

THE SECKFORD FOUNDATION FREE SCHOOLS TRUST

SUPPLEMENTAL FUNDING AGREEMENT FOR SAXMUNDHAM FREE SCHOOL

THIS AGREEMENT made 2012

BETWEEN

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

(2) **THE SECKFORD FOUNDATION FREE SCHOOLS TRUST**

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 Academy" means the Saxmundham Free School to be established at the current Saxmundham Middle School Site, Seaman Avenue, Saxmundham, IP17 1DZ;

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

"Academy Funding Year" means the year from 1st September to 31st 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 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 the Saxmundham Middle School Site, Seaman Avenue, Saxmundham, IP17 1DZ as edged red but excluding the areas edged purple, and including the shared use of the area edged in green, on the attached plan at Annex 2 to this Agreement and to be registered with the Land Registry upon entry into of the Lease, making up the permanent site of the Academy;

“the Lease” means the leasehold agreement between the Company and Suffolk County Council (“the Landlord”) 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.
- 2.2 The curriculum provided by the Academy to pupils up to the age of 16 shall be broad and balanced.
- 2.3 The requirements for the admission of pupils to the Academy are set out at Annex 1.

ACADEMY OPENING DATE

- 2.4 The Academy shall open as a school on 2 September 2012.
- 2.5 The planned capacity of the Academy is 540 in the age range 11-16.

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 Academy in accordance with the Master Agreement.

4A **OTHER RELEVANT FUNDING**

4A.1 Not used.

4B **PROVISION OF INFORMATION IN RESPECT OF THE LAND**

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 Academy Trust shall, within 14 days of receiving any order, notice, proposal, demand or any other requirement affecting the ability of the Academy Trust to use the Land for the purposes of the Academy from any competent authority (including the Landlord), 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 Academy Trust intends to take in response to the order, notice, proposal, demand or other requirement affecting the Land.

4B.3.2 The Academy Trust 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 Academy Trust shall permit the Secretary of State to take all steps in conjunction with or instead of the Academy Trust 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 Academy Trust 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 has the characteristics 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 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 13-34B of the Master Agreement or the Company is otherwise in material breach of the provisions of this Agreement or the Master Agreement;

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

- 5.3.3. specify a reasonable date by which these measures are to be implemented; and
 - 5.3.4. state the form in which the Company is to provide its response and a reasonable date by which it must be provided.
- 5.4 If no response is received by the date specified in accordance with clause 5.3.4, the Secretary of State may give the Company 12 months, or such lesser period 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 13-34B of the Master Agreement or the Company is in material breach of the provisions of this Agreement or the Master Agreement and such breach will not be remedied to his reasonable satisfaction, he shall give the Company twelve months written notice to terminate this Agreement.

- 5.7 If the Secretary of State has cause to serve a notice on the Company under section 165 of the Education Act 2002 and a determination (from which all rights of appeal have been exhausted) has been made that the Academy shall be struck off the Register of Independent Schools, the period of twelve months notice referred to in clause 5.6 may be shortened to a period deemed appropriate by the Secretary of State.
- 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 having taken into account all other resources available and likely to be available to the Academy, including such funds as are set out in clause 73 of the Master Agreement and such other funds as are and likely to be available to the Academy from other academies operated by the Company (“**All Other Resources**”), it is likely that the cost of running the Academy during the Critical Year would cause the Company, on the basis of the Indicative Funding, to become insolvent (and for this reason only) then the Company may give notice of its intention to terminate this Agreement at the end of the then current Academy Financial Year.
- 5.9 Any notice given by the Company under clause 5.8 shall be in writing and shall be served on the Secretary of State not later than 28 February preceding the Critical Year or, if the Secretary of State shall not have given notice of the Indicative Funding to the Company by 14 January in that year, 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 or, if no agreement can be reached and if later than 30 April, twelve weeks after the date on which the Secretary of State shall have given notice of the Indicative Funding to the Company.) as to whether the cost of running the Academy during the Critical Year on the basis of the Indicative Funding and All Other Resources would cause the Company to become insolvent, then that question shall be referred to an independent expert (the “**Expert**”) for resolution. The Expert’s determination shall be final and binding on both parties. The Expert shall be requested to specify in his determination the amount of the shortfall in funding (the “**Shortfall**”). The Expert shall be an insolvency practitioner with significant professional experience of educational institutions or academies. If the parties fail to agree upon the appointment of the Expert then the Expert shall be appointed by the President for the time being of the Institute of Chartered Accountants in England and Wales. The Expert’s fees shall be borne equally between the parties.
- 5.12 The Expert shall be required in reaching his determination to take account of advice from an educational specialist who is professionally familiar with the issues arising from the budget management of large schools. If the parties fail to agree upon the appointment of the educational specialist then the educational specialist shall be appointed by the Chairman for the time being

of the Specialist Schools and Academies Trust. The educational specialist's fees shall be borne equally between the parties.

- 5.13 If the Expert determines that the cost of running the Academy during the Critical Year would cause the Company, on the basis of the Indicative Funding and All Other Resources, to become insolvent, and the Secretary of State shall not have agreed to provide sufficient additional funding to cover the Shortfall, then the Company shall be entitled to terminate this Agreement in accordance with the notice given pursuant to Clause 5.9.
- 5.14 If the Company terminates the Agreement under 5.13, the Secretary of State may by notice in writing to the Company require the Company to appoint up to two persons as directors of the Company in accordance with the Articles.
- 5.15 The Secretary of State may at any time by notice in writing terminate this Agreement forthwith if the Academy has ceased (except where such cessation occurs temporarily by reason of an event beyond the reasonable control of the Company) to operate as an Academy within the meaning of Section 1 of the Academies Act 2010.
- 5.16 A "Special Measures Termination Event Occurs" when:
- 5.16.1. the Chief Inspector 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.

5.19 If the Company has not obtained full planning permission (including where relevant listed building consent), in respect of the Land, by 31/08/2012, 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.

5.20A If at any time after the opening of the Academy but during the development of the Land for the purposes of the Academy, the Secretary of State is of the view that:

- 1. the safety of pupils or staff at the Academy is being threatened; or
- 2. the buildings and other structures on the Land 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 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.

5.21 If the Company has not entered into the Lease by 31/08/2012, 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.

6 **EFFECT OF TERMINATION**

- 6.1 In the event of termination of this Agreement however occurring, the school shall cease to be an Academy within the meaning of Section 1 of the Academies Act 2010.
- 6.2 Subject to clause 6.3, if the Secretary of State terminates this Agreement for reasons other than that a Special Measure Termination Event occurs, the Academy no longer has the characteristics set out in clause 12 of the Master Agreement, or is no longer meeting the conditions and requirements set out in clauses 13-34B of the Master Agreement or that the Company is otherwise in material breach of the provisions of this Agreement or the Master Agreement, the Secretary of State 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 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 or apply the proceeds of sale in furtherance of its charitable object; 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**

Debt

10.1 Not used.

Restrictions on Land transfer

10.2 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 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 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 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 entering into of the Lease, should the Company by 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 Secretary of State for Education, of Sanctuary Buildings, Great Smith Street, London SW1P 3BT.

- (b) shall take any further steps reasonably required to ensure that the restriction referred to in clause 10.2(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 10.2(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 10.2(a), hereby consents to the entering of the restriction referred to in 10.2(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 10.2(a) or 10.2(d) 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

- 10.3 (i) 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 value or marketability of the Land save with the express written consent of the Secretary of State.
- 10.3 (ii) The Company shall observe and comply with its obligations under the Lease and shall promptly enforce its rights against the Landlord.

- 10.3 (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 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

- 10.4 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 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 occupiers liability.

Transfer of Land

10.5 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 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. 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.

10.6 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 10.5 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 10.6(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 10.6(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 10.6(a), hereby consents to the entering of the notice referred to in

10.6(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 10.6(a) or 10.6(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 10.5 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.

Legal Charge

10.7 Not used.

Failure to use the Land for the purposes of the Academy

10.8 Not used.

Sharing of the Land

10.9 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,

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.

Exercise of Rights

10.10 Not used.

10.11 Not used.

10.12 Not used.

10.13 Not used.

Payment of Debt

10.14 Not used.

This Agreement was executed as a Deed on

2012

Executed on behalf of The Seckford Foundation Free Schools 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

Annex 1: Requirements for the Admission for pupils at the Academy

General

1. This annex may be amended in writing at any time by agreement between the Secretary of State and the Company.
2. The Company will act in accordance with, 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 Admissions Appeals Code published by the Department of Education (“the Codes”) as they apply at any given time to maintained schools and with equalities law and the law on admissions as they apply to maintained schools. For this purpose reference in the Codes or legislation to “admission authorities” shall be deemed to be references to the Directors of the Company.
3. Notwithstanding the generality of paragraph 2 of this annex, the Company will take part in any mandatory Admissions Forum set up by the Local Authority (“LA”) in which they are situated and have regard to its advice; and will participate in the coordinated admission arrangements operated by the LA and the local Fair Access Protocol.
4. Notwithstanding any provision in this annex the Secretary of State may:
 - (a) Direct the Company to admit a named pupil to the Saxmundham Free School on application from an LA. This will include complying with a School Attendance Order¹. Before doing so the Secretary of State will consult with the Company .
 - (b) Direct the Company to admit a named pupil to the Saxmundham Free School if the Company has failed to act in accordance with this annex

¹ 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 a Free School 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.

or has otherwise failed to comply with applicable admissions and equalities legislation or the provisions of the Codes.

- (c) Direct the Company to amend its admission arrangements where they fail to comply with the Schools Admissions Code or the Admission Appeals Code.
5. The Company shall ensure that parents and relevant children² will have the right of appeal to an Independent Appeal Panel if they are dissatisfied with an admission decision of the Company. The Independent Appeal Panel will be independent of the Company. The arrangements for appeals will comply with the School Admission Appeals Code published by the Department of Education as it applies to Academies and Free 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 admissions arrangements is that determined by the local authority for maintained schools in the area in accordance with the Education (Relevant Areas for Consultation on Admission Arrangements) Regulations 1999.
7. If the Company does not consider the relevant area determined by the local authority for the maintained schools in the area to be appropriate, it must apply to the Secretary of State by 1 August for a determination of the appropriate relevant area for the Saxmundham Free School, setting out the reasons for this view. The Secretary of State will consult the Company and the LA in which the school is situated in reaching a decision.

Requirements to admit pupils

8. The Company will:

² ‘Relevant children’ means children who are above the compulsory school age, or will be above compulsory school age by the time they start to receive education at the 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 Saxmundham Free School;
- (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

- 9. The admission arrangements will include oversubscription criteria, and an admission number for each relevant age group³. The Company will consult on its admission arrangements and determine them in line with the requirements within the School Admissions Code.
- 10. The Young People’s Learning Agency (YPLA) may consider objections on the Secretary of State’s behalf. The Company will therefore make it clear, when determining the admission arrangements, that objections should be submitted to the YPLA.
- 11. A determination of an objection by the YPLA on behalf of the Secretary of State, or by the Secretary of State will be binding upon the Company .

PROCEDURE FOR ADMITTING PUPILS TO SAXMUNDHAM FREE SCHOOL

Admission number(s)

- 12. Saxmundham Free School has the following agreed admission number for the year 2012/2013:
 - (a) 54 for pupils in Year 7

The admission number will rise in 2013/14 to 108 pupils in Year 7 and will therefore remain the same subject to any changes approved or required by the Secretary of State.

³ ‘Relevant age group’ means normal point of admission to the school, for example, Year 7.

13. The Company will consider all applications for places at the school. Where fewer than the published admission number(s) for the relevant year groups are received, the Company will offer places to all those who have applied.

Procedures where the school is oversubscribed

14. Where the number of applications for admission is greater than the published admission number, applications will be considered against the criteria set out below. After the admission of pupils with statements of Special Educational Needs where Saxmundham Free School is named on the statement, the criteria will be applied in the order in which they are set out below:

1. A “looked after child” or a child who was previously looked after but immediately after being looked after became subject to an adoption, residence, or special guardianship order⁴. A “looked after child” is a child who is;
 - (a) in the care of a local authority, or
 - (b) being provided with accommodation by a local authority in the exercise of their social services functions (“looked after children” as defined in section 22(1) of the Children Act 1989).
2. Children with a sibling attending Saxmundham Free School at the time of application. A sibling is defined in these arrangements as children who live as brother or sister in the same house, including natural brothers or sisters, adopted siblings, stepbrothers or sisters and foster brothers and sisters.
3. Other children by distance from Saxmundham Free School, with priority for admission given to children who live nearest to the school

⁴ An adoption order is an order under section 46 of the Adoption and Children Act 2002.

A ‘residence order’ is as an order settling the arrangements to be made as to the person with whom the child is to live under section 8 of the Children Act 1989. Section 14A of the Children Act 1989 defines a ‘special guardianship order’ as an order appointing one or more individuals to be a child’s special guardian (or special guardians).

as the crow flies. Distances are measured from the main entrance of the child's home to the main entrance of the school.

Random allocation will be used as a tie-break in category '3' above to decide who has highest priority for admission if the distance between two children's homes and the school is the same.

Operation of waiting lists

15. Subject to any provisions regarding waiting lists in Suffolk County Council's coordinated scheme, Saxmundham Free School will operate a waiting list for each year group. Where in any year the school receives more applications for places than there are places available, a waiting list will operate until the final term of the school year. This will be maintained by the Suffolk County Council and it will be open to any parent to ask for his or her child's name to be placed on the waiting list, following an unsuccessful application.
16. A child's position on the waiting list will be determined solely in accordance with the over subscription criteria set out in paragraph 14. Where places become vacant they will be allocated to children on the waiting list in accordance with the over subscription criteria.
17. The Company will maintain and hold those names detailed on the waiting list up to the end of the term after the beginning of each school year.

Arrangements for admitting pupils to other year groups, including to replace any pupils who have left the school

18. During 2012 local authorities will coordinate admissions for in-year applications and for applications for year groups other than the normal point(s) of entry. This will not affect the Company's right to determine which applicants have priority for admission.
19. Parents of gifted and talented children, or those who have experienced problems or missed part of a year, for example due to ill health, can seek places outside their normal age group. Decisions to admit or otherwise will be on the basis of the circumstances of each case. On receiving the decision, parents will be informed of their statutory right to appeal. This right of appeal does not apply if they are offered a place in another year group at the school.

20. Subject to any provisions in Suffolk County Council's coordinated admission arrangements relating to applications submitted for years other than the normal year of entry, the Company will consider all such applications and if the year group applied for has a place available, admit the child unless one of the permitted reliefs apply. If more applications are received than there are places available, the over subscription criteria in paragraph 14 shall apply.

Arrangements for the admission of children of UK Service Personnel (UK Armed Forces)

21. Subject to the over subscription criteria detailed in paragraph 14 above, for families of service personnel with a confirmed posting to the area, the Company will:
- (a) allocate a place in advance, if accompanied by an official government letter which declares a relocation date and a Unit postal address or quartering area address for considering the application against their oversubscription criteria. This will include accepting a Unit postal address or quartering area address for a service child. The Company will not refuse a service child a place because the family does not currently live in the area, or reserve blocks of places for these children.
 - (b) ensure that arrangements in their area support the Government's commitment to removing disadvantage for service children. Arrangements will be appropriate for the area and be described in the school's prospectus.

Arrangements for admission of pupils as the school builds to its full capacity

22. Saxmundham Free School will open on 1 September 2012 with a Published Admission Number relating solely to pupils in Year 7, Year 8 and Year 9 as follows:
- (a) 54 for pupils in Year 7;
 - (b) 81 for pupils in Year 8; and
 - (c) 81 for pupils in Year 9.

Right to Appeal

23. When the Company informs a parent of a decision to refuse their child a place at Saxmundham Free School for which they have applied, it must include the reason why admission was refused; information about the right to appeal; the deadline for lodging an appeal and the contact details for making an appeal. Parents will be informed that, if they wish to appeal, they must set out their grounds for their appeal in writing. The Company will not limit the grounds on which appeals can be made.

Annex 2: Plan of the Land