

DATED 20 JUNE 2013

(1) THE SECRETARY OF STATE FOR EDUCATION

(2) UNITED LEARNING TRUST

SUPPLEMENTAL AGREEMENT

Re: WYE FREE SCHOOL

FINAL

THIS AGREEMENT is made

2013

BETWEEN

(1) THE SECRETARY OF STATE FOR EDUCATION; and

(2) UNITED LEARNING TRUST (the "Company")

IS SUPPLEMENTAL TO THE MASTER FUNDING AGREEMENT made between the same parties and dated 26 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:

"**Academy**" means the Mainstream Free School called Wye Free School to be established at the Kempe Building, Olantigh Road, Wye, Kent, and references in the Master Agreement to a "Mainstream Academy" shall be construed as including reference to the Academy;

"**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 therefrom, 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 imposed from time to time by the insurers or

underwriters;

"Landlord" means Imperial College London;

"Lease" means the leasehold agreement between the Company and the Landlord in respect of the Temporary Site;

"Rent" means a payment by the Company to the Landlord under the Lease but subject to the terms of clause 4A.1 of this Agreement;

"Start-up Period" means up to seven (7) Academy Financial Years and covers the period up to and including the first Academy Financial Year in which all age groups are present at the Academy (that is, all the pupil cohorts relevant to the age range of the Academy will have some pupils present);

"Temporary Site" means the leasehold land (including for the avoidance of doubt all buildings, structures, landscaping and other erections) at the Kempe Building, Olantigh Road, Wye, Kent, as more particularly described in the Lease, on which the Academy will be situated at the date of opening.

1.3 References in this Agreement to clauses and Annexes are, unless otherwise stated, to clauses and annexes of this Agreement.

1.4 References to the Secretary of State are, where the context allows, references to the Education Funding Authority acting on the Secretary of State's behalf.

2 THE ACADEMY

2.1 The Company will establish and maintain, and carry on or provide for the carrying on of, the Academy in accordance with the Master Agreement and this Agreement. Where any provisions in this Agreement conflict with any provisions in the Master Agreement, the provisions of this Agreement will prevail.

- 2.2 There will be an emphasis at the Academy on the needs of the individual pupils (and where relevant personal coaches will contribute to their needs) including pupils with SEN, both those with and without statements of SEN, and students with learning difficulties and disabilities. Clause 13(e) of the Master Agreement does not apply to the Academy.
- 2.3 The requirements for the admission of pupils to the Academy are set out at **Annex 1**.
- 2.4 The Company shall not, in respect of the Academy, make provision in the context of any subject for the teaching, as an evidence-based view or theory, of any view or theory that is contrary to established scientific or historical evidence or explanations.
- 2.5 The Company shall, in respect of the Academy, make provision for the teaching of evolution as a comprehensive, coherent and extensively evidenced theory.
- 2.6 The Company shall ensure that principles are promoted which support fundamental British values, including: 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.
- 2.7 Not used.
- 2.8 Not used.
- 2.9 The Company may offer any course of education or training at the Academy which:
- a) leads to a qualification that is approved by the Secretary of State for the purposes of section 96 of the Learning and Skills Act 2000;

or

b) is specifically approved in writing by the Secretary of State.

Clause 30(d) of the Master Agreement does not apply to the Academy.

ACADEMY OPENING DATE

2.10 The Academy shall open as a school on 2 September 2013.

2.11 The planned capacity of the Academy is 600 pupils in the age range 11 to 19, including a sixth form of 150 places.

3 CAPITAL GRANT

3.1 Pursuant to clause 35 of the Master Agreement, the Secretary of State may, in his absolute discretion, provide Capital Expenditure funding in accordance with any arrangements he considers appropriate.

4 GAG AND EAG

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

4.2 Clauses 42A to 53 of the Master Agreement do not apply to the Academy.

4.3 GAG will be paid by the Secretary of State to the Company in order to cover the normal running costs of the Academy, and shall only be spent by the Company towards those costs. These costs will include, but are not limited to:

- a) teachers' salaries and related costs (including full and part time teaching staff and seconded teachers);
- b) non-teaching staff salaries and related costs (including pension contributions, educational support staff, administrative and clerical staff and manual and premises related staff);
- c) employees' expenses;

- d) the purchase, maintenance, repair and replacement:
 - (i) of teaching and learning materials and other educational equipment, including books, stationery and ICT equipment and software, sports equipment and laboratory equipment and materials;
 - (ii) of other supplies and services;
- e) examination fees;
- f) repairs, servicing and maintenance of buildings (including redecoration, heating, plumbing, lighting etc); maintenance of grounds (including boundary fences and walls); cleaning materials and contract cleaning; water and sewage; fuel and light (including fuel oil, solid and other fuel, electricity and gas); rents; rates; purchase, maintenance, repairs and replacement of furniture and fittings;
- g) insurance;
- h) medical equipment and supplies;
- i) staff development (including in-service training);
- j) curriculum development;
- k) the costs of providing school meals for pupils (including the cost of providing free school meals to pupils who are eligible to receive them), and discretionary grants to pupils to meet the cost of pupil support, including support for pupils with special educational needs or disabilities (taking account of the fact that separate additional money will be available for pupils with statements of special educational needs);
- l) administration; and

m) establishment expenses and other institutional costs.

4.4 Subject to clauses 4.11 and 4A.2, 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 the Academy;
- b) funding for the cost of functions which would be carried out by the local authority if the Academy were a maintained school, such funding to be determined at the discretion of the Secretary of State;
- c) funding for matters for which it is necessary for the Academy to incur extra costs, to the extent that those costs are deemed in the discretion of the Secretary of State to be necessary; and
- d) payments equivalent to 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, such payments to be at the discretion of the Secretary of State.

4.5 Subject to clause 4.7, the basis of the pupil number count for the purposes of determining GAG at the Academy for an Academy Financial Year will be the Company's most recent estimate in respect of the Academy provided in accordance with clause 4.6.

4.6 The Secretary of State shall in advance of each Academy Financial Year, at such time or times as he shall determine, request that the Company provides an estimate of the number of pupils on roll in the following September at the Academy for the purposes of determining GAG for an Academy Financial Year at the Academy, and the Company shall provide the requested estimate (such estimate to be

based on an objective assessment of numbers) in respect of the Academy to the Secretary of State as soon as reasonably practicable.

- 4.7 Once the condition specified in clause 4.8 has been satisfied with respect to the Academy for the Academy Financial Year for which funding is being calculated, the basis of the pupil number count for the purpose of determining GAG for the Academy will be the Schools Census for the relevant month (determined at the discretion of the Secretary of State) preceding the Academy Financial Year in question
- 4.8 For the purpose of clause 4.7, the condition is satisfied in the Academy Financial Year which immediately follows the Academy Financial Year in which all planned year-groups will be present at the Academy (that is, all the pupil cohorts relevant to the age-range of the Academy will have some pupils present).
- 4.9 For any Academy Financial Year in which GAG for the Academy has been calculated in accordance with clauses 4.5 and 4.6, an adjustment may be made to the following Academy Financial Year's formula funding element of GAG for the Academy to recognise any variation from that estimate. The Secretary of State may for the purpose of calculating any adjustment to the formula funding element of GAG under this clause, use the Census for the relevant month (determined at the discretion of the Secretary of State) for the Academy Financial Year in question as a means of determining pupil numbers in an Academy Financial Year. The additional or clawed-back grant will be only that amount relevant to the number of pupils above or below that estimate.
- 4.10 For any Academy Financial Year in which GAG for the Academy is calculated in accordance with clause 4.7, no adjustment will be made to the equivalence funding element in the following Academy Financial Year's equivalence funding element of GAG for the Academy unless the Company demonstrates to the satisfaction of the Secretary of State

that there has been a significant impact on costs, such as an extra class. For any other element of GAG for the Academy 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 or its equivalent.

- 4.11 The Secretary of State recognises that if he serves notice of intention to terminate this Agreement, the intake of new pupils during the notice period is likely to decline and that in such circumstances payments based simply on the number of pupils attending the Academy are unlikely to be sufficient to meet the Academy's needs during the notice period. In those circumstances, the Secretary of State may undertake to pay a reasonable and appropriately larger GAG with respect to the Academy in the notice period than would be justified solely on the basis of the methods set out in clauses 4.4 to 4.10, in order to enable the Academy to operate effectively.
- 4.12 Not used.
- 4.13 At the beginning of any Academy Financial Year the Company may hold unspent GAG for the Academy from previous Academy Financial Years amounting to such percentage (if any) as for the time being specified in the Academies Financial Handbook or otherwise as the Secretary of State may specify by notice in writing to the Company prior to the beginning of that Academy Financial Year of the total GAG payable for the Academy in the Academy Financial Year just ended, or such higher amount as may from time to time be agreed. The Company shall use such carried-forward amount for such purpose, or subject to such restriction on its use, as is for the time being specified in the Academies Financial Handbook or otherwise as the Secretary of State may specify by notice in writing to the Company. Clause 73 of the Master Agreement does not apply to the Academy.

- 4.14 Notwithstanding clause 4.13, any additional grant provided over and above that set out in clauses 4.4 to 4.10 and made in accordance with clause 4.11 may be carried forward without limitation or deduction until the Start-up Period or the circumstances set out in clause 4.11 have come to an end. Clause 74 of the Master Agreement does not apply to the Academy.
- 4.15 Any savings of GAG not allowed to be carried forward under clauses 4.13 and 4.14 above will be taken into account in the payment of subsequent grant. Clause 75 of the Master Agreement does not apply to the Academy.
- 4.16 Not used.
- 4.17 Not used.
- 4.18 Not used
- 4.19 In relation to this Academy, if the Secretary of State pays grant not including GAG to the Company on condition either that such grant be used for a particular purpose or purposes or that such grant be used by a certain date, any failure on the part of the Company to use such grant for such a purpose or purposes or by such date may be taken into account by the Secretary of State either:
- (i) in the same Academy Financial Year that such grant is paid to the Company; or
 - (ii) in the calculation and/or payment of any subsequent grant to the Company; or
 - (iii) by an adjustment to the GAG paid by the Secretary of State to the Company in the following Academy Financial Year or Academy Financial Years.
- 4.20 In relation to this Academy, if the Secretary of State or his agents pay any grant to the Company which includes an amount to cover the VAT

which will be payable by the Company in using any such grant for the purposes intended, the Company shall, having paid the VAT to a third party for any goods or services it has purchased from such a third party, where entitled, promptly and, in any event, as soon as is reasonably practicable, submit a VAT reclaim application to Her Majesty's Revenue and Customs ("**HMRC**") in respect of such VAT payment. Any failure by the Company to submit a VAT reclaim application to HMRC or repay the amount recouped to the Secretary of State as soon as reasonably practicable following the receipt of any such payment from HMRC may be taken into account by the Secretary of State either:

- (a) in the same Academy Financial Year that any such grant is paid to the Company; or
- (b) in the calculation and/or payment of any subsequent grant to the Company; or
- (c) by an adjustment to the GAG paid by the Secretary of State to the Company in the following Academy Financial Year or Academy Financial Years.

4.21 Not used.

4.22 Not used.

4.23 Not used.

4A ADDITIONAL FUNDING

4A.1 The Secretary of State shall meet the Company's costs arising from Rent payable by the Company under the Lease. Such costs shall include those costs arising from any rent rise payable by the Company under the terms of the Lease, so long as the relevant rent rise is properly evidenced in writing by the Company to the Department as soon as is reasonably practicable, but such costs shall not include any amount in respect of service charge payments or insurance premiums.

Where the definition of rent in the Lease includes service charge payments or insurance premiums, the Secretary of State shall exclude from the total grant payable in respect of Rent an amount in respect of such service charge payments or insurance premiums.

- 4A.2 The Secretary of State may pay further grant in the Start-up Period, as determined and specified by him, for costs which cannot otherwise be met from GAG.

4B LEASE

- 4B.1 If the Company is in material breach of the provisions of the Lease or if it is reasonably foreseeable that the Company will be in material breach of the Lease, the Company shall forthwith give written notice to the Secretary of State specifying the exact nature of the material breach or reasonably foreseeable material breach and such notice shall set out the steps taken or to be taken by the Company to remedy the material breach or reasonably foreseeable material breach and, where appropriate, shall include the timescales relating to any remedial action.
- 4B.2 The Company will at its own cost provide all information reasonably required by the Secretary of State in respect of any material breach or reasonably foreseeable material breach.
- 4B.3 Following the receipt by the Secretary of State of the written notice under clause 4B.1, the Company shall permit the Secretary of State to take all such steps in conjunction with or instead of the Company as may be necessary to remedy or prevent the material breach referred to in the said notice. The Company shall, in such circumstances, use its best endeavours to assist the Secretary of State to remedy or prevent such material breach.
- 4B.4 The Company shall, within 14 days of receiving any order, notice, proposal, demand or any other requirement materially affecting the

ability of the Company to use the Temporary Site for the purposes of the Academy from any competent authority (including the Landlord), give full particulars by written notice to the Secretary of State and deliver to the Secretary of State copies of such documents as he may require. Such notice shall state what steps, if any actions are required, the Company intends to take in response to the order, notice, proposal, demand or other requirement affecting the Temporary Site.

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

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

5 TERMINATION

5.1 Either party may give not less than seven Academy Financial Years' written notice to terminate this Agreement, such notice to expire on 31 August 2020 or any anniversary of that date.

Notice of Intention to Terminate by Company

5.2 The Secretary of State shall, before 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 the funds set out in clause 4.13 and such other funds as are, or are likely to be, available to the Academy from other academies operated by the Company ("**All Other Resources**"), it is likely that the cost of running the Academy during the Critical Year would cause the Company, on the basis of the Indicative Funding, to become insolvent (and for this reason only) then the Company may give notice of its intention to terminate this Agreement at the end of the then current Academy Financial Year.

- 5.3 Any notice given by the Company under clause 5.2 shall be in writing and shall be served on the Secretary of State not later than 28 February preceding the Critical Year or, if the Secretary of State has not given notice of the Indicative Funding to the Company on or before the date specified in clause 5.2 above, within six weeks after the Secretary of State has done so. The notice must specify:

5.3.1. the grounds on which the Company's opinion is based, including the evidence for 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

5.3.2. the shortfall in the Critical Year between the Indicative Funding and All Other Resources expected to be available to the Company to run the Academy and the projected expenditure on the Academy; and

5.3.3. a detailed budget of income and expenditure for the Academy during the Critical Year (the "**Projected Budget**").

- 5.4 Both parties will use their best endeavours to agree whether or not the cost of running the Academy during the Critical Year would cause the Company, on the basis of the Indicative Funding and All Other Resources, to become insolvent. Both parties recognise that they will need to engage in a constructive dialogue at the time about how best to provide education for the pupils at the Academy and undertake to use their best endeavours to agree a practical solution to the problem.
- 5.5 If no agreement is reached by 30 April (or by another date agreed between the parties) as to whether the cost of running the Academy during the Critical Year on the basis of the Indicative Funding and All Other Resources would cause the Company to become insolvent, then that question shall be referred to an independent expert (the "**Expert**") for resolution. The Expert's determination shall be final and binding on both parties. The Expert shall be requested to specify in his determination the amount of the shortfall in funding (the "**Shortfall**"). The Expert shall be an insolvency practitioner with significant professional experience of educational institutions or academies. If the parties fail to agree upon the appointment of the Expert then the Expert shall be appointed by the President for the time being of the Institute of Chartered Accountants in England and Wales. The Expert's fees shall be borne equally between the parties.
- 5.6 The Expert shall be required in reaching his determination to take account of advice from an educational specialist who is professionally familiar with the issues arising from the budget management of large schools. If the parties fail to agree upon the appointment of the educational specialist, then the educational specialist shall be appointed by the Chairman for the time being of the Specialist Schools and Academies Trust. The educational specialist's fees shall be borne equally between the parties.

- 5.7 If the Expert determines that the cost of running the Academy during the Critical Year would cause the Company, on the basis of the Indicative Funding and All Other Resources, to become insolvent, and if the Secretary of State has not 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 has been given to the parties or (b), if later, the Secretary of State has given written notice of his refusal to provide sufficient additional funding for the Academy to cover the Shortfall.

Termination Warning Notice

- 5.7A The Secretary of State shall be entitled to issue to the Company a written notice of his intention to terminate this Agreement (a "**Termination Warning Notice**") where he considers that:-

- a) the Academy is no longer meeting the requirements in section 1A of the Academies Act 2010 (subject to clause 5.11)
- b) the conditions and requirements set out in clauses 2.2 and 2.3 of this Agreement and clauses 13-34C of the Master Agreement (where applicable to a Mainstream Free School) are no longer being met;
- c) the standards of performance of pupils at the Academy are unacceptably low;
- d) there has been a serious breakdown in the way the Academy is managed or governed;
- e) the safety of pupils is threatened (whether by breakdown of discipline or otherwise); or
- f) the Company is otherwise in material breach of the provisions of this Agreement.

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

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

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

- a) in light of the Company's representations in response to the Termination Warning Notice, some or all of the Specified Remedial Measures are not required to be implemented (and if so which) and/or the Specified Remedial Measures are being or will be implemented with the specified timeframe; or
- b) subject to any further measures he reasonably requires ("**Further Remedial Measures**") being implemented by a specified date or any evidence he requires being provided, the implementation of such measures has been or will be successfully completed within the specified timeframes; or
- c) he is not satisfied that the Company will rectify the defaults identified in the Termination Warning Notice within the specified timeframes. (In such circumstances, the Secretary of State may notify the Company of his intention to terminate the Agreement on a specified date.)

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

a) the Company has not by the date specified in clause 5.7B(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 Company pursuant to clause 5.7B(c), the Secretary of State remains satisfied that it is appropriate to terminate the Agreement

Notice of Intention to Terminate

5.7E The Secretary of State may at any time give written notice of his intention to terminate the Agreement where the Chief Inspector gives notice to the Company in accordance with section 13(3) of the Education Act 2005 stating that in the Chief Inspector's opinion –

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

(b) the Academy requires significant improvement.

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

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

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

(b) having considered the representations made by the Company

pursuant to clause 5.7F, the Secretary of State remains satisfied that it is appropriate to terminate this Agreement,

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

5.8 If the Company has not obtained full planning permission (including where relevant listed building consent) in respect of the Temporary Site by 16 August 2013, the Secretary of State may terminate this Agreement by notice in writing to the Company, such termination to take effect on the date of the notice.

5.9 If, at any time after the signing of this Agreement but before the Academy opening date, the Secretary of State is of the view that:

1. the Academy would, on opening, provide an unacceptably low standard of education; or
2. the safety of pupils or staff at the Academy would, on opening, be threatened; or
3. the staff employed at the Academy are unsuitable; or
4. there is a serious breakdown in the way the Company is being managed or governed; or
5. the buildings and other structures on the Temporary Site are unsuitable or the Company has not obtained Building Regulations approval,

he may in writing either:

- (a) require the Company (i) not to open the Academy; and/or (ii) not to admit pupils of a particular age range, to be determined by the Secretary of State; and/or (iii) not to use any building or other structure on the Temporary Site until the relevant matter listed in paragraphs 1 to 5 above has been resolved to the Secretary of State's satisfaction; or
- (b) terminate this Agreement by notice in writing to the Company, such termination to take effect on the date of the notice.

- 5.10 If the Company has not entered into the Lease by 16 August 2013, the Secretary of State may terminate this Agreement by notice in writing to the Company, such termination to take effect on the date of the notice or on a date which the Secretary of State thinks appropriate in the circumstances.
- 5.11 If the Company has not acquired a permanent site for the Academy by 16 August 2016, the Secretary of State may terminate this Agreement by notice in writing to the Company, such termination to take effect on the date of the notice or on a date which the Secretary of State thinks appropriate in the circumstances.
- 5.12 If the Company acquires a permanent site for the Academy, it will enter into negotiations in good faith with the Secretary of State in respect of a deed of variation for this Agreement to insert the relevant clauses relating to that permanent site. If the Academy does not enter into negotiations in good faith or does not enter into a deed of variation in respect of the permanent site promptly after the negotiations are concluded, the Secretary of State may terminate this Agreement by notice in writing to the Company, such termination to take effect on the date of the notice or on a date which the Secretary of State thinks appropriate in the circumstances.
- 5.13 If the Secretary of State has cause to serve a notice on the Company under section 165 of the Education Act 2002 and a determination (from which all rights of appeal have been exhausted) has been made that the Academy shall be struck off the Register of Independent Schools, he may terminate this Agreement by notice in writing to the Company, such termination to take effect on the date of the notice.

6 EFFECT OF TERMINATION

- 6.1 In the event of termination of this Agreement however occurring, the school shall cease to be an Academy within the meaning of Sections 1 and 1A of the Academies Act 2010.

- 6.2 Subject to clause 6.3 and 6.4, if the Secretary of State terminates this Agreement pursuant to clause 5.1, the Secretary of State shall indemnify the Company. If the Secretary of State terminates this Agreement other than pursuant to clause 5.1, the Secretary of State may in his absolute discretion indemnify or (to such extent if any as he may in his absolute discretion consider appropriate) compensate the Company.
- 6.3 The amount of any such indemnity or compensation shall be determined by the Secretary of State having regard to any representations made to him by the Company, and shall be paid at such times and in such manner as the Secretary of State may reasonably think fit.
- 6.4 The categories of expenditure incurred by the Company in consequence of the termination of the Agreement in respect of which the Secretary of State shall (where the Secretary of State terminates this Agreement pursuant to clause 5.1) indemnify the Company and may (where the Secretary of State terminates this Agreement otherwise than pursuant to clause 5.1) in his absolute discretion indemnify or compensate the Company include (but not by way of limitation), staff compensation and redundancy payments, compensation payments in respect of broken contracts, expenses of disposing of assets or adapting them for other purposes, legal and other professional fees, and dissolution expenses.
- 6.5 Subject to clause 6.6, on the termination of this Agreement however occurring, the Company shall in respect of any of its capital assets at the date of termination:
- (a) promptly transfer a proportion of the assets to a person nominated by the Secretary of State, if the Secretary of State considers that all or some of those assets need to be used for any educational purpose by that nominee. The proportion of the assets to be transferred shall be

the same as the proportion of the capital contribution made by the Secretary of State to the original value of those assets, whether that contribution was made on the establishment of the Academy or later; or

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

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

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

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

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

7 ANNEX

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

8 GENERAL

8.1 This Agreement shall not be assignable by the Company.

8.2 No delay, neglect or forbearance on the part of the Secretary of State in enforcing (in whole or in part) any provision of this Agreement or in

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

- 8.3 Termination of this Agreement, for any reason, shall not affect the accrued rights, remedies, obligations or liabilities of the parties existing at termination.
- 8.4 This Agreement may be executed in any number of counterparts, each of which when executed and delivered shall constitute a duplicate original, but all the counterparts shall together constitute the one agreement.

9. THE MASTER AGREEMENT AND DISAPPLICATIONS

- 9.1 Except as expressly provided in this Agreement, the Master Agreement shall continue in full force and effect.
- 9.2 The following clauses of the Master Agreement do not apply to the Academy (the descriptions provided are for convenience only):
 - a) 13(g) [donations];
 - b) 63 [TUPE];
 - c) 102-102F [complaints].
 - d) 13(e)
 - e) 42A-53
 - f) 30 (d)

g) 73-75

10. ENGLISH LAW

10.1 This Agreement and any dispute or claim arising out of or in connection with it or its subject matter or formation (including non-contractual disputes or claims) shall be governed by and construed in accordance with the law of England and Wales.

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

10A. Not used.

10B. Not used.

Obligations of the Company

10C) (i) The Company shall keep the Temporary Site clean and tidy and make good any damage it causes to the Temporary Site and any deterioration to the condition of the Temporary Site that arises from the date of this Agreement, save that the Company shall ensure that any actions undertaken in compliance with this clause shall be consistent with the terms of the Lease.

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

10C)(iii) The Company shall seek and obtain the prior written consent of the Secretary of State, not to be unreasonably withheld or delayed, before taking any steps to:

- a) terminate, vary, surrender or dispose of the Lease; or

- b) grant any consent or licence in respect of the Temporary Site or any part of it; or
- c) create or permit to arise or continue any encumbrance affecting the Temporary Site or any part of it; or
- d) part with or share possession or occupation of the Temporary Site or any part of it; or
- e) enter into any onerous or restrictive obligations affecting the Temporary Site or any part of it.

Insurance

10D) The Company shall, save where the terms of the Lease provide for the Landlord to obtain insurance:

- a) keep the Temporary Site insured in accordance with the terms of the Lease and in any event with a reputable insurance office against loss or damage by the Insured Risks in the sum which the Company is advised represents the reinstatement value of the Temporary Site from time to time;
- b) pay the insurance premiums promptly as they become due and maintain the insurance policies in force on the Temporary Site;
- c) if the Temporary Site is damaged or destroyed, and subject to receipt of all necessary consents licences permissions and the like, apply the insurance proceeds received for those purposes in rebuilding and reinstating the Temporary Site as soon as reasonably practicable (provided that this clause should be satisfied if the Company provides premises not necessarily identical to the Temporary Site as it existed before the damage or destruction occurred);
- d) produce to the Secretary of State a copy of the insurance policy whenever reasonably requested and the receipt for the last premium or other evidence of renewal and up-to-date details of

the amount of cover (but no more than once in any period of 12 months in both cases);

- e) not knowingly do anything whereby any insurance policy relating to the Temporary Site may become void or voidable.
- f) insure against liability in respect of property owners' and third-party risks including occupier's liability.

This Agreement was executed as a Deed on 20 June 2013

Executed on behalf of **United Learning Trust** by:



Director 

in the presence of the following witness:

Name:

Address:

Occupation:



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



Duly authorised

ANNEX TO THIS SUPPLEMENTAL AGREEMENT

Requirements for the admission of pupils to the
Academy

Annex 1

Annex 1

Requirements for the Admissions of Pupils at Wye Free School ("the Academy")

GENERAL

1. This Annex may be amended in writing at any time by agreement between the Secretary of State and the United Learning Trust ("the Company").

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

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

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

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

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

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

- (a) direct the Company to admit a named pupil to the Academy on application from a LA. This will include complying with a School Attendance Order².

¹ As defined in the School Admissions Code.

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.



Before doing so the Secretary of State will consult the Company.

- (b) direct the Company to admit a named pupil to the Academy if the Company has failed to act in accordance with this Annex or has otherwise failed to comply with applicable admissions and equalities legislation or the provisions of the Codes.
- (c) direct the Company to amend its admission arrangements where they fail to comply with the School Admissions Code or the Admission Appeals Code.

5. The Company shall ensure that parents and 'relevant children'³ will have the right of appeal to an Independent Appeal Panel if they are dissatisfied with an admission decision of the Company. The Independent Appeal Panel will be independent of the Company. The arrangements for appeals will comply with the School Admission Appeals Code published by the Department for Education as it applies to Foundation and Voluntary Aided schools. The determination of the appeal panel is binding on all parties.

Relevant Area

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

7. If the Company does not consider the relevant area determined by the local authority for the maintained schools in the area to be appropriate, it must 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 in respect of the Academy will:

- a. subject to its right of appeal to the Secretary of State in relation to a named pupil, admit all pupils with a statement of special educational needs naming the Academy;
- b. adopt admission oversubscription criteria that give highest priority to looked after children, in accordance with the relevant provisions of the

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.

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 its admission arrangements and determine them in line with the requirements within the School Admissions Code.

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

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

⁴ 'Relevant age group' means 'normal point of admission to the school: for example, year 5, Year 7 and Year 12'.

