

Multi Free School Model  
Mainstream

**SCHEDULE 1**

**WILLIAM PERKIN CHURCH OF ENGLAND HIGH SCHOOL (FREE SCHOOL)**

**THIS AGREEMENT** made 30 /11/ 2012

**BETWEEN**

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

**(2) TWYFORD CHURCH OF ENGLAND ACADEMIES TRUST** (registered Company number 7648968)

**IS SUPPLEMENTAL TO THE MASTER FUNDING AGREEMENT** made between the same parties and dated 12/11/2012 (the "**Master Agreement**").

**1 DEFINITIONS AND INTERPRETATION**

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

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

"the Academy" means the William Perkin Church of England High School (Free School) to be established at the land at Western Avenue and Oldfield Lane North, Greenford, UB6 8QD as shown edged in red on the attached plan at Annex B

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

"Insured Risks" means fire lightning explosion earthquake storm tempest flood subsidence landslide heave impact terrorism bursting or overflowing of

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<sup>1</sup> Ensure that the Financial Year chosen here aligns with the definition in the Articles of Association.

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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 the land at Western Avenue and Oldfield Lane North, Greenford, UB6 8QD as shown edged in red on the attached plan at Annex B and to be registered with the Land Registry upon entry into the Lease.

"the Lease" means the leasehold agreement between the Company and the Council of the London Borough of Ealing ("the Landlord") whose address is Town Hall, New Broadway, Ealing, London W5 2BY in respect of the Land.

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

## 2 **THE ACADEMY**

- 2.1 The Company will establish and maintain, and carry on or provide for the carrying on of the Academy in accordance with the Master Agreement and this Agreement except insofar as any provisions in this Agreement conflict with any provisions in the Master Agreement, in which case the provisions of this Agreement shall prevail over the relevant provisions in the Master Agreement.

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

- 2.2A The Academy Trust shall make provision for the teaching of evolution as a comprehensive, coherent and extensively evidenced theory.

- 2.3 The requirements for the admission of pupils to the Academy are set out at Annex A.

## **ACADEMY OPENING DATE**

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- 2.4 The Academy shall open as a school on **1 September 2013**,
- 2.5 The planned capacity of the Academy is 1,450 in the age range 11-18, including a sixth form of 250 places.

**3 CAPITAL GRANT**

- 3.1 Pursuant to clause 35 of the Master Agreement as amended by this 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 Academy in accordance with the Master Agreement subject to the following:

- 4.2 Clause 42A to 49 of the Master Agreement shall be replaced with the following clauses:

42A) Subject to clauses 44-45, GAG for each Academy Funding Year for each Academy will include:

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

b) Funding for the cost of functions which would be carried out by the local authority if each Academy were a maintained school, such funding to be determined at the discretion of the Secretary of State;

c) Funding for matters for which it is necessary for the relevant Academy to incur extra costs, to the extent that those costs are deemed in the discretion of the Secretary of State to be necessary; and

d) Payments equivalent to further, specific grants made available to maintained schools, where the relevant Academy meets the requisite conditions and criteria necessary for a maintained school to receive these

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grants, such payments to be at the discretion of the Secretary of State.

43) Subject to clause 43AA, the basis of the pupil number count for the purposes of determining GAG for an Academy Funding Year will be the Company's most recent estimate provided in accordance with clause 43A.

43A) The Secretary of State shall in advance of each Academy Funding Year for the Academy, at such time or times as he shall determine, request that the Company provides an estimate of the number of pupils on roll in the following September for the Academy for the purposes of determining GAG for an Academy Funding Year, and the Company shall provide the requested estimate (such estimate to be based on an objective assessment of numbers) to the Secretary of State as soon as reasonably practicable.

43AA) Once the condition specified in clause 43B) has been satisfied with respect to the Academy for the Academy Funding Year for which funding is being calculated, the basis of the pupil number count for the purpose of determining GAG for the Academy will be:

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

and

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

43B) For the purpose of clause 43AA), the condition is satisfied in the Academy Funding Year which immediately follows the Academy Funding Year in which all planned Year-groups will be present at the Academy (that is, all the pupil cohorts relevant to the age-range of the Academy will have some pupils present)

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43C) For any Academy Financial Year in which GAG for the Academy has been calculated in accordance with clauses 43) and 43A), an adjustment may be made to the following Academy Financial Year's formula funding element of GAG for the Academy to recognise any variation from that estimate. The Secretary of State may for the purpose of calculating any adjustment to the formula funding element of GAG under this clause, use the Census for the relevant month (determined at the discretion of the Secretary of State) for the Academy Financial Year in question as a means of determining pupil numbers in an Academy Financial Year. The additional or clawed-back grant will be only that amount relevant to the number of pupils above or below that estimate.

43D) For any Academy Funding Year in which GAG for the Academy is calculated in accordance with clause 43AA), no adjustment will be made to the equivalence funding element in the following Academy Funding Year's equivalence funding element of GAG unless the Company demonstrates to the satisfaction of the Secretary of State that there has been a significant impact on costs, such as an extra class. For any other element of GAG the Secretary of State may make adjustments to recognise a variation in pupil numbers from that used to calculate the element of grant in question; the basis of these will be set out in the Annual Letter of Funding or its equivalent.

44) The Secretary of State may pay further grant in the Start-up period, as determined and specified by him, for costs which cannot otherwise be met from GAG.

4.3 Clause 63 of the Master Agreement shall not apply.

4.4 Grants paid by the Secretary of State (be they GAG, EAG or Capital Grant) shall only be used by the Academy Trust for purposes listed in Article 4(a) of the Articles. Such funds shall not be used by the Academy Trust for the purpose of setting up or carrying on the SEN unit that the Academy Trust proposes to establish on the land edged red on the attached plan (**Annex B**) or pursuant to an agreement for the provision of services between it and the London Borough of Ealing.

### **Restrictions on Land transfer**

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4B.1 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 entering into of the lease, should the Company be a non-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 to which sections 117-121 or section 124 of the Charities Act 2011 applies is to be registered unless the instrument contains a certificate complying with section 122(3) or section 125(2) of that Act, as appropriate.*

*No disposition of the registered estate by the proprietor of the registered estate or by the proprietor of any registered charge is to be registered without a written consent signed by the proprietor for the time being of the charge dated [date]<sup>2</sup> in favour of The Secretary of State for Education of Sanctuary Buildings, Great Smith Street, London SW1P 3BT referred to in the charges register or, if appropriate, signed on such proprietor's behalf by its conveyancer.*

- a)ii) shall, within 28 days from the entering into of the Lease, 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 or by the proprietor of any registered charge is to be registered without a written consent signed by the proprietor for the time*

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<sup>2</sup> Date to be inserted should be date charge is entered into.

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*being of the charge dated [date]<sup>3</sup> in favour of The Secretary of State for Education of Sanctuary Buildings, Great Smith Street, London SW1P 3BT referred to in the charges register or, if appropriate, signed on such proprietor's behalf by its conveyancer.*

- b) shall take any further steps reasonably required to ensure that the restriction referred to in clause 4B.1a) 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 4B.1a) 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 4C.1a), hereby consents to the entering of the restriction referred to in 4B.1a) 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 4B.1a) or 4B.1d) above, whether by itself, a holding company, a subsidiary company, or a receiver, administrator or liquidator acting in the name of the Company.

**Obligations of the Company**

4C.1 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, save that the Company 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

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<sup>3</sup> Date to be inserted should be date charge is entered into.

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value or marketability of the Land save with the express written consent of the Secretary of State.

4C.2 The Company shall observe and comply with its obligations under the Lease and shall promptly enforce its rights against the Landlord.

4C.3 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 Land or any part of it; and / or
- c) create or permit to arise or continue any encumbrance affecting the Land or any part of it; and / or
- d) part with or share possession or occupation of the Land or any part of it; and / or
- e) enter into any onerous or restrictive obligations affecting the Land or any part of it.

### **Insurance**

4D The Company shall, save where the terms of the Lease provide for the Landlord to obtain insurance in respect of the Land:-

- a) keep the Land insured as in accordance with the terms of the Lease and in any event 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

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necessarily identical to the Land as the same existing prior to such damage or destruction occurring) as soon as may be reasonably practicable;

- d) produce to the Secretary of State a copy of the insurance policy whenever reasonably requested and the receipt for the last premium or other evidence of renewal and up to date details of the amount of cover (but no more often than once in any period of 12 months in both cases);
- e) not knowingly do anything whereby any policy of insurance relating to the Land may become void or voidable.
- f) insure against liability in respect of property owners' and third party risks including occupier's liability.

### Transfer of Land

4E. 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 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 Funding 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 Academy in accordance with clause 4G. 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.

4F. 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

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the Land Registration Act 2002) to protect the option granted under clause 4E 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 4F.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 4F.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 4F.a), hereby consents to the entering of the notice referred to in 4F.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 4F.a) or 4F.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 4E 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.

### **Failure to use the Land for the purposes of the Academy**

4G. If the Company is unable to use the Land or any part thereof as the permanent site of the 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 he intends to exercise the option granted under

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clause 4E to transfer the Land or the relevant part thereof for nil consideration to himself or his nominee.

**Sharing of the Land**

4H. The Company agrees that if:

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

**Provision of Information in respect of the Land**

4I.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.

4I.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.

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- 41.2 Following the receipt by the Secretary of State of the written notice under clause 41.1.1), 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.
- 41.3.1 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.
- 41.3.2 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 41.3.1.
- 41.3.3 Following the receipt by the Secretary of State of the written notice under clause 41.3.1, 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 Academy no longer meets the requirements set out in section 1 and 1A of the Academies Act 2010 or that the conditions and requirements set out in clauses 13-34A of the Master

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Agreement or clauses 2.2-2.8 and 2.11-2.14 of this Agreement are not being met, or that the Company is otherwise in material breach of the provisions of this Agreement or the Master Agreement, the Secretary of State may give notice of his intention to terminate this Agreement.

5.3 Any such notice shall be in writing and shall:

5.3.1. state the grounds on which the Secretary of State considers the Academy no longer meets the requirements set out in section 1 and 1A of the Academies Act 2010 or is not meeting the conditions and requirements of clauses 13-34B of the Master Agreement or clauses 2.2-2.8 and 2.11-2.14 of this 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

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- 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 meet the requirements set out in section 1 and 1A of the Academies Act or does not and will not meet the conditions and requirements set out in clauses 13-34B of the Master Agreement or clauses 2.2-2.8 and 2.11-2.14 of this Agreement or the Company is in material breach of the provisions of this Agreement or the Master Agreement and such breach will not be remedied to his reasonable satisfaction, he shall give the Company twelve months written notice to terminate this Agreement.
- 5.7 If the Secretary of State has cause to serve a notice on the Company under section 165 of the Education Act 2002 and a determination (from which all rights of appeal have been exhausted) has been made that the Academy shall be struck off the Register of Independent Schools, the period of twelve months notice referred to in clause 5.6 may be shortened to a period deemed appropriate by the Secretary of State.
- 5.8 The Secretary of State shall, at a date preceding the start of each Academy Financial Year, provide to the Company an indication of the level of funding to be provided by the Secretary of State to the Company by way of GAG and EAG in the next following Academy Financial Year (the "**Indicative Funding**"). If the Company is of the opinion that, after receipt of the Indicative Funding for the next following Academy Financial Year (the "**Critical Year**") and of the taking into account all other resources available and likely to be available to the Academy, including such funds as are set out in clause 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

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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**").

- 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

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question shall be referred to an independent expert (the "**Expert**") for resolution. The Expert's determination shall be final and binding on both parties. The Expert shall be requested to specify in his determination the amount of the shortfall in funding (the "**Shortfall**"). The Expert shall be an insolvency practitioner with significant professional experience of educational institutions or academies. If the parties fail to agree upon the appointment of the Expert then the Expert shall be appointed by the President for the time being of the Institute of Chartered Accountants in England and Wales. The Expert's fees shall be borne equally between the parties.

- 5.12 The Expert shall be required in reaching his determination to take account of advice from an educational specialist who is professionally familiar with the issues arising from the budget management of large schools. If the parties fail to agree upon the appointment of the educational specialist then the educational specialist shall be appointed by the Chairman for the time being of the Specialist Schools and Academies Trust. The educational specialist's fees shall be borne equally between the parties.
- 5.13 If the Expert determines that the cost of running the Academy during the Critical Year would cause the Company, on the basis of the Indicative Funding and All Other Resources, to become insolvent, and the Secretary of State shall not have agreed to provide sufficient additional funding to cover the Shortfall, then the Company shall be entitled to terminate this Agreement, by notice expiring on 31 August prior to the Critical Year. Any such notice shall be given within 21 days after (a) the Expert's determination shall have been given to the parties or (b), if later, the Secretary of State shall have given written notice of his refusal to provide sufficient additional funding for the Academy to cover the Shortfall.
- 5.14 If the Company 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

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control of the Company) to operate as an Academy within the meaning of Section 1 and Section 1A 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 Academy; and

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

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 50 of the Articles of Association.

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5.19 If the Company has not obtained full planning permission (including where relevant listed building consent), in respect of the site on which it is proposed that the Academy will be situated, by date **1 November 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.

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

1. the Academy would, on opening, provide an unacceptably low standard of education; or
2. the safety of pupils or staff at the Academy would, on opening, be threatened; or
3. the staff employed at the 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 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 If the Company has not entered into the Lease by date **1 March 2014** 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.

**6 EFFECT OF TERMINATION**

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- 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 and 1A 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 meets the requirements set out in section 1 and 1A of the Academies Act, or is no longer meeting the conditions and requirements set out in clauses 13-34B of the Master Agreement or clauses 2.2-2.8 and 2.11-2.14 of this 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 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

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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 LA.
- 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.

### **8 GENERAL**

- 8.1 This Agreement shall not be assignable by the Company.
- 8.2 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.

### **9. THE MASTER AGREEMENT**

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

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**11. ENGLISH LAW**

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

This Agreement was executed as a Deed on

30/11/2012

Executed on behalf of by:

[Redacted signature]

authenticated by:

[Redacted signature]

30/11/12

Duly Authorised



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**ANNEX TO THIS SUPPLEMENTAL AGREEMENT**

Requirements for the Admission for pupils at the  
Academy Annex 1

**REQUIREMENTS FOR THE ADMISSION OF PUPILS TO THE  
WILLIAM PERKIN CHURCH OF ENGLAND HIGH SCHOOL ACADEMY**

**GENERAL**

1. This Annex may be amended in writing at any time by agreement between the Secretary of State and the Academy Trust.
2. The Academy Trust 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 governing body of the Academy Trust.
3. Notwithstanding the generality of paragraph 2 of this Annex, the Academy Trust will not participate in the co-ordinated admission arrangements operated by the LA for the first year of opening but will participate in such arrangements operated by the LA in subsequent years and the local Fair Access Protocol.
4. Notwithstanding any provision in this Annex, the Secretary of State may:
  - (a) direct the Academy Trust to admit a named pupil to the William Perkin Academy on application from a LA. This will include complying with a School Attendance Order<sup>4</sup>. Before doing so the Secretary of State will consult the Academy Trust.
  - (b) direct the Academy Trust to admit a named pupil to the William Perkin Academy if the Academy Trust has failed to act in accordance with this Annex or has otherwise failed to comply with

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<sup>4</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 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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applicable admissions and equalities legislation or the provisions of the Codes.

- (c) direct the Academy Trust to amend its admission arrangements where they fail to comply with the School Admissions Code or the Admission Appeals Code.

**4A William Perkin Church of England High School is a Church of England Academy in the diocese of London.**

***Note: This is the body which (a) has to be consulted on admission arrangements (b) has the right to issue guidance on the adoption of faith criteria and (c) has the right of objection to admission arrangements. CE Dioceses also have to approve the disposal of land or premises of CE Academies.***

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

**Relevant Area**

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

7. If the Academy does not consider the relevant area determined by the

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<sup>5</sup> '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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local authority for the maintained schools in the area to be appropriate, it must apply to the Secretary of State by 1 August for a determination of the appropriate relevant area for the Academy, setting out the reasons for this view. The Secretary of State will consult the Academy and the LA in which the Academy is situated in reaching a decision.

### **Requirement to admit pupils**

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

9. The Academy will:

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

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

10. The Academy admission arrangements will include oversubscription criteria, and an admission number for each relevant age group<sup>6</sup>. The Academy will consult on its admission arrangements and determine them in line with the requirements within the School Admissions Code.

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

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

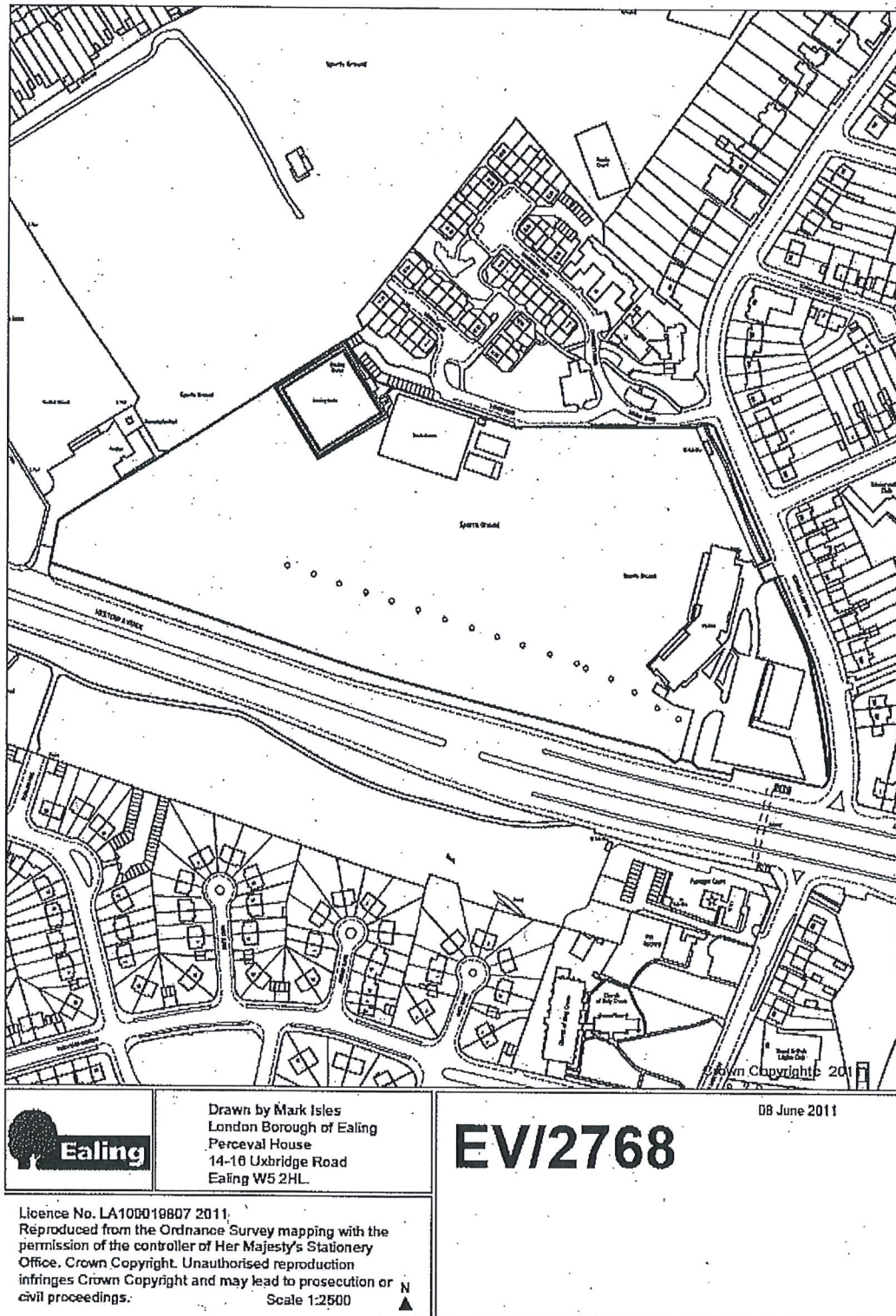
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<sup>6</sup> 'Relevant age group' means 'normal point of admission to the school: for example, year R, Year7 and Year 12.

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## Annex B

Map of William Perkin Church of England High School site outlined in red, location Oldfield Lane North, Greenford, Middlesex UB6 8QD



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