

Dated 24 / 3 / 2015

- (1) The Secretary of State for Education
- (2) ARK Schools

Deed of Variation to a supplemental funding agreement dated 29 August 2006 as amended and restated by deed dated 28 August 2013

This deed is made on the

day of

24 / 3 /

2015

Parties

- (1) **The Secretary of State for Education** (the "**Secretary of State**"); and
- (2) **ARK Schools**, a company limited by guarantee and incorporated and registered in England and Wales with registered number 5112090 whose registered office is at 65 Kingsway, London, WC2B 6TD ("the Company").

Background

- (A) The Parties entered into a Master Funding Agreement dated 26 August 2006 ("the Master Agreement") in order to enable the Company to operate a number of independent schools or educational institutions which now fall within the meaning of sections 1A, 1B and 1C of the Academies Act 2010.
- (B) The Parties also entered into a Supplemental Funding Agreement dated 29 August 2006 ("the Supplemental Agreement") in respect of the Burlington Danes Academy, Wood Lane and Du Cane Road, London, W12 0HR.
- (C) Both the Master Agreement and the Supplemental Agreement were amended and restated by Deed of Variation dated 28 August 2013.
- (D) The Parties now wish to vary and amend the terms of the Supplemental Agreement further in accordance with the terms of this deed.

Operative provisions

1 Interpretation

- 1.1 Words, expressions and interpretations used in this deed shall, unless the context expressly requires otherwise, have the meaning given to them in, and shall be interpreted in accordance with, the Master Agreement and the Supplemental Agreement.
- 1.2 For the avoidance of doubt, the Schedules form part of this deed.

2 Variations to the Supplemental Agreement

- 2.1 The Parties agree that from the date of this deed, the Supplemental Agreement shall be read and construed as varied by the provisions set out in Schedule 1 of this deed.
- 2.2 The Supplemental Agreement shall remain fully effective as varied by this deed.

3 Contractual rights of third parties

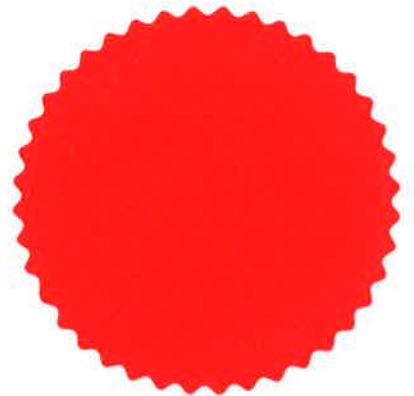
A person who is not a party to this deed shall have no right under the Contract (Rights of Third Parties) Act 1999 to enforce any term of this deed.

4 Governing law and jurisdiction

- 4.1 This deed, and any disputes or claims arising out of or in connection with it, its subject matter or formation (including non-contractual disputes or claims), are governed by and construed in accordance with the law of England.
- 4.2 The parties irrevocably agree that the English courts 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).

IN WITNESS whereof the parties hereto have executed this document as a deed and have delivered it on the day and year first above written.

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

EXECUTED as a deed by a director on behalf of **ARK Schools**:-



in the presence of:-

W
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Sign



Name

MATTHEW HANTON

Address

68 SOTHEBY ROAD, LONDON N5 2UT

Occupation

PROJECT MANAGER

Schedule 1 – Variations to the Supplemental Agreement

1. After the definition of “the Academy” at clause 1.2 there shall be an additional clause 1.2A containing the following definition of “the Land”:

1.2A “the Land” means the land (including all buildings, structures, landscaping and other erections) situated at and known as Burlington Danes School, Wood Lane, London, W12 0HR registered with title number BGL60089; and

2. After the additional definition of “the Land” at new clause 1.2A there shall be an additional clause 1.2B containing the following definition of “the Lease”:

1.2B “the Lease” means the leasehold agreement dated 1 September 2006 between the Company and Burlington Danes School Trustee Limited in respect of the Land.

3. After clause 2.3 there shall be new clauses 2.3A to 2.3F as follows:

“The Academy

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 school.”

“School meals

2.3B 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 the local authority were to any of its Academies.

2.3C The Company must comply with school food standards legislation as if its Academies were maintained schools.

2.3D 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.”

4. Clause 2.6 shall be deleted and replaced with:

"2.6 The planned capacity of the Academy is 1620 in the age range 4-19 including a primary of 420 places, a secondary of 900 places and a sixth form of 300 places. The Academy will also have a nursery of up to 30 places."

5. There shall be a new clause 2.7 which reads:

"Pupils

2.7 The relevant clauses in the Master Agreement and Annex B shall only apply insofar as the relevant provisions of the Children and Families Act 2014 relating to SEN and disability do not apply to Academies and Free Schools."

6. There shall be new clauses 2.8 – 2.12 which shall read:

"Governance

2.8 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.

2.9 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.

2.10 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.

2.11 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.

2.12 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."

7. There shall be a new clause 2.13 which shall read:

"Pupil Premium

2.13 For each Academy Financial Year, the Company must publish, on the Academy's website, information about:

- a) the amount of Year 7 literacy and numeracy catch-up premium grant that it will receive during the Academy Financial Year;
- b) what it intends to spend its Year 7 literacy and numeracy catch-up premium grant on;
- c) what it spent its Year 7 literacy and numeracy catch-up premium grant on in the previous Academy Financial Year; and
- d) the impact of the previous year's Year 7 literacy and numeracy catch-up premium grant on educational attainment, and how that effect was assessed."

8. Clause 4. shall be deleted and replaced with:

"4. The Secretary of State agrees to pay GAG and EAG in accordance with the Master Agreement, save that in respect of the Reception Year to Year 6 inclusive, GAG shall be calculated in accordance with clauses 16 to 26 of Schedule B to the Master Agreement."

9. Clause 5.2(d) shall be deleted, clause 5.2(e) shall become clause 5.2(d), clause 5.2(f) shall become clause 5.2(e) and clause 5.2(g) shall become clause 5.2(f).

10. Clause 5.6 to 5.12 inclusive shall be deleted in their entirety and shall be replaced with the following clauses:

"Notice of Intention to Terminate

5.5A(i) The Secretary of State may at any time give written notice of his intention to terminate the Agreement where the Chief Inspector gives notice to the Company in accordance with section 13(3) of the Education Act 2005 stating that in the Chief Inspector's opinion:

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

5.5A(ii) In deciding whether to give a notice under clause 5.5A(i) the Secretary of State will have due regard to the overall performance of the Company.

5.5B Any notice issued by the Secretary of State in accordance with clause 5.A shall invite the Company to respond with any representations within a specified timeframe.

5.5C Where the Secretary of State has given notice of his intention to terminate this Agreement in accordance with clauses 5.5A and 5.5B and:

- (a) he has not received any representations from the Company within the timeframe specified in clause 5.5B; or
- (b) having considered the representations made by the Company pursuant to clause 5.5B, the Secretary of State remains satisfied that it is appropriate to terminate this Agreement;

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

Notice of intention to terminate by Academy Trust

5.5D 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**").

5.5E 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.

5.5F Any notice given by the Company under clause 5.5E 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 Academy Trust under clause 5.5E 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**").

5.5G 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.

5.5H 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**”).

- 5.5I 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.
- 5.5J 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.
- 5.5K 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.

Termination with Immediate Effect

5.6 If at any time after the Academy has accepted Reception Year pupils, 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:

- (1) give a Warning Notice to the Academy Trust; or

- (2) by written notice terminate this Agreement forthwith; or
- (3) 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 Academy Trust requiring the Academy Trust 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.

5.6A If both parties agree that the Academy is not financially viable because of low pupil numbers, they may jointly terminate this Agreement after agreeing the precise terms of termination.

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, he may terminate this Agreement by notice in writing to the Company, such termination to take effect on the date specified in the notice.

5.8 If:

- a) Any director or member of the Company refuses to consent to any checks required under 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 serve a Termination Notice; or
- ii. serve a Termination Notice.

5.9 For the purposes of clause 5.8 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 Academies.

5.10 For the purposes of clause 5.9:

- 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 Academy.”

11. There shall be an additional clause 10 inserted after clause 9.6 and before the heading “**Annex to this Supplemental Agreement**” as follows:

“10. LAND CLAUSES

Restrictions on Land transfer

10A. The Company must:

- a) apply to the Land Registry using Form RX1 for the following restriction (the “**Restriction**”) to be entered in the leasehold proprietorship registers for the Land:

“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) take any further steps required to ensure that the Restriction is entered on the proprietorship register;
- c) promptly confirm to the Secretary of State when the Restriction has been registered;
- d) if it has not registered the Restriction, allow the Secretary of State to do so in its place; and

- e) not, without the Secretary of State's consent, apply to disapply, modify, cancel or remove the Restriction, 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 Academy Trust

10B. The Company must not, without the Secretary of State's consent:

- a) grant any consent or licence; or
- b) create or allow any encumbrance; or
- c) part with or share possession or occupation; or
- d) enter into any onerous or restrictive obligations;

in respect of the Land.

10C. The Company must

- a) obtain the Secretary of State's consent before taking any action, including the service of any notice or waiver of any condition, under any contract relating to the acquisition of the Land;
- b) keep the Land in good and substantial repair and condition and make good any damage or deterioration to the Land; and
- c) not do anything to lessen the value or marketability of the Land without the Secretary of State's consent.

Option

10D. The Company grants and the Secretary of State accepts an option (the "**Option**") to direct a transfer of all or part of the Company's interest in the Land at nil consideration, to a "permitted assignee" within the meaning of clause 1.1 of the Lease. The Secretary of State or his nominee may exercise the Option in writing on termination of this Agreement. If the Option is exercised, completion will take place 28 days after the exercise date in accordance with the Law

Society's Standard Conditions of Sale for Commercial Property in force at that date.

Option notice

10E. The Company:

- a) must apply to the Land Registry on Form AN1 (including a copy of this Agreement) for a notice of the Option (the "**Option Notice**") to be entered in the leasehold registers pertaining to the Land, taking any further steps required to have the Option Notice registered and promptly confirming to the Secretary of State when this has been done;
- b) if it has not registered the Option Notice, agrees that the Secretary of State may apply to register it using Form UN1;
- c) must not, without the Secretary of State's consent, apply to disapply, modify or remove the Option Notice, whether by itself, a holding company, a subsidiary company, or a receiver, administrator or liquidator acting in the name of the Academy Trust; and
- d) must, in the case of previously unregistered land, within 14 days after acquiring the Land or, if later, after signing this Agreement, apply to register a Class C(iv) land charge in the Land Charges Registry, and send the Secretary of State a copy of the relevant entry within 7 days after the registration has been completed. If the Secretary of State considers that the Academy Trust has not complied with this clause, he may apply to secure the registration."