SUPPLEMENTAL FUNDING AGREEMENT

THIS AGREEMENT made 29 NOVEMBER 2013

BETWEEN

(1) THE SECRETARY OF STATE FOR EDUCATION; and

(2) SOLENT ACADEMIES TRUST

IS SUPPLEMENTAL TO THE MASTER FUNDING AGREEMENT made between the same parties and dated 30 OCTOBER 2013 (the "**Master Agreement**").

1 DEFINITIONS AND INTERPRETATION

1.1 Except as expressly provided in this Agreement words and expressions defined in the Master Agreement shall have the same meanings in this Agreement as were ascribed to them in the Master Agreement.

1.2 The following words and expressions shall have the following meanings:

"the Academy" means Cliffdale Primary Academy to be established at Battenburg Avenue, Portsmouth, PO2 0SN;

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

"the Land" means the publicly funded land (including for the avoidance of doubt all buildings, structures landscaping and other erections) situated at and known as Cliffdale Primary School, Battenburg Avenue, Portsmouth, PO2 0SN of the land that is to be transferred to the Academy and registered under Title number PM22440.

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

2 THE ACADEMY

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

2.2 The Company must ensure special educational provision is made at the Academy for one or more categories of SEN. These categories may include, but are not limited to Moderate Learning Difficulty (MLD), Severe Learning Difficulty (SLD), and Autistic Spectrum Disorder (ASD).[1]

2.3 The Company may not refuse to admit a child to the school whose statement names the Academy on the sole the basis that some, or all, of the child's SEN do not feature in the categories referred to in clause 2.2 of this agreement.

2.4 The requirements for the admission of pupils to the Academy are set out at Annex 1.

3 ACADEMY OPENING DATE

3.1 The Academy shall open as a school on 1 December 2013 replacing Cliffdale 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.

4 PUPILS

4.1 The planned number of places at the Academy is 100 in the age range four to eleven years. The number of funded places and the age ranges is/are

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[1] List the categories of SEN that the Special Academy will be designated for. For Academies that convert further to the Academies Act 2010, they must be the same as the predecessor school's designation immediately prior to conversion. The categories of SEN are SpLD, MLD, SLD, PMLD, BESD, SLCN, ASD, VI, HI, MSI, PD.

not determinative of GAG. GAG for each Academy Funding Year will be determined by the Secretary of State in accordance with clauses 54C and 54D of the Master Agreement.

4.2 Where the Company considers that there is a need to increase the planned number of places stated in clause 4.1, the Company must seek the approval of the Secretary of State and the requirements of this Agreement may be amended accordingly by agreement between the Secretary of State and the Company.

4A NOT USED[2]

5 CAPITAL GRANT

5.1 Pursuant to clause 38 of the Master Funding Agreement, the Secretary of State may, in his absolute discretion provide Capital Expenditure funding in accordance with any arrangements he considers appropriate.

6 GAG AND EAG

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

7 TERMINATION

7.1 Either party may give not less than seven Academy Financial Years' written notice to terminate this Agreement, such notice to expire on 31 August 2021 or any subsequent anniversary of that date.

Termination Warning Notice

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

a) the Academy is no longer meeting the requirements referred to in

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

clause 12A of the Master Agreement;

b) the conditions and requirements set out in clauses 2.2 and 2.3 of this Agreement and clauses 13-34B of the Master Agreement are no longer being met;

c) the standards of performance of pupils at the Academy are unacceptably low;

d) there has been a serious breakdown in the way the Academy is managed or governed;

e) the safety of pupils or staff is threatened (whether by breakdown of discipline or otherwise); or

f) the Company is otherwise in material breach of the provisions of this Agreement or the Master Agreement.

7.3 A Termination Warning Notice issued by the Secretary of State in accordance with clause 7.2 shall specify:

a) reasons for the Secretary of State's issue of the Termination Warning Notice;

b) the remedial measures which the Secretary of State requires the Company to carry out, with associated deadlines, in order to rectify the defaults identified ("Specified Remedial Measures"); and

c) the date by which the Company must respond to the Termination Warning Notice providing its representations with regard thereto or confirm that it accepts and agrees to undertake the Specified Remedial Measures.

7.4 The Secretary of State shall consider any response and representations from the Company which are received by the date specified in accordance with clause 7.3(c) and shall confirm whether he considers that:

a) in the light of the Company's representations in response to the Termination Warning Notice, some or all of the Specified Remedial Measures are not required to be implemented (and if so which) and/or the Specified Remedial Measures are being or will be implemented

within the specified timeframe; or

b) subject to any further measures he reasonably requires ("Further Remedial Measures") being implemented by a specified date or any evidence he requires being provided, the implementation of such measures has been or will be successfully completed within the specified timeframes; or

c) he is not satisfied that the Company will rectify the defaults identified in the Termination Warning Notice within the specified timeframes. (In such circumstances, the Secretary of State may notify the Company of his intention to terminate the Agreement on a specified date.)

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

a) the Company has not, by the date specified in clause 7.3(c), responded to the Termination Warning Notice either confirming that it accepts and agrees to undertake the Specified Remedial Measures or providing its representations with regard to the Specified Remedial Measures; or

b) the Company has not carried out the Specified Remedial Measures and/or Further Remedial Measures within the specified timeframes;

provided that having considered any representations made by the Company pursuant to clause 7.3(c), the Secretary of State remains satisfied that it is appropriate to terminate the Agreement.

Notice of Intention to Terminate

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

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

(b) the Academy requires significant improvement.

7.7 Any notice issued by the Secretary of State in accordance with clause 7.6 shall invite the Company to respond with any representations within a specified timeframe.

7.8 Where the Secretary of State has given notice of his intention to terminate this Agreement in accordance with clauses 7.6 and 7.7 and –

(a) he has not received any representations from the Company within the timeframe specified in clause 7.7; or

(b) having considered the representations made by the Company pursuant to clause 7.7, the Secretary of State remains satisfied that it is appropriate to terminate this Agreement

he may by notice in writing terminate this Agreement with effect from a specified date.

Termination with Immediate Effect

7.9 If the Secretary of State has cause to serve a notice on the Company under section 165 of the Education Act 2002 and a determination (from which all rights of appeal have been exhausted) has been made that the Academy shall be struck off the Register of Independent Schools, he may terminate this Agreement by notice in writing to the Company such termination to take effect on the date of the notice.

Notice of Intention to Terminate by Company

7.10 The Secretary of State shall, at a date preceding the start of each Academy Financial Year, provide to the Company an indication of the level of funding to be provided by the Secretary of State to the Company by way of GAG and EAG in the next following Academy Financial Year (the "**Indicative Funding**"). If the Company is of the opinion that, after receipt of the Indicative

Funding for the next following Academy Financial Year (the "**Critical Year**") and of the taking into account all other resources available and likely to be available to the Academy, including such funds as are set out in clause 73 of the Master Agreement and such other funds as are and likely to be available to the Academy from other academies operated by the Company ("**All Other Resources**"), it is likely that the cost of running the Academy during the Critical Year would cause the Company, on the basis of the Indicative Funding, to become insolvent (and for this reason only) then the Company may give notice of its intention to terminate this Agreement at the end of the then current Academy Financial Year.

7.11 Any notice given by the Company under clause 7.10 shall be in writing and shall be served on the Secretary of State not later than 28 February preceding the Critical Year or, if the Secretary of State shall not have given notice of the Indicative Funding to the Company on or before the date specified in clause 7.10 above, within six weeks after the Secretary of State shall have done so. The notice must specify:

7.11.1. the grounds upon which the Company's opinion is based and include the evidence of those grounds and any professional accounting advice the Company has received and including a detailed statement of steps which the Company proposes to take with a view to ensuring that as soon as reasonably practicable the costs of running the Academy are reduced sufficiently to ensure that such costs are less than the Indicative Funding and All Other Resources and the period of time within which such steps will be taken; and

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

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

7.12 Both parties undertake to use their best endeavours to agree whether or not the cost of running the Academy during the Critical Year would cause the Company, on the basis of the Indicative Funding and All Other Resources, to become insolvent. Both parties recognise that they will need to engage in a constructive dialogue at the time about how best to provide education for the pupils at the Academy and undertake to use their best endeavours to agree a practical solution to the problem.

7.13 If no agreement is reached by 30 April (or such other date as may be agreed between the parties) as to whether the cost of running the Academy during the Critical Year on the basis of the Indicative Funding and All Other Resources would cause the Company to become insolvent, then that question shall be referred to an independent expert (the "**Expert**") for resolution. The Expert's determination shall be final and binding on both parties. The Expert shall be requested to specify in his determination the amount of the shortfall in funding (the "**Shortfall**"). The Expert shall be an insolvency practitioner with significant professional experience of educational institutions or academies. If the parties fail to agree upon the appointment of the Expert then the Expert shall be appointed by the President for the time being of the Institute of Chartered Accountants in England and Wales. The Expert's fees shall be borne equally between the parties.

7.14 The Expert shall be required in reaching his determination to take account of advice from an educational specialist who is professionally familiar with the issues arising from the budget management of 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.

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.

8 EFFECT OF TERMINATION

8.1 In the event of termination of this Agreement however occurring, the school shall cease to be an Academy within the meaning of Section 1 of the Academies Act 2010.

8.2 Subject to clauses 8.3 and 8.4, if the Secretary of State terminates this Agreement pursuant to clause 7.1 of this Agreement, the Secretary of State shall indemnify the Company. If the Secretary of State terminates this Agreement otherwise than pursuant to clause 7.1 of this Agreement, the Secretary of State may in his absolute discretion indemnify or (to such extent if any as he may in his absolute discretion consider appropriate) compensate the Company.

8.3 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.

8.4 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 7.1) indemnify the Company and may (where the Secretary of State terminates this Agreement otherwise than pursuant to clause 7.1) 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.

8.5 Subject to clause 8.6, on the termination of this Agreement however occurring, the Company shall in respect of any of its capital assets at the date of termination:

(a) promptly transfer a proportion of the assets to a person nominated by the Secretary of State, if the Secretary of State considers that all or some of those assets need to be used for any educational purposes by that nominee. The proportion of the assets to be transferred shall be the same as the proportion of the capital contribution made by the Secretary of State to the original value of those assets, whether that contribution was made on the establishment of the Academy or at a later date; or

(b) if the Secretary of State confirms that a transfer under clause 8.5(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.

8.6 The Secretary of State may waive in whole or in part the repayment due under clause 8.5(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.

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

LAND

Restrictions on Land transfer

8A Recognising that they are or will be receiving publicly funded land at nil consideration (which for the purposes of this transaction shall include leases granted at a peppercorn rent) the Company:

a) shall, within 28 days from the transfer to it of the Land, apply to the Land Registry for a restriction in the proprietorship register (under section 43(1)(a) of the Land Registration Act 2002 in Form RX1 as prescribed by Rule 91 and Schedule 4 of the Land Registration Rules 2003) in the following terms:

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 8A(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 8A(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 8A(a), hereby consents to the entering of the restriction referred to in 8A(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 8A(a) or 8A(d) above, whether by

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

9 ANNEX

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

10 THE MASTER AGREEMENT

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

11 ENGLISH LAW

11.1 This Agreement shall be not be assignable by the Company.

11.2 No delay, neglect or forbearance on the part of the Secretary of State in enforcing (in whole or in part) any provision of this Agreement or in exercising (in whole or in part) any right or remedy conferred on him by this Agreement shall be or be deemed to be a waiver of such provision or right or remedy or a waiver of any other provision or right or remedy or shall in any way prejudice any right or remedy of the Secretary of State under this Agreement or shall amount to an election not to enforce such provision or exercise such right or remedy (including, for the avoidance of doubt, any right to terminate this Agreement). No single or partial exercise of such right or remedy shall preclude or restrict the further exercise of that or any other right or remedy.

11.3 Termination of this agreement, for any reason, shall not affect the accrued rights, remedies, obligations or liabilities of the parties existing at termination.

11.4 This deed may be executed in any number of counterparts, each of which when executed and delivered shall constitute a duplicate original, but all the counterparts shall together constitute the one agreement.

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

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

This Agreement was executed as a Deed on 29 NOVEMBER 2013

Executed on behalf of Solent Academies Trust by:

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Director

In the presence of:

Witness..... LORRAINE SWANSON

Address..... 8 COORSHALTON AVENUE PORTSMOUTH

Occupation..... BUSINESS MANAGER

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

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Duly Authorised

ANNEX TO THIS SUPPLEMENTAL AGREEMENT

Requirements for the Admission for pupils at the Academy Annex 1

Annex 1

REQUIREMENTS FOR THE ADMISSION OF PUPILS TO CLIFFDALE PRIMARY 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 where paragraph 3 applies, the Company may not admit a child to the school unless a statement of SEN is maintained for that child and Cliffdale Primary Academy (or Cliffdale Primary School) is named in the child's statement

3. The Company may admit a child without a statement to Cliffdale Primary Academy if:

   (i) he is admitted for the purposes of an assessment of his educational needs under section 323 of the Education Act 1996 and his admission to the Academy is with the agreement of the local authority, the Company, the child's parent and any person whose advice is to be sought in accordance with regulation 7 of the Education (Special Educational Needs) (England) (Consolidation) Regulations 2001;

   (ii) he remains admitted following an assessment under section 323 of the Education Act 1996; or

   (iii) he is admitted following a change in his circumstances, with the agreement of the local authority, the Company and the child's parents.

4. If a child without a statement has been admitted to Cliffdale Primary Academy for the purpose of an assessment, in accordance with paragraph 3(i), the Company may allow the child to remain at that Academy:

   (i) until the expiry of ten school days after the local authority serve a notice under section 325 of the Education Act 1996 that they do not propose to make a statement, or

   (ii) until a statement is made.

5. Where the local authority intend to name Cliffdale Primary Academy in a statement, and have served a copy of the proposed statement (or amended statement) on the Company, the Company must respond to the local authority's proposal within 15 days.

6. 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 local authority's notice, notify the local authority 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 Academy 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. Where a local authority maintains a statement for a child under section 324 of the Education Act 1996 and the name of Cliffdale Primary Academy (or Cliffdale Primary School) is specified in that statement, the Company must admit that child to the Academy even if they consider that the Academy should not have been named in the child's statement.

9. Where the Company considers that the Academy should not have been named in a child's statement, they may ask the Secretary of State to determine that the local authority has acted unreasonably in naming the Academy and to make an order directing the authority to amend the child's statement by removing the name of the Academy. Where the Secretary of State makes an order to this effect, the Company will cease to be under an obligation to admit the child from the date of the Secretary of State's Order, or from such date as the Secretary of State specifies. In specifying a date, the Secretary of State must take into account both the welfare of the child in question and the degree of difficulty caused to the Academy by the child's continued admission.

10. Where the Secretary of State determines that a local authority has acted reasonably in naming Cliffdale Primary Academy in a child's statement, the Company must continue to admit the child until the Academy ceases to be named in the statement.

THE FIRST-TIER TRIBUNAL (SPECIAL EDUCATIONAL NEEDS AND DISABILITY)

11. If a parent or guardian of a child in respect of whom a statement is maintained by a local authority appeals to the First-tier Tribunal (Special Educational Needs and Disability) either against the naming of the Academy in the child's statement or asking the Tribunal to name the Academy, the Company agrees to be bound by the decision of the Tribunal on any such appeal even if the decision is different to that of the Secretary of State under paragraph 9 or 10 above.

12. Where the Academy, the Secretary of State or the First-tier Tribunal (Special Educational Needs and Disability) have determined that it should be named in a child's statement, the Company must admit the child to the Academy notwithstanding any provision of this Annex.