

SCHEDULE 1
SUPPLEMENTAL AGREEMENT

THIS AGREEMENT made 2011

BETWEEN

(1) THE SECRETARY OF STATE FOR EDUCATION; and

(2) DIVERSE ACADEMIES TRUST

IS SUPPLEMENTAL TO THE MASTER FUNDING AGREEMENT made between the same parties and dated 2011 (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 Tuxford Academy to be established at Marnham Road, Tuxford, Newark, Nottinghamshire NG22 0JH;

"Additional Directors" means the Directors who may be appointed by the Secretary of State in accordance with the Articles;

"the Articles" means that Articles of Association of the Company;

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

"Insolvency" has the meaning given to it in section 123 of the Insolvency Act 1986;

"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 land at Marnham Road, Tuxford, Newark, Nottinghamshire NG22 0JH and registered under Land Registry title numbers NT437979 and NT392769;

"Lease" means the lease granted on or around the date hereof by the LA to the Company in relation to the Academy;

"Normal Payment Matter" has the meaning given to it in the Principal Agreement;

"Principal Agreement" means the agreement entered into on or about the date hereof by the Secretary of State, the Company and the LA;

"School Agreement" means the agreement entered into on or around the date hereof between the LA and the Company relating to the provision of facilities and services to the Company;

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.

2.2 The curriculum provided by the Academy to pupils up to the age of 16 shall be broad and balanced with an emphasis in its secondary education on Technology.

2.3 The Academy shall be conducted in accordance with the Principal Agreement, the School Agreement and the Lease.

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

ACADEMY OPENING DATE

2.5 The Academy shall open as a school on 1st July 2011 replacing Tuxford School (a maintained school) which shall cease to be maintained by the Local

1st August 2011

Authority on that date, which date shall be the conversion date within the meaning of the Academies Act 2010.

- 2.6 The planned capacity of the Academy is 1,478 in the age range 11-18, including a sixth form of 400 places.

3 CAPITAL GRANT

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

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.
- 4.2 The Company shall use the GAG funding it receives prudently in order to cover the normal reasonable running costs of the Academy including, but not limited to, payments which fall due pursuant to the School Agreement and/or the Principal Agreement.
- 4.3 In the event that the Secretary of State pays the LA any sums in connection with a Normal Payment Matter pursuant to the Principal Agreement the Secretary of State may, subject to clause 4.4, set off or abate an amount equal to such sums from any GAG payable to the Company in respect of the Academy pursuant to this Agreement in the following financial year.
- 4.4 Before exercising its right of set off or abatement pursuant to clause 4.3 above, the Secretary of State shall:-
- 4.4.1 notify the Company that such sums have been paid by the Secretary of State to the LA;
 - 4.4.2 take into account (acting reasonably) any representations made by the Company providing reasons why the relevant Normal Payment Matters liabilities were not settled;
 - 4.4.3 take into account (acting reasonably) any representations made by the Company as to the nature of the Normal Payment Matters under consideration and whether they properly fall within the definition of Normal Payment Matters having regard to the costs that other academies may normally be expected to bear from GAG funding.

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 2018 or any subsequent anniversary of that date.
- 5.2 If the Secretary of State is of the opinion that the Academy no longer has the characteristics set out in clause 12 of the Master Agreement or that the conditions and requirements set out in clauses 13-34 of the Master Agreement are not being met, or that the Company is otherwise in material breach of the provisions of this Agreement, the Master Agreement, the School Agreement and/or the Principal Agreement, the Secretary of State may give notice of his provisional intention to terminate this Agreement.
- 5.3 Any such notice shall be in writing and shall:-
- 5.3.1. state the grounds on which the Secretary of State considers the Academy no longer has the characteristics set out in clause 12 of the Master Agreement or is not meeting the conditions and requirements of clauses 13-34 of the Master Agreement or the Company is otherwise in material breach of the provisions of this Agreement, the Master Agreement, the School Agreement and/or the Principal 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 of the Academy to discuss his concerns. If following such meeting he has good reasons for remaining satisfied that the Academy does not and will not have the characteristics set out in clause 12 of the Master Agreement or does not and will not meet the conditions and requirements set out in clauses 13-34 of the Master Agreement or the Company is in material breach of the provisions of this Agreement, the Master Agreement, the School Agreement and/or the Principal Agreement, and such breach will not be remedied to his reasonable satisfaction, he shall give the Company twelve months or such lesser period as he considers appropriate in the circumstances 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 will, by not later than the end of December each 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").
- 5.9 For the purpose of clause 5:-

"Critical Years" means the then current financial year and, if an annual letter of funding has been received for the following financial year, that following financial year;

"Current Funding" means the funding specified in the annual letters of funding for the Critical Years and all other resources available and likely to be available to the Company, including such funds as are set out in the Master Agreement;

A "PFI EAG Refusal" occurs where:-

- (a) the Company has made a request for EAG funding to cover any costs that the Company has incurred or reasonably considers is likely to incur as a result of meeting its obligations and/or discharging its liabilities under the School Agreement or the Principal Agreement; and
- (b) the Secretary of State has not agreed, in accordance with clauses 61 and 62 of the Master Agreement, to provide such EAG funding to the Company.

5.10 Within 30 days of being notified by the Secretary of State of a PFI EAG Refusal, the Company may provide written notice that it considers that, after taking into account its Current Funding, it is likely that the running costs during the Critical Years would cause the Company to go into Insolvency ("Company Insolvency Notice").

5.11 Any Company Insolvency Notice must specify:-

5.11.1.the grounds and evidence, including any professional accounting advice, upon which the Company's opinion is based;

5.11.2.a detailed statement of steps which the Company proposes to take with a view to ensuring that as soon as reasonably practicable the running costs are reduced sufficiently in the Critical Years to ensure that such costs are less than its Current Funding and the period of time within which such steps will be taken

5.11.3.the shortfall in the Critical Years between the Current Funding expected to be available to the Company to cover the running costs and the projected expenditure of the Company; and

5.11.4. detailed budget of income and expenditure for the Academy during the Critical Years.

5.12 Within 15 days of the provision of the Company Insolvency Notice, both parties shall discuss and if possible (using reasonable endeavours) agree whether or not on the basis of the Current Funding, it is likely that the running costs during the Critical Years would cause the Company to go into Insolvency and such Insolvency could not be avoided through prudent financial management (including, but not limited to, using GAG funding prudently in order to cover the normal reasonable funding costs of the Academy). 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 reasonable endeavours to agree a practical solution to the problem.

5.13 If the parties are unable to reach an agreement in accordance with clause 5.12 within 15 days of the Company Insolvency Notice being served, then the following questions shall be referred to an independent expert (the "Expert") for determination:-

5.13.1. whether, on the basis of the Current Funding, it is likely that the running costs during the Critical Years would cause the Company to go into Insolvency;

5.13.2. whether the Company is using the funds provided under this Agreement and the Master Agreement prudently; and

5.13.3. whether the Company is using the funds provided under this Agreement and the Master Agreement in accordance with the requirements of this Agreement and the Master Agreement.

The Expert's determination shall be final and binding on both parties. The Expert shall be requested to specify in his determination:-

(a) the amount of the shortfall (if any) in funding between the running costs and the Current Funding during the Critical Years (the "Shortfall"); and

- (b) (if appropriate) recommendations as to future spending and the running costs.

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.

- 5.14 The parties shall procure that the Expert (together with any educational specialist appointed pursuant to this clause) will act promptly in determining the matters referred to him. The Expert shall be required in performing his role 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.
- 5.15 The Expert's and the educational specialist's fees shall be borne equally between the parties.
- 5.16 For the purpose of clause 5.17 and 5.20, "**Insolvency Decision**" means either:
 - (a) in accordance with clause 5.12, the Secretary of State agrees with the Company that on the basis of the Current Funding it is likely that the running costs during the Critical Years would cause the Company to go into Insolvency which could not be avoided through prudent financial management (including, but not limited to, using GAG funding prudently in order to cover the normal reasonable funding costs of the Academy); or
 - (b) an Expert determines in accordance with clause 5.13 that on the basis of the Current Funding it is likely that the running costs during the Critical Years would cause the Company to go into Insolvency or that the Company is not using the funds provided under this Agreement and the Master Agreement prudently and in accordance with the requirements of this Agreement and the Master Agreement.

5.17 Within 10 Business Days of an Insolvency Decision, the Secretary of State may either at its option:

5.17.1 withdraw the PFI EAG Refusal and promptly pay to the Company the amount of requested EAG funding or such other sum as shall be appropriate; or

5.17.2 terminate this Agreement on not less than 20 Business Days notice to the Company.

5.18 In the event that the Secretary of State provides additional EAG funding in accordance with clause 5.17, the Secretary of State may:

5.18.1 appoint Additional Directors sufficient to enable him to appoint a majority of the board of directors in accordance with the Company's articles and implement the recommendations of the Expert; and

5.18.2 within 12 months of paying the additional EAG funding, terminate this Agreement at any time.

5.19 In the event that the Secretary of State appoints Additional Directors in accordance with clause 5.18.1, the Company must, upon the request of the Secretary of State, procure the resignation of the Directors who are not Additional Directors in accordance with the Company's articles.

5.20 In the event that there is no Insolvency Decision, this Agreement shall continue and the Secretary of State shall not be obliged to pay to the Company the requested EAG funding.

5.21 A "Special Measures Termination Event Occurs" when:

5.21.1 the Chief Inspector gives a notice to the Company in accordance with section 13(3) of the Education Act 2005 (the "Special Measures Notice") stating that in his opinion special measures are required to be taken in relation to the Academy; and

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

5.21.3 the Secretary of State shall have requested the Company to deliver within 10 Business Days a written statement (a "Further Action Statement") of the action the Company proposes to take, and the period within which it proposes to take such action, or, if it does not propose to take any action, the reasons for not doing so; and

5.21.4 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.

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

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

5.22.2 subject to clause 109 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.

5.23 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.

5.24 The parties acknowledge that the Secretary of State may appoint Additional Directors to the Company in accordance with the Articles.

5.25 The Secretary of State may at any time by notice in writing terminate this Agreement forthwith if the Academy has ceased (except where such cessation occurs temporarily by reason of an event beyond the reasonable control of the Company) to operate as an Academy within the meaning of Section 1 of the Academies Act 2010.

6 EFFECT OF TERMINATION

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

6.2 Subject to clause 6.3, if the Secretary of State terminates this Agreement for reasons other than

6.2.1 that a Special Measure Termination Event occurs;

6.2.2 the Academy no longer has the characteristics set out in clause 12 of the Master Agreement, or is no longer meeting the conditions and requirements set out in clauses 13-34 of the Master Agreement;

6.2.3 under clause 5.17 or 5.18;

6.2.4 that the Academy has ceased (except where such cessation occurs temporarily by reason of an event beyond the reasonable control of the Company) to operate as an Academy within the meaning of section 1 of the Academies Act 2010;

6.2.5 that the Company is otherwise in material breach of the provisions of this Agreement or the Master Agreement; or

6.2.8 that the Company is in material breach of the provisions of the School Agreement and/or the Principal Agreement

the Secretary of State shall indemnify the Company.

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

6.4 The categories of expenditure incurred by the Company in consequence of the termination of the Agreement in respect of which the Secretary of State shall indemnify the Company include (but not by way of limitation), staff compensation and redundancy payments, compensation payments in respect of broken contracts, expenses of disposing of assets or adapting them for other purposes, legal and other professional fees, and dissolution expenses.

6.5 Subject to clause 6.6, on the termination of this Agreement however occurring, the Company shall in respect of any of its capital assets at the date of termination:

(a) promptly transfer a proportion of the assets to a person nominated by the Secretary of State, if the Secretary of State considers that all or some of those assets need to be used for educational purposes by that nominee. The proportion of the assets to be transferred shall be the same as the proportion of the capital contribution made by the Secretary of State to the original value of those assets, whether that contribution was made on the establishment of the Academy or later; or

(b) if the Secretary of State confirms that a transfer under clause 6.5(a) is not required, promptly repay to the Secretary of State a sum equivalent to the percentage of the value of the assets at the date of termination, or, by agreement with the Secretary of State, at the date of subsequent disposal of those assets. Such percentage to be the same as the percentage of the capital contribution made by the Secretary of State to the original value of those assets, whether that contribution was made on the establishment of the Academy or later.

6.6 The Secretary of State may waive in whole or in part the repayment due under clause 6.5(b) if:

a) The Company obtains his permission to invest the proceeds of sale for its charitable objects; or

b) The Secretary of State directs all or part of the repayment to be paid to the L A.

6.7 If any land or premises of the Academy were acquired by the Company from an LA by a scheme under Paragraph 1 of Schedule 1 of the Academies Act 2010 or otherwise at less than the market value of the land at the date of acquisition, and the Secretary of State does not make a scheme as provided for in Paragraph 6 of Schedule 1 of the Academies Act 2010, the Company may dispose of its interest in that land or premises but only with the consent of the Secretary of State, who shall have regard to any representations from the Company and the LA from which the land was transferred before giving or withholding that consent.

6A LAND: Restrictions on Land transfer

6A.1 The Company:

a) shall, within 28 days from the transfer to it of the Land, apply to the Land Registry for a restriction in the proprietorship register (under section 43(1)(a) of the Land Registration Act 2002 in Form N as prescribed by Rule 91 and Schedule 4 of the Land Registration Rules 2003) in the following terms:

No disposition of the registered estate by the proprietor of the registered estate, or by the proprietor of any registered charge, not being a charge registered before the entry of this restriction is to be registered without a written consent signed by the Secretary of State for Education, of Sanctuary Buildings, Great Smith Street, London SW1P 3BT

b) shall take any further steps required to ensure that the restriction referred to in clause 6A.1(a) is entered on the proprietorship register,

c) shall provide the Secretary of State with confirmation of the entry of the restriction referred to in clause 6A.1(a) as soon as practicable after it receives notification from the Land Registry,

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

e) shall not, without the consent of the Secretary of State, apply to dis-apply, modify or remove (by cancellation or otherwise) a restriction entered in accordance with clause 6A.1(a) or 6A.1(d) above.

6B Repair and Upkeep

6B.1 Save to the extent that any of the Company's obligations are the responsibility of the Contractor (as defined in the Project Agreement), 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.

6C Insurance

6C.1 Where there is no Project Agreement subsisting, the Company shall:-

- a) keep the Land insured with a reputable insurance office against loss or damage by the Insured Risks in the sum the Company is advised represents the reinstatement value of the Land from time to time;
- b) pay the premiums for insurance promptly as they become due and maintain in force the policies of insurance on the Land;
- c) following the incidence of damage to or destruction of the Land and subject to receipt of all necessary consents licences permissions and the like apply the proceeds of the policy of the insurance received for those purposes in rebuilding and reinstating the Land (provided that this clause should be satisfied if the Company provides premises not necessarily identical to the Land as the same existing prior to such damage or destruction occurring) as soon as may be reasonably practicable;
- d) produce to the Secretary of State a copy of the insurance policy whenever reasonably requested and the receipt for the last or other evidence of renewal and up to date details of the amount of cover (but no more often than once in any period of 12 months in both cases); and
- e) insure against liability in respect of property owners' and third party risks including occupiers liability.

6D The Company shall not knowingly do anything whereby any policy of insurance relating to the Land may become void or voidable.

6E Transfer of Land on Termination of this Agreement

6E.1 On termination of this Agreement the Company shall, if the Secretary of State so requires by notice in writing to the Company and, subject to any restrictions contained in the Project Agreement, immediately transfer its interest in the Land to the Secretary of State or such other person as the Secretary of State may nominate.

7 ANNEX

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

8 THE MASTER AGREEMENT

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


9 ENGLISH LAW

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

This Agreement was executed as a Deed on

2011

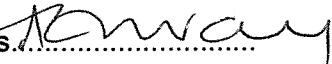
Executed on behalf of by: DIVERSE ACADEMIES TRUST


.....
Director


.....
Director

.....
Director

In the presence of:

Witness 
.....

Address 20 LONGHOLME ROAD RETFORD NOTTS

Occupation CLERK TO GOVERNORS

DN226TU

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