DEED OF VARIATION
OF SUPPLEMENTAL FUNDING AGREEMENT RELATING TO ARK BOULTON ACADEMY, FORMERLY KNOWN AS ARK GOLDEN HILLOCK ACADEMY
The Parties to this Deed are:

(1) The Secretary of State for Education of Sanctuary Buildings, Great Smith Street, London SW1P 3BT (the "Secretary of State");

- and -

(2) ARK Schools a charitable company incorporated in England and Wales with registered company number 05112090 whose registered address is at 65 Kingsway, London, WC2B 6TD ("the Company")

together referred to as the "Parties".

INTRODUCTION

A. The Parties entered into a supplemental funding agreement on 27 March 2015 relating to the establishment, maintenance and funding of ARK Golden Hillock Academy (the "Supplemental Funding Agreement") a copy of which is contained in Schedule 1.

B. The Parties now wish to vary and amend certain terms and conditions of the Supplemental Funding Agreement in accordance with the terms of this Deed.

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 Supplemental Funding Agreement.

2. Variation of the Funding Agreement

2.1 The Parties agree that with effect from the date of this Deed the Supplemental Funding Agreement will be amended as follows:

All references in the Supplemental Funding Agreement to ARK Golden Hillock Academy shall be changed to ARK Boulton Academy.

2.2 Except as varied by this Deed, the Supplemental Funding Agreement shall remain in full force and effect.

2.3 The provisions of the Supplemental Funding Agreement shall up until the date of this Deed continue in full force and effect.

2.4 The schedules, appendices and annexes to this Deed form part of and are incorporated into this Deed.

3. Governing law and jurisdiction

3.1 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), shall be governed by and construed in accordance with English law.

3.2 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).
4. **Counterparts**

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

IN WITNESS whereof this Deed has been executed by the parties hereto and is intended to be and is hereby delivered on the date first above written.

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

[Signature]

Duly Authorised by the Secretary of State for Education

Date... 29 October 2015

EXECUTED as a deed by
ARK Schools acting by:

[Signature]

Director

Print name... LUCY MILLER

Date... 30.9.15
Schedule 1
Supplemental Funding Agreement
Dated 27 March 2015

(1) Secretary of State for Education

and

(2) ARK Schools

Supplemental Funding Agreement

Relating to ARK Golden Hillock 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 Amendment 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 Golden Hillock Academy to be established at Golden Hillock Road, Sparkhill, Birmingham, West Midlands, B11 2QG;

"the Land" means as ALL THAT land and buildings known as Golden Hillock Academy a Parkview Academy, Golden Hillock Road, Sparkhill, Birmingham, West Midlands, B11 2QG comprising title number MM25836;

"the Lease" means the lease or other occupational agreement between the Company and a third party (the "Landlord") under which the Company derives title to the Land;

"Property Notice" means any order, notice, proposal, demand or other requirement issued by any competent authority (including the Landlord) which materially affects the Company's ability to use the Land for the purposes of the Academy;

"Surveyor's Report" means the report at Annex 2 of this Agreement.

"Termination Notice" means a notice sent by the Secretary of State to the Company, terminating this Agreement on the date specified in the notice.
1.3 Reference in this Agreement to clauses and Annexes shall, unless otherwise stated, be to clauses and annexes of this Agreement.

1.4 This Agreement is conditional upon the Company entering into a commercial transfer agreement with Park View Educational Trust (a charitable company registered with company number 07949154) in a form specified by the Secretary of State on or before 31 August 2015.

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 16 shall be broad and balanced.

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

2.3A The 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.

ACADEMY OPENING DATE

2.4 The Academy shall open as a school on 1 September 2015 replacing Golden Hillock School—a Park View Academy.

2.5 The age range of the Academy and capacity of the Academy will be 900 in the age range 11-16.
RUNNING OF THE ACADEMY

2.6 The relevant clauses in the Master Agreement and Annex B shall only apply to the Academy 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.

SCHOOL MEALS

2.7 Clauses 32 and 33 of the Master Agreement are disappplied and replaced with the following clauses 2.8, 2.9 and 2.10 in relation to the Academy:

2.8 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.

2.9 The Company must comply with school food standards legislation as if the Academy were a maintained school.

2.10 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.

CURRICULUM

2.11 The Company must not allow any view or theory to be taught as evidence-based if it is contrary to established scientific or historical evidence and explanations. This clause applies to all subjects taught at the Academy.

2.12 The Company must provide for the teaching of evolution as a comprehensive, coherent and extensively evidenced theory.

2.13 The Company must ensure that principles are promoted which support fundamental British values, of respect for the basis on which the law is made and applied in England; respect for democracy and support for participation in the democratic processes; support for equality of opportunity for all; support and respect for the liberties of all within the law; and respect for and tolerance of different faiths and religious and other beliefs.
GOVERNANCE

2.14 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.

2.15 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.

2.14A 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.

2.14B 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.

2.14C 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.

PUPIL PREMIUM

2.16 For all pupils eligible for Year 7 literacy and numeracy catch-up premium funding, and for each Academy financial Year, the Academy Trust 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;

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.

3 CAPITAL GRANT

3.1 Subject to clauses 3.2 and 3.4, pursuant to clause 38 of the Master Agreement, the Secretary of State may, in his absolute discretion provide Capital Expenditure funding in accordance with any arrangements he considers appropriate.

3.2 Subject to clause 3.3, the Secretary of State shall, up to and including 31 August 2017, provide sufficient grant funding to the Company to complete the works required to remedy the items identified in the Surveyor’s Report.

3.3 If the Secretary of State determines that an alternative proposal would deliver better value for money to the public purse instead of completion of some or all of the works in the manner described in clause 3.2, the Secretary of State shall agree the provision of grant funding for the alternative proposal instead of funding under clause 3.2.

3.4 The Secretary of State shall provide £500,000 of Capital Expenditure funding to the Company in respect of the building works necessary to move the entrance of the Academy to an alternative location on the Land.

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, with the exception that clauses 45A to 49A of the Master Agreement shall not apply to the Academy and clauses 45 to 49 of the Master Agreement will apply to the Academy instead.

4.2 Notwithstanding the provisions of clause 4.1 and the Master Funding Agreement in each of the Academy Financial Years ending 31 August, 2016, 2017 and 2018, GAG shall be calculated on the basis of the capacity of the Academy being a minimum of 875 pupils. In
the Academy Financial Year ending 31 August 2019 and all subsequent years, GAG shall be calculated on the basis set out in clause 4.1.

4.3 The Secretary of State agrees not to make an adjustment of GAG and EAG as a result of any overpayment in the Academy Financial Year ending 31 August 2016. If there is an overpayment in the Academy Financial Years ending 31 August 2017 or 31 August 2018 the Secretary of State shall reduce the amount of GAG and EAG payable in the next Academy Financial Year by an amount equivalent to the overpayment.

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 has been a serious breakdown in the way the Academy is managed or governed;

(e) the safety of pupils or staff is threatened (whether by breakdown of discipline or otherwise); or

(f) 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 the Agreement on a specified date.

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

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

(b) the Company has not carried out the Specified Remedial Measures and/or Further Remedial Measures within the specified timeframes;

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

**Termination on grounds of suitability**

5.5A) 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.

5.5B) For the purposes of clause 5.5A 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.

5.5C) For the purposes of clause 5.5B:

(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.

Notice of Intention to Terminate

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

(a) special measures are required to be taken in relation to the Academy; or

(b) the Academy requires significant improvement.
5.7 Any notice issued by the Secretary of State in accordance with clause 5.6 shall invite the Company to respond with any representations within a specified timeframe.

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

(a) he has not received any representations from the Company within the timeframe specified in clause 5.7; or

(b) having considered the representations made by the Company pursuant to clause 5.7, the Secretary of State remains satisfied that it is appropriate to terminate this Agreement he may by notice in writing terminate this Agreement with effect from a specified date.

5.8A) If the Chief Inspector gives a notice referred to in clause 5.6 to the Company within two years after the Academy opened, the Secretary of State may only serve a Termination Warning Notice under clause 5.6 if:

a) the Chief Inspector has held a monitoring inspection under section 8 of the Education Act 2005 later than two years after the Academy opened; and

b) the Chief Inspector considers that the Academy is not making enough progress towards the removal of the designation referred to in his notice.

Nothing in this clause prevents or prejudices the Secretary of State exercising any other rights arising from or under this Agreement (including, for the avoidance of doubt, any rights under clauses 5.2 to 5.5).

5.8B) In deciding whether to give notice of his intention to terminate under clause 5.8A, the Secretary of State will have due regard to the overall performance of the Company.

Termination with Immediate Effect

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

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

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

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

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

5.11.3 a detailed budget of income and expenditure for the Academy during the Critical Year (the "Projected Budget").
5.12 Both parties undertake to use their best endeavours to agree whether or not the cost of running the Academy during the Critical Year would cause the Company, on the basis of the Indicative Funding and All Other Resources, to become insolvent. Both parties recognise that they will need to engage in a constructive dialogue at the time about how best to provide education for the pupils at the Academy and undertake to use their best endeavours to agree a practical solution to the problem.

5.13 If no agreement is reached by 30 April (or such other date as may be agreed between the parties) as to whether the cost of running the Academy during the Critical Year on the basis of the Indicative Funding and All Other Resources would cause the Company to become insolvent, then that question shall be referred to an independent expert (the "Expert") for resolution. The Expert's determination shall be final and binding on both parties. The Expert shall be requested to specify in his determination the amount of the shortfall in funding (the "Shortfall"). The Expert shall be an insolvency practitioner with significant professional experience of educational institutions or academies. If the parties fail to agree upon the appointment of the Expert then the Expert shall be appointed by the President for the time being of the Institute of Chartered Accountants in England and Wales. The Expert's fees shall be borne equally between the parties.

5.14 The Expert shall be required in reaching his determination to take account of advice from an educational specialist who is professionally familiar with the issues arising from the budget management of schools. If the parties fail to agree upon the appointment of the educational specialist then the educational specialist shall be appointed by the Chairman for the time being of the Specialist Schools and Academies Trust. The educational specialist's fees shall be borne equally between the parties.

5.15 If the Expert determines that the cost of running the Academy during the Critical Year would cause the Company, on the basis of the Indicative Funding and All Other Resources, to become insolvent, and the Secretary of State shall not have agreed to provide sufficient additional funding to cover the Shortfall, then the Company shall be entitled to terminate this Agreement, by notice expiring on 31 August of 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.
6 EFFECT OF TERMINATION

6.1 In the event of termination of this Agreement however occurring, the school shall cease to be an Academy within the meaning of Sections 1 and 1A of the Academies Act 2010.

6.2 Subject to clauses 6.3 and 6.4, if the Secretary of State terminates this Agreement pursuant to clause 5.1 of this Agreement, the Secretary of State shall indemnify the Company. If the Secretary of State terminates this Agreement otherwise than pursuant to clause 5.1 of this Agreement, the Secretary of State may in his absolute discretion indemnify or (to such extent if any as he may in his absolute discretion consider appropriate) compensate the Company.

6.3 The amount of any such indemnity or compensation shall be determined by the Secretary of State having regard to any representations made to him by the Company, and shall be paid at such times and in such manner as the Secretary of State may reasonably think fit.

6.4 The categories of expenditure incurred by the Company in consequence of the termination of the Agreement in respect of which the Secretary of State shall (where the Secretary of State terminates this Agreement pursuant to clause 5.1) indemnify the Company and may (where the Secretary of State terminates this Agreement otherwise than pursuant to clause 5.1) in his absolute discretion indemnify or compensate the Company include (but not by way of limitation), staff compensation and redundancy payments, compensation payments in respect of broken contracts, expenses of disposing of assets or adapting them for other purposes, legal and other professional fees, and dissolution expenses.

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

(a) promptly transfer a proportion of the assets to a person nominated by the Secretary of State, if the Secretary of State considers that all or some of those assets need to be used for any educational purposes by that nominee. The proportion of the assets to be transferred shall be the same as the proportion of the capital contribution made by the Secretary of State to the original value of those assets, whether that contribution was made on the establishment of the Academy or at a later date; or
(b) if the Secretary of State confirms that a transfer under clause 6.5(a) is not required, promptly repay to the Secretary of State a sum equivalent to the percentage of the value of the assets at the date of termination, or, by agreement with the Secretary of State, at the date of subsequent disposal of those assets. Such percentage to be the same as the percentage of the capital contribution made by the Secretary of State to the original value of those assets, whether that contribution was made on the establishment of the Academy or later.

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

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

(b) the Secretary of State directs all or part of the repayment to be paid to the LA.

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

LAND

Restrictions on Land transfer

6A 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.

Obligations of the Company

6B The Company must keep the Land clean and tidy and make good any damage or deterioration to the Land. The Company must not do anything to lessen the value or marketability of the Land without the Secretary of State’s consent.

6C The Company must comply with the Lease and promptly enforce its rights against the Landlord.

6D The Company must not, without the Secretary of State’s consent:

(a) terminate, vary, surrender, renew, dispose of or agree any revised rent under the Lease;

(b) grant any consent or licence; or

(c) create or allow any encumbrance; or

(d) part with or share possession or occupation; or

(e) enter into any onerous or restrictive obligations;

in respect of all or part of the Land.

Option 16
6E The Company grants and the Secretary of State accepts an option (the "Option") to acquire the Land at nil consideration. The Secretary of State 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

6F The Company:

(a) must, within 14 days after acquiring the Land or, if later, after signing this Agreement, 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 register, 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 Company; 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 Company has not complied with this clause, he may apply to secure the registration.

Sharing of the Land

6G 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 Company 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.

6H To the extent the Company and the Secretary of State agree to part of the Land being demised or leased or otherwise made available in accordance with clause 6G 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 Company,

the Company must use its reasonable endeavours to procure all necessary consents in order to enable it to demesne, 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 Company's ownership, occupation and use of the Land and the Company's obligations under charity law. The Secretary of State shall meet the reasonable costs incurred by the Company in connection with this clause.

6I For the purposes of clause 6G:

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

planned capacity has the meaning given in clause 2.B.

**Property Notices**

6J If the Company receives a Property Notice, it must:

(a) send a copy of it to the Secretary of State within 14 days, stating how the Company intends to respond to it;

(b) promptly give the Secretary of State all the information he asks for about it;

(c) allow the Secretary of State to take all necessary action, with or instead of the Company, to comply with it, and

(d) use its best endeavours to help the Secretary of State in connection with it.

**Breach of Lease**

6K If the Company is, or if it is reasonably foreseeable that it will be, in material breach of the Lease, the Company must immediately give written notice to the Secretary of State stating what the breach is and what action the Company has taken or proposes to take to remedy it, including timescales where appropriate.

6L After notifying the Secretary of State under clause 6K, the Company must:

(a) promptly give the Secretary of State all the information he asks for about the breach;

(b) allow the Secretary of State to take all necessary action, with or instead of the Company, to remedy or prevent the breach; and

(c) use its best endeavours to help the Secretary of State to remedy or prevent the breach.

**ANNEX**

19
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:

Lynn Howey

Director

In the presence of

Witness

ADRIAN SMITH

Address

58 CAMDEN SQUARE NW1

Occupation VICE-CHANCELLOR

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

Duly Authorised
This Agreement was executed as a Deed 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
Executed on behalf of ARK SCHOOLS by:

[Signature]

Director

In the presence of:

[Signature]

Witness

ADRIAN SMITH

Address

58 CAMDEN SQUARE

LONDON NW1

Occupation

VICE CHANCELLOR

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

[Signature]

Duly Authorised
ANNEX I

ADMISSIONS ANNEX
ANNEX 1

REQUIREMENTS FOR THE ADMISSION OF PUPILS TO
GOLDEN HILLOCK SCHOOL

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 to the Codes or legislation to "admissions 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\(^1\)) 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 Golden Hillock School on application from an LA. This will include complying with a School

\(^1\) As defined in the School Admissions Code
Attendance Order\(^2\). Before doing so the Secretary of State will consult the Company;

(b) direct the Company to admit a named pupil to Golden Hillock School 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'\(^3\) 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

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:

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\(^2\) 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 as 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.

\(^3\) '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.
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. 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. 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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4 Relevant age group means normal point of admission to the school for example, Year R, Year 7 and Year 12.

5 The OSA has no jurisdiction to consider objections against the agreed variation from the Codes set out in paragraphs 2A and 2B.
<table>
<thead>
<tr>
<th>Location</th>
<th>Element</th>
<th>Description</th>
<th>Observation</th>
<th>Recommendation/Remediation</th>
<th>Year 1</th>
<th>Year 2</th>
<th>Phase 3</th>
</tr>
</thead>
<tbody>
<tr>
<td>Roof Covering</td>
<td>Flat roof area with asphalt covering.</td>
<td>Poor - areas show split asphalt and leaks to classrooms below.</td>
<td>Replace roof covering completely, new 3-layer felts overlay system, insulation, including heat, edge protection and access covers.</td>
<td>£110,000</td>
<td>£1,000</td>
<td>£8,000</td>
<td></td>
</tr>
<tr>
<td>Gutter/Roof</td>
<td>Combination of painted cast iron gutters, self-draining UPVC gutters and painted cast iron downspouts.</td>
<td>Poor - some downspouts require replacement and gutters require helpful work. With all areas requiring repainting.</td>
<td>Replace all cast iron gutters, re-do those areas where roof level, replace downspouts and repainting.</td>
<td>£1,500</td>
<td>£1,000</td>
<td>£8,000</td>
<td></td>
</tr>
<tr>
<td>Windows</td>
<td>Painted metal window units extensively with secondary in thermal paint.</td>
<td>Overhead and deterioration required.</td>
<td>Painted metal window units extensively with secondary in thermal paint.</td>
<td>£25,000</td>
<td>£25,000</td>
<td>£2,800</td>
<td></td>
</tr>
<tr>
<td>Roof Covering</td>
<td>Flat roof area with asphalt covering.</td>
<td>Poor - asphalt split in places, incurred to upstands.</td>
<td>Replace roof covering completely, new 3-layer felts overlay system, insulation, including heat, edge protection and access covers.</td>
<td>£20,000</td>
<td>£20,000</td>
<td>£2,800</td>
<td></td>
</tr>
<tr>
<td>BLOCK D</td>
<td>Roof Covering</td>
<td>Fibrous asbestos insulation board to bin store area.</td>
<td>Poor - signs of failure with replacement required.</td>
<td>Replace roof covering.</td>
<td>£15,000</td>
<td>£15,000</td>
<td>£15,000</td>
</tr>
<tr>
<td>Windows</td>
<td>Single glazed metal crittall units, mainly used in and wall facing directions.</td>
<td>Fan - refitted and replacement required.</td>
<td>Fan - refitted and replacement required.</td>
<td>£135,000</td>
<td>£135,000</td>
<td>£135,000</td>
<td></td>
</tr>
<tr>
<td>Roof Covering</td>
<td>Flat roof area with weathered flat covering over main building.</td>
<td>Poor - look seems split in places with complete re-covering required.</td>
<td>Replace roof covering completely, new 3-layer felts overlay system, insulation, including heat, edge protection and access covers.</td>
<td>£65,000</td>
<td>£65,000</td>
<td>£65,000</td>
<td></td>
</tr>
<tr>
<td>Gutter/Roof</td>
<td>Painted cast iron gutters and downspouts, aluminum to bin store area.</td>
<td>Poor - corrosion and damage to all areas.</td>
<td>Replace all gutters and downspouts.</td>
<td>£25,000</td>
<td>£25,000</td>
<td>£25,000</td>
<td></td>
</tr>
<tr>
<td>Tenant</td>
<td>Painted render.</td>
<td>Poor - areas of render failure above windows at high level.</td>
<td>Replace damaged render sections and rainwater.</td>
<td>£8,000</td>
<td>£8,000</td>
<td>£8,000</td>
<td></td>
</tr>
<tr>
<td>Columns</td>
<td>Painted pre-cast concrete columns.</td>
<td>Poor - surface finish breaking down in places.</td>
<td>Propose concrete and re-seat in concrete repair system and repoint all corners.</td>
<td>£35,000</td>
<td>£35,000</td>
<td>£35,000</td>
<td></td>
</tr>
<tr>
<td>Ceiling</td>
<td>Precast concrete panels, withough cast stone finish.</td>
<td>Fan - panels have some discolorations sections in places, with replacing areas requiring rectifying required.</td>
<td>Cut off and replace all expert pointing and carry out repairs to principal areas requiring replacement.</td>
<td>£4,500</td>
<td>£4,500</td>
<td>£4,500</td>
<td></td>
</tr>
<tr>
<td>External Doors</td>
<td>Missing timber doors to bin store.</td>
<td>Poor - missing doors to bin store.</td>
<td>This allows vehicles to enter bin area, Fan - height to virtually the underside of the pitched roof, reducing flat protection and incomparability.</td>
<td>£3,000</td>
<td>£3,000</td>
<td>£3,000</td>
<td></td>
</tr>
<tr>
<td>PE Block</td>
<td>Roof area with asbestos mixed felt covering to main roof to match with the lower flat roof areas to the block.</td>
<td>No access to inspect roof area. Roof access located behind in roof area which has exposure contaminations. Evidence of roof leaks to roofs below, indicative that roof covering leaks either pitch repairs or replacement.</td>
<td>Carry out flat pitch repairs to roof covering and complete repairment when necessary.</td>
<td>£5,000</td>
<td>£5,000</td>
<td>£5,000</td>
<td></td>
</tr>
<tr>
<td>Windows</td>
<td>Single glazed metal crittall units.</td>
<td>Fan - removed and replacement required.</td>
<td>Fan - removed and replacement required.</td>
<td>£45,000</td>
<td>£45,000</td>
<td>£45,000</td>
<td></td>
</tr>
<tr>
<td>BLOCk A</td>
<td>Built in cupboards.</td>
<td>Painted wood/door frame, atmosphere and door frames exposed.</td>
<td>Chamfer penetration from external walls and ceiling levels from roof and wall.</td>
<td>Replace defective ceiling plaster, remove paint from bywrench, bows - dry fix, apply plaster and redecorate.</td>
<td>£350</td>
<td>£350</td>
<td>£350</td>
</tr>
<tr>
<td>Walls</td>
<td>Painted wood/door frame.</td>
<td>Fan - dirt and stains.</td>
<td>Fan - dirt and stains.</td>
<td>£350</td>
<td>£350</td>
<td>£350</td>
<td></td>
</tr>
<tr>
<td>Floors</td>
<td>Painted floor.</td>
<td>Poor - dirt and stains.</td>
<td>Fan - dirt and stains.</td>
<td>£350</td>
<td>£350</td>
<td>£350</td>
<td></td>
</tr>
<tr>
<td>BLOCk B</td>
<td>Ceiling</td>
<td>Emulsion painted plaster, falling to dowel area.</td>
<td>Fan - asphalt termination adjacent covered cornice.</td>
<td>Blanket and decorate.</td>
<td>£600</td>
<td>£600</td>
<td>£600</td>
</tr>
<tr>
<td>Walls</td>
<td>Painted wood/door frame.</td>
<td>Fan - areas of damp penetration.</td>
<td>Blanket and decorate.</td>
<td>£600</td>
<td>£600</td>
<td>£600</td>
<td></td>
</tr>
<tr>
<td>BLOCk C</td>
<td>Ceiling</td>
<td>Suspended ceiling and recessed lighting.</td>
<td>Fan - damp stains to base.</td>
<td>Replace plastered slab.</td>
<td>£350</td>
<td>£350</td>
<td>£350</td>
</tr>
<tr>
<td>Walls</td>
<td>Painted plaster.</td>
<td>Poor - peeling paint and plaster defects.</td>
<td>Repair damp-effected plaster, prepare and decorate ceiling.</td>
<td>£350</td>
<td>£350</td>
<td>£350</td>
<td></td>
</tr>
<tr>
<td>BLOCk D</td>
<td>Walls</td>
<td>Painted plaster and ceramic tiles.</td>
<td>Poor - dirt and stains to external wall.</td>
<td>Plaster repairs and decorations.</td>
<td>£350</td>
<td>£350</td>
<td>£350</td>
</tr>
<tr>
<td>Ceiling</td>
<td>Emulsion painted plaster and exposed.</td>
<td>Poor - dirt and stains, falling plaster.</td>
<td>Rake and damp penetration area removed.</td>
<td>£600</td>
<td>£600</td>
<td>£600</td>
<td></td>
</tr>
<tr>
<td>Walls</td>
<td>Painted wood/door frame.</td>
<td>Poor - dirt and stains.</td>
<td>Fan - dirt and stains.</td>
<td>£350</td>
<td>£350</td>
<td>£350</td>
<td></td>
</tr>
<tr>
<td>BLOCk E</td>
<td>Ceiling</td>
<td>Plastered and plastered.</td>
<td>Fan - areas of damp penetration, plasterboard damage and repairs required.</td>
<td>Carry out plaster repairs and decorations.</td>
<td>£350</td>
<td>£350</td>
<td>£350</td>
</tr>
<tr>
<td>Walls</td>
<td>Plastered and plastered.</td>
<td>Fan - areas of damp penetration, plasterboard damage and repairs required.</td>
<td>Carrying out plaster repairs and decorations.</td>
<td>£350</td>
<td>£350</td>
<td>£350</td>
<td></td>
</tr>
<tr>
<td>BLOCk F</td>
<td>Ceiling</td>
<td>Suspended ceiling and recessed lighting.</td>
<td>Fan - water leak, with steel tube fixing to tiles.</td>
<td>Replace insulated tiles where necessary.</td>
<td>£350</td>
<td>£350</td>
<td>£350</td>
</tr>
<tr>
<td>Walls</td>
<td>Suspended ceiling and recessed lighting.</td>
<td>Fan - water leak, with stand tubes to tiles.</td>
<td>Replace insulated tiles where necessary.</td>
<td>£350</td>
<td>£350</td>
<td>£350</td>
<td></td>
</tr>
<tr>
<td>Electrics</td>
<td>Suspended metal grids to roof.</td>
<td>Poor - faults covered with worsened symptoms required.</td>
<td>Replace radiograms.</td>
<td>£350</td>
<td>£350</td>
<td>£350</td>
<td></td>
</tr>
<tr>
<td>Mechanical and Electrical</td>
<td>Ventilation</td>
<td>Lack of ventilation to plasterboard areas.</td>
<td>Previous transfer grate to areas where no ventilation has been provided to plasterboard areas.</td>
<td>£2,000</td>
<td>£2,000</td>
<td>£2,000</td>
<td></td>
</tr>
<tr>
<td>BLOCk A</td>
<td>Classroom ventilation</td>
<td>Classrooms under mechanical in Blocks A &amp; C tend to</td>
<td>Install heat recovery mechanical ventilation with supply and return ducts at ceiling areas.</td>
<td>£1,500</td>
<td>£1,500</td>
<td>£1,500</td>
<td></td>
</tr>
<tr>
<td>BLOCk B</td>
<td>Power distribution</td>
<td>Main mains supply and switchboard.</td>
<td>Carry out correlation updated as switchboard in the current year. Schedule replacement of the supply authority service head and for when a power outage be arranged.</td>
<td>£2,500</td>
<td>£2,500</td>
<td>£2,500</td>
<td></td>
</tr>
<tr>
<td>TOTAL</td>
<td></td>
<td></td>
<td></td>
<td></td>
<td>£19,150</td>
<td>£148,775</td>
<td>£212,899</td>
</tr>
</tbody>
</table>