

SUPPLEMENTAL AGREEMENT FOR NISHKAM PRIMARY SCHOOL

THIS AGREEMENT made on 19 May 2011 and amended and restated on
2013

BETWEEN

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

(2) **NISHKAM SCHOOL TRUST (“the Company”)**

IS SUPPLEMENTAL TO THE MASTER FUNDING AGREEMENT made between the same parties and dated September 2012 and amended and restated on 2013 (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 Nishkam Primary School established at the following addresses:-

3 Soho Road, Handsworth, Birmingham, B21 9SN; 5 - 7 Soho Road, Handsworth, Birmingham, B21 9SN; 9 -11 Soho Road, Handsworth, Birmingham, B21 9SN;

“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

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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 leasehold interest in the land (including for the avoidance of doubt all buildings, structures landscaping and other erections) situated at and known as:-

- (i) 3 Soho Road, Handsworth, Birmingham, B21 9SN as edged red in plan 1 attached at Annex 2 and registered under title WM 991559 (“Land 1”);
- (ii) 5 - 7 Soho Road, Handsworth, Birmingham, B21 9SN as edged red in plan 2 attached at Annex 2 and registered under title MM2056 (“Land 2”); and
- (iii) 9 -11 Soho Road, Handsworth, Birmingham, B21 9SN as edged red in plan 3 attached at Annex 2 and registered under title WM991558 (“Land 3”)

making up the permanent site of the Academy;

“the Lease(s)” means the leasehold agreement(s) between the Company and any third party (“Landlord”) in respect of the Land, but in particular:

”Lease 1”: the leasehold agreement between the Company and Mohinder Singh Ahluwalia, Parminder Singh Jhutti, Sucha Singh and Jaswinderpal Singh, the Trustees of Guru Nanak Nishkam Sewak Jatha (Birmingham) UK in respect of Land 1;

”Lease 2”: the leasehold agreement between the Company and Guru Nanak Nishkam Education Trust Limited in respect of Land 2; and

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”Lease 3”: the leasehold agreement between the Company and Mohinder Singh Ahluwalia, Parminder Singh Jhutti, Sucha Singh and Jaswinderpal Singh, the Trustees of Guru Nanak Nishkam Sewak Jatha (Birmingham) UK in respect of Land 3.

“Rent” means a payment made by the Company to a third party pursuant to the Lease but subject to the terms of clause 4A.1 of this Agreement;

“Start-up period” means up to a maximum of 5 Academy Financial Years and covers the period up to and including the first Academy Financial Year in which all age groups are present at the Academy (that is, all the pupil cohorts relevant to the age-range of the Academy will have some pupils present).

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

AMENDMENT AND RESTATEMENT

1A.1 The Company and the Secretary of State entered into a single funding agreement dated 19 May 2011 (the “Original Nishkam Primary School FA”), setting out the terms on which the Company will establish and maintain the Academy.

1A.2 With effect on and from the date of this Agreement, the Original Nishkam Primary School FA will be amended and restated in the form set out in 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.

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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 opened as a school on 1 September 2011.
- 2.5 The planned capacity of the Academy is 478 in the age range 4 - 11, including a nursery unit of 58 places.

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 ADDITIONAL FUNDING

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- 4A.1 The Secretary of State shall meet the Company's costs arising from Rent payable by the Company under the Leases. Such costs shall include those costs arising from any rent rise payable by the Company under the terms of the Leases, so long as the relevant rent rise is properly evidenced in writing by the Company to the Department as soon as is reasonably practicable, but such costs shall not include any amount in respect of service charge payments or insurance premiums. Where the definition of rent in the Leases includes service charge payments or insurance premiums, the Secretary of State shall exclude from the total grant payable in respect of Rent an amount in respect of such service charge payments or insurance premiums.
- 4A.2 The Secretary of State may pay further grant in the Start-up period, as determined and specified by him, for costs which cannot otherwise be met from GAG.

4B **LEASES**

- 4B.1 If the Company is in material breach of the provisions of the Leases or if it is reasonably foreseeable that the Company will be in material breach of the Leases, 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.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.3 Following the receipt by the Secretary of State of the written notice under clause 4B.1, if the Company is unwilling or unable to take the necessary steps to remedy or prevent the material breach referred to in the said notice, then the Company shall permit the Secretary of State

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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.4 The Company shall, within 14 days of receiving any order, notice, proposal, demand or any other requirement materially affecting the ability of the Company 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 Company intends to take in response to the order, notice, proposal, demand or other requirement affecting the Land.

4B.5 The Company will at its own cost provide all information reasonably required by the Secretary of State in respect of an order, notice, proposal, demand or any other requirement affecting the Land as referred to in clause 4B.4.

4B.6 Following the receipt by the Secretary of State of the written notice under clause 4B.4 , , the Company shall permit the Secretary of State to take all steps in conjunction with or instead of the Company as may be necessary to comply with any order, notice, proposal, demand or other requirement affecting the Land referred to in the said notice. The Company shall, in such circumstances, use all reasonable endeavours to assist the Secretary of State to take the appropriate required steps.

5 **TERMINATION**

5.1 Either party may give not less than seven Academy Financial Years' written notice to terminate this Agreement, such notice to expire on 31 August 2018 or any subsequent anniversary of that date.

Notice of Intention to Terminate by Company

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- 5.2 The Secretary of State shall, at a date preceding the start of each Academy Financial Year, provide to the Company an indication of the level of funding to be provided by the Secretary of State to the Company by way of GAG and EAG in the next following Academy Financial Year (the “Indicative Funding”). If the Company is of the opinion that, after receipt of the Indicative Funding for the next following Academy Financial Year (the “Critical Year”) and of the taking into account all other resources available and likely to be available to the Academy, including such funds as are set out in clause 73 of the Master Agreement and such other funds as are and likely to be available to the Academy from other academies operated by the Company (“All Other Resources”), it is likely that the cost of running the Academy during the Critical Year would cause the Company, on the basis of the Indicative Funding, to become insolvent (and for this reason only) then the Company may give notice of its intention to terminate this Agreement at the end of the then current Academy Financial Year.
- 5.3 Any notice given by the Company under clause 5.2 shall be in writing and shall be served on the Secretary of State not later than 28 February preceding the Critical Year or, if the Secretary of State shall not have given notice of the Indicative Funding to the Company on or before the date specified in clause 5.2 above, within six weeks after the Secretary of State shall have done so. The notice must specify:
- 5.3.1. 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

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- 5.3.2. 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
- 5.3.3. a detailed budget of income and expenditure for the Academy during the Critical Year (the “**Projected Budget**”).
- 5.4 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.
- 5.5 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. 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.
- 5.6 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

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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.

- 5.7 If the Expert determines that the cost of running the Academy during the Critical Year would cause the Company, on the basis of the Indicative Funding and All Other Resources, to become insolvent, and the Secretary of State shall not have agreed to provide sufficient additional funding to cover the Shortfall, then the Company shall be entitled to terminate this Agreement, by notice expiring on 31 August prior to the Critical Year. Any such notice shall be given within 21 days after (a) the Expert's determination shall have been given to the parties or (b), if later, the Secretary of State shall have given written notice of his refusal to provide sufficient additional funding for the Academy to cover the Shortfall.

Termination Warning Notice

5.7A 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 he considers that:-

- a) the Academy is no longer meeting the requirements set out in clause 12 of the Master Agreement (subject to clause 5.11)
- b) the conditions and requirements set out in clauses 2.2 and 2.3 of this Agreement and clauses 13-34C of the Master Agreement (where applicable to a Mainstream Free School) are no longer being met;
- c) the standards of performance of pupils at the Academy are unacceptably low;
- d) there has been a serious breakdown in the way the Academy is managed or governed;
- e) the safety of pupils is threatened (whether by breakdown of

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discipline or otherwise); or

- f) the Company is otherwise in material breach of the provisions of this Agreement.

5.7B A Termination Warning Notice issued by the Secretary of State in accordance with clause 5.7A shall specify:

- a) reasons for the Secretary of State's issue of the Termination Warning Notice;
- b) the remedial measures which the Secretary of State requires the Company to carry out, with associated deadlines, in order to rectify the defaults identified ("Specified Remedial Measures"); and;
- c) the date by which the Company must respond to the Termination Warning Notice providing its representations with regard thereto and/or confirm that it accepts and agrees to undertake the Specified Remedial Measures.

5.7C The Secretary of State shall consider any response and representations from the Company which are received by the date specified in accordance with clause 5.7Bc) and shall confirm whether he considers that:

- a) in light of the Company's representations in response to the Termination 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 with the specified timeframe; or
- b) 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; or
- c) he is not satisfied that the Company will rectify the defaults identified in the Termination Warning Notice within the specified timeframes. (In such circumstances, the Secretary of State may

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notify the Company of his intention to terminate the Agreement on a specified date.)

5.7D The Secretary of State may by notice in writing terminate this Agreement with effect from a specified date in the event that:

a) the Company has not by the date specified in clause 5.7Bc) responded to the Termination Warning Notice either confirming that it accepts and agrees to undertake the Specified Remedial Measures or providing its representations with regard to the Specified Remedial Measures; or

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

provided that having considered any representations made by the Company pursuant to clause 5.7Bc), the Secretary of State remains satisfied that it is appropriate to terminate the Agreement

Notice of Intention to Terminate

5.7E The Secretary of State may at any time give written notice of his intention to terminate the 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 –

(a) special measures are required to be taken in relation to the Academy;
or

(b) the Academy requires significant improvement.

5.7F Any notice issued by the Secretary of State in accordance with clause 5.7E shall invite the Company to respond with any representations within a specified timeframe.

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

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(a) he has not received any representations from the Company within the timeframe specified in clause 5.7F; or

(b) having considered the representations made by the Company pursuant to clause 5.7F, the Secretary of State remains satisfied that it is appropriate to terminate this Agreement

he may by notice in writing terminate this Agreement, such termination to take effect from the date of the notice.

5.8 Not used.

5.9 Not used.

5.10 Not used.

5.11 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 such termination to take effect on the date of the notice.

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 other 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.

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- 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, 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 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, 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 any educational purpose 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
 - (a) 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,

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or, by agreement with the Secretary of State, at the date of subsequent disposal of those assets. Such percentage to be the same as the percentage of the capital contribution made by the Secretary of State to the original value of those assets, whether that contribution was made on the establishment of the Academy or later.

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

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

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

6.7 The sale or disposal by other means of publicly funded land held for the purposes of an Academy is now governed by Part 3 of Schedule 1 to the Academies Act 2010..

7 **ANNEX**

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

8 **GENERAL**

8.1 This Agreement shall not be assignable by the Company.

8.2 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 conferred on him by this Agreement shall be or be deemed to be a waiver of such provision or right or a waiver of any other provision or right or shall in any way prejudice any right of the Secretary of State under this Agreement or shall amount to an election not to enforce such provision or exercise such right (including, for the avoidance of doubt, any right to terminate this Agreement).

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- 8.3 Termination of this Agreement, for any reason, shall not affect the accrued rights, remedies, obligations or liabilities of the parties existing at termination.
- 8.4 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. THE MASTER AGREEMENT

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

10 ENGLISH LAW

- 10.1 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.
- 10.2 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).

LAND

Debt

10A) Not used.

Restrictions on Land transfer

10B) In consideration that it has or will be obtaining legal interests in the Land, such acquisition being financed by the Secretary of State, the Company:

- a) shall, within 28 days from the grant of the Leases, 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 is to be registered without a written consent signed by the Secretary of State for Education of Sanctuary Buildings, Great Smith Street, London SW1P.

- b) shall take any further steps reasonably required to ensure that the restrictions referred to in clause 10B(a) are entered on the proprietorship register,
- c) shall provide the Secretary of State with confirmation of the entry of the restrictions referred to in clause 10B(a) as soon as reasonably practicable after it receives notification from the Land Registry,
- d) in the event that it has not registered the restrictions referred to in clause 10B(a), hereby consents to the entering of the restriction[s]

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referred to in 10B(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 10B(a) or 10B(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

10C) (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 Leases. 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.

10C)(ii) The Company shall observe and comply with its obligations under the Leases and shall promptly enforce its rights against the Landlord.

10C)(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 Leases; 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

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it; and / or

- e) enter into any onerous or restrictive obligations affecting the Land or any part of it.

10C) iv) The Company agrees that prior to taking any steps, including but not limited to the service of any notice or waiver of any condition, under any contractual arrangement entered into in respect of the acquisition of the legal interest in the Land, it shall seek and obtain the written consent of the Secretary of State, not to be unreasonably withheld or delayed.

Insurance

10D) The Company shall, save where the terms of the Leases 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 Leases 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

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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

10E) In consideration that it has or will be obtaining legal interests in the Land, such acquisition being financed by the Secretary of State, the Company hereby grants and the Secretary of State hereby accepts options, exercisable by the Secretary of State or his nominee, to take assignment of one or more of the Leases pertaining to the said Land at nil consideration. The options hereby granted shall be exercisable (by notice in writing by or on behalf of the Secretary of State) on the termination of this Funding Agreement for whatever cause or in circumstances where the Company is unable to use all or part of the Land as the permanent site of the Academy in accordance with clauses 10H. On the exercise of these options, 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.

10F) In consideration that it has or will be obtaining legal interests in the Land, such acquisition being financed by the Secretary of State, the Company:

- a) shall, within 14 days from the grant of the Leases or the signing of this Agreement, whichever is the latter, apply to the Land Registry in Form AN1 as prescribed by Rule 81 of the Land Registration Rules 2003 for notices to be entered in the register (under section 34(3)(a) of

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the Land Registration Act 2002) to protect the options granted under clause 10E and including a copy of this Agreement as evidence of those options,

b) shall take any further steps required to ensure that the notices referred to in clause 10F(a) is entered on the proprietorship register,

c) shall provide the Secretary of State with confirmation of the entry of the notices referred to in clause 10F(a) as soon as practicable after it receives notification from the Land Registry,

d) in the event that it has not registered the notices referred to in clause 10F(a), hereby consents to the entering of the notices referred to in 10F(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 10F(a) or 10F(d) above, whether by itself, a holding company, a subsidiary company, or a receiver, administrator or liquidator acting in the name of the Company, and

f) in the case of previously unregistered land, for the further protection of the options granted in Clause 10E the Company shall within 14 days of the grant of the Leases or the signing of this Agreement, whichever is the latter, make applications 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

10G) Not used.

Failure to use the Land for the purposes of the Academy

10H) If the Company is unable to use the Land or any part thereof as the permanent site of the Academy but the Secretary of State agrees not to terminate this Agreement on that basis, the Secretary of State may give notice to the Company that he intends to exercise the option granted under clause 10E) to require an assignment of the Lease or Leases for nil consideration to himself or his nominee.

Sharing of the Land

10I) The Company agrees that if:

- a) the Academy does not reach its planned capacity over a period of 5 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

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

10J) Not used.

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10K) Not used.

10L) Not used.

10M) Not used.

Payment of Debt

10N) Not used.

10O) Not used.

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This Agreement was executed as a Deed
on 2013

Executed on behalf of Nishkam School Trust by:

.....
Director

.....
Director/Secretary

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

.....

Duly Authorised

ANNEXES TO THIS SUPPLEMENTAL AGREEMENT

Requirements for the Admission for pupils at the
Academy

Annex 1

[Plans of the Land

Annex 2]

Annex 1

Requirements for the Admissions of Pupils at Nishkam Primary School (“the Academy”)

GENERAL

1. This Annex may be amended in writing at any time by agreement between the Secretary of State and the Nishkam School Trust (“the Company”).

2. Except as provided in paragraphs 2A to 3 below the (“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 governing body of the Company.

2A The Company is permitted to determine admission arrangements (subject to consultation in accordance with the School Admissions Code) that give priority for admission (but not above looked after children and previously looked after children¹) to other children attracting the pupil premium, including the service premium (‘the pupil premium admission criterion’). Where the Company exercises this freedom it will provide information in its admission arrangements of eligibility for the premiums.

2B For the purposes of applying the pupil premium admission criterion only, sections 1.9(f) and 2.4(a) of the School Admissions Code (2012) do not apply insofar as they prevent admission authorities from giving priority to children according to the financial or occupational status of parents or using supplementary forms that ask for:

- (a) any personal details about their financial status; or
- (b) whether parents are serving in the armed forces (of any nation), stationed in England, and exercising parental care and responsibility for the child in question.

3. Notwithstanding the generality of paragraph 2 of this Annex, the Company will not participate in the co-ordinated admission arrangements operated by the LA for the first year of opening but will participate in such arrangements operated by the LA in subsequent years and the local Fair Access Protocol.

4. Notwithstanding any provision in this Annex, the Secretary of State may:

¹ As defined in the School Admissions Code.

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- (a) direct the Company to admit a named pupil to the Academy on application from a LA. This will include complying with a School Attendance Order². Before doing so the Secretary of State will consult the Company.
- (b) direct the Company to admit a named pupil to the Academy 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 Admission Appeals Code.

4A Nishkam Primary School is a Sikh faith Academy. The relevant faith body is the Guru Nanak Nishkam Sewak Jatha (GNNSJ)

Note: This is the body which (a) has to be consulted on admission arrangements (b) has the right to issue guidance on the adoption of faith criteria and (c) has the right of objection to admission arrangements.

5. The Company shall ensure that parents and ‘relevant children³’ 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 as it applies to Foundation and Voluntary Aided schools. The determination of the appeal panel is binding on all parties.

Relevant Area

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

² 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.

³ 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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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 Academy will:

- a. subject to its right of appeal to the Secretary of State in relation to a named pupil, admit all pupils with a statement of special educational needs naming the Academy;
- b. adopt admission oversubscription criteria that give highest priority to looked after children, in accordance with the relevant provisions of the School Admissions Code.
- c. adopt admission criteria that provide that, if oversubscribed, at least 50% of its places available each year will be allocated without reference to any faith-based admission criteria.

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 group⁴. The Company will consult on its admission arrangements and determine them in line with the requirements within the School Admissions Code.

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

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

⁴ 'Relevant age group' means 'normal point of admission to the school: for example, year R, Year7 and Year 12.

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