

**TORCH ACADEMY GATEWAY TRUST**

**DEED OF VARIATION OF FUNDING AGREEMENT  
2014**

The Parties to this Deed are:

(1) **The Secretary of State for Education** of Sanctuary Buildings, Great Smith Street, London SW1P 3BT (the "**Secretary of State**");

- and -

(2) **Torch Academy Gateway Trust**, a charitable company incorporated in England and Wales with registered company number 07635510 whose registered address is at Toot Hill School, The Banks, Bingham, Nottinghamshire, NG13 8BL (the "**Company**").

together referred to as the "**Parties**".

## **INTRODUCTION**

- A. The Parties entered into a master funding agreement on 30 August 2012, (the "**Existing MFA**").
- B. The Parties entered into a supplementary funding agreement in respect of Toot Hill School on 30 August 2012 (the "**Existing Toot Hill SFA**");
- C. The Parties entered into a supplementary funding agreement in respect of the Meden School on 30 August 2012 (the "**Existing Meden SFA**"); and
- D. The Parties have agreed to amend and re-state the terms of the Existing MFA, the Existing Toot Hill SFA and the Existing Meden SFA, on the terms set out in this Deed.

## **LEGAL AGREEMENT**

- 1. Words, expressions and interpretations used in this Deed shall, unless the context expressly requires otherwise, have the meaning given to them in, and shall be interpreted in accordance with, the Amended Master Funding Agreement (as defined in clause 2 below).
- 2. The Secretary of State and the Company agree that with effect from the date of this Deed, the Existing MFA shall be amended and re-stated in the form of the Master Funding Agreement set out in Schedule 1 (the "**Amended Master Funding Agreement**"). For the avoidance of doubt, the Amended Master Funding Agreement does not terminate or suspend the Existing MFA but amends and re-states it.
- 3. The Secretary of State and the Company agree that with effect from the date of this Deed, the Existing Toot Hill SFA shall be amended and re-stated in the form of the Supplemental Funding Agreement set out in Schedule 2 (the "**Amended Toot Hill SFA**"). For the avoidance of doubt, the Amended Toot Hill SFA does not terminate or suspend the Existing Toot Hill SFA but amends and re-states it.
- 4. The Secretary of State and the Company agree that with effect from the date of this Deed, the Existing Meden SFA shall be amended and re-stated in the form of the Supplemental Funding Agreement set out in Schedule 3

(the "**Amended Meden SFA**"). For the avoidance of doubt, the Amended Meden SFA does not terminate or suspend the Existing Meden SFA but amends and re-states it.

**GOVERNING LAW AND JURISDICTION**

- 3. This Deed, and any dispute or claim arising out of or in connection with it, its subject matter or formation (including non-contractual disputes or claims) shall be governed by and interpreted in accordance with the law of England and Wales.
- 4. The Parties irrevocably agree that the courts of England and Wales shall have exclusive jurisdiction to settle any dispute or claim that arises out of, or in connection with, this deed or its subject matter or formation (including non-contractual disputes or claims).

**COUNTERPARTS**

- 5. This Deed may be executed in any number of counterparts and by the parties to it on separate counterparts, each of which when so executed and delivered shall be an original, but all the counterparts shall together constitute one and the same instrument.

**IN WITNESS whereof this Deed has been executed by the parties hereto and is intended to be and is hereby delivered on the last date listed below.**

**EXECUTED** as a deed by affixing the corporate )  
seal of the **Secretary of State for Education** )  
authenticated by:- )

.....  
Duly authorised by the Secretary of State for Education

Date.....

**EXECUTED** as a deed by  
**Torch Academy Gateway Trust** acting by:

.....

Director

Print name.....

Date.....

.....

Director/Secretary

Print name.....

Date.....

**Schedule 1**

**Amended Master Funding Agreement**

**TORCH ACADEMY GATEWAY TRUST**

**ACADEMIES AND FREE SCHOOLS**

**MASTER FUNDING AGREEMENT**

**TORCH ACADEMY GATEWAY TRUST**

**ACADEMIES AND FREE SCHOOLS**

**MASTER FUNDING AGREEMENT**

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## INTRODUCTION

- 1) This Agreement is made under Section 1 of the Academies Act 2010, between the Secretary of State for Education (“the Secretary of State”) and Torch Academy Gateway Trust (the “Company”).
- 2) The Company is a company incorporated in England and Wales, limited by guarantee with registered Company number 07635510.
- 3) The Company intends to establish and maintain, and to carry on or provide for the carrying on of a number of academies in accordance with this Agreement and the Supplemental Agreements.
- 4) This Agreement and the Supplemental Agreements will apply in respect of an academy from such time as a Supplemental Agreement relating to that academy shall have been entered into between the Secretary of State and the Company.
- 5) The following expressions used in this Agreement have the respective meanings assigned to them by the numbered clauses of this Agreement referred to immediately after the reference to the expressions -
  - a) “Academies Financial Handbook” - clause 67;
  - b) “Accounting Officer” – clause 66;
  - c) "Annual Letter of Funding" - clause 60;
  - d) "GAG" – clause 36;
  - e) "Capital Expenditure" - clause 37;
  - f) “Capital Grant” – clause 37;
  - g) "EAG" - clause 36;
  - h) “Local Governing Body” – clause 15;

- i) "Recurrent Expenditure" – clause 36;
- j) "Statemented Pupils" – clause 18A and paragraphs 2 and 3(i), (ii) and (iii) of Annex 1 to the Supplemental Agreement.

6) In this Agreement the following words and expressions shall have the following meanings:-

"academy Financial Year" means the year from 1<sup>st</sup> September to 31<sup>st</sup> August or such other period as the Secretary of State may from time to time specify by notice in writing to the Company;

"academy" means a mainstream free school, a traditional mainstream academy (including traditional sponsored academies where the context so permits), an alternative provision free school, a traditional alternative provision academy, a special free school, a traditional special academy or a 16-19 free school, in respect of which a Supplemental Agreement has been entered into between the Secretary of State and the Company and the expression "academies" shall refer to all or any of such free schools and academies;

"the Act" means the Academies Act 2010;

"admission requirements" – are annexed to the relevant Supplemental Agreement;

"alternative provision free school" means a new academy which meets the requirements set out in section 1C of the Academies Act 2010, which is a new educational institution within the meaning of section 9(1)(a) of the Act and which is not an existing educational institution within the meaning of section 9(1)(b) of that Act ;

"alternative provision academies" means both alternative provision free schools and Traditional alternative provision academies.

the “Articles” means the Articles of Association of the Company for the time being in force;

“this Agreement” means this agreement and its annexes and a reference in this Agreement to a numbered clause or annex is a reference to the clause or annex of this Agreement bearing that number or letter as the same may be amended or supplemented from time to time;

“Business Day” means any day other than a Saturday, Sunday, Christmas Day, Good Friday or a day which is a bank holiday with the meaning given to that expression in the Banking and Financial Dealings Act 1971;

“Commissioner” means local authorities and/or schools referring children/pupils to the traditional alternative provision academy or the alternative provision free school for admission under the legal powers set out in the relevant annex to the Supplemental Agreement;

“Control” in relation to a body corporate (‘Entity’) means either the legal or beneficial ownership of 30 per cent or more of the issued shares in the Entity ordinarily having voting rights or the power of a person (‘A’) otherwise to secure –

- (a) either by means of the holding of shares in that Entity or having an interest conferring voting rights at general meetings of the membership of the Entity or of any other body corporate;
- (b) by virtue or any powers conferred by the Articles or other document regulating that Entity or any other Entity or partnership including, without limitation, the power to appoint or remove a majority of the directors thereof, or
- (c) by virtue of any agreement, understanding or arrangement between any person or persons,

that the affairs of the first-mentioned Entity are conducted in accordance with the wishes of A and ‘Controls’ shall be construed accordingly;

“DfE” means Department for Education and any successor;

“EFA” means the Education Funding Agency, an executive agency of the DfE or any successor body to the EFA so designated by the Secretary of State;

“free schools” means mainstream free schools, special free schools, alternative provision free schools and 16-19 free schools”;

“LA” means the Local Authority in the area in which the relevant academy is situated;

“mainstream free school” means an academy meeting the requirements referred to in clause 12, which is a new educational institution within the meaning of section 9(1)(a) of the Act and which is not an existing educational institution within the meaning of section 9(1)(b) of the Academies Act 2010, but which is not a Special free school;

“mainstream academies” means both mainstream free schools and traditional mainstream academies;

“Memorandum” means the memorandum of association of the Company for the time being in force;

“parents” means parents or guardians;

“persons” includes a body of persons, corporate or incorporate;

“Principal” means the head teacher of an academy;

“Principal Regulator” means the body or person appointed as the Principal Regulator under the Charities Act 2011;

“Pupil Referral Unit” means any school established in England and maintained by a local authority which is specially organised to provide education for children falling within section 19(1) of the Education Act 1996;

references to “school” shall where the context so admits be references to an academy;

references to “educational institution” shall where the context so admits be references to a 16 to 19 free school;

references to “Secretary of State” shall where the context so admits be references to the EFA acting on the Secretary of State’s behalf;

“SEN” means special educational needs, and the expressions “special educational needs” and “special educational provision” have the meaning set out in section 312 of the Education Act 1996;

“SENCO” means Special Educational Needs Co-ordinator;

“special free school” means an academy meeting the criteria set out in section 1A(2) of the Act, which is a new educational institution within the meaning of section 9(1)(a) of the Act and which is not an existing educational institution within the meaning of section 9(1)(b) of the Academies Act 2010;

“special academies” means both special free schools and traditional special academies;

“Statement of SEN” means a statement made under section 324 of the Education Act 1996;

“Studio School” means a type of Mainstream free school, principally for pupils and students aged between 14 and 19, which places an emphasis on such pupils and students obtaining employability skills through project-based learning;

“Supplemental Agreement” means an agreement supplemental to this Agreement, substantially in the form of the relevant model supplemental funding agreement as published by the DfE at the time of entering into the such agreement, to be entered into by the Secretary of State and the Company pursuant to which the

Company agrees to establish and maintain, and to carry on or provide for the carrying on, and the Secretary of State agrees to fund, an academy in accordance with the terms and conditions of that Supplemental Agreement and this Agreement;

“traditional alternative provision academy” means an academy which meets the requirements set out in section 1C of the Academies Act 2010 and which has been established pursuant to an academy Order under section 4 of that Act;

“traditional mainstream academy” means an academy meeting the requirements referred to in clause 12 which has been established pursuant to an Agreement under section 482 of the Education Act 1996 or pursuant to an academy Order under section 4 of the Academies Act 2010, but which is not a traditional special academy;

“traditional special academy” means an academy meeting the criteria set out in section 1A(2) of the Act, which has been established pursuant to an Agreement under section 482 of the Education Act 1996 or pursuant to an Academy Order under section 4 of the Academies Act 2010; and

“traditional sponsored academy” means a traditional mainstream academy, unless expressly excluded from any such categorisation, and designated as a sponsored academy in the Supplemental Agreement applicable to that academy.

“16-19 free school” means a new academy which meets the requirements set out in section 1B of the Academies Act 2010.

- 7) The Interpretation Act 1978 shall apply for the interpretation of this Agreement and any Supplemental Agreement as it applies for the interpretation of an Act of Parliament.
- 8) Expressions defined in this Agreement shall have the same meaning where used in any Annex to this Agreement or Supplemental Agreement.
- 9) Questions arising on the interpretation of the arrangements in this Agreement shall

be resolved by the Secretary of State after consultation with the Company.

10) Section 1 (3) of the Academies Act 2010 states that -

(3) An academy agreement is an agreement between the Secretary of State and the other party under which -

(a) the other party gives the undertakings in subsection (5), and

(b) the Secretary of State agrees to make payments to the other party in consideration of those undertakings.

## **LEGAL AGREEMENT**

11) In consideration of the Company undertaking to establish and maintain, and to carry on or provide for the carrying on of a number of independent schools in England specially organised to make special educational provision for pupils with SEN (“the special academies”), or meeting the requirements referred to in clause 12 (“the mainstream academies”), or meeting such requirements as referred to in clause 12D (“the alternative provision academies”) or meeting such requirements as referred to in clause 12E (“the 16-19 free schools”), the Secretary of State agrees to make payments to the Company in accordance with the conditions and requirements set out in this Agreement and Supplemental Agreements. If it is agreed between the Secretary of State and the Company that the Company will establish and maintain, and to carry on or provide for the carrying on of an academy, the parties will enter into a Supplemental Agreement in relation to that academy. For the avoidance of doubt, any obligations imposed upon or powers given to an academy by this Agreement or any Supplemental Agreement are also imposed upon the Company.

## **REQUIREMENTS OF MAINSTREAM ACADEMIES**

12) The requirements of mainstream academies are those set down in Section 1A of the Academies Act 2010.



## REQUIREMENTS OF SPECIAL ACADEMIES

12A) The Company must ensure special educational provision is made at each of the special academies for one or more categories of SEN. These categories may include, but are not limited to: Specific Learning Difficulties, Moderate Learning Difficulties, Severe Learning Difficulties, Profound and Multiple Learning Difficulties, Behaviour Emotional Social and Development Needs, Speech Language and Communication Needs, Autistic Spectrum Disorder, Visual Impairment, Hearing Impairment, Multi-Sensory Impairment, Physical Disability.

12B) The Company may not refuse to admit a child whose statement of SEN names one of the special academies on the sole basis that some, or all, of the child's SEN do not feature in the categories referred to in clause 12A) of this agreement.

## THE SEN OBLIGATIONS

12C) In respect of **special academies**:

- a) The Company must comply with all of the obligations imposed upon the governing bodies of maintained special schools in Chapter 1 of Part 4 of the Education Act 1996 and in Regulations in force at the date of this agreement or made from time to time under any provision in that Chapter (as amended from time to time<sup>1</sup>).
- b) Notwithstanding any provision in this Agreement, the Secretary of State may (whether following a complaint made to him or otherwise) direct the Company to

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<sup>1</sup> Currently these duties are in section 313 (Duty to have regard to the Special Educational Needs Code of Practice 2001); section 317(5), (6) and (6A) (Duties in relation to the publication of information relating to arrangements and facilities for disabled pupils at the school); and 324(5)(b) (Duty to admit the child where a school is named in the statement); and the Education (Special Educational Needs)(Information)(England) Regulations 1999 (S.I. 1999/2506). For the avoidance of doubt, the obligations in clause 12A of this agreement are in addition to any obligations imposed upon academy proprietors directly in legislation or regulations.

comply with an obligation imposed by this Agreement where the Company has failed to comply with any such obligation.

- c) The Company must ensure that each **special academy's** website includes details of the arrangements for the admission of disabled pupils; the steps taken to prevent disabled pupils from being treated less favourably than other pupils; the facilities provided to assist access to the academy by disabled pupils; and the plan prepared by the Company under paragraph 3 of Schedule 10 to the Equality Act 2010. Disabled pupils in this paragraph mean pupils who are disabled for the purposes of the Equality Act 2010<sup>2</sup>.

## **REQUIREMENTS OF ALTERNATIVE PROVISION ACADEMIES**

12D) The requirements for alternative provision academies are those set down in Section 1C of the Academies Act 2010.

## **REQUIREMENTS OF 16-19 FREE SCHOOLS**

12E) The requirements of 16-19 free schools are those set down in Section 1B of the Academies Act 2010.

## **CONDITIONS OF GRANT**

### **General**

13) Other conditions and requirements in respect of an academy, unless specified otherwise in a Supplemental Agreement, are that:

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<sup>2</sup> This obligation is in addition to the obligation to comply with the duties to publish information imposed upon the governing bodies of maintained special schools set out in the Education (Special Educational Needs) (Information) Regulations 1999 (as amended from time to time) which clause 12A has the effect of imposing.

- a) the academy will be at the heart of its community, promoting community cohesion and sharing facilities with other schools and the wider community;
- b) at each of the **mainstream academies** and at each of the **special academies** there will be assessments of pupils' performance as they apply to maintained schools (and this will also apply to **alternative provision academies** unless there are exceptional reasons to do otherwise), and the opportunity to study for qualifications in accordance with clause 30 (d);
- c) in respect of **mainstream academies**, the admissions policy and arrangements for the school will be in accordance with admissions law, and the DfE Codes of Practice, as they apply to maintained schools; in respect of **alternative provision academies** the admissions policy and arrangements for the school will be set out in the relevant annex to the Supplemental Agreement; and in respect of 16-19 free schools the admissions policy and arrangements for the educational institution will be fair, objective and transparent, in accordance with legal powers and duties in relation to 16 to 19 provision and with the requirements in clause 18F;
- d) teachers' levels of pay and conditions of service at the academies will be the responsibility of the Company;
- e) there will be an emphasis on the needs of the individual pupils and students and where relevant personal coaches will contribute to the needs of the individual pupils and students including pupils with SEN, both those with and without statements of SEN, and students with learning difficulties and disabilities;
- f) there will be no charge to pupils (or their parents or guardians) or students (or their parents or guardians) in respect of admission to, or attendance at, any of the academies and the academies are only permitted to charge where the law allows either maintained schools to charge or institutions within the further education sector to charge;

g) in respect of each traditional mainstream academy, traditional special academy and Traditional alternative provision academy the Company shall as soon as reasonably practicable establish an appropriate mechanism for the receipt and management of donations and shall use reasonable endeavours to procure donations through that mechanism for the purpose of the objects specified in the Articles.

13A) Clause 13f) does not prevent the Company receiving funds from a local authority or a charity in respect of the admission of a pupil with special educational needs to an academy.

13B) Clause 13f) does not prevent the Company receiving funds/income from Commissioners in respect of the admission and attendance of a pupil at any of the **alternative provision academies**.

## **Governance**

14) Each academy will be governed by the Company. The Company shall have regard to (but for the avoidance of doubt shall not be bound by) any guidance as to the governance of academies that the Secretary of State may publish.

15) The Company shall establish, for each academy, an Advisory Body, whose role shall be to provide advice to the Company in relation to the functioning of that academy. The role of the Advisory Body and the membership of it shall be for the Company to decide, but the Company will, as a minimum, ensure that:

a) a minimum of two parents of a pupil or a student at the academy (to be elected by the parents of registered pupils or students of the academy) shall be a member of the Advisory Body;

b) any advice of the Advisory Body is brought to the attention of the Directors of the Company;

c) to the extent that the Company may, in accordance with the Articles, choose to establish a Local Governing Body, then the Company may additionally constitute the Advisory Body as the academy's Local Governing Body.

## **Conduct**

16) Each academy shall be conducted in accordance with:

a) the Articles;

b) all provisions by or under statute which confer rights or impose obligations on academies including, without limitation, the independent schools standards prescribed under section 157 of the Education Act 2002 to the extent they apply to the academy;

c) the terms of this Agreement and the relevant Supplemental Agreement.

## **Disclosure and Barring Service Checks**

17) In respect of each of the **mainstream academies, alternative provision academies and special academies**, the Company shall comply with the requirements of the Education (Independent School Standards) (England) Regulations 2010 (or such regulations as may for some time being be applicable) in relation to carrying out enhanced criminal records checks, obtaining enhanced criminal records certificates and making any further checks, as required and appropriate for members of staff, supply staff, individual Directors and the Chair of the Local Governing Body.

17A) In respect of each **16-19 free school**, the Company agrees to comply with any obligations that apply to it by virtue of provisions in the Safeguarding and Vulnerable Groups Act 2006 as may be amended from time to time in respect of, but not limited to, the performance of barred list checks.

17B) Further, in respect of each **16-19 free school**, the Company agrees to act in accordance with the Further Education (Providers of Education) (England) Regulations 2006 (SI 2006/3199) as may be amended or replaced from time to time as if the **16 to 19**

**free school** were a further education institution and subject to the following modifications:

- a) references to “the governing body of a further education institution” or to “the governing body” shall be treated as references to the Company;
- b) references to “a further education institution” or “the institution” shall be treated as references to the **16 to 19 free school**, except in regulations 9(1)(b) and 19(2)(a)(ii) where they shall have their normal meaning;
- c) the Company shall not have to comply with any of the requirements in relation to relevant staff qualifications specified in regulation 3(2), namely: regulations 5(3); regulation 17(1) only in so far as it relates to regulation 18(3); regulation 22 only in so far as it relates to paragraph 4 of Part 1 of the Schedule; and regulation 23 only in so far as it relates to paragraph 2(3) of Part 2 of the Schedule. For the avoidance of doubt, the relevant staff qualification requirements do not need to be met by members of staff at the **16 to 19 free school**; and
- d) references to “new member of staff” shall include individual Directors and the Chair of the Directors and in respect of them:
  - (i) the obligation to carry out an enhanced criminal record check as provided for at regulation 5(5) will apply whether or not their position will involve a relevant activity;
  - (ii) the reference in regulation 6 to “considering his suitability for a position that will involve a relevant activity” will be treated as a reference to considering his suitability for a position as a Director or Chair of the Directors as appropriate;

(iii) references to “beginning work at the further education institution” shall be treated as references to beginning work as a Director or Chair of the Directors as appropriate.

### **Secondary education provided to persons of compulsory school age**

17C) The Company shall, on receipt of a copy of an enhanced criminal record certificate, on request from the Secretary of State or his agents, as soon as possible thereafter submit information contained in the certificate to the Secretary of State in accordance with section 124 of the Police Act 1997.

17D) Where secondary education is provided to persons of compulsory school age by an academy the Company shall secure that, except in such circumstances described in clause 17E, no education is provided to a person who has attained the age of nineteen years in a room in which any persons of compulsory school age are for the time being receiving secondary education.

17E)

(a) The circumstances referred to in clause 17D shall be that a teacher is present in the room.

(b) For the purposes of paragraph (a) a teacher shall be considered to be present in the room at a particular time even though no teacher is present if—

(i) it would be impracticable to secure the presence of a teacher in a room at that time, and

(ii) the absence of a teacher at that time has not lasted more than five minutes.

### **Pupils and Students**

18) Each of the **mainstream academies** will be an all ability inclusive school whose requirements for:

- a) the admission of pupils to the academy are set out in the relevant annex to the Supplemental Agreement;
- b) the admission to the academy of and support for pupils with SEN and with disabilities (for pupils who have and who do not have statements of SEN) are set out in Annex B to this Agreement;
- c) pupil exclusions are set out in regulations made by virtue of section 51A of the Education Act 2002 (as may be amended or modified from time to time, and includes any successor provisions).

18A) GAG at each of the **special academies** for each academy Funding Year in respect of Statemented Pupils will be determined by the Secretary of State in accordance with clauses 53-54 and 54A to 54E in respect of Special free schools, and in accordance with clauses 53, 53A, 54, 54F and 54G in respect of traditional special academies.

18B) Each of the **special academies** will be a special school whose requirements for:

- a) the admission of pupils to the academy are set out in the relevant annex to the Supplemental Agreement;
- b) pupil exclusions are set out in regulations made by virtue of section 51A of the Education Act 2002 (as may be amended or modified from time to time, and includes any successor provisions).

18C) Where in respect of any of the **special academies** the Company considers that there is a need to increase the planned number of places (as referred to in clause 18A of this Agreement and as set out in the Supplemental Agreement for the relevant **special academy** (if applicable), the Company must seek the approval of the Secretary of State and the requirements of this Agreement and the Supplemental Agreement for the relevant **special academy** may be amended accordingly by agreement between the Secretary of State and the Company.



18D) The planned number of places and the age ranges at each of the **alternative provision academies** (as set out in the Supplemental Agreement for each of the **alternative provision academies**) is /are not determinative of GAG. GAG at each of the **alternative provision academies** for each academy Funding Year will be determined by the Secretary of State in accordance with clauses 54K to 54M. Each of the **alternative provision academies** will provide education for the cohort of pupils whose characteristics are set out in the requirements at section 1C of the Academies Act 2010 and whose requirements for:

- a) the admission of pupils to each of the **alternative provision academies** are set out in the relevant annex to the Supplemental Agreement;
- b) the admission to each of the **alternative provision academies** and support for pupils with SEN and with disabilities (for pupils who have and who do not have statements of SEN) are set out in Annex B to this Agreement;
- c) pupil exclusions are set out in regulations made by virtue of section 51A of the Education Act 2002 (as may be amended or modified from time to time, and includes any successor provision(s)).

18E) Each **16 to 19 free school** will be an educational institution principally concerned with providing full-time or part-time education suitable to the requirements of persons over compulsory school age but under 19 whose requirements for:

- a) the admission of students to the **16 to 19 free school**;
- b) the admission to the **16 to 19 free school** of and support for students with learning difficulties and with disabilities; and
- c) student exclusions;

are set out in written policies to be agreed with the Secretary of State prior to the signing of the relevant Supplementary Funding Agreement, such policies will be fair, objective and transparent, in accordance with legal powers and duties in relation to 16 to 19 provision and for the avoidance of doubt adherence to those policies forms part of this Agreement.

18F) The Secretary of State agrees that the Company may vary such policies as are referred to in clause 18E subject to the Company informing the Secretary of State of any variation to such policies in writing as soon as reasonably practicable and the Company agreeing that the Secretary of State may, if he wishes, substitute any changes to such policies that the Company makes with changes to such policies of his own.

18G) The Company agrees to vary such policies referred to in clause 18E as may become necessary to comply with changes to future legislation and/or as the Secretary of State may require.

#### **Designated Teacher for Looked after Children**

18H) The Company will where applicable in respect of each of its academies act in accordance with, and be bound by, all relevant statutory and regulatory provisions and have regard to any guidance and codes of practice issued pursuant to such provisions, as they apply at any time to a maintained school, relating to the designation of a person to manage the teaching and learning programme for children who are looked after by an LA and are registered pupils at the school. For the purpose of this clause, any reference to the governing body of a maintained school in such statutory and regulatory provisions, or in any guidance and code of practice issued pursuant to such provisions, shall be deemed to be references to the Directors of the Company.

#### **Teachers and other staff**

19) In respect of **mainstream** and **alternative provision academies**:

a) subject to clause 19(b), the Company shall, in accordance with any guidance which the Secretary of State may issue on the qualifications of teaching and other staff in academies, employ anyone it deems is suitably qualified or is otherwise eligible under a contract of employment or for services to carry out planning and preparing lessons and courses for pupils, delivering lessons to pupils, assessing the development, progress and attainment of pupils, and reporting on the development, progress and attainment of pupils.

b) clause 19(a) does not apply to anyone who:

- i) is appointed as the SENCO by the Company under section 317(3A) of the Education Act 1996, who must meet the requirements set out in Regulation 3 of the Education (Special Educational Needs Co-ordinators) (England) Regulations 2008 (SI 2008/2945); or
- ii) is appointed as a designated teacher for looked after children further to clause 18H.

20) In respect of **special academies** the Company shall not employ anyone under a contract of employment or for services to carry out planning and preparing lessons and courses for pupils, delivering lessons to pupils, assessing the development, progress and attainment of pupils, and reporting on the development, progress and attainment of pupils (“specified work”) who is not either:-

- a) a qualified teacher within the meaning of regulations made under section 132 of the Education Act 2002; or
- b) otherwise eligible to do specified work under the Education (Specified Work) (England) Regulations 2012 (SI 2012/762), which for the purpose of this clause shall be construed as if the relevant academy were a maintained school.

20A) In respect of **special academies** Clause 20 does not apply to anyone who:

- a) was transferred to the employment of the Company by virtue of the Transfer of

