

DATED

2012

(1) THE SECRETARY OF STATE FOR EDUCATION

(2) ARK SCHOOLS

SUPPLEMENTAL AGREEMENT

Re: ARK Putney Academy

BETWEEN

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

(2) **ARK SCHOOLS (the "Company")**.

IS SUPPLEMENTAL TO THE MASTER FUNDING AGREEMENT made between (1) the Secretary of State for Education and Skills and (2) the Company (under its former name "ARK Academies") and dated 29 August 2006 (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 the ARK Putney Academy to be established at Pullman Gardens, Putney, London, SW15 3DG .

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

"**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 Putney Academy, Pullman Gardens, London SW15 3DG.

1.3 Reference in this Agreement to clauses and Annexes shall, unless otherwise stated, be to clauses and annexes of this Agreement.

2 THE ACADEMY

2.1 The Company will establish and maintain, and carry on or provide for the carrying on of the Academy, in accordance with the Master Agreement and this Agreement.

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

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

2.4 Clauses 16, 17, 18, 30, 31, 35 and 36 of the Master Agreement shall not apply to the Academy.

ACADEMY OPENING DATE

2.5 The Academy shall open as a school on 1 September 2012 replacing Elliott 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.

2.6 The planned capacity of the Academy is 1200 in the age range 11-18, including a sixth form of 300 places.

3 CAPITAL GRANT

Pursuant to clause 39 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 In respect of the Academy, Clauses 62 and 63 of the Master Agreement shall not apply and shall be replaced with the following provisions:

62) Subject to clause 63, the basis of the pupil number count for the purposes of determining GAG for the financial year in which the Academy opens shall be the same basis as that used by the Local Authority for determining the budget share of the predecessor maintained school as adjusted by numbers counted in any subsequent Schools Census, as determined by the Secretary of State. In subsequent years the basis of the pupil count will be as determined by the Secretary of State.

62A) Subject to clause 63 the basis of the pupil number count for the purpose of determining GAG for the Academy for financial years after the financial year in which the Academy opens will be:

a) for the pupil number count for pupils in Year 11 and below, the Schools Census which is used to fund maintained schools for the financial year overlapping with the financial year in question; and

b) for the pupil number count for pupils in Year 12 and above, the formula which for the time being is in use for maintained schools for the calculation of pupil numbers for pupils in Year 12 and above for the purpose of calculating their level of funding.

63) Where either of the following conditions applies in respect of an financial year, the basis of the pupil count shall be determined by the Secretary of State, taking account of any diseconomies of scale that the Academy will be under as a result of such condition(s) applying. The conditions are:

a) not all planned Year-groups will be present at the Academy (that is, not all the pupil cohorts relevant to the age-range of the Academy will have some pupils present); or

b) the total number of pupils as measured in the Schools Census which is used to fund maintained schools for the financial year overlapping with the financial year in question is less than 90% of the planned final size of the Academy, as specified in this Agreement, and has not at any previous time been greater than 90% of that number.

63A) For any financial year in which GAG for the Academy has been calculated in accordance with clause 62, no adjustment shall be made to the following financial year's formula funding element of GAG for the Academy to recognise variation from the pupil count basis used.

63B) For any financial year in which GAG for the Academy is calculated in accordance with clause 62A, no adjustment will be made to the formula funding element in the following financial year's formula funding element of GAG unless the Company demonstrates to the satisfaction of the Secretary of State that there has been a significant impact on costs, such as an extra class. For any other element of GAG the Secretary of State may make adjustments to recognise a variation in pupil numbers from that used to calculate the element of grant in question; the basis of these will be set out in the annual letter of funding.

4A COMPLAINTS

4A.1 If a complaint is made about matters arising in whole or in part prior to the opening of the Academy and all or part of that complaint was being or had been investigated by the Local Government Ombudsman under Part III or the Local Government Act 1974 ('Part III') or that complaint in whole or in part could have been investigated under Part III had the school the Academy replaced remained a maintained school, the Company:

- a) will abide by the provisions of Part III as though the Academy were a maintained school;
- b) agrees that the Secretary of State shall have the power to investigate the matter complained of as if it had taken place after conversion;
- c) agrees to act in accordance with any recommendation from the Secretary of State as though that recommendation had been made under Part III and the Academy were a maintained school.

4A.2) If the Secretary of State could have given an order and/or a direction under section 496 and/or section 497 of the Education Act 1996 to the governing body of the school the Academy replaced and that order and/or direction related to matters occurring within the 12 months immediately prior to conversion, the Company agrees:

- a) that the Secretary of State may give orders and/or directions to the Company as though the Academy were a maintained school and sections 496 and 497 applied to the governing body of that maintained school; and
- b) to act in accordance with any such order and/or direction from the Secretary of State.

5 TERMINATION

5.1 Either party may give not less than seven financial years' written notice to terminate this Agreement, such notice to expire on 31 August 2019 or any subsequent anniversary of that date.

- 5.1A In the event that the Development Agreement to be entered into between the Company and the LA for the construction of new buildings at the Academy has not been entered into on or before 31 December 2014, the Secretary of State may serve notice in writing to terminate this Agreement upon giving at least six months' written notice to the Company to expire on 31 August 2015.
- 5.2 If the Secretary of State is of the opinion that the Academy no longer has the characteristics set out in clause 12 of the Master Agreement or that the conditions and requirements set out in clauses 13 – 34 of the Master Agreement (other than clauses 16, 17, 18, 30 and 31) are not being met, or that the Company is otherwise in material breach of the provisions of this Agreement or the Master Agreement, the Secretary of State may give notice of his provisional intention to terminate this Agreement.
- 5.3 Any such notice shall be in writing and shall:
- 5.3.1 state the grounds on which the Secretary of State considers the Academy no longer has the characteristics set out in clause 12 of the Master Agreement or is not meeting the conditions and requirements of clauses 13 - 34 of the Master Agreement (other than clauses 16, 17, 18, 30 and 31) or the Company is otherwise in material breach of the provisions of this Agreement or the Master Agreement;
 - 5.3.2 specify the measures needed to remedy the situation or breach;
 - 5.3.3 specify a reasonable date by which these measures are to be implemented; and
 - 5.3.4 state the form in which the Company is to provide its response and a reasonable date by which it must be provided.
- 5.4 If no response is received by the date specified in accordance with clause 5.3.4, the Secretary of State may give the Company 12 months, or such lesser period as he considers appropriate in the circumstances, written notice to terminate this Agreement.

- 5.5 If a response is received by the date specified in accordance with clause 5.3.4, the Secretary of State shall consider it, and any representations made by the Company, and shall, within three months of its receipt, indicate that:
- 5.5.1 he is content with the response and/or that the measures which he specified are being implemented; or
 - 5.5.2 he is content, subject to any further measures he reasonably specifies being implemented by a specified date or any evidence he requires that implementation of such measures have been successfully completed; or
 - 5.5.3 he is not satisfied, that he does not believe that he can be reasonably satisfied, and that he will proceed to terminate the Agreement.
- 5.6 In the circumstances of clause 5.5.3 the Secretary of State shall notify the Company why he believes that he cannot be reasonably satisfied and, if so requested by the Company within thirty days from such notification, he shall meet a deputation including representatives from directors of the Company and the Local Governing Body of the Academy to discuss his concerns. If following such meeting he has good reasons for remaining satisfied that the Academy does not and will not have the characteristics set out in clause 12 of the Master Agreement or does not and will not meet the conditions and requirements set out in clauses 13 - 34 (other than clauses 16, 17, 18, 30 and 31) of the Master Agreement or the Company is in material breach of the provisions of this Agreement or the Master Agreement and such breach will not be remedied to his reasonable satisfaction, he shall give the Company twelve months written notice to terminate this Agreement.
- 5.7 If the Secretary of State has cause to serve a notice on the Company under section 165 of the Education Act 2002 and a determination (from which all rights of appeal have been exhausted) has been made that the Academy shall be struck off the Register of Independent Schools, the period of twelve months notice referred to in clause 5.6 may be shortened to a period deemed appropriate by the Secretary of State.
- 5.8 The Secretary of State shall, at a date preceding the start of each 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 financial year (the "Indicative Funding"). If the Company is of the opinion that, after receipt of the Indicative Funding for the next following 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 68 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 financial year.

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

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

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

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

- 5.10 Both parties undertake to use their best endeavours to agree whether or not the cost of running the Academy during the Critical Year would cause the Company, on the basis of the Indicative Funding and All Other Resources, to become insolvent. Both parties recognise that they will need to engage in a constructive dialogue at the time about how best to provide education for the pupils at the Academy and undertake to use their best endeavours to agree a practical solution to the problem.
- 5.11 If no agreement is reached by 30 April (or such other date as may be agreed between the parties) as to whether the cost of running the Academy during the Critical Year on the basis of the Indicative Funding and All Other Resources would cause the Company to become insolvent, then that question shall be referred to an independent expert (the "Expert") for resolution. The Expert's determination shall be final and binding on both parties. The Expert shall be requested to specify in his determination the amount of the shortfall in funding (the "Shortfall"). The Expert shall be an insolvency practitioner with significant professional experience of educational institutions or academies. If the parties fail to agree upon the appointment of the Expert then the Expert shall be appointed by the President for the time being of the Institute of Chartered Accountants in England and Wales. The Expert's fees shall be borne equally between the parties.
- 5.12 The Expert shall be required in reaching his determination to take account of advice from an educational specialist who is professionally familiar with the issues arising from the budget management of large schools. If the parties fail to agree upon the appointment of the educational specialist then the educational specialist shall be appointed by the Chairman for the time being of the Specialist Schools and Academies Trust. The educational specialist's fees shall be borne equally between the parties.
- 5.13 If the Expert determines that the cost of running the Academy during the Critical Year would cause the Company, on the basis of the Indicative Funding and All Other Resources, to become insolvent, and the Secretary of State shall not have agreed to provide sufficient additional funding to cover the Shortfall, then the Company shall be entitled to terminate this Agreement, by notice expiring on 31

August prior to the Critical Year. Any such notice shall be given within 21 days after (a) the Expert's determination shall have been given to the parties or (b), if later, the Secretary of State shall have given written notice of his refusal to provide sufficient additional funding for the Academy to cover the Shortfall.

5.14 If the Company shall have given notice to terminate the Agreement under 5.13, the Secretary of State may by notice in writing to the Company require the Company to appoint up to two persons as directors of the Company in accordance with the Articles.

5.15 The Secretary of State may at any time by notice in writing terminate this Agreement forthwith if the Academy has ceased (except where such cessation occurs temporarily by reason of an event beyond the reasonable control of the Company) to operate as an Academy within the meaning of Section 1 of the Academies Act 2010.

5.16 A "Special Measures Termination Event Occurs" when:

5.16.1 the Chief Inspector gives a notice to the Company in accordance with section 13(3) of the Education Act 2005 (the "Special Measures Notice") stating that in his opinion special measures are required to be taken in relation to the Academy; and

5.16.2 the Chief Inspector carries out a subsequent inspection of the Academy in accordance with the Education Act 2005 and makes a report in accordance with the Education Act 2005 stating that the Academy has made inadequate progress since the date of the Special Measures Notice; and

5.16.3 the Secretary of State shall have requested the Company to deliver within 10 Business Days a written statement (a "Further Action Statement") of the action the Company proposes to take, and the period within which it proposes to take such action, or, if it does not propose to take any action, the reasons for not doing so; and

5.16.4 the Secretary of State, having considered the Further Action Statement, is not satisfied that any action proposed to be taken by the Company is sufficient in all the circumstances, or, if no Further Action Statement shall

have been given to the Secretary of State within the requested timeframe or otherwise.

- 5.17 If a Special Measures Termination Event occurs, the Secretary of State may:
- 5.17.1 serve written notice on the Company requiring the Company to: procure the resignation and removal of such member(s) of the Local Governing Body as may be specified by the Secretary of State within 42 days of receipt of such notice by the Company (provided always that the Company has the power to effect such removal(s) under its Articles); and/or procure the appointment of such additional members to the Local Governing Body as may be specified by the Secretary of State (provided always that the Company has the power to effect such appointment(s) under its Articles); or
- 5.17.2 give at least 12 months' notice in writing to terminate this Agreement (such notice to take effect at the end of an Academy term).

6 EFFECT OF TERMINATION

- 6.1 In the event of termination of this Agreement however occurring, the school shall cease to be an Academy within the meaning of Section 1 of the Academies Act 2010.
- 6.2 Subject to clause 6.3, if the Secretary of State terminates this Agreement for reasons other than that a Special Measures Termination Event occurs, the Academy no longer has the characteristics set out in clause 12 of the Master Agreement, or is no longer meeting the conditions and requirements set out in clauses 13 - 34 (other than clauses 16, 17, 18, 30 and 31) of the Master Agreement or that the Company is otherwise in material breach of the provisions of this Agreement or the Master Agreement, the Secretary of State shall indemnify the Company.
- 6.3 The amount of any such indemnity shall be determined by the Secretary of State having regard to any representations made to him by the Company, and shall be paid at such times and in such manner as the Secretary of State may reasonably think fit.

6.4 The categories of expenditure incurred by the Company in consequence of the termination of the Agreement in respect of which the Secretary of State shall indemnify the Company include (but not by way of limitation), staff compensation and redundancy payments, compensation payments in respect of broken contracts, expenses of disposing of assets or adapting them for other purposes, legal and other professional fees, and dissolution expenses.

6.5 Subject to clause 6.6, on the termination of this Agreement however occurring, the Company shall in respect of any of its capital assets at the date of termination:

6.5.1 promptly transfer a proportion of the assets to a person nominated by the Secretary of State, if the Secretary of State considers that all or some of those assets need to be used for educational purposes by that nominee. The proportion of the assets to be transferred shall be the same as the proportion of the capital contribution made by the Secretary of State to the original value of those assets, whether that contribution was made on the establishment of the Academy or later; or

6.5.2 if the Secretary of State confirms that a transfer under clause 6.5.1 is not required, promptly repay to the Secretary of State a percentage of the Net Proceeds of Sale of such assets at the date of 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. For the purposes of this clause 6.5.2 "Net Proceeds of Sale" shall mean the amount received by the Company on the disposal of such assets after deducting VAT and all costs (including legal and other fees) incurred in relation to such disposal.

6.6 The Secretary of State may waive in whole or in part the repayment due under clause 6.5.2 if:

6.6.1 the Company obtains his permission to invest the proceeds of sale for its charitable objects; or

6.6.2 the Secretary of State directs all or part of the repayment to be paid to the L A.

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

6A RESTRICTIONS ON LAND TRANSFER

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 SPECIAL EDUCATIONAL NEEDS

7.1 In respect of the Academy the following duties will apply in relation to pupils with Special Educational Needs (“SEN”), ARK Schools must comply with all of the duties imposed upon the governing bodies of maintained schools in:

7.1.1 Part 4 of the Education Act 1996 as amended from time to time;

7.1.2 The Education (Special Educational Needs) (Information) Regulations 1999 as amended from time to time; and

7.1.3 The Education (Special Educational Needs Co-ordinators) (England) (Amendment) Regulations 2008 as amended from time to time.

8 ANNEX

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

9 THE MASTER AGREEMENT

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

10 ENGLISH LAW

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

This Agreement has been executed as a Deed by or on behalf of each of the parties and delivered as a deed on the date written at the beginning of it.

Executed on behalf of ARK Schools by:

.....
Director

.....
Director/Secretary

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

.....

Duly Authorised

ANNEX TO THIS SUPPLEMENTAL AGREEMENT

Requirements for the Admission for pupils at the Academy

Annex 1