

ARK Schools

**DEED OF VARIATION
OF THE GRANT AGREEMENT RELATING TO THE TRANSFER OF THE OPERATIONS
OF 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 grant agreement on 27 March 2015 relating to the transfer of ARK Boulton Academy, formerly called ARK Golden Hillock Academy (the "**Grant 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 Grant 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 Grant Agreement.
- 2. Variation of the Grant Agreement**
- 2.1 The Parties agree that with effect from the date of this Deed the Grant Agreement will be amended as follows:
- The definition of "Academy" shall be replaced with the following:
- means the academy to be run by the Company on the site of the School under the proposed name ARK Boulton Academy;
- 2.2 Except as varied by this Deed, the Grant Agreement shall remain in full force and effect.
- 2.3 The provisions of the Grant 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:

David McKee
.....

Duly Authorised by the Secretary of State for Education

Date *29 October 2015*
.....



EXECUTED as a deed by
ARK Schools acting by:

Lucy Heller
.....
Director

Print name *LUCY HELLER*
.....

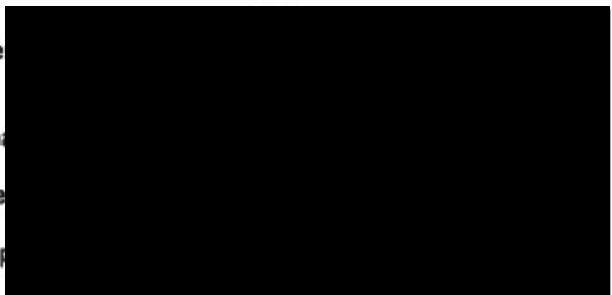
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**Schedule 1
Grant Agreement**

DATED *27 March* 2015

(1) SECRETARY OF STATE FOR EDUCATION

(2) ARK SCHOOLS

AGREEMENT

Relating to Grants for ARK Golden Hillock Academy

SK STONE KING

Stone King LLP
16 St John's Lane
London EC1M 4BS

DRAFT (5)
CFC/106839/0032
23 March 2015

THIS AGREEMENT made

2015

BETWEEN

- (1) **THE SECRETARY OF STATE FOR EDUCATION** ("the Secretary of State"); and
- (2) **ARK SCHOOLS**, a company limited by guarantee registered in England and Wales under number 05112090 whose registered office is at 65 Kingsway, London, WC2B 6TD ("the Company").

SUPPLEMENTAL TO:

- (1) A Master Funding Agreement ("the Master Agreement") made between the Secretary of State for Education and Skills and the Company, dated 26th August 2006, as amended and restated pursuant to an Amendment and Restated Agreement dated 28th August 2013; and
- (2) A supplemental funding agreement of even date with this Agreement made between the Secretary of State and the Company relating to the Academy.

NOW IT IS HEREBY AGREED as follows:

1 Definitions

In this Agreement unless the context otherwise requires:

1.1 The following words shall have the following meanings:

- | | |
|----------------------------|--|
| "Academy" | means the academy to be run by the Company on the site of the School under the proposed name ARK Golden Hillock Academy ; |
| "Business Day" | means a day (except a Saturday or Sunday) when banks are open for the transaction of all normal sterling banking business in the City of London; |
| "Directive" | means the Safeguarding of Employees Directive (2001/23/EC) (as amended, re-enacted or extended from time to time); |
| "Funding Agreement" | means the funding agreement between the Secretary of Education and the Transferor relating to the operation of the School and dated 25 September 2013; |
| "Lease" | means the lease of the Site entered into between |

Birmingham City Council as landlord and the Transferor as tenant dated 30 September 2013 and registered with title number is MM25836;

"Loss"

means all reasonable costs, claims, liabilities and expenses (including reasonable legal expenses) and "Losses" shall be construed accordingly;

"Redundancy"

has the meaning set out in section 139(1) of the Employment Rights Act;

"Redundancy Costs"

means:

(a) any statutory redundancy payment and/or any enhanced contractual redundancy payment to which a Redundant Employee is legally entitled; and/or

(b) any notice payment in respect of any Redundant Employee;

but excluding all other costs, liabilities or expenses, including without limitation all those which arise from the failure of the Company to establish a potentially fair reason for the dismissal and those arising from the manner or mode of dismissal or from the failure of the Company to mitigate its redundancy costs;

"Redundant Employee"

means a Transferring Employee whose employment with the Company is terminated by reason of Redundancy within 12 months following the Transfer Date;

"the Regulations"

means The Transfer of Undertakings (Protection of Employment) Regulations 2006 (as amended or re-enacted from time to time);

"the School"

means Golden Hillock School A Park View Academy which expression shall include any predecessor school;

"School Employees"	means any employees of the Transferor or of any other person who are assigned to the School or to services provided in connection with the School;
"Site"	the site of the Academy;
"Transfer Agreement"	means the agreement to be entered into by the (1) the Transferor and (2) the Company relating to the transfer of the undertaking and assets of the Transferor to the Company on or before the Transfer Date;
"Transfer Date"	means 31 st August 2015 or such other date as may be agreed by the Transferor, the Company and the Secretary of State;
"Transferring Employees"	means any School Employees whose employment transfers to the Company or to a Contractor on the Transfer Date pursuant to the Regulations;
"Transferor"	means Core Educational Trust, a company limited by guarantee registered in England and Wales under No. 7949154;

1.2 Expressions defined in the Master Agreement shall have the meanings ascribed to them in the Master Agreement.

2 Condition precedent

2.1 This Agreement is conditional upon the Transferor and the Company entering into the Transfer Agreement in a form specified by the Secretary of State on or before 31 August 2015.

3 Losses Arising as a result of the Operation of the Regulations and/or the Directive

3.1 The Secretary of State shall make a grant to the Company of an amount equal to

- (1) all Losses incurred by the Company in connection with or as a result of:
 - (a) any claim or demand by any School Employee or former School Employee (whether in contract, tort, under statute, pursuant to European law or otherwise) including any claim for unfair dismissal, wrongful dismissal, a redundancy payment, breach of contract, unlawful deduction from wages, discrimination on the grounds of sex, race, disability, age, sexual orientation, religion or religious belief, personal injury, a protective award or a claim or demand of any other

nature, in each case arising directly or indirectly from any act, fault or omission of the Transferor in respect of any School Employee or former School Employee, or any claim by a Transferring Employee relating to the period on and before the Transfer Date (including, for the avoidance of doubt, Losses incurred by the Company in respect of the period after the Transfer Date where the claim (such as, without limitation, a claim for equal pay) arises out of circumstances which arose on or before the Transfer Date OR any costs or Losses incurred by the Company as a result of Information provided to the Company under the Regulations by the Transferor which proves to be materially incorrect where the Transferor has not notified the Company of such error prior to the Transfer Date);

- (b) any failure by the Transferor or any other employer of the School Employees to comply with its obligations under Regulations 13 and 14 of the Regulations, or any award of compensation under Regulation 15 of the Regulations, save where such failure arises from the failure of the Company or any Contractor to comply with its duties under Regulation 13 of the Regulations;
 - (c) any claim (including any individual employee entitlement under or consequent on such a claim) by any trade union or other body or person representing the School Employees arising from or connected with any failure by the Transferor or any other employer of the School Employees to comply with any legal obligation to such trade union, body or person; and/or
 - (d) any claim by any person (other than a Transferring Employee) in respect of which the Company or any Contractor incurs or is alleged to incur responsibility or liability as a result of the operation of the Regulations in respect of the transfer of the undertaking and assets of the Transferor to the Company; and
- (2) all Losses which the Company (or, where applicable, the Contractor) may suffer or incur in respect of the dismissal of any person who is not a Transferring Employee who alleges that his employment has been transferred to the Company pursuant to the Directive or the Regulations, and the employment of that person up to the date of his or her dismissal and any other claim brought by or on behalf of that person provided that the dismissal takes place within 12 months of the Transfer Date, the Losses arise out of the fault, act or omission of the Transferor and the Company has acted in accordance with proper employment procedures and has taken all possible steps to mitigate the amount of such Losses.
- (3) all Losses which the Company may suffer or incur in respect of any claim or demand (whether in contract, tort, under statute, pursuant to European law or otherwise) relating to the period on and before the Transfer Date (including, for the avoidance of

doubt, losses incurred by the Company in respect of the period after the Transfer Date where the claim arises out of circumstances which arose on or before the Transfer Date) that the Company assumes liability for under the Transfer Agreement or that are legally enforceable against the Company as result of the operation of the Transfer Agreement provided that to the extent the Losses are covered by Insurance, or the Company has failed to take all possible steps to mitigate the amount of such Losses, then the Secretary of State shall not be obliged to make such a grant.

3.2 The grant to be made in accordance with this clause shall be paid within 10 Business Days after delivery to the Secretary of State of evidence of the Losses incurred by the Company.

4 Dismissal of Transferring Employees on grounds of Redundancy

4.1 The Company shall, as soon as reasonably practicable following the Transfer Date, provide details to the Secretary of State of any Transferring Employee whom the Company reasonably anticipates may be a Redundant Employee and the Secretary of State shall, subject to the remaining provisions of this clause 4, pay or reimburse to the Company the Redundancy Costs.

4.2 The Secretary of State shall, subject to the Company's compliance with the provisions of this clause 4, make available the funds to cover the Redundancy Costs within an appropriate timeframe agreed by the parties to enable the Redundancy Costs to be paid to the Redundant Employees in a timely manner. Where the Secretary of State is reimbursing the Company in respect of Redundancy Costs already paid by the Company, the Secretary of State shall make such payment within 60 days of the Secretary of State confirming to the Company that it is satisfied that the payments requested fall within the category of Redundancy Costs on the basis of evidence provided under clause 4.4 below.

4.3 The Secretary of State shall not be liable for any increase in the Redundancy Costs payable to any Redundant Employee where the increase to the Redundancy Costs results from any changes made by the Company to the terms and conditions of employment of any Redundant Employee which take effect on or after the Transfer Date.

4.4 When claiming payment for any sums under this clause 4, the Company shall provide the Secretary of State with such evidence as the Secretary of State reasonably requests to evidence that the payments claimed by the Company fall within the category of Redundancy Costs and shall include (but not be limited to) providing evidence:

- (1) of the identity of the Redundant Employees
- (2) that the Redundant Employees were dismissed by reason of Redundancy;
- (3) of the contractual entitlements of any Redundant Employee;
- (4) to demonstrate that the Notice Payments claimed are payable;

- (5) such information relating to pay, benefits and other entitlements as may be necessary for the Secretary of State to verify the Redundancy Costs.

4.5 The obligation of the Secretary of State to pay a grant under clauses 4.1 to 4.4 is conditional upon the Company:

- (1) complying with all relevant legal processes in respect of the Transferring Employees; and
- (2) meeting its obligations under paragraphs 3.7.2 – 3.7.7 (Inclusive) of the Academies Financial Handbook 2014.

5 Tribunal costs

5.1 Subject to the conditions in clause 5.2, the Secretary of State agrees to make a grant to the Company equal to the amount of the Company's reasonable legal costs reasonably incurred in defending claims brought against the Company by Transferring Employees in the employment tribunal.

5.2 The conditions in clause 5.1 are:

- (1) the legal costs are incurred within 12 months of the Transfer Date;
- (2) the legal costs are not covered by any policies of insurance held by the Company;
- (3) the Company has taken all possible steps to mitigate the amount of such legal costs;
- (4) the Company provides written assurance to the Secretary of State that all other possible routes, including voluntary severance and settlement of any claims, or alternative dispute resolution, have been fully considered by the Company and there is no more cost-effective way of dealing with the claim;

6 Settlement agreements

6.1 Up to and including 31 August 2016, the Secretary of State agrees to make a grant to the Company of an amount equal to the costs (including legal costs that are reasonably incurred and reasonable in amount) of any settlement or compromise agreements it enters into with Transferring Employees (other than the Redundant Employees) subject to the Company demonstrating that the costs represent value for money in accordance with paragraph 3.7.7; and complying with all of its obligations in section 3.7; of the Academies Financial Handbook 2014.

7 Lease

7.1 The Secretary of State shall procure that the Transferor assigns the Lease of the Transferor to the Company on the Transfer Date. If the Transferor fails to assign the Lease then the

Company may terminate the Supplemental Funding Agreement on providing written notice to that effect to the Secretary of State.

8 Deficit and Surplus

8.1 Subject to clause 8.2 below, if the externally audited accounts of the Transferor for the Academy Financial Year ending 31 August 2015 report a revenue funding deficit as at 31 August 2015; the Secretary of State shall provide additional funding to the Company equal to the amount of the reported deficit.

8.2 The Secretary of State and the Company agree to use their best endeavours from the date of this Agreement until 31 August 2015 to ensure that any deficit is eliminated or reduced as far as possible.

8.3 If the Transferor fails to transfer to the Company any surplus revenue funding in respect of the School that it is required to under the Transfer Agreement, the Secretary of State shall provide additional funding to the Company equal to the amount of surplus that should have transferred.

9 General

9.1 This Agreement shall not be assignable by the Company.

9.2 No delay, neglect or forbearance 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 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 This Agreement may be executed in counterparts, each of which when executed and delivered shall constitute a duplicate original, but all the counterparts shall together constitute the one agreement.

9.4 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.

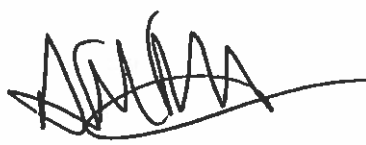
9.5 The parties irrevocably agree that the courts of England and Wales shall have exclusive jurisdiction to settle any dispute or claim that arises out of or in connection with this agreement or its subject matter or formation (including non-contractual disputes or claims).

Executed on behalf of ARK SCHOOLS by:

LYNN HENNER

Director

In the presence of:



Witness

ADRIAN SMITH

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:

.....

Director

In the presence of:

Witness

Address

.....

Occupation

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

A. Braice
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Duly Authorised

