

Catholic Multi Academy Model
Mainstream 16-19

SCHEDULE 1

MODEL SUPPLEMENTAL AGREEMENT

THIS AGREEMENT made 2013

BETWEEN

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

(2) **BISHOP CLEARY CATHOLIC MULTI ACADEMY COMPANY**

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

1 DEFINITIONS AND INTERPRETATION

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

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

"the Academy" means the St Michael's Catholic Primary Academy and Nursery established at Telford Gardens, Merry Hill, Wolverhampton, WV3 7LE.

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 11 shall be broad and balanced.

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- 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 1 July 2013 replacing St Michael's Catholic Primary School which shall cease to be maintained by the Local Authority on that date, which date shall be the conversion date within the meaning of the Academies Act 2010.

- 2.5 The planned capacity of the Academy is 243 in the age range 4 – 11. In addition there is a nursery unit for 52 part-time children aged 3 – 4.

3 CAPITAL GRANT

- 3.1 Pursuant to clauses 38, 40A and 40B 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.

5 TERMINATION

- 5.1A The Secretary of State is entitled, upon the written application to him by the Founder Member requesting such action and setting out its grounds for requesting such action, should he agree with the Founder Member, to issue to the Company a written notice of his intention to terminate this Agreement on a specified date.

- 5.1 Either party to this Agreement may give not less than seven Academy Financial Years' written notice to terminate this Agreement, such notice to expire on 31 August 2020 or any subsequent anniversary of that date and the Company shall copy any such notice sent or received to the Founder Member and to the Trustees.

- 5.2 The Secretary of State shall be entitled to issue to the Company a written notice of his intention to terminate this Agreement ("Termination Warning Notice") where in his opinion, acting reasonably, he considers that:

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- 5.2.1 the Academy is no longer meeting the requirements referred to in clause 12 of the Master Agreement (subject to clause 5.9 of this Agreement);
 - 5.2.2 the conditions and requirements set out in clauses 13-34B of the Master Agreement are no longer being met;
 - 5.2.3 the standards of performance of pupils at the Academy are unacceptably low;
 - 5.2.4 there has been a serious breakdown in the way the Academy is managed or governed;
 - 5.2.5 the safety of pupils or staff is threatened (whether by breakdown of discipline or otherwise); or
 - 5.2.6 the Company is otherwise in material breach of the provisions of this Agreement or the Master Agreement
- and such notice shall be copied to the Founder Member.
- 5.3 A Termination Warning Notice issued by the Secretary of State in accordance with clause 5.2 shall specify:
- 5.3.1 which reason or reasons listed in clause 5.2 above are relied on by the Secretary of State as a default on which to issue his Termination Warning Notice;
 - 5.3.2 the remedial measure or measures which the Secretary of State requires the Company to carry out, with associated deadlines, in order to rectify the default or defaults identified (“Specified Remedial Measures”); and
 - 5.3.3 the last date by which the Company must respond to the Termination Warning Notice which must allow the Company a reasonable period in which to provide to the Secretary of State its representations with regard thereto and/or to confirm that it accepts and agrees to undertake the Specified Remedial Measures.
- 5.4 The Secretary of State shall consider any response and representations made by the Company, the Founder Member or on their behalf which are received by him by the date specified in accordance with clause 5.3.3 and within a reasonable time thereafter shall confirm whether he considers that:
- 5.4.1 in the light of the representations made in response to the Termination

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Warning Notice, some or all of the Specified Remedial Measures are not required to be implemented (and if so which) and/or the Specified Remedial Measures are being or will be implemented within the specified timeframe; or

5.4.2 subject to any further measures he reasonably requires (“Further Remedial Measures”) being implemented by a specified date or any evidence he requires being provided, the implementation of such measures has been or will be successfully completed within the specified timeframes;

in which cases the Secretary of State shall notify the Company that his intention to terminate this Agreement is withdrawn; or

5.4.3 he is not satisfied that the Company will rectify the default or defaults identified in the Termination Warning Notice within the specified timeframes. In such circumstances, the Secretary of State may notify the Company of his intention to terminate the Agreement on a specified date, which date must take account of the provisions of clause 5.5A below.

Each notice issued by the Secretary of State pursuant to this clause 5.4 shall be copied to the Founder Member. The Secretary of State shall use all reasonable endeavours to inform and keep informed the Company and the Founder Member of his intentions and any steps he is taking or intends to take in relation to the termination (or not) of this Agreement.

5.5 Subject to clause 5.5A below, the Secretary of State may by further notice in writing to the Company and copied to the Founder Member terminate this Agreement with effect from a specified date, but which date must take account of the provisions of clause 5.5A below in the event that:

5.5.1. neither the Company, nor the Founder Member nor any party on their behalf has, by the date specified in clause 5.3.3, responded to the Termination Warning Notice either confirming that the Company accepts and agrees to undertake the Specified Remedial Measures or providing representations with regard to the Specified Remedial Measures; or

5.5.2. the Company has not carried out the Specified Remedial Measures and/or Further Remedial Measures within the specified timeframes;

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provided that having considered any representations made pursuant to clause 5.3.3 and clause 5.5A, the Secretary of State remains satisfied that it is appropriate to terminate this Agreement.

5.5A In the circumstances of clause 5.4.3 the Secretary of State shall, if so requested in writing by the Company and/or the Founder Member within thirty days from such notification, meet a deputation including representatives from directors of the Company, the Founder Member and the Academy Committee to discuss his concerns. If following such meeting he has good reasons for remaining satisfied that the Company will not rectify the default or defaults identified in the Termination Warning Notice within the specified timeframes, he shall give the Company written notice to terminate this Agreement with effect from the specified date issued pursuant to clause 5.4.3 or such later date as may be reasonable in the circumstances and be stated in the Secretary of State's further notice issued pursuant to clause 5.5 and such notice shall be copied to the Founder Member.

Notice of Intention to Terminate

5.6 The Secretary of State may at any time give written notice to the Company and copied to the Founder Member of his intention to terminate this Agreement where the Chief Inspector gives notice to the Company in accordance with section 13(3) of the Education Act 2005 stating that in the Chief Inspector's opinion –

5.6.1. special measures are required to be taken in relation to the Academy;
or

5.6.2. the Academy requires significant improvement¹.

5.7 Any notice issued by the Secretary of State in accordance with clause 5.6 shall invite the Company and the Founder Member to respond with any representations within a specified timeframe (such timeframe being not less

¹ Note: the term "significant improvement" is set out in legislation under section 44(2) of the Education Act 2005, and refers to a school which requires "significant improvement....if it is performing significantly less well than it might in all the circumstances reasonably be expected to perform." Further guidance is available from the Department for Education.

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than 10 Business Days).

5.8 Where the Secretary of State has given notice of his intention to terminate this Agreement in accordance with clauses 5.6 and 5.7 and –

5.8.1. he has not received any representations from the Company or the Founder Member or any party on their behalf within the timeframe specified in clause 5.7; or

5.8.2. having considered the representations made by the Company or the Founder Member or on their behalf pursuant to clause 5.7, the Secretary of State remains satisfied that it is appropriate to terminate this Agreement

he may by further notice in writing to the Company and copied to the Founder Member terminate this Agreement with effect from a specified date.

Termination with Immediate Effect

5.9 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, he may terminate this Agreement by notice in writing to the Company and copied to the Founder Member such termination to take effect on the date of the notice.

Notice of Intention to Terminate by Company

5.10 The Secretary of State shall, at a date preceding the start of each Academy Financial Year, provide to the Company an indication of the level of funding to be provided by the Secretary of State to the Company by way of GAG and EAG in the next following Academy Financial Year (the “**Indicative Funding**”). If the Company is of the opinion that, after receipt of the Indicative Funding for the next following Academy Financial Year (the “**Critical Year**”) and of the taking into account all other resources available and likely to be available to the Academy, including such funds as are set out in clause 73 of the Master Agreement and such other funds as are and likely to be available to the Academy from other academies operated by the Company (“**All Other Resources**”), it is likely that the cost of running the Academy during the

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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.

5.11 Any notice given by the Company under clause 5.10 shall be in writing and shall be served on the Secretary of State and on the Founder Member not later than 28 February preceding the Critical Year or, if the Secretary of State shall not have given notice of the Indicative Funding to the Company on or before the date specified in clause 5.10 above, within six weeks after the Secretary of State shall have done so. The notice given by the Company pursuant to clause 5.10 must specify:

5.11.1. 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

5.11.2. 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

5.11.3. a detailed budget of income and expenditure for the Academy during the Critical Year (the "**Projected Budget**").

5.12 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 and shall use all reasonable endeavours to procure that any other party with an interest in the Academy (such as the Trustees, the Founder Member and the Diocesan Bishop) are consulted on

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and/or engaged in or kept informed of such constructive dialogue to the extent each interested party may request and the parties shall have due regard to any representations made by such interested parties.

- 5.13 If no agreement is reached by 30 April (or such other date as may be agreed between the parties) as to whether the cost of running the Academy during the Critical Year on the basis of the Indicative Funding and All Other Resources would cause the Company to become insolvent, then that question shall be referred to an independent expert (the “**Expert**”) for resolution. The Expert’s determination shall be final and binding on both parties and be copied to the Founder Member. 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.
- 5.14 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 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.
- 5.15 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, the Secretary of State shall provide sufficient additional funding to cover the Shortfall and in accordance with the Master Agreement.
- 5.15A If the Secretary of State does not give a written assurance to the Company within 21 days after the Expert’s determination shall have been given to the parties, copied to the Founder Member, that he shall provide sufficient additional funding and thereafter does provide sufficient additional funding to

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cover the Shortfall, then the Company shall be entitled to terminate this Agreement, by notice to the Secretary of State expiring on 31 August prior to the Critical Year and such notice shall be copied to the Trustees and to the Founder Member.

- 5B In the event of any termination of this Agreement under clause 5.10 and/or in circumstances where the Academy would not otherwise be closing, the Secretary of State agrees to seek and have due regard to any wishes of the Diocesan Bishop to continue to provide education at the Property through a "voluntary" maintained school under the provisions of the Schools Standards and Framework Act 1998 and the provisions of this clause shall continue to apply notwithstanding any termination or expiry of 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 Sections 1 and 1A of the Academies Act 2010.
- 6.2 Subject to clause 6.3 and 6.4, if the Secretary of State terminates this Agreement pursuant to clause 5.1 of this Agreement the Secretary of State shall indemnify the Company. If the Secretary of State terminates this Agreement otherwise than pursuant to clause 5.1 of this Agreement, the Secretary of State may in his absolute discretion indemnify or (to such extent if any as he may in his absolute discretion consider appropriate) compensate the Company.
- 6.3 The amount of any such indemnity or compensation shall be determined by the Secretary of State having regard to any representations made to him by the Company, the Trustees and/or the Founder Member 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 (where the Secretary of State terminates this Agreement pursuant to clause 5.1) indemnify the Company and may (where the Secretary of State terminates this Agreement otherwise than pursuant to clause 5.1) in his

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absolute discretion indemnify or compensate 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 of this Agreement and clauses 78, 78A, 78B and 83A of the Master Agreement, on the termination of this Agreement however occurring, the Company shall in respect of any of its capital assets owned and used solely and exclusively by the Academy at the date of termination:

6.5.1 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 any 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 at a later date; or

6.5.2 if the Secretary of State confirms that a transfer under clause 6.5.1 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 6.5.2 if:

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

6.6.2 The Secretary of State directs all or part of the repayment to be paid to the L A and/or to the Trustees.

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- 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 and when making a direction under that Part the Secretary of State shall have regard to any representations from the Company and the Trustees and/or the LA from which the land was transferred.

Restrictions on Land transfer

- 6A Whenever the Company is or will be receiving publicly funded Land at nil consideration (which for the purposes of this transaction shall include leases granted at a peppercorn rent) the Company:

- 6A.1 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 RX1 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 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

- 6A.2 shall take any further steps required to ensure that the restriction referred to in clause 6A.1 is entered on the proprietorship register,
- 6A.3 shall provide the Secretary of State with confirmation of the entry of the restriction referred to in clause 6A.1 as soon as practicable after it receives notification from the Land Registry,
- 6A.4 in the event that it has not registered the restriction referred to in clause 6A.1, hereby consents to the entering of the restriction referred to in 6A.1 in the register by the Secretary of State (under s. 43(1)(b) of the Land Registration Act 2002),

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6A.5 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 or 6A.4 above, whether by itself, a holding company, a subsidiary company, or a receiver, administrator or liquidator acting in the name of the Company.

6B While the Academy operates from the Property or any part of it pursuant to leases between the Company and the LA and/or the Trustees, in respect of such Property the terms of such leases shall prevail over clause 6A of this Agreement.

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.

8.2 Number not used

8A **NOTICES**

8A.1 The notice provisions in clauses 100 of the Master Agreement shall apply to any notice or communication concerning or to be issued in accordance with this Agreement, and in addition, in the case of a notice or communication to the Founder Member to the Financial Secretary at Cathedral House, St Chad's Queensway, Birmingham B4 6EU or such other address as may be notified to the Company, the Secretary of State, the Diocesan Bishop and the Trustees in writing from time to time by the Founder Member.

8B **THIRD PARTY RIGHTS**

8B.1 Any term of this Agreement which confers a right or benefit on a LA, the Trustees, the Founder Member and/or the Diocesan Bishop may be enforced by that party (or their successor) pursuant to the Contracts (Rights of Third Parties) Act 1999. Subject as aforesaid, this Agreement is not intended to confer any rights on any third party pursuant to the said Act.

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9 **GENERAL**

- 9.1 This Agreement shall not be assignable by the Company.
- 9.2 No delay, neglect or forbearance on the part of the Secretary of State in enforcing (in whole or in part) any provision of this Agreement or in exercising (in whole or in part) any right or remedy conferred on him by this Agreement shall be or be deemed to be a waiver of such provision or right or remedy or a waiver of any other provision or right or remedy or shall in any way prejudice any right or remedy of the Secretary of State under this Agreement or shall amount to an election not to enforce such provision or exercise such right or remedy (including, for the avoidance of doubt, any right to terminate this Agreement). No single or partial exercise of such right or remedy shall preclude or restrict the further exercise of that or any other right or remedy.
- 9.3 Termination of this Agreement, for any reason, shall not affect the accrued rights, remedies, obligations or liabilities of the parties existing at termination.
- 9.4 This Agreement may be executed in any number of counterparts, each of which when executed and delivered shall constitute a duplicate original, but all the counterparts shall together constitute the one agreement.
- 9.5 This Agreement and any dispute or claim arising out of or in connection with it or its subject matter or formation (including non-contractual disputes or claims) shall be governed by and construed in accordance with the law of England and Wales.
- 9.6 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 agreement or its subject matter or formation (including non-contractual disputes or claims).

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This Agreement was executed as a Deed on 2013

Executed on behalf of the Company by:

.....
Director

.....
Director/Secretary

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

.....
Duly Authorised

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ANNEX TO THIS SUPPLEMENTAL AGREEMENT

Requirements for the Admission for pupils at the
St Michael's Catholic Primary Academy and Nursery

Annex 1

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 Admission Appeals Code published by the Department for Education (“the Codes”) as they apply at any given time to maintained schools and with equalities law and the law on admissions as they apply to maintained schools. For this purpose, reference in the Codes or legislation to “admission authorities” shall be deemed to be references to the Directors of the Company.
3. Notwithstanding the generality of paragraph 2 of this Annex, the Company will participate in the co-ordinated admission arrangements operated by the Local Authority (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 St Michael's Catholic Primary Academy and Nursery on application from an LA. This will include complying with a School Attendance Order¹. Before doing so the Secretary of State will consult the Company;
 - (b) direct the Company to admit a named pupil to the St Michael's Catholic Primary Academy and Nursery if the Company has failed to act in accordance with this Annex 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 School Admissions Code or the School Admission Appeals Code.

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 an Academy but his/her parents are refusing to send him/her to school. The order will require a parent to ensure his/her child attends a specified school.

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4A St Michael's Catholic Primary Academy and Nursery is a faith Academy in the Catholic Archdiocese of Birmingham.

5. The Company shall ensure that parents and 'relevant children'² 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 for Education. The determination of the appeal panel is binding on all parties.

Relevant Area

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

7. If the 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 Academy, setting out the reasons for this view. The Secretary of State will consult the Company and the LA in which the Academy is situated in reaching a decision.

Requirement to admit pupils

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

9. The Company will:

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

² relevant children' means:

- a) in the case of appeals for entry to a sixth form, the child, and;
- b) in any other case, children who are above compulsory school age, or will be above compulsory school age by the time they start to receive education at the school.

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

10. The Academy admission arrangements will include oversubscription criteria, and an admission number for each relevant age group³. The Company will consult on its admission arrangements and determine them in line with the requirements within the School Admissions Code.

11. The Office of the School's Adjudicator (OSA) will consider objections to the Academy's admission arrangements⁴. The Company should therefore make it clear, when determining the Academy's admission arrangements, that objections should be submitted to the OSA.

12. A determination of an objection by the OSA will be binding upon the Academy and the Company will make appropriate changes as quickly as possible.

³ 'Relevant age group' means 'normal point of admission to the school, for example, year R, Year7 and Year 12.

⁴ The OSA has no jurisdiction to consider objections against the agreed variation from the Codes set out in paragraphs 2A and 2B.