

Catholic Multi Academy Model
Mainstream

SCHEDULE 1

MODEL SUPPLEMENTAL AGREEMENT

THIS AGREEMENT made 27 March 2013

BETWEEN

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

(2) **THE DOMINIC BARBERI MULTI ACADEMY COMPANY**

IS SUPPLEMENTAL TO THE MASTER FUNDING AGREEMENT made between the same parties and dated 27 March 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 St Thomas More Catholic Primary School established at Oxford Road, Kidlington, Oxford, OX5 1EA;

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

"Early Years Provision" has the meaning as that given it by section 20 Childcare Act 2006;

"Founder Member" means the Barberi & Newman Academy Trust (company number 8183803); and

"SSFA" means the Schools Standards and Framework Act 1998.

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

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2 THE ACADEMY

- 2.1 The Company will establish and maintain, and carry on or provide for the carrying on of the Academy in accordance with the Master Agreement and this Agreement.
- 2.2 The curriculum provided by the Academy to pupils up to the age of 16 shall be broad and balanced.
- 2.3 The requirements for the admission of pupils to the Academy are set out at Annex 1.

ACADEMY OPENING DATE

- 2.4 The Academy shall open as a school on 1 April 2013 replacing St Thomas More 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 262 in the age range 3-11, including a nursery unit of 52 places.

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 shall before issuing a notice pursuant to clauses 5.1, 5.2, 5.7 and/or 5.16, notify the Founder Member that he intends to take such action giving his reasons for such action and he shall allow the Founder Member a reasonable opportunity to make representations regarding such action and to take action to remedy any failing of the Company to which the

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Secretary of State shall have due regard before finally taking any action referred to in clauses 5.1, 5.2, 5.7 and/or 5.16.

- 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 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 If the Secretary of State is of the opinion that the Academy no longer has the characteristics set out in clause 12 of the Master Agreement or that the conditions and requirements set out in clauses 13-34B of the Master Agreement are not being met, or that the Company is otherwise in material breach of the provisions of this Agreement or the provisions in the Master Agreement with respect to this Academy, or on the receipt of an application from the Founder Member, the Secretary of State may give notice of his provisional intention to terminate this Agreement and such notice shall be copied to the Founder Member.
- 5.3 Any such notice referred to in clause 5.2 shall be in writing and shall:
- 5.3.1. state the grounds on which the Secretary of State considers the Academy no longer has the characteristics set out in clause 12 of the Master Agreement or is not meeting the conditions and requirements of clauses 13-34B of the Master Agreement or the Company is otherwise in material breach of the provisions of this Agreement or the provisions in the Master Agreement with respect to this Academy;
 - 5.3.2. specify the measures needed to remedy the situation or breach;
 - 5.3.3. specify a reasonable date by which these measures are to be implemented;
 - 5.3.4. state the form in which the Company is to provide its response and a reasonable date by which it must be provided; and
 - 5.3.5. be copied to the Founder Member.
- 5.4 If no response is received by the date specified in accordance with clause 5.3.4, the Secretary of State may give the Company 12 months, or such

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lesser period as he considers appropriate in the circumstances, written notice to terminate this Agreement and such notice shall be copied to the Founder Member.

5.5 If a response is received from either of the Company and/or the Founder Member by the date specified in accordance with clause 5.3.4, the Secretary of State shall consider it, and any representations made by or on behalf of the Company, and shall, within three months of its receipt, indicate that:

5.5.1. he is content with the response and/or that the measures which he specified are being implemented and his intention to terminate this Agreement is withdrawn; or

5.5.2. he is content, subject to any further measures he reasonably specifies being implemented by a specified date or any evidence he requires that implementation of such measures have been successfully completed and his intention to terminate this Agreement is withdrawn; or

5.5.3. he is not satisfied, that he does not believe that he can be reasonably satisfied, and that he will proceed to terminate the Agreement.

5.6 In the circumstances of clause 5.5.3 the Secretary of State shall notify the Company copied to the Founder Member why he believes that he cannot be reasonably satisfied and, if so requested by the Company and/or the Founder Member, within thirty days from such notification, he shall 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 Academy does not and will not have the characteristics set out in clause 12 of the Master Agreement or does not and will not meet the conditions and requirements set out in clauses 13-34B of the Master Agreement or the Company is in material breach of the provisions of this Agreement or of the provisions in the Master Agreement in respect of this Academy and such breach will not be remedied to his reasonable satisfaction, he shall give the Company twelve months written notice to terminate this Agreement and such notice shall be copied to the Founder Member.

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- 5.7 If the Secretary of State has cause to serve a notice on the Company under section 165 of the Education Act 2002 and a determination (from which all rights of appeal have been exhausted) has been made that the Academy shall be struck off the Register of Independent Schools, the period of twelve months notice referred to in clause 5.6 may by written notice issued to the Company copied to the Founder Member be shortened to a period deemed appropriate by the Secretary of State..
- 5.8 The Secretary of State shall, at a date preceding the start of each Academy Financial Year, provide to the Company an indication of the level of funding to be provided by the Secretary of State to the Company by way of GAG and EAG in the next following Academy Financial Year (the "**Indicative Funding**"). If the Company is of the opinion that, after receipt of the Indicative Funding for the next following Academy Financial Year (the "**Critical Year**") and 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.
- 5.9 Any notice given by the Company under clause 5.8 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 5.8 above, within six weeks after the Secretary of State shall have done so. The notice given by the Company pursuant to clause 5.8 must specify:
- 5.9.1. the grounds upon which the Company's opinion is based and include the evidence of those grounds and any professional accounting advice the Company has received and including a detailed statement of steps which the Company proposes to take with a view to ensuring that as

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soon as reasonably practicable the costs of running the Academy are reduced sufficiently to ensure that such costs are less than the Indicative Funding and All Other Resources and the period of time within which such steps will be taken; and

- 5.9.2. the shortfall in the Critical Year between the Indicative Funding and All Other Resources expected to be available to the Company to run the Academy and the projected expenditure on the Academy; and
 - 5.9.3. a detailed budget of income and expenditure for the Academy during the Critical Year (the "**Projected Budget**").
- 5.10 Both the Company and the Secretary of State 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 those 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 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.
- 5.11 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

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- be appointed by the President for the time being of the Institute of Chartered Accountants in England and Wales. The Expert's fees shall be borne equally between the parties.
- 5.12 The Expert shall be required in reaching his determination to take account of advice from an educational specialist who is professionally familiar with the issues arising from the budget management of large schools. If the parties fail to agree upon the appointment of the educational specialist then the educational specialist shall be appointed by the Chairman for the time being of the Specialist Schools and Academies Trust. The educational specialist's fees shall be borne equally between the parties.
- 5.13 If the Expert determines that the cost of running the Academy during the Critical Year would cause the Company, on the basis of the Indicative Funding and All Other Resources, to become insolvent, the Secretary of State shall provide sufficient additional funding to cover the Shortfall and in accordance with the Master Agreement.
- 5.13A 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 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.
- 5.14 [Number not used].
- 5.15 The Secretary of State may at any time by notice in writing terminate this Agreement forthwith if the Academy has ceased (except where such cessation occurs temporarily by reason of an event beyond the reasonable control of the Company) to operate as an Academy within the meaning of section 1 of the Academies Act 2010.
- 5.16 A "Special Measures Termination Event Occurs" when:

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- 5.16.1 the Chief Inspector gives a notice to the Company in accordance with section 13(3) of the Education Act 2005 (the "Special Measures Notice") stating that in his opinion special measures are required to be taken in relation to the Academy; and
- 5.16.2 the Chief Inspector carries out a subsequent inspection of the Academy in accordance with the Education Act 2005 and makes a report in accordance with the Education Act 2005 stating that the Academy has made inadequate progress since the date of the Special Measures Notice; and
- 5.16.3 the Secretary of State shall have requested the Company to deliver within 10 Business Days a written statement (a "Further Action Statement") of the action the Company proposes to take, and the period within which it proposes to take such action, or, if it does not propose to take any action, the reasons for not doing so; and
- 5.16.4 the Secretary of State, having considered the Further Action Statement, is not satisfied that any action proposed to be taken by the Company is sufficient in all the circumstances, or, if no Further Action Statement shall have been given to the Secretary of State within the requested timeframe or otherwise.
- 5.17 If a Special Measures Termination Event occurs, the Secretary of State may:
- 5.17.1 subject to clause 5.1A, by notice in writing to the Company copied to the Founder Member terminate this Agreement forthwith; or
- 5.17.2 subject to clause 102 of the Master Agreement, and after consultation with the Founder Member appoint such Further Directors to the Company as he thinks fit in accordance with the Articles and/or may provide up to 12 months' notice in writing to terminate this Agreement and such notice shall be copied to the Founder Member; and
- 5.17.3 in exercising his rights under the Articles of Association, the Secretary of State shall have regard to the Object and to the importance of preserving and developing the Catholic character of the Academy in any appointments he makes.

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5.18 [Number not used].

5B In the event of any termination of this Agreement under clause 5.8 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 SSFA 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 section 1 of the Academies Act 2010.

6.2 Subject to clause 6.3, if the Secretary of State terminates this Agreement for reasons other than that a Special Measure Termination Event occurs, the Academy no longer has the characteristics set out in clause 12 of the Master Agreement, or is no longer meeting the conditions and requirements set out in clauses 13-34B of the Master Agreement or that the Company is otherwise in material breach of the provisions of this Agreement or the Master Agreement, the Secretary of State shall indemnify the Company.

6.3 The amount of any such indemnity shall be determined by the Secretary of State having regard to any representations made to him by the Company, 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 indemnify the Company include (but not by way of limitation), staff compensation and redundancy payments, compensation payments in respect of broken contracts, expenses of disposing of assets or adapting them for other purposes, legal and other professional fees, and dissolution expenses.

6.5 Subject to clause 6.6 of this Agreement and clauses 78A and 83A of the Master Agreement, on the termination of this Agreement however occurring,

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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 educational purposes by that nominee. The proportion of the assets to be transferred shall be the same as the proportion of the capital contribution made by the Secretary of State to the original value of those assets, whether that contribution was made on the establishment of the Academy or later;
or
 - 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.
- 6.7 The sale or disposal by other means of publicly funded land held for the purposes of an Academy is 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

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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),

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

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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.

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 its registered office address 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.

9 **ENGLISH LAW**

9.1 This Agreement shall be governed by and interpreted in accordance with English law.

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This Agreement was executed as a Deed on 27 March 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 Thomas More Catholic Primary School

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

¹ As defined in the School Admissions Code.

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- 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 St Thomas More Catholic Primary School on application from an LA. This will include complying with a School Attendance Order. Before doing so the Secretary of State will consult the Company;

(b) direct the Company to admit a named pupil to St Thomas More Catholic Primary School 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 St Thomas More Catholic Primary School is a faith Academy in the Catholic Archdiocese of Birmingham.

5. The Company shall ensure that parents and 'relevant children' 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. A Panel's decision that child shall be admitted is binding.

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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 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 group. The

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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 arrangements. 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.