

**ACADEMIES SPONSORED BY
ARK ACADEMIES**

SUPPLEMENTAL FUNDING AGREEMENT

ST ALBAN'S ACADEMY

20 August **2009**

Lewis Silkin LLP
5 Chancery Lane
Clifford's Inn
London EC4A 1BL

Ref: GRD/89215.26/1847109-9
Date: 13 August 2009

THIS AGREEMENT made

2009

BETWEEN

- (1) **THE SECRETARY OF STATE FOR CHILDREN, SCHOOLS AND FAMILIES** (“the Secretary of State”); and
- (2) **ARK ACADEMIES** (“the Company”).

IS SUPPLEMENTAL TO THE MASTER FUNDING AGREEMENT made between the Secretary of State for Education and Skills (“the Previous Secretary of State”) and the Company dated 29 August 2006 (the “**Master Agreement**”).

WHEREAS by virtue of the Secretaries of State for Children, Schools and Families, for Innovation, Universities and Skills and for Business, Enterprise and Regulatory Reform Order 2007 the rights and obligations of the Previous Secretary of State are now vested in and are to be performed by the Secretary of State. References in the Master Agreement to the Secretary of State shall be treated as references to the Secretary of State as defined above.

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 Academy initially to be established at the Site and called St Alban’s Academy;

“Capital Expenditure” shall include Capital Expenditure (as defined in the Master Agreement) incurred after as well as before the date on which the Academy opens;

“Chief Inspector” means H.M. Chief Inspector of Schools in England or his successor;

“EA 2005” means the Education Act 2005;

“the Council” means Birmingham City Council;

“LA” means a local authority;

“Minimum Period” means a period determined according to the following table:

If at the time the Special Measures Notice is given the Academy shall have been opened for:	The Minimum Period will be
Less than 12 months	36 months
Less than 24 months but 12 months or more	24 months
24 months or more	12 months

“Site” means Angelina Street, Highgate, Birmingham B12 0UU;

“Total Authorised Expenditure” means the amount of Capital Expenditure which the Secretary of State will authorise to be spent under the Building Schools for the Future programme for the building of new buildings and/or the refurbishment of existing buildings for the Academy in accordance with the Funding Allocation Formula applicable at the time the development agreement to be entered into between the Council and the Company is to be entered.

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

2 THE ACADEMY

- 2.1 The Company will sponsor the Academy.
- 2.2 The specialism of the Academy will be Mathematics and Engineering.
- 2.3 The arrangements for admission of pupils to the Academy are set out at Annex 1.
- 2.4 The Academy is intended to open on 1 September 2009.

3 CAPITAL EXPENDITURE

- 3.1 Clauses 40-50 (inclusive) of the Master Agreement shall not apply to the Academy and the terms of this Clause 3 shall apply in their place.
- 3.2 The Secretary of State will provide funding to the Council for Capital Expenditure in relation to the Academy up to the Total Authorised Expenditure in accordance with the arrangements made under the Building Schools for the Future programme.

- 3.3 The Secretary of State will use his reasonable endeavours to enforce the terms and conditions of any grants made by the Secretary of State to the Council for the development of the Site in accordance with the terms thereof with a view to enabling the new building and/or refurbishment of the buildings intended to house the Academy and the related furnishings, equipment and fittings and fixtures to be available for use by the Company by not later than 1 September 2012.
- 3.4 If Capital Expenditure beyond that funded by the Secretary of State in accordance with clause 3.2 is required to meet the requirements of any legislation enacted or made after the date of this Agreement the Secretary of State will also fund such Capital Expenditure as the parties agree is required to meet such requirements.

4 NATIONAL CURRICULUM

- 4.1 The Academy will be a 11 – 19 school with 600 pupils in the Years 7 to 11 and up to 200 Sixth form students and will be funded on that basis by the Secretary of State.
- 4.2 The curriculum provided by the Academy to pupils up to the age of 16 shall be broad and balanced. The Company will ensure that, subject as provided in clause 4.3 below:
- 4.2.1 English, Mathematics and Science are taught to all pupils in years 7 to 11; and
- 4.2.2 the National Curriculum programmes of study for English, Mathematics and Science for the time being prescribed by the Secretary of State under section 87 of the Education Act 2002 are covered in full by the end of the final year of each Key Stage.
- 4.3 The Academy is not required to teach an individual pupil or group of pupils in one or more subjects where, in the opinion of the Principal, it is inappropriate to do so by reason of the pupil's or group's ability or attainment.

5 IMPLEMENTATION GRANT

The Secretary of State agrees to pay Implementation Grant to the Company in accordance with the budget set out in Annex 2 to this Agreement.

6 GAG AND EAG

The Secretary of State agrees to pay GAG and EAG to the Company in relation to the Academy in accordance with the Master Agreement.

7 TERMINATION

- 7.1 Either party may give not less than seven years' written notice to terminate this Agreement, such notice to expire on 31 August 2016 or any subsequent anniversary of that date.
- 7.2 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 12 and 13 of the Master Agreement 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.
- 7.3 Any such notice shall be in writing and shall:
- 7.3.1 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 12 and 13 of the Master Agreement or the Company is otherwise in material breach of the provisions of this Agreement or the Master Agreement;
 - 7.3.2 specify the measures needed to remedy the situation or breach;
 - 7.3.3 specify a reasonable date by which these measures are to be implemented; and
 - 7.3.4 state the form in which the Company is to provide its response and a reasonable date by which it must be provided.
- 7.4 If no response is received by the date specified in accordance with clause 7.3, 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.
- 7.5 If a response is received by the date specified in accordance with clause 7.3, the Secretary of State shall consider it, and any representations made by the Company, and shall, within three months of its receipt, indicate that:
- 7.5.1 he is content with the response and/or that the measures which he specified are being implemented; or
 - 7.5.2 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
 - 7.5.3 he is not satisfied, that he does not believe that he can be reasonably satisfied, and that he will proceed to terminate the Agreement.

- 7.6 In the circumstances of clause 7.5 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 Academy 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 12 and 13 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.
- 7.7 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 7.6 may be shortened to a period deemed appropriate by the Secretary of State.
- 7.8 The Secretary of State will, by not later than the end of December each 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 after taking into account all other resources available and likely to be available to the Academy, including such funds as are set out in clause 89 of the Master Agreement and such other funds as are available 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.
- 7.9 Any notice given by the Company under clause 7.8 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 7.8 above, within six weeks after the Secretary of State shall have done so. The notice must specify:
- 7.9.1 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

- 7.9.2 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
- 7.9.3 a detailed budget of income and expenditure for the Academy during the Critical Year (the "**Projected Budget**").
- 7.10 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.
- 7.11 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.
- 7.12 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, unless the parties shall agree otherwise. 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.
- 7.13 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.

- 7.14 If the Company shall have given notice to terminate the Agreement under clause 7.13, the Secretary of State may by notice in writing to the Company require the Company to appoint up to two persons nominated by the Secretary of State as directors of the Company. The right to nominate additional directors shall be without prejudice to the right of the Secretary of State to appoint additional directors under Article 40 of the Articles if the conditions in Article 38 of the Articles are, or become, satisfied.
- 7.15 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 482 of the Education Act 1996.
- 7.16 If:
- 7.16.1 the Chief Inspector shall have given a notice to the Company in accordance with s13(3) 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
- 7.16.2 not less than the Minimum Period after the Special Measures Notice, the Chief Inspector shall have carried out a subsequent inspection of the Academy in accordance with the EA 2005 and shall have made a report in accordance with the EA 2005 stating that the Academy has made inadequate progress since the date of the Special Measures Notice; and
- 7.16.3 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
- 7.16.4 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, the Secretary of State may by notice in writing to the Company terminate this Agreement forthwith in which case, for the avoidance of doubt, the provisions of clauses 8.2 and 8.3 shall apply.

8 EFFECT OF TERMINATION

- 8.1 In the event of termination of this Agreement however occurring the school shall cease to be an Academy within the meaning of Section 482 of the Education Act 1996.
- 8.2 If the Secretary of State terminates this Agreement for reasons other than that the Academy no longer has the characteristics set out in clause 7 of the Master Agreement, or is no longer meeting the conditions and requirements set out in clauses 12 and 13 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.
- 8.3 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.
- 8.4 The amounts and 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.
- 8.5 Subject to clause 8.6 and unless otherwise agreed between the Company and the Council in an agreement signed prior to the opening of the Academy on the termination of this Agreement, however occurring, the Company shall in respect of any of the capital assets owned by the Company and present at the Academy's premises on the date of termination:
- 8.5.1 if the Secretary of State considers that all or some of those assets need to be used for educational purposes by a person nominated by the Secretary of State promptly transfer to that person:-
- (a) a proportion of the assets acquired by the Company which is the same as the proportion of the Capital Expenditure incurred by the Company to acquire such assets funded directly or indirectly by way of Capital Grant made by the Secretary of State, whether that grant was made on the establishment of the Academy or later; and
 - (b) any assets acquired by the Company from the Council for no or a nominal consideration, whether on the establishment of the Academy or later; or

8.5.2 if the Secretary of State confirms that a transfer under clause 8.5.2 is not required, the Company shall use its reasonable endeavours to sell such assets and shall pay to the Secretary of State on the disposal of assets:

- (a) falling within clause 8.5.1(a) above, a percentage of the net proceeds of sale of those assets equal to the percentage of the Capital Expenditure incurred by the Company to acquire such assets funded directly or indirectly by way of Capital Grant made by the Secretary of State, whether that grant was made on the establishment of the Academy or later; and
- (b) falling within clause 8.5.1(b) above, the net proceeds of sale of such assets.

For the purposes of this clause where assets were acquired for the Company at an undervalue the amount of that undervalue shall be treated as Capital Expenditure incurred by the Company to acquire such assets.

8.6 The Secretary of State may waive in whole or in part the repayment due under clause 8.5.2 if:

- 8.6.1 The Company obtains his permission to apply the proceeds of sale for its charitable objects; or
- 8.6.2 The Secretary of State directs all or part of the repayment to be paid to the Council.

9 PUPIL WELL BEING; COMMUNITY COHESION; AND THE CHILDREN & YOUNG PEOPLE PLAN

In operating the Academy and in providing community facilities the Company shall, so far as it is within the objects of the Company contained in its Memorandum for it to do so and is reasonably practicable:-

- 9.1 promote the well-being of pupils at the Academy (through its main activity of operating the Academy and through activities ancillary thereto);
- 9.2 promote community cohesion (through its main activity of operating the Academy and through activities ancillary thereto); and
- 9.3 have regard to any plan published by the Council under Section 17 of the Children Act 2004 or (if the Council is not required to published such a plan) any plan published by the Council setting out its strategy in relation to children and relevant young people provided that any such plan shall have been sent to the Principal of the Academy and to the Company at its registered office.

10 DESIGNATED PERSON FOR CHILDREN IN CARE

The Company will in respect of the Academy act in accordance with, and be bound by, all relevant statutory and regulatory provisions and as they apply at any time to a maintained school relating to the designation of a person to promote the educational achievement of registered pupils at the Academy who are looked after by a LA and will have regard to any guidance issued by the Secretary of State in relation to those designations. For the purpose of this clause, any reference to the governing body of a maintained school in such statutory and regulatory provisions, or in any guidance and code of practice issued pursuant to such provisions, shall be deemed to be references to the local governing body of the Academy.

11 **EXCLUSIONS AGREEMENT**

The Company shall, if invited to do so by a LA, enter into an agreement in respect of the Academy with that LA which has the effect that where:-

- 11.1 The Company admits a pupil to the Academy who has been permanently excluded from a maintained school, or another Academy with whom the LA has a similar agreement; or
- 11.2 The Company permanently excludes a pupil from the Academy;

payment will flow between the Company and the LA in the same direction and for the same amount that it would, were the Academy a maintained school, under Regulations made under Section 47 of the Schools Standards and Framework Act 1998 relating to the addition or deduction of a maintained school's budget following a permanent exclusion or the admission of a permanently excluded pupil. At the date of this Agreement, the applicable Regulation is Regulation 23 of the School Finance (England) Regulations 2008.

12 **14-19 ENTITLEMENT**

- 12.1 Subject as provided in clause 12.2 below the Company shall so far as is consistent with its obligations under clause 11 of the Master Agreement make arrangements to ensure that:-
 - 12.1.1 a registered pupil at any Academy in the fourth key stage shall have the same curriculum entitlements as are conferred on a pupil in the fourth key stage at a maintained school by section 85A(1) of the Education Act 2002 (as amended); and
 - 12.1.2 a course of study in the core subjects and a course of study in one of the entitlement areas is made available with effect from the commencement of the autumn term following such pupil's fifteenth birthday to any registered pupil at any Academy who is above compulsory school age but has not attained the age of 19.

- 12.2 Nothing in clause 12.1 shall require the Company:-
- 12.2.1 in making the arrangements described in clause 12.1 to incur expenditure which is disproportionate to the expenditure incurred by the Company in providing courses for other pupils in the fourth key stage; or
- 12.2.2 to make the arrangements described in clause 12.1 if to do so would not be reasonably practicable.
- 12.3 Nothing in this clause 12 shall confer any greater entitlements on a pupil than are conferred by section 85A(1) of the Education Act 2002 or section 3A of the Learning and Skills Act 2000.
- 12.4 The Company may make the arrangements referred to in clause 12.1 either at the Academy or, if it so decides, at any school or institution.
- 12.5 In making arrangements under clause 12.1 the Company shall have regard to any relevant 14-19 curriculum guidance issued from time to time by the Secretary of State or the Qualifications and Curriculum Authority.
- 12.6 For the purpose of clause 12.1, "course of study", "core subjects" and "entitlement areas" have the same meaning as in sections 3A, 3B and 3C respectively of the Learning and Skills Act 2000 (as amended).
- 12.7 The Secretary of State will review the arrangements in this clause 12 which relate to the 14-19 entitlement after one year from the Academy opening in the light of any representations concerning them he receives from the Company.

13 CONTRACTS (RIGHTS OF THIRD PARTIES) ACT 1999

The parties do not intend that any term of this Agreement shall be enforceable solely by virtue of the Contracts (Rights of Third Parties) Act 1999 by any person who is not a party to this Agreement.

14 ANNEX

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

15 THE MASTER AGREEMENT

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

16 ENGLISH LAW

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

The Corporate Seal of the Secretary of State

