

SCHEDULE 1

SUPPLEMENTAL FUNDING AGREEMENT

THIS AGREEMENT made 28th March 2014

BETWEEN

(1) THE SECRETARY OF STATE FOR EDUCATION; and

(2) SOUTH EAST ESSEX ACADEMY TRUST

IS SUPPLEMENTAL TO THE MASTER FUNDING AGREEMENT made between the same parties and dated 28th March 2014 (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:

"Academy" means Westcliff High School for Girls established at Kenilworth Gradens, Westcliff-on-Sea, Essex, SS0 0BS.

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

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 save that clauses 12 and 18 of the Master Agreement do not apply in so far as they require the Academy to be an all ability inclusive school as the

Academy is a "selective school" within the meaning of Section 6(4) of the Academies Act 2010.

2.2 The curriculum provided by the Academy to pupils up to the age of 16 shall be broad and balanced.

2.3 The requirements for the admission of pupils to the Academy are set out at Annex 1 and the procedure for the removal of the Academy's selective admission arrangements are set out at Annex 2.

ACADEMY OPENING DATE

2.4 The Academy opened as a school on 1 March 2011 replacing Westcliff High School for Girls which ceased to be maintained by the Local Authority on that date, which date was the conversion date within the meaning of the Academies Act 2010.

2.5 The planned capacity of the Academy is 1110 in the age range 11-18, including a sixth form of 340 places.

3 CAPITAL GRANT

3.1 Pursuant to clause 38 of the Master 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 Not used.

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 2021 or any subsequent anniversary of that date.

Termination Warning Notice

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 he considers that:

- a) 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);
- b) the conditions and requirements set out in clauses 13-34B of the Master Agreement 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 or staff is threatened (whether by breakdown of discipline or otherwise); or
- f) the Company is otherwise in material breach of the provisions of this Agreement or the Master Agreement.

5.3 A Termination Warning Notice issued by the Secretary of State in accordance with clause 5.2 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 or confirm that it accepts and agrees to undertake the Specified Remedial Measures.

5.4 The Secretary of State shall consider any response and representations from the Company which are received by the date specified in accordance with clause 5.3(c) and shall confirm whether he considers that:

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

5.5 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 5.3(c), 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 Academy Trust pursuant to clause 5.3(c), the Secretary of State remains satisfied that it is appropriate to terminate the Agreement.

Notice of Intention to Terminate

5.6 The Secretary of State may at any time give written notice 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 –

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

(b) the Academy requires significant improvement.

5.7 Any notice issued by the Secretary of State in accordance with clause 5.6 shall invite the Company to respond with any representations within a specified timeframe.

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 –

- (a) he has not received any representations from the Company within the timeframe specified in clause 5.7; or
- (b) having considered the representations made by the Company pursuant to clause 5.7, the Secretary of State remains satisfied that it is appropriate to terminate this Agreement

he may by notice in writing 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 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 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 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 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.

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. 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, 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.

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 clauses 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, 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 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

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

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

- a) the Company obtains his permission to invest the proceeds of sale for its charitable objects; or
- b) the Secretary of State directs all or part of the repayment to be paid to the LA.

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 **ANNEXES**

7.1 The Annexes to this Agreement forms part of and are 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 Not used.

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 deed 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).

This Agreement was executed as a Deed on

28th March

2014

Executed on behalf of SOUTH EAST ESSEX ACADEMY TRUST by:

Pam Hyma

[Signature]

Pam Hyman,

Director

Director/Secretary

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

.....*W Churchill*

Duly Authorised

ANNEX TO THIS SUPPLEMENTAL FUNDING AGREEMENT

Requirements for the Admission for pupils at the Academy

Annex 1

Removal of Academy's selective admission arrangements

Annex 2



Annex 1

REQUIREMENTS FOR THE ADMISSION OF PUPILS TO WESTCLIFF HIGH SCHOOL FOR GIRLS

GENERAL

1. This annex may be amended in writing at any time by agreement between the Secretary of State and the Company.
2. Except as provided in paragraphs 2A to 2B below 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.

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 a 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 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:

- any personal details about their financial status; or
- 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 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 Westcliff High School

¹ As defined in the School Admissions Code.

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for Girls on application from an 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 Westcliff High School for Girls 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.

4A Westcliff High School for Girls is a former maintained grammar school designated as such under section 104 of the School Standards and Framework Act 1998 and the Education (Grammar School Designation) Order 1998. As such it is permitted to continue to select its intake by reference to ability.

Annex 2 to the relevant supplemental funding agreement will set out the procedures for removing selective arrangements.

5. The Company shall ensure that parents and 'relevant children'³ 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.

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

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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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 for the Academy that give highest priority to looked after children and previously looked after children, in accordance with the relevant provisions of the School Admissions Code.

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

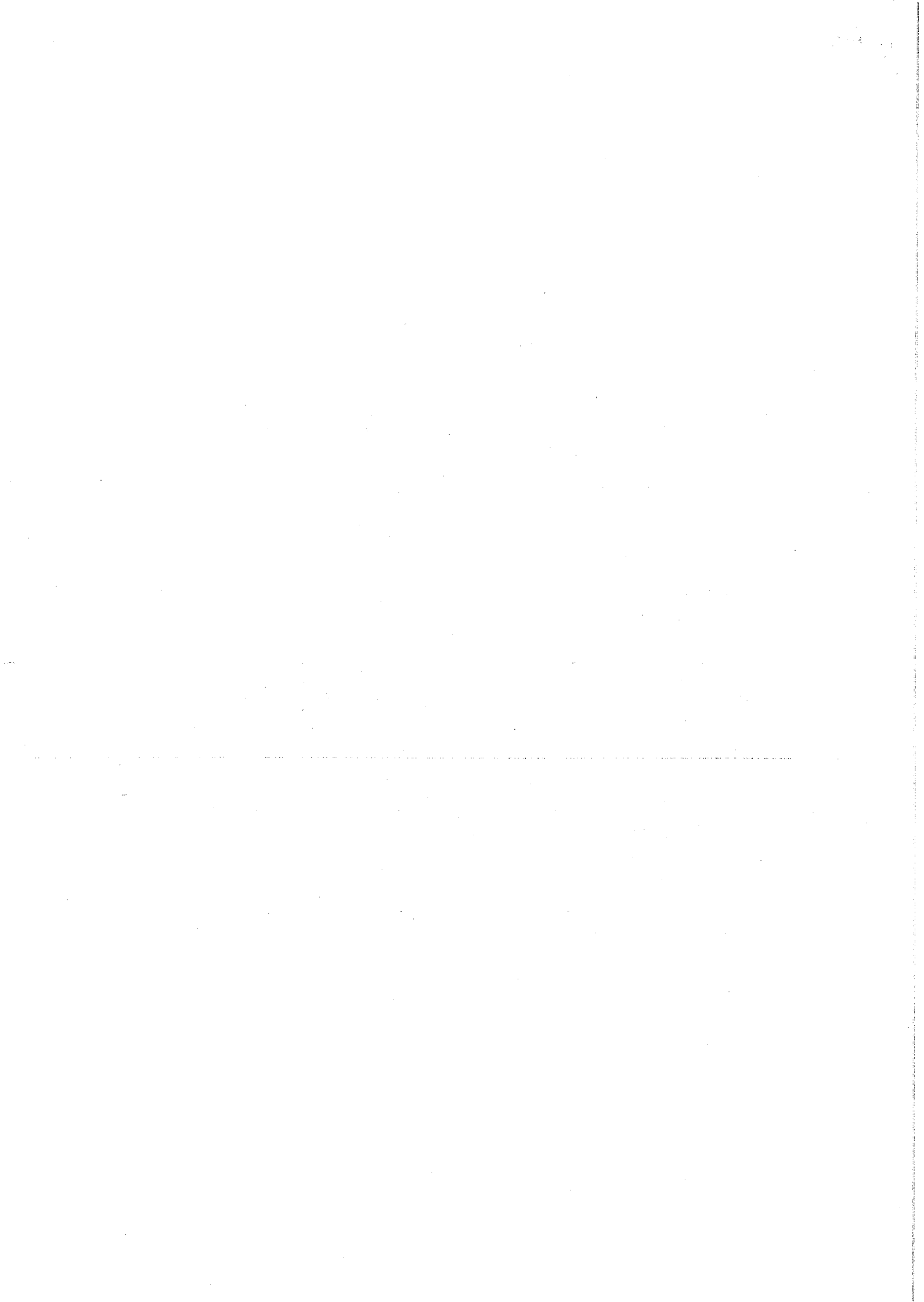
10. The Academy admission arrangements will include oversubscription criteria, and an admission number for each relevant age group⁴. The Company will consult on the Academy's admission arrangements and determine them in line with the requirements within the School Admissions Code.

11. The Office of the School's Adjudicator (OSA) will consider objections to the Academy's admission arrangements⁵. 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.

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

⁵ The OSA has no jurisdiction to consider objections against the agreed variation from the Codes set out in paragraphs 2A and 2B.



Annex 2

Removal of selection at wholly selective Academies.

1. This annex applies to any Academy which was designated as a grammar school under the Education (Grammar School Designation) Order 1998 – or subsequent designation orders made under section 104 of the School Standards and Framework Act 1998- prior to their entering into Academy arrangements with the Secretary of State under section 1 of the Academies Act 2010.

Proposals by the Company to remove selection

2. Where a Company for a wholly selective Academy wishes to remove the Academy's selective admission arrangements they will follow the process set out below.

3. The Company will ballot all parents of registered pupils at the school on the question 'are you in favour of the Academy removing selection by ability and introducing admission arrangements which admit children of all abilities?'

4. If a simple majority of parents vote to remove selection, the Academy will determine admission arrangements that do not provide for selection by ability.

5. The ballot must allow parents a minimum of five weeks within which to vote. The ballot must be initiated prior to 25 January and the ballot result must be declared by 1 March in the determination year¹.

6. If a ballot is in favour of the removal of selection, non selective admission arrangements must be determined by 15 April in the determination year.

7. If a ballot does not vote in favour of the removal of selection the Company must retain the Academy's selective admission arrangements.

Parental Ballots to remove selection.

8. There are three ways of removing selection at wholly selective Academies via a parental ballot.

9. The arrangements are changed as result of a **whole area ballot**², ("area ballot"), the Academy in question is subject to a **stand alone ballot**³ or

¹ A 'determination year' is the Academy Financial Year beginning two years before the Academy Financial Year which the admissions arrangements will be for e.g. consultation to end in March 2011 and determination to be in April 2011 for admissions in September 2012

² A "whole area ballot" has the same meaning as an "area ballot" (as defined by regulation 11(2) of the Ballot Regulations: a ballot which relates to all grammar schools within a relevant area.)

³ A "stand alone ballot" is a ballot which relates to a stand alone grammar school as defined in

Annex to Supplemental Funding Agreement

where the school is subject to a **group ballot**⁴.

10. The **moratorium period** set out in regulation 16 of the Ballots Regulations will apply. That is, where the result of a ballot is that the grammar schools in a selective area, or the Academy in a stand-alone ballot to which the ballot relates should retain selective admission arrangements, no further ballot shall be held or petition raised within the period of 5 years from the ballot result date. This moratorium does not apply to the procedures in paragraphs 2-7 of this annex.

11. Westcliff High School for Girls is subject to the result of a whole-area ballot concerning the grammar schools in **Southend**.

Academies subject to the result of whole area ballots.

12. Where the Academy is located within the local authority areas set out under regulation 2(1) and schedule 1 to the Ballots Regulations (**Bexley, Buckinghamshire, Kent, Lincolnshire, Medway, Slough, Southend, Torbay, Trafford or Sutton and Nonsuch Ward**) and would thus, prior to becoming an Academy, have been subject to any ballot on selective admission arrangements in that area, if there is a ballot of parents, under the provisions of the Ballot Regulations, within those areas, the Academy must abide by the result of the ballot .

13. Where the result of the whole area ballot is to remove selection, the Academy will determine non-selective admission arrangements by the date set out in paragraph 14 of this Annex. If the ballot does not vote in favour of removal of selection the Company must retain the Academy's selective admission arrangements.

Implementation of decision that an Academy should cease to have selective admission arrangements

14. In the case of a successful ballot, the Company will secure that their admission arrangements are revised so that the Academy no longer has selective admission arrangements.

- a. where the ballot result date is on or before 31st December in any school year – or where the Secretary of State has chosen not to declare a ballot void -, it will determine non selective admission arrangements by the date in paragraph 6 of this annex; and
- b. where the ballot result date is after 31st December in any school year, it will determine non selective admission arrangements in the following determination year, by the 15 April

regulation 11(1)(c) of the Ballots Regulations.

⁴ A 'group ballot' is a ballot which relates to a prescribed group of schools as set out in Schedule 2 to the Education (Grammar School Ballots) Regulations 1998