

28 SEP 2012

**Stone King LLP**

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Dear James

**Re: Southway Primary School – Supplemental Funding Agreement**

I enclose the original Supplemental Funding Agreement for Southway Primary Academy, dated 31<sup>st</sup> August 2012. I should be grateful if you could please acknowledge safe receipt.

Yours sincerely

  
**Geoffrey Davies**  
Consultant

**Also at:**

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DATED 31 August 2012

(1) THE SECRETARY OF STATE FOR EDUCATION

(2) UNITED LEARNING TRUST

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**SUPPLEMENTAL AGREEMENT  
FOR SOUTHWAY PRIMARY ACADEMY**

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**Lewis Silkin LLP  
5 Chancery Lane  
Clifford's Inn  
London EC4A 1BL  
DX 182 Chancery Lane**

**Tel: 020 7074 8000  
Ref: GRD/82548.111**

**THIS AGREEMENT** made

31 August

2012

**BETWEEN**

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

(2) **UNITED LEARNING TRUST**

**IS SUPPLEMENTAL TO THE MASTER FUNDING AGREEMENT** made between The Secretary of State for Education and Skills and the Company dated 19 October 2005 (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 Southway Primary Academy to be established at South Way, Bognor Regis, West Sussex, PO21 5E2;

"Academy Financial Year" means the year from 1<sup>st</sup> September to 31<sup>st</sup> August in any year;

"this Agreement" means this agreement and its annexes;

"Additional Directors" means Directors who may be appointed by the Secretary of State under the Articles of Association;

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

"Insured Risks" means fire lightning explosion earthquake storm tempest flood subsidence landslip heave impact terrorism bursting or overflowing of water tanks and pipes earthquake damage by aircraft 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 land to be leased to the Company (including for the avoidance of doubt all buildings, structures landscaping and other erections) situated at and known as Southway Primary School, South Way, Bognor Regis, West Sussex PO21 5E2 which comprises part of the site registered under Land Registry (freehold) Title Number WSX328233.

“SEN” means special educational needs, and the expressions “special educational needs” and “special educational provision” have the meaning set out in section 312 of the Education Act 1996.

- 1.3 Reference in this Agreement to clauses and Annexes shall, unless otherwise stated, be to clauses and annexes of this Agreement.
- 1.4 All references in the Master Agreement to DfES and the Department of Education and Skills shall be to the Department for Education or its successor.

## **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 (as amended by this Agreement) and this Agreement.
- 2.2 The arrangements for the admission of pupils to the Academy are set out at Annex 1.

### **ACADEMY OPENING DATE**

- 2.3 The Academy shall open as a school on 1 September 2012 replacing Southway 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.
- 2.4 The planned capacity of the Academy is 630 place in the age range 3 to 11, and a nursery unit of 52 places.

### **LOCAL GOVERNMENT PENSION SCHEME**

- 2.5 The Company shall ensure that all employees at the Academy other than teachers (“Non-teaching Staff”) have access to either the Local Government

Pension Scheme in accordance with the Local Government Pension Scheme (Administration) Regulations 2008 [SI2008/239] ("the Regulations"), where the Regulations require this, or such other pension benefits as those Regulations, or any legislation which may in the future replace the Regulations, require for Non-teaching staff.

#### **APPLICATION OF MASTER AGREEMENT CLAUSES**

- 2.6 Clauses 16-18, 22, 30, 31, 35, 36, 40-58 (inclusive), 60-63, 73 and 76 of the Master Agreement do not apply to the Academy.

#### **CHARACTERISTICS OF THE ACADEMY**

- 2.7 In respect of the Academy only, Clause 11 of the Master Agreement shall be replaced with the following;

"12. The characteristics of an academy are as set down in Section 1A(1) of the Academies Act 2010 (as amended):

- a) It is an independent school,
- b) it has a curriculum satisfying the requirements of section 78 of the Education Act 2002 (balanced and broadly based curriculum),
- c) it provides education for pupils of different abilities
- d) it provides education for pupils who are wholly or mainly drawn from the area in which the school is situated, and
- e) it is not an alternative provisions Academy."

#### **CONDITIONS OF GRANT**

- 2.8 In respect of the Academy only, Clause 12, sub-clause (b) of the Master Agreement shall be replaced with the following:

*"b) there will be assessments of pupils' performance as they apply to maintained schools and the opportunity to study for relevant qualifications in accordance with clause 2.14 (d) of the relevant Supplemental Agreement;"*

**GOVERNANCE**

- 2.9 Clauses 14 and 15 of the Master Agreement shall apply but, in addition, the Company will as a minimum ensure that a minimum of two parents of a pupil at the Academy (to be elected by the parents of registered pupils of the Academy) shall be members of the Local Governing Body.

**CRIMINAL RECORDS BUREAU CHECKS**

- 2.10 The Company shall comply with the requirements of the Education (Independent School Standards) (England) Regulations 2010 (or such regulations as may for some time being be applicable) in relation to carrying out enhanced criminal records checks, obtaining enhanced criminal records certificates and making any further checks, as required and appropriate for members of staff, supply staff, individual directors and the Chair of the Local Governing Body.

**PUPILS**

- 2.11 In respect of the Academy only, a new Clause 19 sub-clause c) of the Master Agreement shall be inserted as follows:

*“21c) pupil exclusions are set out in regulations made by virtue of section 51A of the Education Act 2002 (as may be amended from time to time, and includes any successor provisions).”*

and for the avoidance of doubt, Annex C of the Master Agreement shall not apply in respect of the Academy and the wording “Arrangements for pupil exclusions are set out in Annex C to this Agreement” in Clause 19 of the Master Agreement shall not apply in respect of the Academy.

- 2.12 In respect of the Academy, Clause 19, sub-clause b) of the Master Agreement shall not apply and the requirements for the admission to the Academy of and support for pupils with SEN and with disabilities (for pupils who have and who do not have statements of SEN) are set out in Annex 2 to this Agreement. For the avoidance of doubt, Annex B of the Master Agreement shall not apply in respect of the Academy.

**DESIGNATED TEACHER FOR LOOKED AFTER CHILDREN**

- 2.13 The Company will in respect of the Academy act in accordance with, and be bound by, all relevant statutory and regulatory provisions and have regard to any guidance and codes of practice issued pursuant to such provisions, as they apply at any time to a maintained school, relating to the designation of a person to manage the teaching and learning programme for children who are looked after by a LA and are registered pupils at the school. For the purpose of this clause, any reference to the governing body of a maintained school in such statutory and regulatory provisions, or in any guidance and code of practice issued pursuant to such provisions, shall be deemed to be references to the Directors of the Company.

**ASSESSMENT**

- 2.14 The Secretary of State will notify the appropriate body for assessment purposes about the Academy:
- (a) The Company shall ensure that the Academy complies with any guidance issued by the Secretary of State from time to time to ensure that pupils take part in assessments and in teacher assessments of pupil's performance as they apply to maintained schools.
  - (b) The Company shall report to any body on assessments in respect of the Academy as the Secretary of State shall prescribe and shall provide such information as may be required by that body as applies to maintained schools.
  - (c) In respect of all Key Stages, the Company will submit the Academy to monitoring and moderation of its assessment arrangements as prescribed by the Secretary of State.
  - (d) The Company may not offer courses at the Academy which lead to relevant qualifications, as defined in section 96 of the Learning and Skills Act 2000, unless the Secretary of State gives specific approval for such courses
- 2.15 The Company shall ensure that the following information is published on the Academy's website:

a) The Academy's most recent key stage 2 results as published by the Secretary of State under the following column headings in the School Performance Tables published on the Department for Education's website:

- (i) "% achieving Level 4 or above in English and Maths";
- (ii) "% making expected progress";
- (iii) in relation to English, "% achieving Level 5 or above"; and
- (iv) in relation to Maths, "% achieving Level 5 or above".

b) The Academy's most recent key stage 4 results as published by the Secretary of State under the following column headings in the School Performance Tables published on the Department for Education's website:

- (i) "% achieving 5 + A\* - C GCSEs (or equivalent) including English or Maths GCSEs";
- (ii) "% achieving the English Baccalaureate"; and
- (iii) "% of pupils making expected progress".

c) Information as to where and by what means parents (including prospective parents) may access the most recent report about the Academy published by the Chief Inspector.

d) Information as to where and by what means parents (including prospective parents) of pupils at the Academy may access the School Performance Tables published by the Secretary of State on the Department for Education's website.

### **POLITICAL INDOCTRINATION**

2.16 In respect of the Academy, the Company agrees to act in accordance with Sections 406 (Political Indoctrination) and 407 (Duty to secure balance treatment of political issues) of the Education Act 1996 as if it were a maintained school, subject to the following modifications:

- (a) references to any maintained school shall be treated as references to the Academy;



- (b) references to registered pupils shall be treated as references to registered pupils at the Academy;
- (c) references to the governing body or the local authority shall, in each case, be treated as references to the Company; and
- (d) references to the head teacher shall, in each case, be treated as references to the Principal of the Academy.

#### **EXCLUSIONS AGREEMENT**

2.17 The Company shall, if invited to do so by a LA, enter into an agreement in respect of the Academy with that LA, which has the effect that where:

- (a) the Company admits a pupil to the Academy who has been permanently excluded from a maintained school, the Academy itself or another Academy with whom the LA has a similar agreement; or
- (b) the Company permanently excludes a pupil from the Academy payment will flow between the Company and the LA in the same direction and for the same amount that it would, were the Academy a maintained school, under Regulations made under section 47 of the School Standards and Framework Act 1998 relating to the addition or deduction of a maintained school's budget following a permanent exclusion or the admission of a permanently excluded pupil. At the date of this Agreement, the applicable Regulation is Regulation 23 of the School Finance (England) Regulations 2008.

#### **DISPOSAL OF ASSETS**

2.18 The Company shall provide 30 days notice to the Secretary of State of its intention to dispose of assets for a consideration less than the best price that can reasonably be obtained, whether or not such disposal requires the Secretary of State's consent under clause 95 of the Master Agreement. This clause shall only apply to publicly funded assets.

**CURRICULUM, CURRICULUM DEVELOPMENT AND DELIVERY AND RE  
AND COLLECTIVE WORSHIP:**

2.19 In addition to the requirements of clauses 24 to 29 of the Master Agreement, the following shall apply:

2.19.1. The Company shall publish information in relation to its current curriculum provision in relation to the Academy. Such information shall include details relating to

- a) the content of the curriculum;
- b) its approach to the curriculum;
- c) any GCSE options (and other Key Stage 4 qualifications) offered by the Academy;
- d) the names of any phonics or reading schemes in operation for Key Stage 1; and
- e) how parents (including prospective parents) can obtain further information in relation to the Academy's curriculum.

2.19.2. Sections 42A (provision of careers guidance) and 45A (guidance as to discharge of duties) of the Education Act 1997 shall be deemed to apply to the Academy with the following modifications:

- a) the Academy shall be treated as falling within the meaning of "a school" under section 42A (2);
- b) the Company shall be deemed to be the "responsible authorities" for the purposes of subsection 42A(3); and
- c) references to registered pupils shall be treated as references to registered pupils at the Academy.

2.19.3. The Company shall have regard to the requirements set out in section 405 of the Education Act 1996 which shall apply to the Academy as if it were a maintained school.

**PUPIL PREMIUM**

- 2.20 The Company shall publish, for the Academy, in each Academy Financial Year information in relation to:
- a) the amount of Pupil Premium allocation that it will receive during the Academy Financial Year;
  - b) on what it intends to spend the Pupil Premium allocation;
  - c) on what it spent its Pupil Premium in the previous Academy Financial Year;
  - d) the impact in educational attainment, arising from expenditure of the previous Academy Financial Year's Pupil Premium.

**COMPLAINTS**

- 2.21 If a complaint is made about matters arising in whole or in part prior to the date of the opening of any the Academy , as referred to in clause 2.3 of this Agreement, and all or part of that complaint was being or had been investigated by the Local Government Ombudsman under Part III or 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.
- 2.21A) 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 2.3 of this Agreement) 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.

## **RELIGIOUS EDUCATION AND COLLECTIVE WORSHIP**

2.22 Clause 26 of the Master Agreement shall not apply in respect of the Academy and Clause 27 of the Master Agreement shall be replaced by the following:

“The requirements for religious education and collective worship are as follows:

- a) subject to clause 28 of the Master Agreement, the Company shall ensure that provision shall be made for religious education to be given to all pupils at the Academy in accordance with the requirements for agreed syllabuses in section 375(3) of the Education Act 1996 and paragraph 2(5) of Schedule 19 to the School Standards and Framework Act 1998 as if the Academy were a foundation school or voluntary controlled school with a religious character;
- b) subject to clause 28 of the Master Agreement, the Company shall comply with the requirements of section 70(1) of, and Schedule 20 to, the School Standards and Framework Act 1998 as if the Academy were a foundation school or voluntary controlled school with religious character, and as if references to ‘the required collective worship’ were references to collective worship in accordance with the tenets and practices of the specified religion or religious denomination of the Academy.”

## **EARLY YEARS PROVISION**

2.23 There will be no charge in respect of admission to the school and the Company will only charge pupils where the law allows maintained schools to charge. The Company may nonetheless charge registered pupils at the Academy for Early Years Provision (as defined in section 20 Childcare Act 2006) provided in excess of the provision funded by the LA in accordance with its duty under section 7 of the Childcare Act 2006. Grants paid by the

Secretary of State (be they GAG, EAG or Capital Grant) shall not be used by the Company for Early Years Provision for which the Company is entitled to make a charge without the prior written consent of the Secretary of State except where the use of such funds is merely incidental to their use for establishment and maintenance, carrying on or providing for the carrying on of the Academy.

3 **INTERNATIONAL EDUCATION SURVEYS**

The Secretary of State may, by notice in writing to the Company, require the Company, in relation to the Academy, in the event that it is selected by the relevant international organisation, as part of a national sample of schools, to participate in an international education survey and the Company shall, upon receipt of such notice, participate in that survey and provide to the Secretary of State or to those carrying out the survey all such assistance and information as may reasonably be required for the purposes of the Academy's participation in that survey.

4 **CAPITAL GRANT AND IMPLEMENTATION GRANT**

- 4.1 The Secretary of State may, in his absolute discretion provide Capital Expenditure funding in accordance with this clause and any arrangements he considers appropriate.
- 4.2 Any Capital Expenditure incurred in respect of the Academy on which Capital Grant payments are sought from the Secretary of State will require the specific prior written agreement of the Secretary of State, which agreement shall not be unreasonably withheld or delayed.
- 4.3 Any payment of Capital Grant to the Company under this Agreement is subject to the fulfilment of the following conditions:
- (a) such grants are used solely to defray expenditure approved by the Secretary of State;
  - (b) the Company certifying and providing evidence that all planning and other consents necessary for the development and all related infrastructure to be completed have been obtained or put in place;
  - (c) any other conditions that the Secretary of State may specify.

- 4.4 Capital Grant will be paid by the Secretary of State to the Company in respect of this Academy on the basis of claims for grant submitted to the Secretary of State in the notified format with supporting invoices and certificates as required by the Secretary of State. Capital Grant will be paid within 21 days from the day on which a claim for grant is received if the claim is in the proper format, supported by the appropriate documentation and the conditions on its payment set out at clause 4.3 are complied with. If a dispute arises as to whether a claim is or is not acceptable both parties undertake to attempt to resolve it in good faith. In the event of such a dispute, the Secretary of State shall pay to the Company so much of the claim as shall not be in dispute and shall promptly pay any additional amount due to the Company following resolution of the dispute if further payment is due to the Company.

#### **IMPLEMENTATION GRANT**

- 4.5 The Secretary of State will not, in relation to the Academy, pay Implementation Grant pursuant to clauses 54 to 58 of the Master Agreement.

#### **GAG AND EAG**

- 5.1 Subject to clause 5.2 the Secretary of State agrees to pay GAG and EAG to the Company in relation to the Academy in accordance with the Master Agreement.
- 5.2 [Not used]
- 5.3 In respect of the Academy, Clause 59(1) (h) of the Master Agreement will be replaced with the following:
- 5.4 *"h) insurance, provided that the Secretary of State shall not be obliged to pay GAG in relation to insurance to the extent that insurance and/or comparable arrangements are made available to the Company (whether at a cost to the Company or otherwise and whether made available by and/or on behalf of the Secretary of State or otherwise) save that, to the extent that such insurance and/or comparable arrangements as may be made available constitute a cost for the Company, the Secretary of State shall provide a contribution through GAG in relation to such cost;"*
- 5.5 In respect of the Academy only, Clauses 60 and 61 of the Master Agreement will be replaced with the following:

*“60) Subject to clauses 65 and 66 GAG for each Academy Financial Year for the Academy will include;*

*a) funding equivalent to that which would be received by a maintained school with similar characteristics, determined by the Secretary of State and notified in the Annual Letter of Funding or its equivalent, taking account of the number of pupils at each Academy;*

*b) funding in respect of functions which would be carried out by the LA if each Academy was a maintained school;*

*61) The GAG for each Academy Financial Year for the Academy will also include, payable on a basis equivalent to that applied to maintained schools:*

*a) funding for matters for which it is necessary for that Academy to incur extra costs, for as long as those costs are deemed necessary by the Secretary of State; and*

*b) payments in respect of further, specific grants made available to maintained schools, where the Academy meets the requisite conditions and criteria necessary for a maintained school to receive these grants.”*

5.6 In respect of the Academy only Clauses 62 and 63 of the Master Agreement shall not apply and shall be replaced with the following provisions:

62) Subject to Clause 62A (as amended by this agreement), the basis of the pupil number count for the purposes of determining GAG for the first Academy Financial Year in which the Academy opens and the following four Academy Financial Years (for the avoidance of doubt, ending at the end of the fifth Academy Financial Year (the “**Initial Five Year Term**”)) will be the estimate of the Company each November for numbers on the roll in the following September. However, the Secretary of State may make adjustments to the GAG for the following Academy Financial Year to recognise any variation between the number of pupils that were actually on the roll in the previous September (the “**Actual Figure**”) and the Company’s estimate given in the November preceding that September (the “**Estimated Figure**”). The basis of these will be set out in the Annual Letter of Funding.

62A) If the Conditions (as defined in Clause 63 below (as amended by this Agreement) have been met then the basis of the pupil number count for the

purpose of determining GAG for the Academy Financial Year in question will be determined in accordance with Clause 63 and Clause 62 will no longer apply.

63) After: (i) all planned Year-groups are present at the Academy (that is, all the pupil cohorts relevant to the age-range of the Academy will have some pupils present); and (ii) the total number of pupils as measured in the Schools Census which is used to fund maintained schools for the financial year overlapping with the Academy Financial Year in question is 90% of the planned final size of the Academy, as specified in the Supplemental Agreement applicable to the Academy (together, the "**Conditions**"), the basis of the pupil number count for the purpose of determining GAG for the Academy for Academy Financial Years will be:

a) for the pupil number count for pupils in Year 11 and below, the Schools Census which is used to fund maintained schools for the financial year overlapping with the Academy Financial Year in question; and

b) for the pupil number count for pupils in Year 12 and above, the formula which for the time being is in use for maintained schools for the calculation of pupil numbers for pupils in Year 12 and above for the purpose of calculating their level of funding.

63A) If either of the Conditions have not been met in respect of an Academy Financial Year and the Initial Five Year Term has come to an end, the basis of the pupil count shall be determined by the Secretary of State, taking account of any diseconomies of scale that the Academy will be under as a result of such Condition(s) not applying.

63B) For any Academy Financial Year in which GAG is calculated in accordance with clause 63, no adjustment will be made to the formula funding element in the following Academy Financial Year's formula funding element of GAG unless the Company demonstrates to the satisfaction of the Secretary of State that there has been a significant impact on balances. For any other element of GAG the Secretary of State may make adjustments to recognise a variation in pupil numbers from that used to calculate the element of grant in question; the basis of these will be set out in the annual letter of funding.



- 5.7 Grants paid by the Secretary of State shall only be used by the Company for the educational purposes listed in clause 3 of the Memorandum, ("the Object"). Such funds shall not be used by the Company for purposes that do not directly relate to the Object of providing education in the United Kingdom, in particular by establishing, maintaining, carrying on, managing and developing schools. Grants shall not be used for purposes other than the Object without the prior written consent of the Secretary of State.

## 6 **TERMINATION**

- 6.1 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.
- 6.2 If the Secretary of State is of the opinion that the Academy no longer has the characteristics set out in clause 11 of the Master Agreement (as amended by this Agreement) or that the conditions and requirements set out in clauses 12-36 (other than clauses 16-18, 22, 30, 31, 35 and 36) of the Master Agreement (as amended by this Agreement) and clauses 2.5, 2.8 to 2.17, 2.19, 2.20 and 3 of this Agreement are not being met, or that the Company is otherwise in material breach of the provisions of this Agreement or the Master Agreement (as amended by this Agreement), the Secretary of State may give notice of his provisional intention to terminate this Agreement.
- 6.3 Any such notice shall be in writing and shall:
- 6.3.1. state the grounds on which the Secretary of State considers the Academy no longer has the characteristics set out in clause 11 of the Master Agreement (as amended by this Agreement) or is not meeting the conditions and requirements set out in clauses 12-36 (other than clauses 16-18, 22, 30, 31, 35 and 36) of the Master Agreement (as amended by this Agreement) and clauses 2.5, 2.8 to 2.17, 2.19, 2.20 and 3 of this Agreement or the Company is otherwise in material breach of the provisions of this Agreement or the Master Agreement (as amended by this Agreement);
  - 6.3.2. specify the measures needed to remedy the situation or breach;
  - 6.3.3. specify a reasonable date by which these measures are to be implemented; and

- 6.3.4. state the form in which the Company is to provide its response and a reasonable date by which it must be provided.
- 6.4 If no response is received by the date specified in accordance with clause 6.3.4, 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.
- 6.5 If a response is received by the date specified in accordance with clause 6.3.4, the Secretary of State shall consider it, and any representations made by the Company, and shall, within three months of its receipt, indicate that:
- 6.5.1. he is content with the response and/or that the measures which he specified are being implemented; or
- 6.5.2. 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
- 6.5.3. he is not satisfied, that he does not believe that he can be reasonably satisfied, and that he will proceed to terminate the Agreement.
- 6.6 In the circumstances of clause 6.5.3 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 Local Governing Body of the Academy 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 11 of the Master Agreement (as amended by this Agreement) or does not and will not meet the conditions and requirements set out in clauses 12-36 (other than clauses 16-18, 22, 30, 31, 35 and 36) of the Master Agreement (as amended by this Agreement) and clauses 2.5, 2.8 to 2.17, 2.19, 2.20 and 3 of this 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.

- 6.7 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 6.6 may be shortened to a period deemed appropriate by the Secretary of State.
- 6.8 The Secretary of State shall, by the end of December, 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 84 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.
- 6.9 Any notice given by the Company under clause 6.8 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 6.8 above, within six weeks after the Secretary of State shall have done so. The notice must specify:
- 6.9.1. 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

- 6.9.2. 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
- 6.9.3. a detailed budget of income and expenditure for the Academy during the Critical Year (the "**Projected Budget**").
- 6.10 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.
- 6.11 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.
- 6.12 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.

- 6.13 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.
- 6.14 If the Company shall have given notice to terminate the Agreement under 6.13, 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.
- 6.15 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.
- 6.16 A "Special Measures Termination Event Occurs" when:
- 6.16.1. 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
  - 6.16.2. 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
  - 6.16.3. 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

6.16.4. 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.

6.17 If a Special Measures Termination Event occurs, the Secretary of State may:

6.17.1 in relation to a member of the Local Governing Body who has been appointed by the Company serve notice in writing on the Company requiring the Company to procure the resignation and removal of such persons and/or procure the appointment of such additional Local Governing Body members as the Company has the power to appoint under its Articles and as specified by the Secretary of State in the notice; or

6.17.2 give notice in writing to terminate this Agreement forthwith.

6.18 If, following the exercise of the Secretary of State's powers to appoint Additional Directors pursuant to the Articles of Association the Members pass an ordinary or special resolution to remove one or more of those Additional appointed by the Secretary of State, 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.

6.19 The Secretary of State's right to terminate this Agreement under clause 6.18 shall cease if he removes any of the Additional Directors which he has appointed pursuant to the Articles of Association."

## **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 grant of a lease of the Land to the Company, apply to the Land Registry for a restriction in the proprietorship register of the Company's leasehold title (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*

- 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,

## **7 EFFECT OF TERMINATION**

- 7.1 In the event of termination of this Agreement however occurring, the Academy shall cease to be an academy within the meaning of Section 1 of the Academies Act 2010.
- 7.2 Subject to clause 7.3, 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 11 of the Master Agreement(as amended by this Agreement) or is no longer meeting the conditions and requirements set out in clauses 12-36 (other than clauses 16-18, 22, 30, 31, 35 and 36) of the Master Agreement (as amended by this Agreement) and clauses 2.5, 2.8 to 2.17, 2.19, 2.20 and 3 of this 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.
- 7.3 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.

- 7.4 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.
- 7.5 Subject to clause 7.6, 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) 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
  - (b) the Secretary of State confirms that a transfer under clause 7.5(a) is not required, promptly repay to the Secretary of State a sum equivalent to the percentage of the Net Proceeds of the Sale of such 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. For the purposes of this clause "Net Proceeds of Sale" shall mean the amount received by the Company on the disposal of such assets after deducting VAT and all costs (including legal and other fees) incurred in relation to such disposal.
- 7.6 The Secretary of State may waive in whole or in part the repayment due under clause 7.5(b) if:
- a) the Company obtains his permission to invest the proceeds of sale for its charitable objects; or



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

7.7 If any land or premises of the Academy were acquired by the Company from an LA by a scheme under Paragraph 1 of Schedule 1 of the Academies Act 2010 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 Paragraph 6 of Schedule 1 of the Academies Act 2010, 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.

8 **ANNEX**

8.1 The Annexes to this Agreement forms part of and are incorporated into this Agreement.

9 **THE MASTER AGREEMENT**

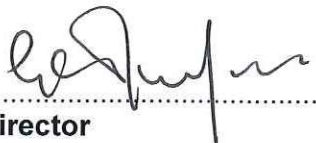
9.1 Except as expressly provided in this Agreement the Master Agreement shall continue in full force and effect.

10 **ENGLISH LAW**

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

10.2 The parties do not intend that any term of this Agreement shall be enforceable solely by virtue of the Contracts (Rights of Third Parties) Act 1999 by any person who is not a party to this Agreement.

Executed as a deed on behalf of United Learning Trust by:

  
.....  
**Director**

  
.....  
**Director/Secretary**

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

*[Handwritten signature]*

**Duly Authorised**



**ANNEX TO THIS SUPPLEMENTAL AGREEMENT**

Requirements for the Admission for pupils at the  
Academy      Annex 1

SEN arrangements      Annex 2

## ANNEX 1

### REQUIREMENTS FOR THE ADMISSION OF PUPILS TO SOUTHWAY PRIMARY SCHOOL (the "Academy")

#### GENERAL

1. This annex may be amended in writing at any time by agreement between the Secretary of State and the 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 children<sup>1</sup>) 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 Academy on application from an LA. This will include complying with a School Attendance Order<sup>2</sup>. Before doing so the Secretary of State will consult the Company;
  - (b) direct the Company to admit a named pupil to the Academy if the Company has failed to act in accordance with this Annex or has otherwise failed to comply with applicable admissions and equalities legislation or the provisions of the Codes;

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<sup>1</sup> As defined in the School Admissions Code.

<sup>2</sup> 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.

- (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 children'<sup>3</sup> 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:

- 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; and
- 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<sup>4</sup>. The Company will consult on the

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<sup>3</sup> 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.

<sup>4</sup> 'Relevant age group' means 'normal point of admission to the school, for example, year R,

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<sup>5</sup>. 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.

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Year7 and Year 12.

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

## ANNEX 2

### ARRANGEMENTS FOR PUPILS WITH SPECIAL EDUCATIONAL NEEDS ('SEN') AND DISABILITIES AT SOUTHWAY PRIMARY SCHOOL (the "Academy")

#### Duties in relation to pupils with SEN

1. The Directors of the Company must, in respect of the Academy, comply with all of the duties imposed upon the governing bodies of maintained schools in:
  - Part 4 of the Education Act 1996 as amended from time to time;
  - The Education (Special Educational Needs) (Information) Regulations 1999 as amended from time to time;
  - The Education (Special Educational Needs Co-ordinators) (England) (Amendment) Regulations 2008 as amended from time to time<sup>1</sup>.
2. Notwithstanding any provision in this Agreement, the Secretary of State may (whether following a complaint made to him or otherwise) direct the Company to comply with an obligation described in this Annex 2 where the Company has failed to comply with any such obligation.
3. Where a child who has SEN is being educated in the Academy, those concerned with making special educational provision for the child must secure that the child engages in the activities of the school together with children who do not have SEN, so far as is reasonably practicable and is compatible with:
  - the child receiving the special educational provision which his learning difficulty calls for,
  - the provision of efficient education for the children with whom he will be educated, and
  - the efficient use of resources.
4. In addition to complying with the duties imposed upon the governing bodies of maintained schools set out in The Education (Special Educational Needs) (Information) Regulations 1999 (as amended from time to time) the Company must ensure that the website for each Academy includes details of the implementation of its policy for pupils with special educational needs; 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 Equality Act 2010<sup>2</sup>).

#### Admissions

<sup>1</sup> These Regulations are amended by The Education (Special Educational Needs Co-ordinators) (England) (Amendment) Regulations 2009 (SI 2009 No 1387).

<sup>2</sup> For the meaning of 'disabled', see section 6 of the Equality Act 2010.

5. The Company must ensure that for the Academy pupils with SEN are admitted on an equal basis with others in accordance with the Academy's admissions policy.
6. Where a local authority ("LA") proposes to name the Academy in a statement of SEN made in accordance with section 324 of the Education Act 1996, it must give the Company written notice that it so proposes. Within 15 days of receipt of the LA's notice that it proposes to name the Academy in a statement, the Company must 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 Company must have regard to the relevant guidance issued by the Secretary of State to maintained schools.
7. If the Company determines that admitting the child would be incompatible with the provision of efficient education, it must, within 15 days of receipt of the LA's notice, notify the LA in writing that it does not agree that the Academy should be named in the pupil's statement. Such notice must set out all the facts and matters the Company relies upon in support of its contention that: (a) admitting the child would be incompatible with efficiently educating other children; and (b) the Company cannot take reasonable steps to secure this compatibility.
8. After service by the Company on the LA of any notice (further to paragraph 7 above) stating that it does not agree with the LA's proposal that the Academy be named, the Company must seek to establish from the LA, as soon as is reasonably practicable, whether or not the LA agrees with the Company. If the LA notifies the Company that it does not agree with the Company's response, and names the Academy in the child's statement, then the Company must admit the child to the school on the date specified in the statement or on the date specified by the LA.
9. Where the Company considers that the Academy should not have been named in a child's statement, it may ask the Secretary of State to determine that the LA has acted unreasonably in naming the Academy and to make an order directing the LA to reconsider.
10. 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 First-tier Tribunal (Special Educational Needs and Disability), be final.
11. If a parent or guardian of a child in respect of whom a statement is maintained by the local authority appeals to the First-tier Tribunal (Special Educational Needs and Disability) either against the naming of an Academy in the child's SEN statement or asking the Tribunal to name an 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 9 above, be substituted for the Secretary of State's decision.
12. Where the Company, the Secretary of State or the First-tier Tribunal (Special Educational Needs and Disability) have determined that it should be named, the Company shall admit the child to the Academy notwithstanding any provision of Annex 1 of this Agreement.