

SUPPLEMENTAL AGREEMENT

THIS AGREEMENT made

2012

BETWEEN

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

(2) **THE BROOKE WESTON TRUST** (company number 2400784) of Brooke Weston, Coomb Road, Great Oakley, Corby, Northamptonshire, NN18 8LA (the "Company")

IS SUPPLEMENTAL TO THE MASTER FUNDING AGREEMENT made between the same parties and dated 2012 (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 Corby Technical School to be established at Cottingham Road, Corby, Northamptonshire;

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

"Academy Funding Year" means the year from 1st September to 31st August in any year;

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

"Discharge Process" means the removal of:

- i. the restriction in the proprietorship register as referred to in clause 9A.1a);
- and

ii. the notice in the proprietorship register as referred to in clause 9A.5 a);

“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 (including for the avoidance of doubt all buildings, structures landscaping and other erections) situated at and known as Corby Technical School of Cottingham Road, Corby, Northamptonshire making up the permanent site of the Academy or the part of such land remaining following any disposal in accordance with clause 9A.9;

"Mainstream Academy" means an Academy meeting the requirements set down in Section 1A Academies Act 2010;

"Relevant Qualification" has the same meaning as that given to the expression in Section 96 of the Learning and Skills Act 2000;

"the Short Term Lease" means the leasehold agreement between the Company and the LA in respect of the Land (save for the football pitch and changing room subject to a lease or licence in favour of Corby Locomotive Football Club) which either will terminate following receipt of satisfactory planning permission for works necessary to enable long term use of the Land for the Academy (“long term works”) or in the event that the Company cannot secure satisfactory planning permission for the long term works;

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

“the Long Term Lease” means the leasehold agreement between the Company and the LA in respect of the Land which will be entered into following a grant of satisfactory planning permission for long term works.

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 curriculum provided by the Academy to pupils up to the age of 16 shall be broad and balanced.

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

2.4 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).

ACADEMY OPENING DATE

2.4 The Academy shall open as a school on 1 September 2012.

2.5 The planned capacity of the Academy is 475 in the age range 11-18, including a sixth form of 100 places.

3 CAPITAL GRANT

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

4 GAG AND EAG

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

4A LEASE

4A.1.1 If the Company is in material breach of the provisions of the Short Term Lease or Long Term Lease or if it is reasonably foreseeable that the Company will be in material breach of the Short Term Lease or Long Term 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.

4A.1.2 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.

4A.2 Following the receipt by the Secretary of State of the written notice under clause 4A.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.

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 2019 or any subsequent anniversary of that date, save where the provisions of this Agreement otherwise provide.

5.2 If the Secretary of State is of the opinion that the Academy no longer meets the requirements set out in clause 12 of the Master Agreement or that the conditions and requirements set out in clauses 13-34A of the Master Agreement (as amended by clause 8.4 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, the Secretary of State may give notice of his intention to terminate this Agreement.

5.3 Any such notice shall be in writing and shall:

5.3.1. state the grounds on which the Secretary of State considers the Academy no longer meets the requirements set out in clause 12 of the Master Agreement (as amended by clause 8.4 of this Agreement) or is not meeting the conditions and requirements of clauses 13-34A of the Master Agreement or the Company is otherwise in material breach of the provisions of this Agreement or the Master Agreement;

- 5.3.2. specify the measures needed to remedy the situation or breach;
 - 5.3.3. specify a reasonable date by which these measures are to be implemented; and
 - 5.3.4. state the form in which the Company is to provide its response and a reasonable date by which it must be provided.
- 5.4 If no response is received by the date specified in accordance with clause 5.3.4, the Secretary of State may give the Company 12 months, or such lesser period as he considers appropriate in the circumstances, written notice to terminate this Agreement.
- 5.5 If a response is received by the date specified in accordance with clause 5.3.4, the Secretary of State shall consider it, and any representations made by the Company, and shall, within three months of its receipt, indicate that:
- 5.5.1. he is content with the response and/or that the measures which he specified are being implemented; or
 - 5.5.2. he is content, subject to any further measures he reasonably specifies being implemented by a specified date or any evidence he requires that implementation of such measures have been successfully completed; or
 - 5.5.3. he is not satisfied, that he does not believe that he can be reasonably satisfied, and that he will proceed to terminate the Agreement.
- 5.6 In the circumstances of clause 5.5.3 the Secretary of State shall notify the Company 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 meet the requirements set out in clause 12 of the Master Agreement (as amended by clause 8.4 of this Agreement) or does not and will not meet the conditions and requirements set out in clauses 13-34A of the Master Agreement or the Company is in material breach of the provisions of this Agreement or the Master Agreement and such breach will

not be remedied to his reasonable satisfaction, he shall give the Company twelve months written notice to terminate this Agreement.

5.7 If the Secretary of State has cause to serve a notice on the Company under section 165 of the Education Act 2002 and a determination (from which all rights of appeal have been exhausted) has been made that the Academy shall be struck off the Register of Independent Schools, the period of twelve months notice referred to in clause 5.6 may be shortened to a period deemed appropriate by the Secretary of State.

5.8 The Secretary of State shall, at a date preceding the start of each Academy Financial Year, provide to the Company an indication of the level of funding to be provided by the Secretary of State to the Company by way of GAG and EAG in the next following Academy Financial Year (the “**Indicative Funding**”). If the Company is of the opinion that, after receipt of the Indicative Funding for the next following Academy Financial Year (the “**Critical Year**”) and of the taking into account all other resources available and likely to be available to the Academy, including such funds as are set out in clause 73 of the Master Agreement and such other funds as are and likely to be available to the Academy from other academies operated by the Company (“**All Other Resources**”), it is likely that the cost of running the Academy during the Critical Year would cause the Company, on the basis of the Indicative Funding, to become insolvent (and for this reason only) then the Company may give notice of its intention to terminate this Agreement at the end of the then current Academy Financial Year.

5.9 Any notice given by the Company under clause 5.8 shall be in writing and shall be served on the Secretary of State not later than 28 February preceding the Critical Year or, if the Secretary of State shall not have given notice of the Indicative Funding to the Company on or before the date specified in clause 5.8 above, within six weeks after the Secretary of State shall have done so. The notice must specify:

5.9.1. the grounds upon which the Company’s opinion is based and include the evidence of those grounds and any professional accounting advice the Company has received and including a detailed statement of steps which the Company proposes to take with a view to ensuring that as soon as reasonably practicable the costs of running the Academy are

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

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

5.9.3. a detailed budget of income and expenditure for the Academy during the Critical Year (the “**Projected Budget**”).

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

5.11 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.

5.12 The Expert shall be required in reaching his determination to take account of advice from an educational specialist who is professionally familiar with the issues arising from the budget management of large schools. If the parties fail to agree upon the appointment of the educational specialist then the educational specialist shall be appointed by the Chairman for the time being

of the Specialist Schools and Academies Trust. The educational specialist's fees shall be borne equally between the parties.

- 5.13 If the Expert determines that the cost of running the Academy during the Critical Year would cause the Company, on the basis of the Indicative Funding and All Other Resources, to become insolvent, 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.
- 5.14 If the Company shall have given notice to terminate the Agreement under 5.13, 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.
- 5.15 The Secretary of State may at any time by notice in writing terminate this Agreement forthwith if the Academy has ceased (except where such cessation occurs temporarily by reason of an event beyond the reasonable control of the Company) to operate as an Academy within the meaning of Section 1 of the Academies Act 2010.
- 5.16 A "Special Measures Termination Event Occurs" when:
- 5.16.1. the Chief Inspector has given a notice to the Company in accordance with section 13(3) of the Education Act 2005 (the "Special Measures Notice") stating that in his opinion special measures are required to be taken in relation to the Academy; and
- 5.16.2. the Chief Inspector has carried out a subsequent inspection of the Academy in accordance with the Education Act 2005 and has made a report in accordance with the Education Act 2005 stating that the Academy has made inadequate progress since the date of the Special Measures Notice; and

- 5.16.3. the Secretary of State has requested the Company to deliver within 10 Business Days a written statement (a "Further Action Statement") of the action the Company proposes to take, and the period within which it proposes to take such action, or, if it does not propose to take any action, the reasons for not doing so; and
- 5.16.4. the Secretary of State, having considered the Further Action Statement, is not satisfied that any action proposed to be taken by the Company is sufficient in all the circumstances, or, if no Further Action Statement shall have been given to the Secretary of State within the requested timeframe or otherwise.
- 5.17 If a Special Measures Termination Event occurs, the Secretary of State may:
- 5.17.1. by notice in writing to the Company terminate this Agreement forthwith; or
- 5.17.2. subject to clause 102 of the Master Agreement, appoint such Further Directors to the Company as he thinks fit in accordance with the Articles and/or may provide up to 12 months' notice in writing to terminate this Agreement.
- 5.18 In the event that the Secretary of State appoints Further Directors in accordance with clause 5.17.2, the Company must, upon the request of the Secretary of State, procure the resignation of the Directors appointed in accordance with Article 50 of the Articles of Association.
- 5.19 If the Company has not obtained full planning permission (including where relevant listed building consent) in respect of the Land by 31 July 2013, the Secretary of State may by notice terminate this Agreement forthwith or may provide such notice as he deems appropriate in the circumstances in writing to terminate this Agreement.
- 5.19A If, at any time during the development of the Land for use as the permanent site of the Academy, the Secretary of State is of the view that:
1. the safety of pupils or staff at the Academy would be threatened; or

2. the buildings and other structures on the Land or parts thereof are unsuitable including but not limited to the requirement for any Building Regulations approval to have been obtained;

he may in writing either:

- (a) require the Company not to use any building or other structure on the Land or parts thereof until such time as the relevant matter or matters listed in 1. to 2. above has or have been resolved to the Secretary of State's satisfaction; or
- (b) terminate this Agreement forthwith or provide such notice as he deems appropriate in the circumstances to terminate this Agreement.

5.19B If by 31 July 2013, it becomes clear that the Long Term Lease will not be entered into, the Secretary of State may direct the Company to enter into negotiations in respect of securing an alternative permanent site the Secretary of State considers suitable for the needs of the Academy.

5.19C If, having been directed under 5.19B to enter into negotiations, the Company has not secured an interest in that alternative site to the satisfaction of the Secretary of State by 31 July 2013, the Secretary of State may:

- a) by notice terminate this Agreement forthwith; or
- b) provide such notice as he deems appropriate in the circumstances in writing to terminate this Agreement; or
- c) appoint such Further Directors as he thinks fit to enable a permanent site to be secured for the Academy. Should it prove impossible to secure a permanent site for the Academy, the Secretary of State may:
 - i. by notice terminate this Agreement forthwith; or
 - ii. provide up to 12 months' notice in writing to terminate this Agreement.

5.20 If at any time after the signing of this Agreement but prior to 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. the buildings and other structures on the Land are unsuitable or the Company has not obtained Building Regulation 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 Land until such time as the relevant matter or matters listed in 1. to 4. above has or have been resolved to the Secretary of State's satisfaction; or
- (b) terminate this Agreement forthwith or provide such notice as he deems appropriate in the circumstances to terminate this Agreement.

5.21 If the Company has not entered into the Short Term Lease by 31 July 2012, the Secretary of State may by notice terminate this Agreement forthwith or may provide such notice as he deems appropriate in the circumstances in writing to terminate this Agreement.

5.22 If the Company has not entered into the Long Term Lease by 31 July 2013, the Secretary of State may by notice terminate this Agreement forthwith or may provide such notice as he deems appropriate in the circumstances in writing to terminate this Agreement.

6 EFFECT OF TERMINATION

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

6.2 Subject to clause 6.3, if the Secretary of State terminates this Agreement for reasons other than that a Special Measure Termination Event occurs, the Academy no longer meets the requirements set out in clause 12 of the Master Agreement (as amended by clause 8.4 of this Agreement), or is no longer meeting the conditions and requirements set out in clauses 13-34A of the

Master Agreement or that the Company is otherwise in material breach of the provisions of this Agreement or the Master Agreement, the Secretary of State may indemnify the Company.

- 6.3 The amount of any such indemnity shall be determined by the Secretary of State having regard to any representations made to him by the Company, 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 may indemnify the Company include (but not by way of limitation), staff compensation and redundancy payments, compensation payments in respect of broken contracts, expenses of disposing of assets or adapting them for other purposes, legal and other professional fees, and dissolution expenses.
- 6.5 Subject to clause 6.6, on the termination of this Agreement, however occurring, the Company shall, in respect of any of its capital assets purchased using funding provided by the Secretary of State in connection with the Academy 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 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) 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 L A.
- 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**

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

7A **GENERAL**

- 7A.1 This Agreement shall not be assignable by the Company.
- 7A.2 The Secretary of State and the Company agree that, notwithstanding the termination of this Agreement, any obligation upon the Company and/or the Secretary of State expressed as arising upon the termination of this Agreement shall continue to subsist.

8 **THE MASTER AGREEMENT**

- 8.1 Except as expressly provided in this Agreement the Master Agreement ("MA") shall continue in full force and effect.
- 8.1A The following amendments to the provisions within the MA shall only apply to Corby Technical School unless expressly stated otherwise. For the avoidance of doubt, the following amendments shall not apply to any other academy or school operated by the Company.
- 8.2 In Clause 11 of the MA the words "having the characteristics" are replaced by "meets the requirements".

8.3 The heading in the MA "Characteristics of a Mainstream Academy" is amended to "Academy Requirements of a Mainstream Academy".

8.4 Clause 12 of the MA is replaced with the words "The Academy requirements are as set down in Section 1A of the Academies Act 2010.

Clause 15 of the MA is replaced with the words:

"The Company shall establish, for each Academy, an Advisory Body, whose role shall be to provide advice to the Company in relation to the functioning of that Academy. The role of the Advisory Body and the membership of it shall be for the Company to decide, but the Company will, as a minimum, ensure that:"

a new sub clause 15 f) is added to the MA as follows:

"A representative of the Local Authority for the area in which the Local Authority is established shall be a member of the Advisory Body."

Clause 15 e) of the MA is replaced with the words:

"to the extent that the Company may, in accordance with the Articles, choose to establish a Local Governing Body, then the Company may additionally constitute the Advisory Body as the Academy's Local Governing Body."

A new Clause 17A is added to the MA as follows:

"The Company shall, on receipt of information from the Criminal Records Bureau in response to an application for an enhanced criminal record certificate, on request from the Secretary of State or his agents, as soon as possible thereafter submit such information to the Secretary of State in accordance with section 124 of the Police Act 1997.

8.5 Clauses 19 & 20 of the MA is replaced by:

"19) Subject to clause 20, the Company shall, in accordance with any guidance which the Secretary of State may issue on the qualifications of teaching and other staff in Academies, employ anyone it deems is suitably qualified or is otherwise eligible under a contract of employment or for services to carry out planning and preparing lessons and courses for pupils, delivering lessons to pupils, assessing the development, progress and

attainment of pupils, and reporting on the development, progress and attainment of pupils.

20) Clause 19 does not apply to anyone who (a) is appointed as the SENCO by the Company under section 317(3A) of the Education Act 1996, who must meet the requirements set out in Regulation 3 of the Education (Special Educational Needs Co-ordinators) (England) Regulations 2008 (SI 2008/2945); or (b) is appointed as a designated teacher for looked after children further to clause 18A.”

8.6 Clause 22 of the MA is replaced by:

“22) 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 [SI 2008/239] (“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. “

8.7 Clause 23 A of the MA is replaced by:

“23A) The Company shall publish information in relation to its current curriculum provision at each of the Academies. Such information shall include details relating to:

- a) the content of the curriculum provided at each Academy;
- b) its approach to the curriculum provided at each Academy;
- c) the GCSE options (and other Key Stage 4 qualifications) offered by each Academy; and
- d) how parents (including prospective parents) can obtain further information in relation to an individual Academy’s curriculum”

8.8 A new Clause 25A is added to the MA as follows:

“25A The Company shall not 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 and/or historical evidence and explanations.”

8.9 Sub clause 26a) of the MA is replaced by:

“26a) subject to clause 28, and paragraph 4 of Schedule 19 to the School Standards and Framework Act 1998 which shall apply as if the Academy were a voluntary aided school with religious character, the Company shall ensure that provision is made for religious education to be given to all pupils at the Academy in accordance with the tenets of the specified religion or religious denomination of the Academy;”

8.10 Clause 27b) of the MA is amended to refer to “community or foundation school ”in place of “community, foundation or voluntary school”.

8.11 Clauses 28A, 29 and 29A of the MA are replaced by:

“28) The Company shall have regard to any guidance issued by the Secretary of State, further to section 403 of the Education Act 1996, on sex and relationship education to ensure that children at each Academy are protected from inappropriate teaching materials and they learn the nature of marriage and its importance for family life and for bringing up children. The Company shall also have regard to the requirements set out in section 405 of the Education Act 1996 which shall apply to each Academy as if it were a maintained school.

29) 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 each Academy;

b) references to registered pupils shall be treated as references to registered pupils at each 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 each Academy.

29A) 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.”

8.12 Clause 30c) of the MA does not apply.

8.13 Clause 34A of the MA is replaced by:

International Education Surveys

“34A) Section 538A of the Education Act 1996 (power to direct participation in international surveys) shall be deemed to apply to the relevant Academy with the following modifications:

(a) references to the governing body shall be treated as references to the Company; and

(b) references to community, foundation voluntary school shall be treated as references to the relevant Academy.

Pupil Premium

34B) The Company shall publish in each Academy Financial Year information in relation to:

a) the amount of Pupil Premium allocation that it will receive during that Academy Financial Year for each of the Academies;

b) on what it intends to spend the Pupil Premium allocation at each of the Academies;

c) on what it spent its Pupil Premium at each of the Academies in the previous Academy Financial Year;

d) the impact on educational attainment at each of the Academies, arising from expenditure of the previous Academy Financial Year’s Pupil Premium.”

8.14 Clause 35 of the MA is replaced by:

“35) The Secretary of State shall pay grants towards Recurrent Expenditure and may pay grants towards Capital Expenditure for each Academy. For the purposes of this clause and clauses 58 onwards an Academy Financial Year shall be deemed to run from 1st September to 31st August or such other period as the Secretary of State may from time to time specify by notice in writing to the Company. For the purposes of clauses 36 to 57 an Academy Funding Year shall be deemed to run from 1st September to 31st August, to align with funding allocations. Except with the Secretary of State’s prior agreement, the Company shall not budget for its expenditure in any Academy Financial Year in excess of expected income. The Company shall not enter into commitments which are likely to have substantial implications for future levels of grant, or for the period for which grant may be required. No decision by the Company shall commit the Secretary of State to paying any particular amount of grant.”

8.15 The following words are added at the end of Clause 36 of the MA:

“and where appropriate Additional Funding under clause 64.”

8.16 Sub clause 40b) of the MA is amended by the addition at the end of the sub clause of the word “and” at the end of that sub clause.

8.17 Clauses 41A to 41F inclusive of the MA do not apply.

8.18 At Clause 42 g) of the MA the following words are added:

“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;

8.19 The following words are added to the end of Clause 43 b) of the MA:

“such funding to be determined at the discretion of the Secretary of State.”

8.20 The following words are added to the end of Clause 44 o) of the MA:

“such payments to be at the discretion of the Secretary of State”.

8.21 Clauses 46–52 of the MA inclusive are replaced by the following clauses:

“46) Subject to clause 43A of the MA, the basis of the pupil number count for the purposes of determining GAG for an Academy Funding Year for an Academy will be the Company's estimate each November for numbers on roll in the following September for the relevant Academy, such estimate to be based on an objective assessment of pupil numbers.

47) Once the condition specified in clause 43B has been satisfied with respect to an Academy for the Academy Funding Year for which funding is being calculated, the basis of the pupil number count for the purpose of determining GAG for that Academy will be:

- a) for the pupil number count for pupils in Year 11 and below, the Schools Census for the January preceding the Academy Funding 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.

48) For the purpose of clause 43A, the condition is satisfied when 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.

49) For any Academy Funding Year in which GAG for an Academy has been calculated in accordance with clause 43, an adjustment will be made to the following Academy Funding Year's formula funding element of GAG for the Academy to recognise any variation from that estimate greater than or lower than 2.5%. The additional or clawed-back grant will be only that amount relevant to the number of pupils beyond the 2.5% variation.

50) For any Academy Funding Year in which GAG for an Academy is calculated in accordance with clause 43A, no adjustment will be made to the equivalence funding element in the following Academy Funding Year's

equivalence funding element of GAG 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 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.

51) 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.

52) The Secretary of State recognises that if he serves notice of intention to terminate this Agreement or a Supplemental Agreement, the intake of new pupils during the notice period is likely to decline and that in such circumstances payments based simply upon the number of pupils attending the relevant Academy or Academies are unlikely to be sufficient to meet the Academy's or Academies' 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 that Academy or those Academies in the notice period than would be justified solely on the basis of the methods set out in clauses 42-43D, in order to enable the Academy to operate effectively.

52A) The Secretary of State also recognises that if this Agreement or a Supplemental Agreement is terminated for any reason by either party the number of pupils at the relevant Academy or Academies is likely to decline. In these circumstances both parties undertake to attempt to resolve issues arising from such termination in good faith and with the aim of protecting the interests and the education of the pupils at the relevant Academy or Academies.”

8.22 Clause 56 of the MA is amended by deleting the address given and inserting the words “to the Secretary of State at an address notified from time to time”.

8.23 Clauses 62 – 63 inclusive of the MA do not apply.

8.24 The following words are added to the end of Clause 69 h) of the MA:

“or under the terms of the lease of the relevant academy”.

8.25 The following clauses are added to the MA :

“75A 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:

(a) in the same Academy Funding Year that 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 Funding Year or Academy Funding Years.

75B) 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 on the part of 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 Funding 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 Funding Year or Academy Funding Years.”

8.26 The words “spend or” are added to Clause 76 of the MA after the words “The Company may also...”. and in the same clause, the words “provided that it complies with all applicable requirements relating to the proper and regular use of funds in the Academies Financial Handbook.” are added after the words “for application to the benefit of an Academy as it sees fit...”.

8.27 Clause 77) b of the MA is amended so that the words “for the time” are replaced by “from time to time”.

8.28 Clause 79 is amended so that the words “for the time” are replaced by “from time to time”.

8.29 Clause 81 of the MA is replaced by:

“The Company shall not borrow against or so as to put at risk property or assets funded (whether in whole or in part) by the Secretary of State without specific approval of the Secretary of State, such approval at the absolute discretion of the Secretary of State. The Company shall not operate an overdraft except to cover irregularities in cash flow. Such an overdraft, and the maximum amount to be borrowed, must be approved by the Company in a General Meeting and in writing by the Secretary of State, and shall be subject to any conditions which the Secretary of State may reasonably impose.”

8.30 Clause 85 of the MA is amended so that the words “for the time” are replaced by “from time to time”.

8.31 Clause 89A of the MA does not apply.

8.32 The following clause is added as Clause 91A of the MA:

“91A If the Secretary of State is satisfied that any Director or Member of the Company is not a suitable person he may:

(a) in relation to such a Director or Member, without giving any reasons, serve notice in writing on the Company requiring the Company to procure the resignation or removal of the person(s) within 42 days; and if the Company fails to procure the said resignation or removal within the time specified, the

Secretary of State may by notice terminate this Agreement forthwith or may provide up to 12 months' notice in writing to terminate this Agreement; or

(b) appoint such Further Directors as he thinks fit and/or provide up to 12 months' notice in writing to terminate this Agreement; or

(c) by notice in writing terminate this Agreement forthwith or on such date as the Secretary of State may determine."

8.33 Clause 93 of the MA is replaced by the following:

"Following the Members passing a resolution as described in clause 92, the Secretary of State's right to terminate this Agreement or, as the Secretary of State may in his absolute discretion decide, any of the Supplemental Funding Agreements under clause 92 shall cease if he removes one or more Additional Directors or Further Directors and fails to replace at least one Additional Director or Further Director within the 30 days of their removal resulting in there being no remaining Additional Director or Further Director on the governing body of the Company."

8.34 The following words are added at the end of Clause 93A) of the MA:

"Provided that where a person ('P') is a member or director of the body corporate (as a corporation sole or otherwise) by virtue of an office, no change of Control arises merely by P's successor becoming a member or director in P's place."

8.35 The following words are added at the end of sub clause l) of Clause 95 of the MA:

"a) together with any other relevant information concerning the management or governance of the Academies which, subject to clause 99), is reasonably necessary for the Secretary of State to carry out his functions generally and in relation to this Agreement."

8.36 A new sub clause m) is added to Clause 95 of the MA as follows:

"m) compliance with the requirements of the Charity Commission's guidance to charities and charity trustees and in particular the Charity Commission's guidance in the Protecting Charities from Harm ('the compliance toolkit') as amended from time to time."

8.37 The following new clauses are added to the MA:

“96A)(i) The Company shall provide to the Secretary of State the name of any new or replacement Member or Director of the Company, whether such a person has been appointed or elected, together with the date of such an appointment or election and, where applicable, the name of the Member or Director such a person replaces as soon as is practicable and in any event within 14 days of the appointment or election of such a person.

96A) (ii) In this regard, the Company shall not appoint any new or replacement Members or Directors of the Company until it has first (a) notified such persons that their name shall be shared with the Secretary of State and (b) explained to the new or replacement Members or Directors of the Company that the reason their name is being shared with the Secretary of State is to enable the Secretary of State to assess their suitability.”

8.38 The following words are added to the end of Clause 98 of the MA:

“upon request”.

8.39 The following new clause is added as the last clause of the MA:

“105 The Secretary of State and the Company agree that, notwithstanding the termination of this Agreement, any obligation upon the Company and/or the Secretary of State expressed as arising upon the termination of this Agreement shall continue to subsist.”

9 **ENGLISH LAW**

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

9A **LAND**

Restrictions on Land transfer

9A.1 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 or by the proprietor of any registered charge 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 reasonably required to ensure that the restriction referred to in clause 9A.1(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 9A.1(a) as soon as reasonably practicable after it receives notification from the Land Registry,

d) in the event that it has not registered the restriction referred to in clause 9A.1(a), hereby consents to the entering of the restriction referred to in 9A.1(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 9A.1(a) or 9A.1(d) above, whether by itself, a holding company, a subsidiary company, or a receiver, administrator or liquidator acting in the name of the Company.

Obligations of the Company

9A.2(i) The Company shall keep the Land clean and tidy and make good any damage it causes to the Land and / or any deterioration to the condition of the Land that may arise from the date of this Agreement, save that the Company shall ensure that any actions undertaken in compliance with this clause shall be consistent with the terms of the Lease. In compliance with this clause, the

Company shall not do or cause or permit to be done anything to lessen the value or marketability of the Land save with the express written consent of the Secretary of State.

9A.2(ii) The Company shall observe and comply with its obligations under the Lease and shall promptly enforce its rights against the Landlord.

9A.2(iii) The Company agrees it 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; and/or
- b) grant any consent or licence in respect of the Land or any part of it; and/or
- c) create or permit to arise or continue any encumbrance affecting the Land or any part of it; and/or
- d) part with or share possession or occupation of the Land or any part of it; and/or
- e) enter into any onerous or restrictive obligations affecting the Land or any part of it.

Insurance

9A.3 The Company shall, save where the terms of the Lease provide for the Landlord to obtain insurance in respect of the Land:-

- a) keep the Land insured as in accordance with the terms of the Short Term Lease or the Long Term Lease (as applicable) and in any event with a reputable insurance office against loss or damage by the Insured Risks in the sum the Company is advised represents the reinstatement value of the Land from time to time;
- b) pay the premiums for insurance promptly as they become due and maintain in force the policies of insurance on the Land;
- c) following the incidence of damage to or destruction of the Land and subject to receipt of all necessary consents licences permissions and

the like apply the proceeds of the policy of the insurance received for those purposes in rebuilding and reinstating the Land (provided that this clause should be satisfied if the Company provides premises not necessarily identical to the Land as the same existing prior to such damage or destruction occurring) as soon as may be reasonably practicable;

- d) produce to the Secretary of State a copy of the insurance policy whenever reasonably requested and the receipt for the last premium or other evidence of renewal and up to date details of the amount of cover (but no more often than once in any period of 12 months in both cases);
- e) not knowingly do anything whereby any policy of insurance relating to the Land may become void or voidable.
- f) insure against liability in respect of property owners' and third party risks including occupiers liability.

Transfer of Land

9A.4) The Company hereby grants and the Secretary of State hereby accepts an option, exercisable by the Secretary of State or his nominee, to acquire the Company's interest in the said Land or any part thereof at nil consideration. The option hereby granted shall be exercisable (by notice in writing by or on behalf of the Secretary of State) on the termination of this Agreement for whatever cause or in circumstances where the Company is unable to use all or part of the Land as the permanent site of the Academy in accordance with clauses 9A.6 or 9A.9. On the exercise of this option, the Law Society's Standard Conditions of Sale for Commercial Property in force at the date of such exercise shall apply to the transaction and completion shall take place 28 days after such exercise.

9A.5) The Company shall

- a) within 14 days from the transfer to it of the Land under the Long Term Lease, apply to the Land Registry in Form AN1 as prescribed by Rule 81 of the Land Registration Rules 2003 for a notice to be entered in the register (under section 34(3)(a) of the Land Registration Act 2002) to protect the

option granted under clause 9A.4 and including a copy of this Agreement as evidence of that option,

b) shall take any further steps required to ensure that the notice referred to in clause 9A.5 a) is entered on the proprietorship register,

c) shall provide the Secretary of State with confirmation of the entry of the notice referred to in clause 9A.5 a) as soon as practicable after it receives notification from the Land Registry,

d) in the event that it has not registered the notice referred to in clause 9A.5 a), hereby consents to the entering of the notice referred to in 10F(a) in the register by the Secretary of State (by application in Form UN1 under s. 34(3)(b) of the Land Registration Act 2002) and

e) shall not, without the consent of the Secretary of State, apply to dis-apply, modify or remove (by cancellation or otherwise) a notice entered in accordance with clause 9A.5 a) or 9A.5 d) above, whether by itself, a holding company, a subsidiary company, or a receiver, administrator or liquidator acting in the name of the Trust.

Failure to use the Land for the purposes of the Academy

9A.6) If the Company is unable to use the Land or any part thereof as the permanent site of the Academy but the Secretary of State agrees not to terminate this Agreement on that basis, the Secretary of State may give notice to the Company that he intends to exercise the option granted under clause 9.4A) to transfer the Land or the relevant part thereof for nil consideration to himself or his nominee.

Sharing of the Land

9A.7) The Company agrees that if:

a) the Academy does not reach its planned capacity over a period of 7 Academy Funding Years; or

b) notice of termination is served by either the Company or the Secretary of State in accordance with clause 5.1 of this Agreement; or

c) in the reasonable opinion of the Secretary of State the operation of the Academy at planned capacity does not require the use of the full extent of the

Land it will share occupation of the Land with such other Academy as the Secretary of State deems appropriate in the circumstances and enter into such legal arrangements in respect of the same as are required by the Secretary of State.

Exercise of Rights

9A.8) On the termination of this Agreement, the Secretary of State may give notice of his intention to exercise the rights conferred upon the Secretary of State pursuant to clause 6.5, 6.6 and 9A.4:

- a) any such notice shall be in writing and shall confirm which clause of this Agreement the Secretary of State intends to exercise without prejudice to the Secretary of State's right to exercise all and any other rights available to him;
- b) in the event that upon termination of this Agreement for whatever reason, the Secretary of State exercises his option granted and the legal interest in the Land is transferred to the Secretary of State or his nominee for nil consideration by the Company pursuant to clause 9A.4, the obligation on the Company to pay a proportion of the proceeds of sale of the Land to the Secretary of State under clause 6.5(b) shall be deemed to be complied with, and the Secretary of State shall take all steps reasonably required to carry out the Discharge Process;
- c) in the event that upon termination of this Agreement for whatever reason, the Secretary of State agrees that, pursuant to clause 6.6, the Company may invest the proceeds of the sale of the Land for its charitable objects or directs the Company to pay all or part of the proceeds of sale of the Land to the LA, the Secretary of State shall take all steps reasonably required to carry out the Discharge Process.

9A.9) On the Company applying to the Secretary of State for consent to the disposal of all or part of the Land during the lifetime of this Agreement, the Secretary of State shall, should he agree that the Land is no longer required or cannot be used for the purposes of the Academy, subject to clause 84 of the Master Agreement,

a) consent to the disposal subject to any one or a combination of the following conditions:-

- i. that, pursuant to clause 86 of the Master Agreement, the Company may retain some or all proceeds of the disposal for its charitable purposes, subject to the Company accounting to the Secretary of State for any remaining proceeds of sale that the Secretary of State does not agree that the Company may retain for such charitable purposes; or
- ii. that pursuant to clause 87 of the Master Agreement, the Company pays all or some of the proceeds of sale to the LA and/or may reinvest all or some of the proceeds of sale for its charitable purposes,

and any such notice of consent and conditions shall be in writing; or

b) exercise the option granted to him pursuant to clause 9A.4 to transfer the relevant part of the Land to him or his nominee for nil consideration.

9A.10) In the event that the Secretary of State consents to the disposal of the Land during the lifetime of this Agreement, subject to any of the conditions set out in clause 9A.9(a):

a) if the Secretary of State agrees that the Company may retain some or all proceeds of the disposal for its charitable purposes, subject to the Company accounting to the Secretary of State for any remaining proceeds of sale that the Secretary of State does not agree that the Company may retain for such charitable purposes, the obligations on the Company to pay a proportion of the proceeds of sale of the Land to the Secretary of State under clause 86 of the Master Agreement shall be deemed to have been complied with and the Secretary of State shall take all steps reasonably required to carry out the Discharge Process, provided that in the event of a disposal of part of the Land, the Company's obligation under clause 86 of the Master Agreement shall be deemed to have been satisfied in relation to the relevant part of the Land and the restriction and the notice shall remain in place in relation to the balance of the Land;

- b) if the Secretary of State directs the Company to pay all or part of the proceeds of sale of the Land to the LA pursuant to clause 87 of the Master Agreement or agrees that the Company may reinvest the proceeds of the sale for its charitable purposes, the Secretary of State shall take all steps reasonably required to carry out the Discharge Process.

9A.11) In the event that the Secretary of State exercises his option during the lifetime of this Agreement under clause 9A.9b) and the legal interest in the Land is transferred to the Secretary of State or his nominee for nil consideration by the Company pursuant to clause 9A.4, the obligations on the Company to pay a proportion of the proceeds of sale of the Land to the Secretary of State under clause 86 of the Master Agreement shall be deemed to have been complied with and the Secretary of State shall take all steps reasonably required to carry out the Discharge Process, provided that in the event of the exercise of the option in relation to part of the Land, the Company's obligation under clause 86 of the Master Agreement shall be deemed to have been satisfied in relation to the relevant part of the Land.

This Agreement was executed as a Deed on

2012

Executed on behalf of **The Brooke Weston Trust** by:

.....
Director

In the presence of:

Witness.....

Address.....

Occupation.....

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

.....

Duly Authorised

ANNEX TO THIS SUPPLEMENTAL AGREEMENT

Requirements for the Admission for pupils at the
Academy

Annex 1