

**DEED OF NOVATION AND VARIATION
OF THE
SUPPLEMENTAL FUNDING AGREEMENT FOR
LITTLEWORTH GRANGE PRIMARY ACADEMY**

The Parties to this Deed are:

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

(2) **OUTWOOD GRANGE ACADEMIES TRUST**, a charitable company incorporated in England and Wales with registered company number 06995649 whose registered address is at Potovens Lane, Outwood, Wakefield WF1 2PF ("**OGAT**"); and

(3) **NAVIGATE ACADEMIES TRUST**, a charitable company incorporated in England and Wales with registered company number 08021882 whose registered address is at Brookfield Court Selby Road, Garforth, Leeds LS25 1NB (the "**Company**"),

together referred to as the "Parties".

INTRODUCTION

- A. Littleworth Grange Primary Academy is an academy within the meaning of the Academies Act 2010 (the "**academy**") and is currently operated by the Company (a multi academy trust).
- B. The Secretary of State and the Company entered into a Supplemental Funding Agreement on 30 August 2013 (the "**Agreement**") for the maintenance and funding of the academy (attached as Schedule 1).
- C. It is proposed that, with effect from 00.01 am on 1 April 2016 ("Transfer Date"), OGAT will assume responsibility for the management and operation of the academy in succession to the Company.
- D. The Parties wish to novate the Agreement to OGAT and the Secretary of State and OGAT wish to vary the terms of the Agreement subject to the provisions of this Deed.

LEGAL AGREEMENT

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

NOVATION

2. The Company transfers all its rights and obligations under the Agreement to OGAT with effect on and from the Transfer Date. With effect on and from the Transfer Date, OGAT shall enjoy all the rights and benefits of the Company under the Agreement and all references to the Company in the Agreement shall be read and construed as references to OGAT.

3. The references in the Agreement to the Master Funding Agreement between the Company and the Secretary of State shall be read as a reference to the Master Funding Agreement between the OGAT and the Secretary of State.

4. With effect on and from the Transfer Date, OGAT agrees to perform the Agreement and be bound by its terms in every way as if it were the original party to it in place of the Company.

5. With effect on and from the Transfer Date, the Secretary of State agrees to perform the Agreement and be bound by its terms in every way as if OGAT were the original party to it in place of the Company.

OBLIGATIONS AND LIABILITIES

6. With effect on and from the Transfer Date, the Company and the Secretary of State release each other from all future obligations to the other under the Agreement.

7. Each of the Company and the Secretary of State release and discharge the other from all claims and demands under or in connection with the Agreement arising on and after the Transfer Date.

8. Each of OGAT and the Secretary of State will have the right to enforce the Agreement and pursue any claims and demands under the Agreement against the other with respect to matters arising before, on or after the date of this Deed as though OGAT were the original party to the Agreement instead of the Company.

INDEMNITY

9.. OGAT agrees to indemnify the Company against any losses, liabilities, claims, damages or costs the Company suffers or incurs under or in connection with the

Agreement as a result of OGAT's failure to perform or satisfy its obligations under the Agreement on or after the Transfer Date.

VARIATION

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

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

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

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

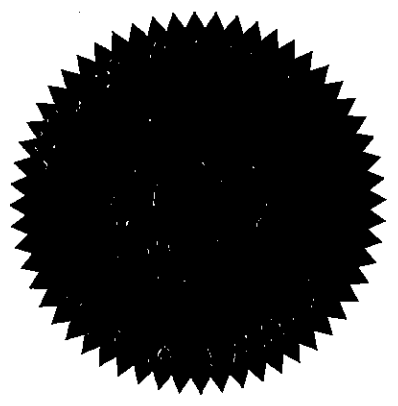
COUNTERPARTS

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

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

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

[Handwritten Signature]
.....
Duly authorised by the **SECRETARY OF STATE FOR EDUCATION**
Date *31/3/16*



EXECUTED as a deed by **OGAT**
acting by one director in the
presence of a witness:

Director
Print name.....
Date

Witness
Print name.....
Address.....
Occupation.....

EXECUTED as a deed by **the Company** acting by one
director in the presence of a
witness:

Director [Redacted]
Print name [Redacted]
Date [Redacted]

Witness [Redacted]
Print name [Redacted]
Address [Redacted]
Occupation [Redacted]

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

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

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

EXECUTED as a deed by **OGAT**
acting by one director in the
presence of a witness:

Director [REDACTED]
Print name. [REDACTED]
Date [REDACTED]
Witness [REDACTED]
Print name. [REDACTED]
Address. [REDACTED]
Occupation. [REDACTED]

EXECUTED as a deed by **the**
Company acting by one
director in the presence of a
witness:

Director
Print name.....
Date
Witness
Print name.....
Address.....
Occupation.....

Schedule 1
Supplemental Funding Agreement

FREEDOM OF INFORMATION REDACTION SHEET

LITTLEWORTH GRANGE PRIMARY ACADEMY

SUPPLEMENTAL FUNDING AGREEMENT

<p>Exemptions in full</p> <p>n/a</p> <p>Partial exemptions</p> <p>Personal Information has been redacted from this document under Section 40 of the Freedom of Information (FOI) Act.</p> <p>Section 40 of the FOI Act concerns personal data within the meaning of the Data Protection Act 1998.</p>	
<p>Factors for disclosure</p>	<p>Factors for Withholding</p>
<ul style="list-style-type: none">▪ further to the understanding of and increase participation in the public debate of issues concerning Academies.▪ to ensure transparency in the accountability of public funds	<ul style="list-style-type: none">▪ To comply with obligations under the Data Protection Act

Reasons why public interest favours withholding information

Whilst releasing the majority of the Littleworth Grange Primary Academy Supplemental Funding Agreement will further the public understanding of Academies. The whole of the Littleworth Grange Primary Academy Supplemental Funding Agreement cannot be revealed. If the personal information redacted was to be revealed under the FOI Act, Personal Data and Commercial interests would be prejudiced.

SUPPLEMENTAL AGREEMENT

THIS AGREEMENT made 20 August 2013

BETWEEN

- (1) THE SECRETARY OF STATE FOR EDUCATION; and
- (2) NAVIGATE ACADEMIES TRUST (company number 8021882) of Carrwood Park, Selby Road, Leeds, LS15 4LG.

IS SUPPLEMENTAL TO THE MASTER FUNDING AGREEMENT made between the same parties and dated 23 August 2012 as may be varied from time to time (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 Littleworth Grange Primary Academy to be established at Littleworth Lane, Lundwood, Barnsley, South Yorkshire, S71 5RG;

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

"Further Remedial Measures" has the meaning given in clause 5.4;

"Insolvency" has the meaning given to it in section 123 of the Insolvency Act 1986;

"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 Littleworth Grange Primary Academy of Littleworth Lane, Lundwood, Barnsley, South Yorkshire, S71 5RG and registered under Land Registry Title number SYK583319;

"Lease" means the lease granted on or around the date hereof by the LA to the Company in relation to the Academy;

"Normal Payment Matters" has the meaning given to it in the Principal Agreement;

"PFI Contractor" means Modern Schools (Barnsley) Limited, the counterparty of the LA to the Project Agreement;

"Principal Agreement" means the principal agreement entered into by the Secretary of State, the Company and the LA in connection with the Academy and dated on or around the date of this Agreement;

"Project Agreement" means the PFI project agreement between the LA and the PFI Contractor dated 4 May 2005 (as may be amended from time to time); and

"School Agreement" means the school agreement entered into by the LA and the Company relating to the provision of facilities and services to the Company in respect of the Academy and dated on or around the date of this Agreement;

"Specified Remedial Measures" has the meaning given in clause 5.3; and

"Termination Warning Notice" has the meaning given in clause 5.2.

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.

2.3A The Academy shall be conducted in accordance with the Principal Agreement, the School Agreement and the Lease.

ACADEMY OPENING DATE

- 2.4. The Academy shall open as a school on 1 September 2013 replacing Littleworth Grange Primary Learning Centre, which shall cease to be maintained by the Local Authority on that date, which date shall be the conversion date within the meaning of the Academies Act 2010.
- 2.5. The planned capacity of the Academy is 420 pupils in the age range 3-11 including a nursery unit of 39 full-time equivalent places.

3. CAPITAL GRANT

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

4. GAG AND EAG

- 4.1. The Secretary of State agrees to pay GAG and EAG to the Company in relation to the Academy in accordance with the Master Agreement.
- 4.2. The Company shall use the GAG funding it receives prudently in order to cover the normal reasonable running costs of the Academy including, but not limited to, payments which fall due pursuant to the School Agreement and/or the Principal Agreement.
- 4.3. In the event that the Secretary of State pays the LA any sums pursuant to the Principal Agreement the Secretary of State may, subject to clause 4.4, set off or abate an amount equal to such sums from any GAG payable to the Company in respect of the Academy pursuant to this Agreement in the following financial year.
- 4.4. Before exercising its right of set off or abatement pursuant to clause 4.3 above, the Secretary of State shall:
 - 4.4.1. notify the Company that such sums have been paid by the Secretary of State to the LA;
 - 4.4.2. take into account (acting reasonably) any representations made by the Company as to the nature of the liabilities under consideration.
- 4A Not used.

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 1 September 2020 or any subsequent anniversary of that date.

Termination Warning Notice

- 5.2. The Secretary of State shall be entitled to issue to the Company a written notice of his intention to terminate this Agreement ("Termination Warning Notice") where he considers that:
- (a) the Academy is no longer meeting the requirements referred to in clause 12 of the Master Agreement (subject to clause 5.9 of this Agreement);
 - (b) the conditions and requirements set out in clauses 13-34B of the Master Agreement are no longer being met;
 - (c) the standards of performance of pupils at the Academy are unacceptably low;
 - (d) there has been a serious breakdown in the way the Academy is managed or governed;
 - (e) the safety of pupils or staff is threatened (whether by breakdown of discipline or otherwise);
 - (f) the Company is in material breach of the provisions of this Agreement or the Master Agreement;
 - (g) the Secretary of State is under a liability to make a payment to the LA pursuant to the Principal Agreement and/or the LA has recovered any sums from the Secretary of State pursuant to the Principal Agreement;
 - (h) the Secretary of State considers that, in the immediately preceding 12 month period, the aggregate of payments made by the Company to the LA pursuant to the Principal Agreement in respect of Normal Payment Matters has reached a level which the Secretary of State considers to be excessive and which may (assessed objectively) cause the Company material financial difficulties;

- (i) the Secretary of State considers (acting reasonably) that there has been a Persistent Breach of the School Agreement and/or the Principal Agreement likely to materially and adversely impact on the provision of educational services at the Academy, and for the purposes of this clause 5.2(l) Persistent Breach" means: (i) a particular breach (including, but not limited to, a breach which relates to contract management and co-operation) which has recurred three (3) or more times in any rolling six (6) month period; or (ii) the occurrence of five (5) or more different breaches (including, but not limited to, breaches which relate to contract management and co-operation) in any rolling six (6) month period; or
- (j) the Company has committed a material breach of the Schools Agreement and/or the Principal Agreement;
- (k) the Secretary of State has received a notice from the LA sent pursuant to the Principal Agreement informing it of instances of breaches or non-compliance by the Company of its obligations under the School Agreement and/or Principal Agreement that may have the consequence of causing the LA to be in breach or default of the Project Agreement;
- (l) the Company has acted or omitted to act such that any Specified Remedial Measures and/or Further Remedial Measures as may have been specified by the Secretary of State have been or may be undermined or circumvented; or
- (m) the circumstances envisaged by clauses 5.25 and 5.26 of this Agreement in respect of EAG funding are applicable.

Each of a) to m) (inclusive) above is a default event for the purposes of this Agreement

5.3. A Termination Warning Notice issued by the Secretary of State in accordance with clause 5.2 shall specify:

- (a) reasons for the Secretary of State's issue of the Termination Warning Notice;
- (b) the remedial measures which the Secretary of State requires the Company to carry out, with associated deadlines, in order to rectify the defaults identified ("Specified Remedial Measures"); and

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

5.4. The Secretary of State shall consider any response and representations from the Company which are received by the date specified in accordance with clause 5.3(c) and shall confirm whether he considers that:

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

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

- (a) the Company has not, by the date specified in clause 5.3(c), responded to the Termination Warning Notice either confirming that it accepts and agrees to undertake the Specified Remedial Measures or providing its representations with regard to the Specified Remedial Measures; or
- (b) the Company has not carried out the Specified Remedial Measures and/or Further Remedial Measures within the specified timeframes;

provided that having considered any representations made by the Academy Trust pursuant to clause 5.3(c), the Secretary of State remains satisfied that it is appropriate to terminate the Agreement.

Notice of Intention to Terminate

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

- (a) special measures are required to be taken in relation to the Academy; or
- (b) the Academy requires significant improvement.

5.7. Any notice issued by the Secretary of State in accordance with clause 5.6 shall invite the Company to respond with any representations within a specified timeframe.

5.8. Where the Secretary of State has given notice of his intention to terminate this Agreement in accordance with clauses 5.6 and 5.7 and –

- (a) he has not received any representations from the Company within the timeframe specified in clause 5.7; or
- (b) having considered the representations made by the Company pursuant to clause 5.7, the Secretary of State remains satisfied that it is appropriate to terminate this Agreement

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

Termination with Immediate Effect

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

Notice of Intention to Terminate by Company

5.10. The provisions of this clause 5.10 and of clauses 5.11 to 5.15 (inclusive) shall apply when the Project Agreement has expired or been terminated (for as long as the Project Agreement is extant the provisions of clauses 5.16 to 5.27 below shall apply in place of clauses 5.10 to 5.15). The Secretary of State shall, at a date

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

- 5.11. Any notice given by the Company under clause 5.10 shall be in writing and shall be served on the Secretary of State not later than 28 February preceding the Critical Year or, if the Secretary of State shall not have given notice of the Indicative Funding to the Company on or before the date specified in clause 5.10 above, within six weeks after the Secretary of State shall have done so. The notice must specify:

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

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

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

- 5.12. Both parties undertake to use their best endeavours to agree whether or not the cost of running the Academy during the Critical Year would cause the Company,

on the basis of the Indicative Funding and All Other Resources, to become insolvent. Both parties recognise that they will need to engage in a constructive dialogue at the time about how best to provide education for the pupils at the Academy and undertake to use their best endeavours to agree a practical solution to the problem.

- 5.13. If no agreement is reached by 30 April (or such other date as may be agreed between the parties) as to whether the cost of running the Academy during the Critical Year on the basis of the Indicative Funding and All Other Resources would cause the Company to become insolvent, then that question shall be referred to an independent expert (the "Expert") for resolution. The Expert's determination shall be final and binding on both parties. The Expert shall be requested to specify in his determination the amount of the shortfall in funding (the "Shortfall"). The Expert shall be an insolvency practitioner with significant professional experience of educational institutions or academies. If the parties fail to agree upon the appointment of the Expert then the Expert shall be appointed by the President for the time being of the Institute of Chartered Accountants in England and Wales. The Expert's fees shall be borne equally between the parties.
- 5.14. The Expert shall be required in reaching his determination to take account of advice from an educational specialist who is professionally familiar with the issues arising from the budget management of schools. If the parties fail to agree upon the appointment of the educational specialist then the educational specialist shall be appointed by the Chairman for the time being of the Specialist Schools and Academies Trust. The educational specialist's fees shall be borne equally between the parties.
- 5.15. If the Expert determines that the cost of running the Academy during the Critical Year would cause the Company, on the basis of the Indicative Funding and All Other Resources, to become insolvent, and the Secretary of State shall not have agreed to provide sufficient additional funding to cover the Shortfall, then the Company shall be entitled to terminate this Agreement, by notice expiring on 1 September 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.
- 5.16. The provisions of this clause 5.16 and of clauses 5.17 to 5.27 (inclusive) shall apply when the Project Agreement is subsisting (when the Project Agreement has expired or been terminated the provisions of clauses 5.10 to 5.15 above shall apply in place of clauses 5.16 to 5.27). The Secretary of State will, 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").

5.17. For the purpose of clauses 5.16 to 5.27:

"Critical Years" means the then current financial year and, if an annual letter of funding has been received for the following financial year, that following financial year;

"Current Funding" means the funding specified in the annual letters of funding for the Critical Years and all other resources available and likely to be available to the Company, including such funds as are set out in the Master Agreement;

"PFI EAG Refusal" occurs where:

- (a) the Company has made a request for EAG funding to cover any costs that the Company has incurred or reasonably considers is likely to incur as a result of meeting its obligations and/or discharging its liabilities under the School Agreement or the Principal Agreement; and
- (b) the Secretary of State has not agreed, in accordance with clauses 55 and 56 of the Master Agreement, to provide such EAG funding to the Company.

5.18. Within 30 days of being notified by the Secretary of State of a PFI EAG Refusal, the Company may provide written notice that it considers that, after taking into account its Current Funding, it is likely that the running costs during the Critical Years would cause the Company to go into Insolvency ("Company Insolvency Notice").

5.19. Any Company Insolvency Notice must specify:

- 5.19.1. the grounds and evidence, including any professional accounting advice, upon which the Company's opinion is based;
- 5.19.2. a detailed statement of steps which the Company proposes to take with a view to ensuring that as soon as reasonably practicable the running costs are reduced sufficiently in the Critical Years to ensure that such costs are less than its Current Funding and the period of time within which such steps will be taken;

- 5.19.3. the shortfall in the Critical Years between the Current Funding expected to be available to the Company to cover the running costs and the projected expenditure of the Company; and
 - 5.19.4. detailed budget of income and expenditure for the Academy during the Critical Years.
- 5.20. Within 15 days of the provision of the Company Insolvency Notice, both parties shall discuss and if possible (using reasonable endeavours) agree whether or not on the basis of the Current Funding, it is likely that the running costs during the Critical Years would cause the Company to go into Insolvency and such Insolvency could not be avoided through prudent financial management (including, but not limited to, using GAG funding prudently in order to cover the normal reasonable running costs of the Academy). 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 reasonable endeavours to agree a practical solution to the problem.
- 5.21. If the parties are unable to reach an agreement in accordance with clause 5.20 within 15 days of the Company Insolvency Notice being served, then the following questions shall be referred to an independent expert (the "Expert") for determination:
- 5.21.1. whether, on the basis of the Current Funding, it is likely that the running costs during the Critical Years would cause the Company to go into Insolvency;
 - 5.21.2. whether the Company is using the funds provided under this Agreement and the Master Agreement prudently; and
 - 5.21.3. whether the Company is using the funds provided under this Agreement and the Master Agreement in accordance with the requirements of this Agreement and the Master Agreement.

The Expert's determination shall be final and binding on both parties. The Expert shall be requested to specify in his determination:

- (a) the amount of the shortfall (if any) in funding between the running costs and the Current Funding during the Critical Years (the "Shortfall"); and
- (b) (if appropriate) recommendations as to future spending and the running costs.

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.

5.22. The parties shall procure that the Expert (together with any educational specialist appointed pursuant to this clause) will act promptly in determining the matters referred to him. The Expert shall be required in performing his role 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.

5.23. The Expert's and the educational specialist's fees shall be borne equally between the parties.

5.24. For the purpose of clauses 5.25 and 5.27, "Insolvency Decision" means either:

(a) in accordance with clause 5.20, the Secretary of State agrees with the Company that on the basis of the Current Funding it is likely that the running costs during the Critical Years would cause the Company to go into Insolvency which could not be avoided through prudent financial management (including, but not limited to, using GAG funding prudently in order to cover the normal reasonable running costs of the Academy);
or

(b) an Expert determines in accordance with clause 5.21 that on the basis of the Current Funding it is likely that the running costs during the Critical Years would cause the Company to go into Insolvency or that the Company is not using the funds provided under this Agreement and the Master Agreement prudently and in accordance with the requirements of this Agreement and the Master Agreement.

5.25. Within 10 Business Days of an Insolvency Decision, the Secretary of State may either at its option:

5.25.1. withdraw the PFI EAG Refusal and promptly pay to the Company the amount of requested EAG funding or such other sum as shall be appropriate; or

- 5.25.2. terminate this Agreement on not less than 20 Business Days notice to the Company.
- 5.26. In the event that the Secretary of State provides additional EAG funding in accordance with clause 5.25, the Secretary of State may within 12 months of paying the additional EAG funding, terminate this Agreement at any time.
- 5.27. In the event that there is no Insolvency Decision, this Agreement shall continue and the Secretary of State shall not be obliged to pay to the Company the requested EAG funding.

6. **EFFECT OF TERMINATION**

- 6.1. In the event of termination of this Agreement however occurring, the school shall cease to be an Academy within the meaning of Sections 1 and 1A of the Academies Act 2010.
- 6.2. Subject to clauses 6.3 and 6.4, if the Secretary of State terminates this Agreement pursuant to clause 5.1 of this Agreement, the Secretary of State shall indemnify the Company. If the Secretary of State terminates this Agreement otherwise than pursuant to clause 5.1 of this Agreement, the Secretary of State may in his absolute discretion indemnify or (to such extent if any as he may in his absolute discretion consider appropriate) compensate the Company.
- 6.3. The amount of any such indemnity or compensation shall be determined by the Secretary of State having regard to any representations made to him by the Company, and shall be paid at such times and in such manner as the Secretary of State may reasonably think fit.
- 6.4. The categories of expenditure incurred by the Company in consequence of the termination of the Agreement in respect of which the Secretary of State shall (where the Secretary of State terminates this Agreement pursuant to clause 5.1) indemnify the Company and may (where the Secretary of State terminates this Agreement otherwise than pursuant to clause 5.1) in his absolute discretion indemnify or compensate the Company include (but not by way of limitation), staff compensation and redundancy payments, compensation payments in respect of broken contracts, expenses of disposing of assets or adapting them for other purposes, legal and other professional fees, and dissolution expenses.
- 6.5. Subject to clause 6.6, on the termination of this Agreement however occurring, the Company shall in respect of any of its capital assets at the date of termination:

- (a) promptly transfer a proportion of the assets to a person nominated by the Secretary of State, if the Secretary of State considers that all or some of those assets need to be used for any educational purposes by that nominee. The proportion of the assets to be transferred shall be the same as the proportion of the capital contribution made by the Secretary of State to the original value of those assets, whether that contribution was made on the establishment of the Academy or at a later date; or
 - (b) if the Secretary of State confirms that a transfer under clause 6.5(a) is not required, promptly repay to the Secretary of State a sum equivalent to the percentage of the value of the assets at the date of termination, or, by agreement with the Secretary of State, at the date of subsequent disposal of those assets. Such percentage to be the same as the percentage of the capital contribution made by the Secretary of State to the original value of those assets, whether that contribution was made on the establishment of the Academy or later.
- 6.6. The Secretary of State may waive in whole or in part the repayment due under clause 6.5(b) if:
- (a) the Company obtains his permission to invest the proceeds of sale for its charitable objects; or
 - (b) the Secretary of State directs all or part of the repayment to be paid to the LA.
- 6.7. The sale or disposal by other means of publicly funded land held for the purposes of an Academy is now governed by Part 3 of Schedule 1 to the Academies Act 2010.

LAND

Restrictions on Land transfer

- 6A Recognising that they are or will be receiving publicly funded land at nil consideration (which for the purposes of this transaction shall include leases granted at a peppercorn rent) the Company:
- a) shall, within 28 days from the transfer to it of the Land, apply to the Land Registry for a restriction in the proprietorship register (under section 43(1)(a) of

the Land Registration Act 2002 in Form RX1 as prescribed by Rule 91 and Schedule 4 of the Land Registration Rules 2003) in the following terms:

No disposition of the registered estate by the proprietor of the registered estate is to be registered without a written consent signed by the Secretary of State for Education, of Sanctuary Buildings, Great Smith Street, London SW1P 3BT

- b) shall take any further steps required to ensure that the restriction referred to in clause 6A(a) is entered on the proprietorship register,
- c) shall provide the Secretary of State with confirmation of the entry of the restriction referred to in clause 6A(a) as soon as practicable after it receives notification from the Land Registry,
- d) in the event that it has not registered the restriction referred to in clause 6A(a), hereby consents to the entering of the restriction referred to in 6A(a) in the register by the Secretary of State (under s. 43(1)(b) of the Land Registration Act 2002),
- e) shall not, without the consent of the Secretary of State, apply to dis-apply, modify or remove (by cancellation or otherwise) a restriction entered in accordance with clause 6A(a) or 6A(d) above, whether by itself, a holding company, a subsidiary company, or a receiver, administrator or liquidator acting in the name of the Company.

7. **ANNEX**

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

8. **THE MASTER AGREEMENT**

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

9. **GENERAL**

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

9.2. No delay, neglect or forbearance on the part of the Secretary of State in enforcing (in whole or in part) any provision of this Agreement or in exercising (in whole or in part) any right or remedy conferred on him by this Agreement shall be or be

deemed to be a waiver of such provision or right or remedy or a waiver of any other provision or right or remedy or shall in any way prejudice any right or remedy of the Secretary of State under this Agreement or shall amount to an election not to enforce such provision or exercise such right or remedy (including, for the avoidance of doubt, any right to terminate this Agreement). No single or partial exercise of such right or remedy shall preclude or restrict the further exercise of that or any other right or remedy.

- 9.3. Termination of this agreement, for any reason, shall not affect the accrued rights, remedies, obligations or liabilities of the parties existing at termination.
- 9.4. This deed may be executed in any number of counterparts, each of which when executed and delivered shall constitute a duplicate original, but all the counterparts shall together constitute the one agreement.
- 9.5. This Agreement and any dispute or claim arising out of or in connection with it or its subject matter or formation (including non-contractual disputes or claims) shall be governed by and construed in accordance with the law of England and Wales.
- 9.6. The parties irrevocably agree that the courts of England and Wales shall have exclusive jurisdiction to settle any dispute or claim that arises out of or in connection with this agreement or its subject matter or formation (including non-contractual disputes or claims).

Schedule 2
Amended Supplemental Funding Agreement

