

UNITED LEARNING TRUST

**DEED OF NOVATION AND VARIATION
OF THE
SUPPLEMENTAL FUNDING AGREEMENT
FOR
RICHARD ROSE MORTON ACADEMY**

Dated

2014

The Parties to this Deed are:

(1) **THE SECRETARY OF STATE FOR EDUCATION** of Sanctuary Buildings, Great Smith Street, London SW1P 3BT (the "Secretary of State");

(2) **UNITED LEARNING TRUST**, a charitable company incorporated in England and Wales with registered company number 04439859 whose registered address is at Fairline House, Nene Valley Business Park, Oundle, Peterborough, PE8 4HN ("IAT"); and

(3) **THE RICHARD ROSE TRUST**, a charitable company incorporated in England and Wales with registered company number 06422085 whose registered address is at The Richard Rose Morton Academy, Wigton Road, Carlisle, CA2 6LB (the "Company"),

together referred to as the "Parties".

INTRODUCTION

- A. Richard Rose Morton Academy is an academy within the meaning of the Academies Act 2010 (the "academy") and is currently operated by the Company (a multi academy trust).
- B. The Secretary of State and the Company entered into a Supplemental Funding Agreement on 1 July 2008 (the "**Agreement**") for the maintenance and funding of the academy (attached as Schedule 1).
- C. It is proposed that, with effect from 23.59 am on 31 August 2014 ("Transfer Date"), IAT will assume responsibility for the management and operation of the academy in succession to the Company.
- D. The Parties wish to novate the Agreement to IAT and the Secretary of State and IAT wish to vary the terms of the Agreement subject to the provisions of this Deed.

LEGAL AGREEMENT

1. Any word or phrase used in this Deed shall, if that word or phrase is defined in the Agreement, bear the meaning given to it in the Agreement.
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NOVATION

2. The Company transfers all its rights and obligations under the Agreement to IAT with effect from the Transfer Date. With effect from the Transfer Date, IAT shall enjoy all the rights and benefits of the Company under the Agreement and all references to the Company in the Agreement shall be read and construed as references to IAT.
3. The references in the Agreement to the Master Funding Agreement between the Company and the Secretary of State shall be read as a reference to the Master Funding Agreement between the IAT and the Secretary of State.
4. With effect from the Transfer Date, IAT agrees to perform the Agreement and be bound by its terms in every way as if it were the original party to it in place of the Company.
5. With effect from the Transfer Date, The Secretary of State agrees to perform the Agreement and be bound by its terms in every way as if IAT were the original party to it in place of the Company.

OBLIGATIONS AND LIABILITIES

6. With effect from the Transfer Date, the Company and the Secretary of State release each other from all future obligations to the other under the Agreement.
7. Each of the Company and the Secretary of State release and discharge the other from all claims and demands under or in connection with the Agreement arising after the Transfer Date.
8. Each of IAT and the Secretary of State will have the right to enforce the Agreement and pursue any claims and demands under the Agreement against the other with respect to matters arising before, on or after the date of this Deed as though IAT were the original party to the Agreement instead of the Company.

INDEMNITY

9. The Company agrees to indemnify IAT against any losses, liabilities, claims, damages or costs that IAT suffers or incurs under or in connection with the Agreement as a result
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of the Company's failure to perform or satisfy its obligations under the Agreement on or before the Transfer Date.

10. IAT agrees to indemnify the Company against any losses, liabilities, claims, damages or costs the Company suffers or incurs under or in connection with the Agreement as a result of IAT's failure to perform or satisfy its obligations under the Agreement on or after the Transfer Date.

VARIATION

11. The Secretary of State and IAT agree that with effect from the Transfer Date the Agreement shall be amended and restated so as to take effect in the form set out in Schedule 2 to this Deed.

12. As varied by this Deed, the Agreement shall remain in full force and effect.

13. This Deed shall be governed by and interpreted in accordance with English law.

14. The Parties irrevocably agree that the courts of England and Wales shall have exclusive jurisdiction to settle any dispute or claim that arises out of, or in connection with, this deed or its subject matter or formation (including non-contractual disputes or claims).

COUNTERPARTS

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

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

EXECUTED as a deed by affixing the corporate seal)
of **THE SECRETARY OF STATE FOR EDUCATION**)
authenticated by:-)

[Handwritten Signature]

Duly authorised by the **SECRETARY OF STATE FOR EDUCATION**

Date ~~29/8/14~~



EXECUTED as a deed by
UNITED LEARNING TRUST
acting by one director in the
presence of a witness:

Director *[Handwritten Signature]*

Print name JON COLES

Date 20/8/2014

Witness *[Handwritten Signature]*

Print name JESSE STEPHENS

Address 55A CAVENDISH RD N41R

Occupation PROJECT MANAGER

EXECUTED as a deed by **THE
RICHARD ROSE TRUST**
acting by one director in the
presence of a witness:

Director 

Print name GRAHAM HARNEY-BROWNE

Date 20/8/14

Witness 

Print name JESSE STEPHENS

Address 55A CAVENDISH RD, N4 1 RR

Occupation PROJECT MANAGER

Schedule 1
Supplemental Funding Agreement

THIS AGREEMENT made

2008

BETWEEN

(1) THE SECRETARY OF STATE FOR CHILDREN, SCHOOLS AND FAMILIES; and

(2) RICHARD ROSE TRUST

IS SUPPLEMENTAL TO THE MASTER FUNDING AGREEMENT made between the same parties and dated • 2008 (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 Richard Rose Morton Academy to be established at Wigton Road, Carlisle, Cumbria, CA2 6LB.

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

"EA 2005" means the Education Act 2005;

"Minimum Period" means a period determined according to the following table:

If at the time the Special Measures Notice is given the Academy shall have been opened for:	The Minimum Period will be
Less than 12 months	36 months
Less than 24 months but 12 months or more	24 months
24 months or more	12 months

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 Sponsor the Academy.
- 2.2 The specialism of the Academy will be Science and Creative Arts.
- 2.3 The arrangements for admission of pupils to the Academy are set out at Annex 1.
- 2.4 The Academy is intended to open on 1 September 2008.
- 2.5 The planned final pupil number of the Academy is 1150

3 GAG AND EAG

The Secretary of State agrees to pay GAG and EAG to the Company in relation to the Academy in accordance with the Master Agreement.

4 TERMINATION

- 4.1 Either party may give not less than seven years' written notice to terminate this Agreement, such notice to expire on 31 August 2016 or any subsequent anniversary of that date.
- 4.2 If the Secretary of State is of the opinion that the Academy no longer has the characteristics set out in clause 13 of the Master Agreement or that the conditions and requirements set out in clauses 14-59 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 Master Agreement, the Secretary of State may give notice of his provisional intention to terminate this Agreement.
- 4.3 Any such notice shall be in writing and shall:
 - 4.3.1. state the grounds on which the Secretary of State considers the Academy no longer has the characteristics set out in clause 13 of the Master Agreement or is not meeting the conditions and requirements of clauses 14-59 of the Master Agreement or the Company is otherwise in material breach of the provisions of this Agreement or the Master Agreement;
 - 4.3.2. specify the measures needed to remedy the situation or breach;
 - 4.3.3. specify a reasonable date by which these measures are to be implemented;and

- 4.3.4. state the form in which the Company is to provide its response and a reasonable date by which it must be provided.
- 4.4 If no response is received by the date specified in accordance with clause 4.3.4, the Secretary of State may give the Company 12 months, or such lesser period as he considers appropriate in the circumstances, written notice to terminate this Agreement.
- 4.5 If a response is received by the date specified in accordance with clause 4.3.4, the Secretary of State shall consider it, and any representations made by the Company, and shall, within three months of its receipt, indicate that:
- 4.5.1. he is content with the response and/or that the measures which he specified are being implemented; or
- 4.5.2. 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; or
- 4.5.3. he is not satisfied, that he does not believe that he can be reasonably satisfied, and that he will proceed to terminate the Agreement.
- 4.6 In the circumstances of clause 4.5.3 the Secretary of State shall notify the Company why he believes that he cannot be reasonably satisfied and, if so requested by the Company within thirty days from such notification, he shall meet a deputation including representatives from directors of the Company and the Governing Body 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 13 of the Master Agreement or does not and will not meet the conditions and requirements set out in clauses 14-59 of the Master Agreement or the Company is in material breach of the provisions of this Agreement or the Master Agreement and such breach will not be remedied to his reasonable satisfaction, he shall give the Company twelve months written notice to terminate this Agreement.
- 4.7 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 4.6 may be shortened to a period deemed appropriate by the Secretary of State.

- 4.8 The Secretary of State will, by not later than the end of December each 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 Financial Year (the "Indicative Funding"). If the Company is of the opinion that, after receipt of the Indicative Funding for the next following 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 100 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 Financial Year.
- 4.9 Any notice given by the Company under clause 4.8 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 4.8 above, within six weeks after the Secretary of State shall have done so. The notice must specify:
- 4.9.1. 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 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
 - 4.9.2. 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
 - 4.9.3. a detailed budget of income and expenditure for the Academy during the Critical Year (the "Projected Budget").

- 4.10 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.
- 4.11 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. 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.
- 4.12 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.
- 4.13 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, 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.

- 4.14 If the Company shall have given notice to terminate the Agreement under Error! Reference source not found., the Secretary of State may by notice in writing to the Company require the Company to appoint up to two persons as directors of the Company in accordance with the Articles.
- 4.15 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 482 of the Education Act 1996.
- 4.16 A "Special Measures Termination Event Occurs" when:
- 4.16.1. 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
 - 4.16.2. not less than the Minimum Period after the Special Measures Notice, 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
 - 4.16.3. 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
 - 4.16.4. 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
- 4.17 If a Special Measures Event occurs, the Secretary of State may:
- 4.17.1. by notice in writing to the Company terminate this Agreement forthwith; or

4.17.2. subject to clauses 122A-122E of the Master Agreement, appoint such Further Directors to the Company as he thinks fit in accordance with the Company's Articles and/or may provide up to 12 months' notice in writing to terminate this Agreement.

4.18 In the event that the Secretary of State appoints Further Directors in accordance with clause 4.17.2, the Company must, upon the request of the Secretary of State, procure the resignation of the Sponsor Directors (as defined in the Articles) in accordance with the Company's Articles.

5 EFFECT OF TERMINATION

5.1 In the event of termination of this Agreement however occurring the school shall cease to be an Academy within the meaning of Section 482 of the Education Act 1996.

5.2 If the Secretary of State terminates this Agreement for reasons other than that the Academy no longer has the characteristics set out in clause 13 of the Master Agreement, or is no longer meeting the conditions and requirements set out in clauses 14-59 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.

5.3 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, and shall be paid at such times and in such manner as the Secretary of State may reasonably think fit.

5.4 The amounts and 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.

5.5 On the termination of this Agreement however occurring the Company shall repay to the Secretary of State a sum in respect of the Capital Grant made under clauses 62 and 63 of the Master Agreement.

5.6 The amount to be repaid to the Secretary of State in accordance with clause 5.5 shall be determined in accordance with subclauses 5.6.1 or 5.6.2 as appropriate.

- 5.6.1. Where the Company retains the site and buildings of the Academy the amount to be repaid to the Secretary of State shall be a percentage of the value of the assets belonging to the Company at the date of termination which were purchased wholly or in part with capital grants paid under this agreement. Such percentage to be the same as the percentage of the capital contribution made by the Secretary of State to the original cost of those assets, whether that contribution was made on the establishment of the Academy or later;
- 5.6.2. Where the Company disposes of the site and buildings of the Academy the amount to be repaid to the Secretary of State shall be a percentage of the net proceeds of the realisation of the assets belonging to the Company at the date of termination, which were purchased wholly or in part with capital grants paid under this agreement. 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 than contribution was made on the establishment of the Academy or later.
- 5.7 The Secretary of State may waive in whole or in part the repayment due under clause 5.6 if:
- 5.7.1. The Company obtains his permission to invest the proceeds of sale for its charitable objects; or
- 5.7.2. The Secretary of State directs all or part of the repayment to be paid to the LA.
- 5.8 If any land or premises of the Academy were acquired by the Company from an LA by a scheme under Schedule 35A of the 1996 Act or otherwise at less than the market value of the land at the date of acquisition, and the Secretary of State does not make a scheme as provided for in Schedule 35A (Paragraph 8) of the 1996 Act , the Company may dispose of its interest in that land or premises but only with the consent of the Secretary of State, who shall have regard to any representations from the Company and the LA from which the land was transferred before giving or withholding that consent.

6 ANNEX

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

7 THE MASTER AGREEMENT

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

8 ENGLISH LAW

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

This Agreement was signed on I 3U-cf 2008

SIGNED on behalf of Richard Rose Trust by :

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SIGNED on behalf of the Secretary of State by :

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ANNEX TO THIS SUPPLEMENTAL AGREEMENT

Arrangements for Admission for pupils at the
Academy

Annex 1

Approved Admission Arrangements for Richard Rose Morton Academy

1. This document sets out the admission arrangements for the Richard Rose Morton Academy in accordance with Annex 2 to the Funding Agreement between the Richard Rose Morton Academy and the Secretary of State. Any changes to the arrangements set out in this document must be approved in advance by the Secretary of State. Obligations in this document are to be treated as if imposed by the Funding Agreement.
2. Notwithstanding these arrangements, the Secretary of State may direct the Richard Rose Morton Academy to admit a named pupil to the Richard Rose Morton Academy on application from a LA. Before doing so the Secretary of State will consult the Academy.

I: ADMISSION ARRANGEMENTS APPROVED BY SECRETARY OF STATE

Arrangements for admission to 11-16 Provision

3. The admission arrangements for the Richard Rose Morton Academy for the year 2009/2010 and, subject to any changes approved or required by the Secretary of State, for subsequent years are:
 - a) The Richard Rose Morton Academy has an agreed admission number of 180 pupils. The Richard Rose Morton Academy will accordingly admit at least 180 pupils in the relevant age group each year if sufficient applications are received.
 - b) The Richard Rose Morton Academy may set a higher admission number as its Published Admission Number for any specific year. Before setting an admission number higher than its agreed admission number, the Richard Rose Morton Academy will consult those listed at paragraphs 16-18 below. Pupils will not be admitted above the Published Admission Number unless exceptional circumstances apply and such circumstances shall be reported to the Secretary of State.

Process of application

4. Applications for places at the Academy will be made in accordance with Cumbria County Council's co-ordinated admission arrangements and will be made on the Common Application Form provided and administered by the Cumbria County Council. The Richard Rose Morton Academy will use the following timetable for applications each year (exact dates within the months may vary from year to year) which, whenever possible, will fit in with the common timetable agreed by the Cumbria County Council Admissions Forum or Local Authority.

(Note The following is an example timetable:)

a) By September - The Richard Rose Morton Academy will publish in its prospectus information about the arrangements for admission, including oversubscription criteria, for the following September (e.g. in September 2008 for admission in September 2009). This will include details of open evenings and other opportunities for prospective pupils and their parents to visit the school. The Richard Rose Morton Academy will also provide information to the LA for inclusion in the composite prospectus, as required;

b) September/October - The Richard Rose Morton Academy will provide opportunities for parents to visit the Academy;

c) October/November - CAF to be completed and returned to the LA to administer

d) LA sends applications to Academy

e) Academy sends list of pupils to be offered places to LA

f) February - LA applies agreed scheme for own schools, informing other LA's of offers to be made to their residents.

g) 1st March offers made to parents.

Consideration of applications

5. The Richard Rose Morton Academy will consider all applications for places. Where fewer than the published admission number for any relevant age group are received, the Richard Rose Morton Academy will offer places to all those who have applied.

Procedures where the Richard Rose Morton Academy is oversubscribed

6. Where the number of applications for admission is greater than the published admissions number, applications will be considered against the criteria set out below. After the admission of pupils with statements of Special Educational Needs where the Richard Rose Morton Academy is named on the statement, the criteria will be applied in the order in which they are set out below:

a) children in public care;

b) admission of pupils whose siblings currently attend the school and who will continue to do so on the date of admission; (Note: *The term "sibling" includes those living as siblings in the same family unit on the roll of the Richard Rose Morton Academy and who will still be on the roll at the time of the sibling's admission.*)

c) admission of pupils on the basis of proximity to the school using straight line measurement from the main entrance of the Academy to the

main entrance to the child's home.

Operation of waiting lists

7. Subject to any provisions regarding waiting lists in the LA's co-ordinated admission scheme, the Academy will operate a waiting list. Where in any year the Richard Rose Morton Academy receives more applications for places than there are places available, a waiting list will operate until a month after the admission date. This will be maintained by the Richard Rose Morton Academy and it will be open to any parent to ask for his or her child's name to be placed on the waiting list, following an unsuccessful application.

8. Children's position on the waiting list will be determined solely in accordance with the oversubscription criteria set out in paragraph 6a-c above. Where places become vacant they will be allocated to children on the waiting list in accordance with the oversubscription criteria.

Arrangements for admission to post 16 provision

9. The Richard Rose Morton Academy will publish specific criteria in relation to minimum entrance requirements for the range of courses available based upon GCSE grades or other measures of prior attainment. These criteria are the same for internal and external transfers and will be subject to consultation with those in paragraph 17. All internal applicants who meet the criteria will be admitted to the 6th form, even if this number is greater than the planned admissions number of 125 students per year. The academic entry criteria will be published in the autumn immediately preceding the year of admissions (that is autumn 2008) for September 2009 admissions. The criteria will be included within the academy's prospectus and within the local authority composite admission prospectus.

Where there are more external applicants for the 6th form than places available, the oversubscription criteria in paragraph 6 will be applied to determine who is admitted.

10. There will be a right of appeal to an Independent Appeals Panel for unsuccessful applicants, whether they are internal or external applicants.

Arrangements for admitting pupils to other year groups, including to replace any pupils who have left the Richard Rose Morton Academy

11. Subject to any provisions in the LA's co-ordinated admission arrangements relating to applications submitted for years other than the normal year of entry, the Academy will consider all such applications and if the year group applied for has a place available, admit the child unless one of the permitted reliefs apply. If more applications are received than there are places available, the oversubscription criteria in paragraph 6a-c shall apply. Parents whose application is turned down are entitled to appeal.

12. The Richard Rose Morton Academy will participate in Cumbria County

Council's In-Year Fair Access Protocol.

Arrangements for admission of pupils as the Richard Rose Morton Academy builds to its full capacity

13. The Richard Rose Morton Academy will open on 1 September 2008 with a Published Admission Number relating solely to pupils in Year 7 and, where relevant, Year 12. Pupils in subsequent Years will have been transferred automatically from the predecessor school, Morton School, which will close on 31 August 2008.

14. Admission to Year groups without a Published Admission Number will be based upon the size of teaching groups already existing in the Richard Rose Morton Academy and the efficient use of resources.

15. There will be a right of appeal to an Independent Appeal Panel for unsuccessful applicants.

II: ANNUAL PROCEDURES FOR DETERMINING ADMISSION ARRANGEMENTS

Consultation

16. The Richard Rose Morton Academy will consult by 1 March each year on its proposed admission arrangements:

- a) Cumbria County Council, LA;
- b) The admission forum for Cumbria County Council, LA;
- c) Any other admission authorities for primary and secondary schools located within the relevant area for consultation set by the LA;
- d) Any other governing body for primary and secondary schools (as far as not falling within paragraph c)) located within the relevant area for consultation;
- e) Affected admission authorities in neighbouring LA areas.

Publication of admission arrangements

17. The Richard Rose Morton Academy will publish its admission arrangements each year once these have been determined, by:

- a) copies being sent to primary and secondary schools in Cumbria County Council LA;
 - b) copies being sent to the offices of Cumbria County Council LA;
 - c) copies being made available without charge on request from the Academy;
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d) copies being sent to public libraries in the area of Cumbria County Council LA for the purposes of being made available at such libraries for reference by parents and other persons.

18. The published arrangements will set out:

a) the name and address of the Academy and contact details;

b) a summary of the admissions policy, including oversubscription criteria;

c) a statement of any religious affiliation;

d) numbers of places and applications for those places in the previous year; and

e) arrangements for hearing appeals.

ANNEX 2

THE ADMISSION OF PUPILS TO THE RICHARD ROSE MORTON ACADEMY

1. The Academy will act in accordance with, and will ensure that the Independent Appeal Panel is trained to act in accordance with, all relevant provisions of the statutory codes of practice (the School Admissions Code and the School Admission Appeals Code of Practice) as they apply at any given time to maintained schools and with the law on admissions as it applies to maintained schools. Reference in the codes to admission authorities shall be deemed to be references to the governing body of the Academy. In particular, the Academy will take part in the Admissions Forum set up by Cumbria County Council and have regard to its advice; and will participate in the co-ordinated admission arrangements operated by Cumbria County Council.
2. Pupils will be admitted to the Richard Rose Morton Academy in accordance with the detailed admission arrangements described in the Admissions Policy Document. Changes to the Admissions Policy Document will require the approval of the Secretary of State.

Arrangements for appeals panels

3. Parents will have the right of appeal to an Independent Appeal Panel if they are dissatisfied with an admission decision of the Morton Academy. The Appeal Panel will be independent of the Academy. The arrangements for Appeals will be in line with the School Admission Appeals Code of Practice published by the Department for Children, Schools and Families as it applies to Foundation and Voluntary Aided schools. The determination of the appeal panel is binding on all parties. The Academy will prepare guidance for parents about how the appeals process will work and provide parents with a named contact who can answer any enquiries parents may have about the process. The Academy may, if it chooses, enter into an agreement with the local authority for it to recruit, train and appoint appeal panel members, and to arrange for the process to be independently administered and clerked.

II: ANNUAL PROCEDURES FOR DETERMINING ADMISSION ARRANGEMENTS

Consultation

4. The Richard Rose Morton Academy shall consult by 1 March each year on its proposed admission arrangements with relevant parties in line with the requirements of the School Admissions Code and relevant admissions legislation. (At the date of this Agreement, Section 89 of the School Standards and Framework Act 1998 as amended, and regulations under that section.)
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Determination and publication of admission arrangements

5. Following consultation, the Richard Rose Morton Academy will consider comments made by those consulted. The Richard Rose Morton Academy will then determine its admission arrangements by 15 April of the relevant year and notify those consulted what has been determined within 14 days.

Publication of admission arrangements

6. The Richard Rose Morton Academy will publish its admission arrangements each year once these have been determined in accordance with the arrangements described in the Admissions Policy Document.

Representations about admission arrangements

7. Where any of those bodies that were consulted, or that should have been consulted, make representations to the Richard Rose Morton Academy about its admission arrangements, the Richard Rose Morton Academy will consider such representations before determining the admission arrangements. Where the Academy has determined its admission arrangements and notified all those bodies whom it has consulted and any of those bodies object to the Academy's admission arrangements they can make representations to the Secretary of State. These representations must be made by 30 April. The Secretary of State will consider the representation and in so doing will consult the Richard Rose Morton Academy. Where he judges it appropriate, the Secretary of State may direct the Richard Rose Morton Academy to amend its admission arrangements.

8. Those consulted have the right to ask the Richard Rose Morton Academy to increase its proposed Published Admissions Number for any year. Where such a request is made, but agreement cannot be reached locally, they may ask the Secretary of State to direct the Richard Rose Morton Academy to increase its proposed Published Admissions Number. The Secretary of State will consult the Richard Rose Morton Academy and will then determine the Published Admissions Number.

9. In addition to his powers in paragraphs 8 and 9 above, the Secretary of State may direct changes to the Richard Rose Morton Academy's proposed admission arrangements and to the proposed Published Admissions Number.

Proposed changes to admission arrangements by the Richard Rose Morton Academy after arrangements have been published

10. Once the admission arrangements have been determined for a particular year and published, the Richard Rose Morton Academy will propose changes only if there is a major change of circumstances. In such cases, the Richard Rose Morton Academy must notify those consulted under paragraph 4 above of the proposed variation and must then apply to the Secretary of

State setting out:

- a) the proposed changes;
- b) reasons for wishing to make such changes;
- c) any comments or objections from those entitled to object.

Need to secure Secretary of State's approval for changes to admission arrangements

11. The Secretary of State will consider applications from the Richard Rose Morton Academy to change its admission arrangements only when the Richard Rose Morton Academy has notified and consulted on the proposed changes as outlined at 4 above.
 12. Where the Richard Rose Morton Academy has consulted on proposed changes the Richard Rose Morton Academy must secure the agreement of the Secretary of State before any such changes can be implemented. The Richard Rose Morton Academy must seek the Secretary of State's approval in writing, setting out the reasons for the proposed changes and passing to him any comments or objections from other admission authorities/other persons.
 13. The Secretary of State can approve, modify or reject proposals from the Richard Rose Morton Academy to change its admission arrangements.
 14. Records of applications and admissions shall be kept by the Richard Rose Morton Academy for a minimum period of ten years and shall be open for inspection by the Secretary of State.
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Annex 3

Arrangements for pupils with SEN and disabilities at Richard Rose Morton Academy

Duty to have regard to the Code of Practice and other guidance

1. The Academy shall have regard to the Special Educational Needs Code of Practice (2001) and any guidance issued by the Secretary of State relating to sections 316 and 316A of the Education Act 1996. Any changes to be made to the provisions set out in this document must be approved in advance by the Secretary of State.

Duties in relation to pupils with SEN

2. The governors of the Academy shall designate a person, who may be the headteacher, the chair of governors or another governor as appropriate, who shall be the responsible person for the purposes of the following duties in relation to pupils with SEN.

3. The governors of the Academy shall:

- use their best endeavours, in exercising their functions in relation to the school, to secure that, if any registered pupil has special educational needs, the special educational provision which the pupil's learning difficulty calls for is made;
- secure that, where the responsible person has been informed by the local education authority that a registered pupil has special educational needs, those needs are made known to all who are likely to teach the pupil;
- secure that the teachers in the school are aware of the importance of identifying, and providing for, those registered pupils who have special educational needs; and
- consult the local education authority and the governing bodies of other schools in the area, to the extent that this is necessary for co-ordinating provision for pupils with SEN.

4. Where a child who has special educational needs is being educated in the Academy, those concerned with making special educational provision for the child shall secure, so far as is reasonably practicable and is compatible with:

- (a) the child receiving the special educational provision which his learning difficulty calls for,
- (b) the provision of efficient education for the children with whom he will be educated,
- (c) the efficient use of resources and

- (d) that the child engages in the activities of the school together with children who do not have SEN.

5. The Academy prospectus shall include details of the governing body's policy for pupils with SEN and in particular shall include the information specified in Schedule 1 to the Education (Special Educational Needs) (Information) Regulations 1999 as amended or re-enacted from time to time. It shall also include details of the arrangements for the admission of disabled pupils; the steps taken to prevent disabled pupils from being treated less favourably than other pupils; and the facilities provided to assist access to the Academy by disabled pupils (disabled pupils meaning pupils who are disabled for the purposes of the Disability Discrimination Act 1995).

Admissions

6. The Academy shall ensure that pupils with SEN are admitted on an equal basis with others in accordance with its admissions policy.

7. Where a local education authority proposes to name the Academy in a statement of SEN made in accordance with section 324 of the Education Act 1996, the Academy shall consent to being named, except where admitting the child would be incompatible with the provision of efficient education for other children; and where no reasonable steps may be made to secure compatibility. In deciding whether a child's inclusion would be incompatible with the efficient education of other children, the Academy shall have regard to the relevant guidance issued by the Secretary of State to maintained schools.

8. In the event of any disagreement between the Academy and the local education authority over the proposed naming of the Academy in a statement, the Academy may ask the Secretary of State to determine whether the Academy should be named. The Secretary of State's determination shall, subject only to any right of appeal which any parent or guardian of the child may have to the Special Educational Needs and Disability Tribunal (SENDIST), be final.

9. If a parent or guardian of a child in respect of whom a statement is maintained by the local education authority appeals to SENDIST either against the naming of the Academy in the child's SEN statement or asking the Tribunal to name the Academy, then the decision of the Tribunal on any such appeal shall be binding and shall, if different from that of the Secretary of State under paragraph 7 above, be substituted for the Secretary of State's decision.

10. Where the Academy has consented to be named in a child's statement of SEN, or the Secretary of State or SENDIST have determined that it should be named, the Academy shall admit the child notwithstanding any provision of Annex 2 of this agreement.

ANNEX 4

Serious incidents of misbehaviour leading to fixed period or permanent exclusion

1. In discharging its duty the Richard Rose Morton Academy Trust will have regard and will ensure that the Independent Appeal Panel has regard to the Secretary of State's guidance on exclusions for maintained schools in accordance with any written directions from the Secretary of State on the interpretation of such guidance for the purpose of this annex.

2. At the date of this agreement, the Secretary of State's guidance on exclusions is called "Improving Behaviour and Attendance: Guidance on Exclusion from Schools and Pupil Referral Units", which is published on the DfES website at:
<http://www.teachernet.gov.uk/wholeschool/behaviour/exclusion/guidance/> The title, contents and publication site of this guidance may be subject to change and the Richard Rose Morton Academy Trust will have regard to the guidance as it stands at any given time.

Constitution and conduct of independent appeal panels

3. In addition to the obligations under paragraphs 1 and 2, the Richard Rose Morton Academy Trust will be responsible for carrying out the functions of the Local Authority, as specified in the guidance, for the management of the appeal procedure. The Appeal panel must be impartial and constituted in accordance with the provisions of the guidance detailing the composition of the Appeal Panel. The Richard Rose Morton Academy Trust will arrange suitable training for appeal panel members and clerks.

4. The appeal panel's decision is final and binding on the Richard Rose Morton Academy Trust. Decisions of appeal panels are in principle amendable to judicial review on the application of a parent. A parent may not, however, appeal to the Commissioner for Local Administration (the Local Government Ombudsman) about maladministration because the Commissioner's remit is limited to considering the conduct of appeal panels constituted by Local Authorities.

Schedule 2
Amended Supplemental Funding Agreement

SCHEDULE 1

MODEL SUPPLEMENTAL AGREEMENT

THIS AGREEMENT made

2014

BETWEEN

(1) THE SECRETARY OF STATE FOR EDUCATION; and

(2) UNITED LEARNING TRUST

IS SUPPLEMENTAL TO THE MASTER FUNDING AGREEMENT made between the same parties and dated 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 Richard Rose Morton Academy established at Wigton Road, Carlisle, Cumbria, CA2 6LB.

"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,, , damage by aircraft 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 publicly funded land (including for the avoidance of doubt all buildings, structures landscaping and other erections) situated at and known as Richard Rose Morton Academy, Wigton Road, Carlisle, Cumbria, CA2 6LB and registered under [enter Title number of Land].

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 Agreement¹.

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.

¹ Where the Academy is to be a "selective school" within the meaning of section 6(4) of the Academies Act 2010, please see alternative wording for this clause in Section C. of the Appendix of Alternative and Additional Clauses. "

2.3A) The Academy Trust must ensure that so far as is reasonably practicable and consistent with clause 27 of the Master Agreement of this Agreement and the Equality Act 2010, the policies and practices adopted by the Academy (in particular regarding curriculum, uniform and school food) enable pupils of all faiths and none to play a full part in the life of the Academy, and do not disadvantage pupils or parents of any faith or none. For the avoidance of doubt, this requirement applies irrespective of the proportion of pupils of any faiths or none currently attending or predicted to join the school.

ACADEMY OPENING DATE

2.4 The Academy opened as a school on 1st September 2008 replacing The Morton School which ceased 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 1150 in the age range 11-18, including a sixth form of 250 places.

Pupils

2.6 The relevant clauses in the Master Agreement and Annex B shall only apply insofar as the relevant provisions of the Children and Families Act 2014 relating to SEN and disability do not apply to Academies and Free Schools.

School meals

Clauses 32 and 33 of the Master agreement are disapplied and replaced with the following clauses 2.7, 2.8 and 2.9.

2.7 The Academy Trust must provide school lunches and free school lunches in accordance with the provisions of sections 512(3) and 512ZB(1) of the Education Act 1996 as if references in sections 512 and 512ZB to a local authority were to the Academy Trust and as if references to a school maintained by a local authority were to any of its Academies.

2.8 The Academy Trust must comply with school food standards legislation as if its Academies were maintained schools.

- 2.9 Where the Academy Trust provides milk to pupils, it must be provided free of charge to pupils who would be eligible for free milk if they were pupils at a maintained school.

Curriculum

- 2.10 The Academy Trust must not allow any view or theory to be taught as evidence-based if it is contrary to established scientific or historical evidence and explanations. This clause applies to all subjects taught at an Academy.
- 2.11 The Academy Trust must provide for the teaching of evolution as a comprehensive, coherent and extensively evidenced theory.
- 2.12 The Academy Trust must ensure that principles are promoted which support fundamental British values, of: respect for the basis on which the law is made and applied in England; respect for democracy and support for participation in the democratic processes; support for equality of opportunity for all; support and respect for the liberties of all within the law; and respect for and tolerance of different faiths and religious and other beliefs.

Governance

- 2.13 The Academy Trust must provide to the Secretary of State the names of all new or replacement members of the Academy Trust, stating the date of their appointment and, where applicable, the name of the member they replaced as soon as is practicable and in any event within 14 days of their appointment.
- 2.14 The Academy Trust must not appoint any new or replacement members until it has first informed them, and they have agreed, that their names will be shared with the Secretary of State to enable him to assess their suitability.

Pupil Premium

- 2.15 For each Academy Financial Year, the Academy Trust must publish, on the Academy's website, information about:
- a) the amount of Year 7 literacy and numeracy catch-up premium grant that it will receive during the Academy Financial Year;
 - b) what it intends to spend its Year 7 literacy and numeracy catch-up premium grant on;
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- c) what it spent its Year 7 literacy and numeracy catch-up premium grant on in the previous Academy Financial Year;
- d) the impact of the previous year's Year 7 literacy and numeracy catch-up premium grant on educational attainment, and how that effect was assessed.

3 **CAPITAL GRANT**

3.1 Pursuant to clause 38 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 **COMPLAINTS**²

4A.1 If a complaint is made about matters arising in whole or in part prior to the opening of the Academy, as referred to in clause 2.4 above, and all or part of that complaint was being or had been investigated by the Local Government Ombudsman under Part III of the Local Government Act 1974 ("Part III") or that complaint in whole or in part could have been investigated under Part III had the school the Academy replaced remained a maintained school, the Company:

- a) will abide by the provisions of Part III as though the Academy were a maintained school;
- b) agrees that the Secretary of State shall have the power to investigate the matter complained of as if it had taken place after conversion;
- c) agrees to act in accordance with any recommendation from the Secretary of State as though that recommendation had been made under Part III and the Academy were a maintained school.

² Only include this clause if it is not already contained in the Master Funding Agreement. Otherwise mark as 'Not used'.

4A.2 If at the time of the opening of the Academy the investigation of a complaint made to the governing body of the school the Academy replaced (as referred to in clause 2.4 above) has not yet been completed, the Company shall continue to investigate that complaint in accordance with the complaints procedures established by that governing body.

4A.3 If a complaint is made to the Company about matters arising in whole or in part during the 12 months prior to the opening of the Academy, the Company agrees to investigate that complaint as if the matter complained of had taken place after the opening of the Academy.

4A.4) If the Secretary of State could have given an order and/or a direction under section 496 and/or section 497 of the Education Act 1996 to the governing body of the school the Academy replaced (as referred to in clause 2.4 above) and that order and/or direction related to matters occurring within the 12 months immediately prior to conversion, the Company agrees:

- a) the Secretary of State may give orders and/or directions to the Company as though the Academy were a maintained school and sections 496 and 497 applied to the governing body of that maintained school;
- b) to act in accordance with any such order and/or direction from the Secretary of State.

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.

5.8A) If

- a) Any Governor or member of the Academy Trust refuses to consent to any checks required under this Agreement, or as otherwise requested by the Secretary of State; or
- b) The Secretary of State determines that any Governor or member of the Academy Trust is unsuitable,

the Secretary of State may:

- i. direct the Academy Trust to ensure that the Governor or member resigns or is removed within 42 days, failing which the Secretary of State may serve a Termination Notice; or
- ii. serve a Termination Notice.

5.8B) For the purposes of clause 5.8A a Governor or member of the Academy Trust will be “unsuitable” if that Governor or member:

- a) has been convicted of an offence;
 - b) has been given a caution in respect of an offence;
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- c) is subject to a relevant finding in respect of an offence; or
- d) has engaged in relevant conduct,

as a result of which, the Secretary of State considers that that Governor or member is unsuitable to take part in the management of the Academies.

5.8C) For the purposes of clause 5.8B:

- a) a Governor or member of the Academy Trust will be subject to a "relevant finding" in respect of an offence if:
 - i. that Governor or member has been found not guilty of the offence by reason of insanity;
 - ii. that Governor or member has been found to be under a disability and to have done the act charged against them in respect of the offence; or
 - iii. a court outside the United Kingdom has made a finding equivalent to that described in paragraphs (i) and (ii) above.

 - b) "relevant conduct" is conduct by a Governor or member of the Academy Trust which is:
 - i. aimed at undermining the fundamental British values of democracy, the rule of law, individual liberty and mutual respect and tolerance of those with different faiths and beliefs; or
 - ii. found to be in breach of professional standards by a professional body; or
 - iii. so inappropriate that, in the opinion of the Secretary of State, it makes that Governor or member unsuitable to take part in the management of the Academy.
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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:

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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

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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

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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

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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.

LAND

Restrictions on Land transfer

6A Recognising that they are 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:

- a) 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:

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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

b) shall take any further steps required to ensure that the restriction referred to in clause 6A(a) is entered on the proprietorship register,

c) shall provide the Secretary of State with confirmation of the entry of the restriction referred to in clause 6A(a) as soon as practicable after it receives notification from the Land Registry,

d) in the event that it has not registered the restriction referred to in clause 6A(a), hereby consents to the entering of the restriction referred to in 6A(a) in the register by the Secretary of State (under s. 43(1)(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 restriction entered in accordance with clause 6A(a) or 6A(d) above, whether by itself, a holding company, a subsidiary company, or a receiver, administrator or liquidator acting in the name of the Company.

Repair and Upkeep

6B) 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.

Insurance

6C) The Company shall:-

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- a) keep the Land insured 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 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 on Termination of Agreement

6D) In recognition by the Company that they are or will be taking a transfer of publicly-funded land for nil consideration (which for the purposes of this transaction shall include leases granted at a peppercorn rent), the Company hereby grants and the Secretary of State hereby accepts an option, exercisable by the Secretary of State or his nominee, to transfer the said land pursuant to Schedule 1 to the Academies Act 2010. The option 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

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whatever cause. On the exercise of this option, 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.

6E) In further recognition by the Company that they are or will be taking a transfer of publicly-funded land for nil consideration, (which for the purposes of this transaction shall include leases granted at a peppercorn rent), to protect the option granted under clause 6D, the Company:

- a) shall, within 14 days from the transfer to it of the Land, apply to the Land Registry in Form AN1 as prescribed by Rule 81 of the Land Registration Rules 2003 for a notice to be entered in the register (under section 34(3)(a) of the Land Registration Act 2002) to protect the option granted under clause 6D and including a copy of this Agreement as evidence of that option,
- b) shall take any further steps required to ensure that the notice referred to in clause 6E(a) is entered on the proprietorship register,
- c) shall provide the Secretary of State with confirmation of the entry of the notice referred to in clause 6E(a) as soon as practicable after it receives notification from the Land Registry,
- d) in the event that it has not registered the notice referred to in clause 6E(a), hereby consents to the entering of the notice referred to in 6E(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 6E(a) or 6E(d) above, whether by

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itself, a holding company, a subsidiary company, or a receiver, administrator or liquidator acting in the name of the Company,

f) in the case of previously unregistered land, for the further protection of the option granted in Clause 6D the Company shall within 14 days of the signing of this Agreement make application 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.

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.

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

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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).

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This Agreement was executed as a Deed on

2014

Executed on behalf of by:

.....

Director

In the presence of:

Witness.....

Address.....

Occupation.....

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
Academy Annex 1

Annex 1

REQUIREMENTS FOR THE ADMISSION OF PUPILS TO THE RICHARD ROSE MORTON ACADEMY

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 the Richard Rose Morton Academy on application from an LA. This will include

¹ As defined in the School Admissions Code.

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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 Richard Rose Morton 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 School Admission Appeals Code.

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.

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:

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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- 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.