

DATED

2015

(1) THE SECRETARY OF STATE FOR EDUCATION

(2) ARK SCHOOLS

SUPPLEMENTAL AGREEMENT

Re: ARK Byron Primary Academy

THIS AGREEMENT made

2015

BETWEEN

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

(2) **ARK SCHOOLS (“the Company”)**

IS SUPPLEMENTAL TO THE MASTER FUNDING AGREEMENT made between the Secretary of State for Education and Skills and the Company dated 26 August 2006 (the “**Master Agreement**” which expression shall refer to the Master Agreement as amended and restated pursuant to an Agreement and Restatement Agreement dated 28 August 2013).

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 ARK Byron Primary Academy to be established at Acton Park, The Vale, Ealing, London W3 7JT;

“Insured Risks” means fire, lightning, explosion, earthquake, storm, tempest, flood, subsidence, landslip, heave, impact, terrorism, bursting or overflowing of water tanks and pipes, damage by aircraft and other aerial devices or articles dropped 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 Acton Park, The Vale, Ealing, London W3 7JT, registered with title number AGL58077 and shown edged in red on the plan attached to this Agreement;

“the Landlord” means the landlord under the Lease, being the Council of the London Borough of Ealing or any successor in title;

“the Lease” means a lease of the Land for the term of 125 years at a peppercorn rent, to be entered into between (1) The Council of the London Borough of Ealing and (2) the Company;

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

- 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 as a Mainstream Free School in accordance with the Master Agreement and this Agreement.
- 2.2 The curriculum provided by the Academy to pupils up to the age of 11 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 Company must ensure that so far as is reasonably practicable and consistent with (i) the provisions of the Master Agreement and this Agreement as they relate to the provision of religious education and collective worship; and (ii) the Equality Act 2010, the policies and practices adopted by the Academy (in particular regarding curriculum, uniform and school food) enable pupils of all faiths and none to play a full part in the life of the Academy, and do not disadvantage pupils or parents of any faith or none. For the avoidance of doubt, this requirement applies irrespective of the proportion of pupils of any faiths or none currently attending or predicted to join the Academy.
- 2.3B The relevant clauses in the Master Agreement and Annex B of the Master Agreement shall only apply insofar as the relevant provisions of the Children and Families Act 2014 relating to SEN and disability do not apply to the Academy.

ACADEMY OPENING DATE

- 2.4 The Academy shall open as a school on 1 September 2015.
- 2.5 The planned capacity of the Academy is 420 in the age range 4-11.

School Meals

- 2.6 Clauses 32 and 33 of the Master Agreement are disapplied and replaced with the following clauses 2.7 to 2.9.
- 2.7 The Company must provide school lunches and free school lunches in accordance with the provisions of sections 512(3) and 512ZB(1) of the Education Act 1996 as if references in sections 512 and 512ZB to a local authority were to the Company and as if references to a school maintained by a local authority were to any of its Academies.
- 2.8 The Company must comply with school food standards legislation as if its Academies were maintained schools.
- 2.9 Where the Company provides milk to pupils, it must be provided free of charge to pupils who would be eligible for free milk if they were pupils at a maintained school.

Governance

- 2.10 The Company must provide to the Secretary of State the names of all new or replacement Directors and members of the Company, stating whether they have been appointed or elected, the date of their appointment or election and, where applicable, the name of the Director or member they replaced as soon as is practicable and in any event within 14 days of their appointment or election.
- 2.11 The Company must not appoint any new or replacement Directors or members until it has first informed them, and they have agreed, that their names will be shared with the Secretary of State to enable him to assess their suitability.
- 2.12A The Company must not amend or remove the provisions in its Articles relating to the appointment or election or the resignation or removal of Directors or members (“the Governance Articles”) without the Secretary of State’s consent.

2.12B Before any change to the Governance Articles is proposed the Company must give notice to the Secretary of State of:

- a) the proposed amendment or removal; and
- b) the reason for it.

2.12C If the Secretary of State consents to the proposed changes, the Company shall approve any changes to the Articles as soon as reasonably practicable and provide the Secretary of State with a copy of the amended Articles and the resolution(s) approving them

3 CAPITAL GRANT

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

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 ADDITIONAL FUNDING

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

4B LEASE

4B.1 If the Company is in material breach of the provisions of any Lease or if it is reasonably foreseeable that the Company will be in material breach of any Lease, the Company shall forthwith give written notice to the Secretary of State specifying the exact nature of the material breach or reasonably foreseeable material breach and such notice shall set out the steps taken or to be taken by the Company to remedy the material breach or reasonably foreseeable material breach and,

where appropriate, shall include the timescales relating to any remedial action.

- 4B.2 The Company will at its own cost provide all information reasonably required by the Secretary of State in respect of any material breach or reasonably foreseeable material breach.
- 4B.3 Following the receipt by the Secretary of State of the written notice under clause 4B.1, the Company shall permit the Secretary of State to take all such steps in conjunction with or instead of the Company as may be necessary to remedy or prevent the material breach referred to in the said notice. The Company shall, in such circumstances, use its best endeavours to assist the Secretary of State to remedy or prevent such material breach.
- 4B.4 The Company shall, within 14 days of receiving any order, notice, proposal, demand or any other requirement materially affecting the ability of the Company to use the Land for the purposes of the Academy from any competent authority (including the Landlord), give full particulars by written notice to the Secretary of State and deliver to the Secretary of State copies of such documents as he may require. Such notice shall state what steps, if any actions are required, the Company intends to take in response to the order, notice, proposal, demand or other requirement affecting the Land.
- 4B.5 The Company will at its own cost provide all information reasonably required by the Secretary of State in respect of an order, notice, proposal, demand or any other requirement affecting the Land as referred to in clause 4B.4.
- 4B.6 Following the receipt by the Secretary of State of the written notice under clause 4B.4, the Company shall permit the Secretary of State to take all steps in conjunction with or instead of the Company as may be necessary to comply with any order, notice, proposal, demand or other requirement affecting the Land referred to in the said notice. The

Company shall, in such circumstances, use all reasonable endeavours to assist the Secretary of State to take the appropriate required steps.

5 TERMINATION

5.1 Either party may give not less than seven Academy Financial Years' written notice to terminate this Agreement, such notice to expire on 31 August 2022 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;
- (b) the conditions and requirements set out in clauses 13-34B of the Master Agreement are no longer being met insofar as they apply to the Academy;
- (c) the standards of performance of pupils at the Academy are unacceptably low;
- (d) there are grounds to issue a Termination Warning Notice of his intention to terminate as a consequence of the Chief Inspector giving notice to the Company in accordance with section 13(3) of the Education Act 2005 stating that in the Chief Inspector's opinion special measures are required to be taken in relation to the Academy or that the Academy requires significant improvement (as that expression is used in section 44 of the Education Act 2005 (as amended)), providing that in deciding whether to issue a Termination Warning Notice in accordance with this clause the Secretary of State

shall have due regard to the overall performance of the Company;

- (e) there has been a serious breakdown in the way the Academy is managed or governed;
- (f) the safety of pupils or staff is threatened (whether by breakdown of discipline or otherwise); or
- (g) the Company is otherwise in material breach of the provisions of this Agreement or the Master 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 this 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 Company pursuant to clause 5.3(c), the Secretary of State remains satisfied that it is appropriate to terminate this Agreement.

Notice of Intention to Terminate

- 5.6 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.

Request to consider termination if the Academy is financially unsustainable

- 5.7 Not used.
- 5.8 Not used.
- 5.9 Not used.
- 5.10 Not used.
- 5.11 Not used.
- 5.12 Not used.

Termination with Immediate Effect

- 5.13 Not used.
- 5.14 If at any time after signing this Agreement and after the Academy has opened, the Secretary of State is of the opinion that, by virtue of low pupil numbers, the Academy is not financially viable, then the Secretary of State may:
- (a) give a Warning Notice to the Company; or
 - (b) by written notice terminate this Agreement forthwith; or
 - (c) by written notice provide such notice as he deems appropriate in the circumstances to terminate this Agreement.

For the purposes of this clause a “Warning Notice” means a notice in writing by the Secretary of State to the Company requiring the Company to procure the admission of a sufficient number of pupils by such date as he deems appropriate in the circumstances and setting out the consequences of not procuring the admission of a sufficient number of pupils by the date specified in such Warning Notice.

5.15 If the Company has not obtained full planning permission (including where relevant listed building consent), in respect of the Land on which it is proposed that the Academy will be situated, by 31/12/2015, the Secretary of State may terminate this Agreement by notice in writing to the Company such termination to take effect on the date of the notice.

5.16 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.) there is a serious breakdown in the way the Company is being managed or governed; or
- (5.) the buildings and other structures on the Land are unsuitable;

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 5. above has or have been resolved to the Secretary of State’s satisfaction; or

- (b) terminate this Agreement by notice in writing to the Company such termination to take effect on the date of the notice.

5.17 If the Company has not entered into the Lease by 01.09.2018, the Secretary of State may terminate this Agreement by notice in writing to the Company such termination to take effect on the date of the notice.

5.18 If:

- a) any Director or member of the Company refuses to consent to any checks required under the Master Agreement, this Agreement, or as otherwise requested by the Secretary of State; or
- b) the Secretary of State determines that any Director or member of the Company is unsuitable;

the Secretary of State may:

- i. direct the Company to ensure that the Director or member resigns or is removed within 42 days, failing which the Secretary of State may terminate this Agreement such termination to take effect on the date specified in the notice; or
- ii. terminate this Agreement such termination to take effect on the date specified in the notice.

5.19 For the purposes of clause 5.18 a Director or member of the Company will be “unsuitable” if that Director or member:

- a) has been convicted of an offence;
- b) has been given a caution in respect of an offence;
- c) is subject to a relevant finding in respect of an offence; or
- d) has engaged in relevant conduct;

as a result of which, the Secretary of State considers that that Director or member is unsuitable to take part in the management of the Company's academies.

5.20 For the purposes of clause 5.19:

- a) a Director or member of the Company will be subject to a "relevant finding" in respect of an offence if:
 - i. that Director or member has been found not guilty of the offence by reason of insanity;
 - ii. that Director or member has been found to be under a disability and to have done the act charged against them in respect of the offence; or
 - iii. a court outside the United Kingdom has made a finding equivalent to that described in paragraphs (i) and (ii) above.

- b) "relevant conduct" is conduct by a Director or member of the Company which is:
 - i. aimed at undermining the fundamental British values of democracy, the rule of law, individual liberty and mutual respect and tolerance of those with different faiths and beliefs; or
 - ii. found to be in breach of professional standards by a professional body; or
 - iii. so inappropriate that, in the opinion of the Secretary of State, it makes that Director or member unsuitable to take part in the management of the Company.

Notice of intention to terminate by the Company

- 5.21 The Secretary of State will, before the start of each Academy Financial Year, provide the Company with a final funding allocation indicating the level of GAG and EAG to be provided in the next Academy Financial Year (the “**Funding Allocation**”).
- 5.22 If the Company is of the opinion that, after receipt of the Funding Allocation for the next Academy Financial Year (the “**Critical Year**”) and after taking into account all other resources likely to be available to the Academy, including other funds that are likely to be available to the Academy from other academies operated by the Company (“**All Other Resources**”), it is likely that the cost of running the Academy during the Critical Year would cause the Company to become insolvent (and for this reason only) then the Company may give written notice of its intention to terminate this Agreement at the end of the Critical Year.
- 5.23 Any notice given by the Company under clause 5.22 must be provided to the Secretary of State within six weeks of the Secretary of State issuing the Funding Allocation. The notice given by the Company under clause 5.22 must specify:
- a) the grounds upon which the Company’s opinion is based, including:
 - i. evidence of those grounds;
 - ii. any professional accounting advice the Company has received;
 - iii. a detailed statement of steps which the Company proposes to take to ensure that the running costs of the Academy are reduced such that costs are less than the Funding Allocation and All Other Resources, and the period of time within which such steps will be taken; and

- b) the shortfall in the Critical Year between the Funding Allocation and All Other Resources expected to be available to the Company to run the Academy and the projected expenditure on the Academy; and
 - c) a detailed budget of income and expenditure for the Academy during the Critical Year (the “**Projected Budget**”).
- 5.24 Both parties will use their best endeavours to agree whether or not the cost of running the Academy during the Critical Year would cause the Company 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 use their best endeavours to agree a practical solution to the problem.
- 5.25 If no agreement is reached by 30 April (or another date if agreed between the parties) as to whether the cost of running the Academy during the Critical Year would cause the Company to become insolvent, then that question will be referred to an independent expert (the “**Expert**”) for resolution. The Expert’s determination will be final and binding on both parties. The Expert will be requested to specify in his determination the amount of the shortfall in funding (the “**Shortfall**”).
- 5.26 The Expert will 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 will be appointed by the President of the Institute of Chartered Accountants in England and Wales. The Expert’s fees will be borne equally between the parties.
- 5.27 The Expert will 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 will be appointed by the Chairman of the Specialist Schools and Academies Trust (or any successor or equivalent body). The educational specialist's fees will be borne equally between the parties.

- 5.28 If the Expert determines that the cost of running the Academy during the Critical Year would cause the Company to become insolvent, and the Secretary of State will not have agreed to provide sufficient additional funding to cover the Shortfall, then the Company will be entitled to terminate this Agreement, by notice expiring on 31 August of the Critical Year. Any such notice will be given within 21 days after (a) the Expert's determination will have been given to the parties or (b), if later, the Secretary of State will have given written notice of his refusal to provide sufficient additional funding for the Academy to cover the Shortfall.

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 other 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 this Agreement in respect of which the Secretary of State shall (where the Secretary of State terminates this Agreement pursuant to clause 5.1) indemnify the Company and may (where the Secretary of State terminates this Agreement otherwise than pursuant to clause 5.1) in his absolute discretion indemnify or compensate the Company include (but not by way of limitation), staff compensation and redundancy payments, compensation payments in respect of broken contracts, expenses of disposing of assets or adapting them for other purposes, legal and other professional fees, and dissolution expenses.
- 6.5 Subject to clause 6.6, on the termination of this Agreement however occurring, the Company shall in respect of any of its capital assets at the date of termination:
- (a) promptly transfer a proportion of the assets to a person nominated by the Secretary of State, if the Secretary of State considers that all or some of those assets need to be used for any educational purpose by that nominee. The proportion of the assets to be transferred shall be the same as the proportion of the capital contribution made by the Secretary of State to the original value of those assets, whether that contribution was made on the establishment of the Academy or later; or
 - (b) if the Secretary of State confirms that a transfer under clause 6.5(a) is not required, promptly repay to the Secretary of State a sum equivalent to the percentage of the value of the assets at the date of termination, or, by agreement with the Secretary of State, at the date of subsequent disposal of those assets. Such percentage to

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

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

- (a) The Company obtains his permission to invest the proceeds of sale for its charitable objects; or
- (b) The Secretary of State directs all or part of the repayment to be paid to the LA.

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

Restrictions on Land transfer

6.8 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 acquisition of the legal interest in the Land or the signing of this Agreement, whichever is the later, 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) ('LRR 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 reasonably required to ensure that the restriction referred to in clause 6.8(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 6.8(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 6.8(a), hereby consents to the entering of the restriction referred to in 6.8(a) in the register by the Secretary of State (under s. 43(1)(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 restriction entered in accordance with clause 6.8(a) or 6.8(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 Obligations of the Company

- 7.1 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.

- 7.2 The Company shall observe and comply with its obligations under the Lease and shall promptly enforce its rights against the Landlord.
- 7.3 The Company agrees it shall seek and obtain the prior written consent of the Secretary of State, such consent 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.
- 7.4 The Company agrees that prior to taking any steps, including but not limited to the service of any notice or waiver of any condition, under any contractual arrangement entered into in respect of the acquisition of the legal interest in the Land, it shall seek and obtain the written consent of the Secretary of State, such consent not to be unreasonably withheld or delayed.

Insurance

- 7.5 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 Lease 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

7.6 In consideration that it has or will be obtaining a legal interest in the land, 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 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 Funding Agreement for whatever cause. 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.

- 7.7 In consideration that it has or will be obtaining a legal interest in the Land, the Company:
- a) shall, within 14 days from the transfer to it of the Land or the signing of this Agreement, whichever is the latter, 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 7.6 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 7.7 (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 7.7 (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 7.7 (a), hereby consents to the entering of the notice referred to in 7.7 (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);
 - 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 7.7 (a) or 7.7 (d) above,

whether by itself, a holding company, a subsidiary company, or a receiver, administrator or liquidator acting in the name of the Company; and

- f) in the case of previously unregistered land, for the further protection of the option granted in Clause 7.6 the Company shall within 14 days of the acquisition of the legal interest in the Land or the signing of this Agreement, whichever is the latter, make application to register a Class C (iv) land charge in the Land Charges Registry and a Caution against First Registration in the Land Registry and shall provide the Secretary of State with copies of the entries secured thereby within 7 days of completing each registration, respectively. If the Secretary of State is of the view that the Company has failed to perform the registration obligations in this sub-clause he shall be at liberty to make his own applications to secure these registrations.

Sharing of the Land

7.8(A) Where:

- a) the Secretary of State identifies basic or parental need for additional places in the area in which the Academy is situated which cannot be satisfied by the Academy; and

- b) the Secretary of State then considers that not all the Land is needed for the operation of the Academy at planned capacity;

the Secretary of State must consult with the Academy Trust to determine whether part of the Land could be demised or leased or otherwise made available to another academy trust, as the Secretary of State considers appropriate, for the purpose of that academy trust

establishing and maintaining an educational institution on that part.

7.8(B) To the extent the Academy Trust and the Secretary of State agree to part of the Land being demised or leased or otherwise made available in accordance with clause 7.8(A) and provided that:

(i) the land being demised or leased or otherwise made available is, in the Secretary of State's reasonable opinion, surplus to the Academy's needs to fulfil its obligations under this Agreement; and

(ii) the alienation of the land would not be detrimental to the operation of the Academy by the Academy Trust;

the Academy Trust must use its reasonable endeavours to procure all necessary consents in order to enable it to demise, lease or otherwise make available the land to the incoming academy trust, and shall enter into any legal arrangements which the Secretary of State requires for this purpose, subject to all restrictions governing the Academy Trust's ownership, occupation and use of the Land and the Academy Trust's obligations under charity law. The Secretary of State shall meet the reasonable costs incurred by the Academy Trust in connection with this clause.

7.8(C) For the purposes of clause 7.8(A):

a) a basic need will arise when the forecast demand for pupil places in the area where the Academy is situated is greater than the existing capacity to provide them;

b) a parental need will arise when the DfE is actually aware of an additional demand for pupil places in the area where the Academy is situated, following representations from parents in that area; and

c) planned capacity has the meaning given in clause 2.5.

8 ANNEX

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

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

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 Agreement may be executed in any number of counterparts, each of which when executed and delivered shall constitute a duplicate

original, but all the counterparts shall together constitute the one agreement.

10 THE MASTER AGREEMENT

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

11 ENGLISH LAW

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

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

This Agreement was executed as a Deed on the day and year first before mentioned

Executed on behalf of **ARK Schools** 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

ANNEXES TO THIS SUPPLEMENTAL AGREEMENT

Requirements for the Admission for pupils at the

Academy

Annex 1

Annex 1

REQUIREMENTS FOR THE ADMISSION OF PUPILS TO THE ARK BYRON PRIMARY ACADEMY

GENERAL

1. This annex may be amended in writing at any time by agreement between the Secretary of State and the Company.
2. Except as provided in paragraph 3 below the Company will act in accordance with, and will ensure that an Independent Appeal Panel is trained to act in accordance with, all relevant provisions of the School Admissions Code, and the School Admission Appeals Code published by the Department for Education (“the Codes”) as they apply at any given time to maintained schools and with equalities law and the law on admissions as they apply to maintained schools. For this purpose, reference in the Codes or legislation to “admission authorities” shall be deemed to be references to the Directors of the Company.
3. Notwithstanding the generality of paragraph 2 of this Annex, the Company may not participate in the co-ordinated admission arrangements operated by the LA for the first year of opening unless it chooses to do so, but will participate in such arrangements operated by the LA in subsequent years and the local Fair Access Protocol.
4. Notwithstanding any provision in this Annex, the Secretary of State may:
 - (a) direct the Company to admit a named pupil to the Ark Byron Primary Academy on application from an LA. This will include complying with a School Attendance Order¹. Before doing so the

¹ Local authorities are able to issue school attendance orders if a child is not attending school. These are legally binding upon parents. Such an order might, for instance, be appropriate where a child has a place at

Secretary of State will consult the Company;

(b) direct the Company to admit a named pupil to the Ark Byron Primary Academy if the Company has failed to act in accordance with this Annex or has otherwise failed to comply with applicable admissions and equalities legislation or the provisions of the Codes;

(c) direct the Company to amend its admission arrangements where they fail to comply with the School Admissions Code or the School Admission Appeals Code.

5. The Company shall ensure that parents and ‘relevant children²’ will have the right of appeal to an Independent Appeal Panel if they are dissatisfied with an admission decision of the Company. The Independent Appeal Panel will be independent of the Company. The arrangements for appeals will comply with the School Admission Appeals Code published by the Department for Education as it applies to Foundation and Voluntary Aided schools. The determination of the appeal panel is binding on all parties.

Relevant Area

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

an Academy but his/her parents are refusing to send him/her to school. The order will require a parent to ensure his/her child attends a specified school.

²‘relevant children’ means:

a) in the case of appeals for entry to a sixth form, the child, and;

b) in any other case, children who are above compulsory school age, or will be above compulsory school age by the time they start to receive education at the school.

7. If the Company does not consider the relevant area determined by the local authority for the maintained schools in the area to be appropriate, it must apply to the Secretary of State by 1 August for a determination of the appropriate relevant area for the Academy, setting out the reasons for this view. The Secretary of State will consult the Company and the LA in which the Academy is situated in reaching a decision.

Requirement to admit pupils

8. Pupils on roll in any predecessor maintained or independent school will transfer automatically to the Academy on opening. All children already offered a place at any predecessor school will be admitted.

9. The Company will:

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

Oversubscription criteria, admission number, consultation, determination and objections.

10. The Academy admission arrangements will include oversubscription criteria, and an admission number for each relevant age group³. The Company will consult on the Academy's admission arrangements and determine them in line with the requirements within the School Admissions

³ 'relevant age group' means 'normal point of admission to the school, for example, Year R, Year 7 and Year 12.

Code.

11. The Office of the School's Adjudicator (OSA) will consider objections to the Academy's admission arrangements⁴. The Company should therefore make it clear, when determining the Academy's admission arrangements, that objections should be submitted to the OSA.

12. A determination of an objection by the OSA will be binding upon the Academy and the Company will make appropriate changes as quickly as possible.

⁴ The OSA has no jurisdiction to consider objections against the agreed variation from the Codes set out in paragraphs 2A and 2B.



Key

Site Boundary

Public Open Space

MOL

Green Corridor

Conservation Area

Site Area - 4273m2
 Existing buildings - 437m2
 Containers - 170m2

