

DATED 30<sup>th</sup> AUGUST 2013

(1) THE SECRETARY OF STATE FOR EDUCATION

(2) ARK SCHOOLS

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**SUPPLEMENTAL AGREEMENT**

**Re: ARK Ayrton Primary Academy**

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28-8-13

**THIS AGREEMENT** made 30<sup>th</sup> AUGUST 2013

**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 26<sup>th</sup> 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 Ayrton Primary Academy to be established at Somers Road, Southsea, Portsmouth, Hampshire, PO5 4LS.

“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 Ark Ayrton Primary Academy, Somers Road, Southsea, Portsmouth, Hampshire, PO5 4LS that is to be transferred to the Company and which is registered under Title numbers PM26661 and PM27124.

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 Sponsored 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 11 shall be broad and balanced.
- 2.3 The requirements for the admission of pupils to the Academy are set out at **Annex 1**.

### **ACADEMY OPENING DATE**

- 2.4 The Academy shall open as a school on 1 September 2013 replacing Somers Park Primary School (a community school) which shall cease to be maintained by the Local Authority on that date, which date shall be the conversion date within the meaning of the Academies Act 2010.
- 2.5 The capacity of the Academy upon opening is 375 in the age range 3-11 which includes a nursery unit of 30 full time equivalent places. The academy will expand to a planned capacity of 450 in the age range 3-11 by 2018, following the provision of two additional classrooms by Portsmouth City Council.

### **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.

### **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 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;
- (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) at any time after the expiry of two years beginning with the date on which the Academy opened as a school as set out in clause 2.4 of this Agreement, 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 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));
- (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 Subject to the condition in 5.8 below, the Company may by notice in writing request the Secretary of State to terminate this Agreement (“Termination Request Notice”) where the Company considers the Academy is or will be unable to attract sufficient pupils to enable the Academy to be financially sustainable in the foreseeable future, each party recognising that for these purposes the Company will not be required to subsidise the operations of the Academy by diverting the funding available for the operation of other academies and/or free schools operated by the Company.
- 5.8 A Termination Request Notice must be received by the Secretary of State before 31 December in the Academy Financial Year the Company proposes the termination of this agreement shall have effect.
- 5.9 The Termination Request Notice shall set out:
- (a) The grounds upon which the Company’s opinion that the Academy is or will be unable to attract sufficient pupils to enable the academy to be financially sustainable in the foreseeable future.
  - (b) A detailed statement of the steps taken by the Company in response to the circumstances set out in 5.9 (a) above.
- 5.10 The Secretary of State shall consider reasonably the representations from the Company set out in a Termination Request Notice and shall by notice in writing to the Company given

within six weeks after receipt of the Termination Request Notice confirm whether he considers that:

- (c) in the light of the Company's representations in its Termination Request Notice, there are measures which the Secretary of State requires the Company to carry out, with associated deadlines for the implementation and review of such measures and the date after which a further Termination Request Notice under 5.7 will be considered by the Secretary of State;
- (d) he is satisfied that the Academy has no reasonable prospect of becoming financially sustainable in the foreseeable future, in which case the Secretary of State will consent to the Company terminating this Agreement on 31 August following the Termination Request Notice or on such other date as the parties may mutually agree and the Company may by notice in writing to the Secretary of State terminate this agreement on that date; or
- (e) the Academy is or will become financially sustainable in the foreseeable future and the basis for his view. In such circumstances, the Secretary of State will consider a further Termination Request Notice under 5.7 where the Company can demonstrate in that Notice a material change affecting the financial sustainability of the Academy.

5.11 Both parties recognise that if a Termination Request Notice is given by the company they will need to engage in a constructive dialogue about how best to provide education for the pupils at the Academy and undertake to use their respective best endeavours to agree a practical solution to the problem identified by the Termination Request Notice and, if possible, to seek ways in which the financial sustainability of the Academy can be achieved.

5.12 If this Agreement is terminated in accordance with clause 5.10 the parties shall agree as soon as practical arrangements for the closure of the Academy and the future teaching of the pupils at the Academy.

## 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 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 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**

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

## **8 THE MASTER AGREEMENT**

- 8.1 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).

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

Executed on behalf of **ARK SCHOOLS** by:

L. HEWITT

Director

In the presence of:



Witness ..... SALLY MORGAN  
Address ..... 26 Gorst Road  
..... Sewell BJC.  
Occupation ..... House of Lords

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

..... R. Churchill

**Duly Authorised**



# Annex 1

## **REQUIREMENTS FOR THE ADMISSION OF PUPILS TO ARK AYRTON 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 paragraphs 2A to 2B 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.

2A The Company is permitted to determine admission arrangements (subject to consultation in accordance with the School Admissions Code) that give priority for admission (but not above looked after children and previously looked after children<sup>1</sup>) to other children attracting the pupil premium, including the service premium (“the pupil premium admission criterion”). Where a Company exercises this freedom it will provide information in its admission arrangements of eligibility for the premiums.

2B For the purposes of applying the pupil premium admission criterion only, sections 1.9(f) and 2.4(a) of the School Admissions Code do not apply insofar as they prevent admission authorities from giving priority to children according to the financial or occupational status of parents or using supplementary forms that ask for:

- any personal details about their financial status; or
- whether parents are serving in the armed forces (of any nation), stationed in England, and exercising parental care and responsibility for the child in question.

3. Notwithstanding the generality of paragraph 2 of this Annex, the Company will participate in the co-ordinated admission arrangements operated by the Local Authority (LA) 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 ARK Ayrton Primary Academy on application from an LA. This will include complying with a

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<sup>1</sup> As defined in the School Admissions Code.

School Attendance Order<sup>2</sup>. Before doing so the Secretary of State will consult the Company;

- (b) direct the Company to admit a named pupil to ARK Ayrton 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 children'<sup>3</sup> 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.

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**

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<sup>2</sup> 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 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.

<sup>3</sup> '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.

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 group<sup>4</sup>. The Company will consult on the Academy's admission arrangements and determine them in line with the requirements within the School Admissions Code.

11. The Office of the School's Adjudicator (OSA) will consider objections to the Academy's admission arrangements<sup>5</sup>. 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.

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<sup>4</sup> 'Relevant age group' means 'normal point of admission to the school, for example, year R, Year7 and Year 12.

<sup>5</sup> The OSA has no jurisdiction to consider objections against the agreed variation from the Codes set out in paragraphs 2A and 2B.