligation under clause 86 of the Master Agreement shall be deemed to have been satisfied in relation to the relevant part of the Land and the Legal Charge shall be released and the restriction and notice shall be removed in relation to such part and the Legal Charge, the restriction and the notice shall remain in place in relation to the balance of the Land.

10N) **PAYMENT OF DEBT**

In the event that the Company pays all the Debt, upon termination of this Agreement or at any other time, the Secretary of State shall take all steps reasonably required to carry out the Discharge Process.

This Agreement was executed as a Deed on 31 August 2012

Executed on behalf of **DERBY PRIDE TRUST** by:

  
Director

  
Director/Secretary

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

  
Duly Authorised



**ANNEX TO THIS SUPPLEMENTAL AGREEMENT**

Requirements for the Admission for pupils at the  
Academy Annex 1

# Annex 1

## Requirements for the admission of pupils to Derby Pride Academy

### GENERAL

This Annex may be amended in writing at any time by agreement between the Secretary of State and the Company.

The Company will act in accordance with equalities law.

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 Derby Pride 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 Derby Pride 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:

---

<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.

a) Subject to its right of appeal to the Secretary of State in relation to a named pupil, admit all pupils with a statement of special educational needs naming the Alternative Provision Academy; and

b) Adopt admission oversubscription 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

---

<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,

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.

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.

---

<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.

<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)

## **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.