

**DATED** 2 March **2016**

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

and

**ARK SCHOOLS** (2)

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**DEED OF VARIATION  
relating to a Funding Agreement  
dated 29 AUGUST 2013**

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## **DEED OF VARIATION**

The parties to this Deed are:

(1) The Secretary of State for Education (“the Secretary of State”),

- and –

(2) Ark Schools a charitable company incorporated in England and Wales with registered number 5112090 (“the Academy”).

together referred to as the “Parties”

### **INTRODUCTION**

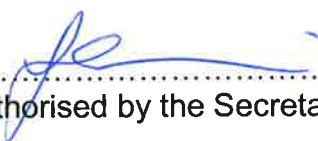
- A. The Parties entered into a funding agreement dated 29<sup>th</sup> August 2013 (“the Funding Agreement”) relating to the establishment, maintenance and funding of an independent school known as Ark Brunel Primary Academy.
- B. The Parties now wish to vary and amend the terms of the Funding Agreement and wish to record their agreement as to such variations/amendments to the Funding Agreement by this Deed.

### **LEGAL AGREEMENT**

- 1. Any word or phrase used in this Deed shall, if that word or phrase is defined in the Funding Agreement, bear the meaning given to it in the Funding Agreement.
- 2. The Secretary of State and the Academy agree that with effect from the date of this Deed the Funding Agreement shall be amended in accordance with Schedule 1 to this Deed.
- 3. As varied by this Deed, the Funding Agreement shall remain in full force and effect.

EXECUTED AND DELIVERED AS A DEED by the Parties on the 2 day  
of March 2016


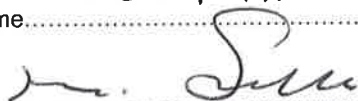
The Corporate Seal of the Secretary of State for Education hereunto affixed is  
authenticated by:

  
.....  
Duly Authorised by the Secretary of State for Education



Ark Schools

acting by two directors or a  
director and a secretary

  
.....  
Director  
Print name..... LUCY HELLER  
  
.....  
Director/Secretary  
Print name..... MICHAEL SANDALL

Witnessed by .....

Full name.....

Address.....

Occupation.....

## **Schedule 1**

### Amendments to the Funding Agreement

1. The following clauses shall be inserted after Clause 2.2 of the Funding Agreement
  - a. The Academy Trust must operate designated places reserved for pupils with SEN (SEN Unit or Resourced Provision) with up to 16 planned places for pupils with speech and language, communication need language in the age range 5-11.
  - b. The Secretary of State may at any time determine that the SEN Unit or Resourced Provision should cease to operate. In making such a determination, the Secretary of State will:
    - i. Consider the views of the Academy and relevant LAs (in their strategic role in the commissioning of SEN provision); and
    - ii. Consider how his determination will affect the LAs' ability to secure suitable SEN provision for children in the area.
2. A further Annex (Annex 2) of the Funding Agreement shall be included:

### **ANNEX 2**

#### **1. PUPILS WITH SPECIAL EDUCATION NEEDS (SEN) AND DISABILITIES**

**“Statement of SEN”** means a statement made under section 324 of the Education Act 1996.

**“EHC plan”** means an Education, Health and Care plan made under section 37 (2) of the Children and Families Act

1A. Except as set out in clause 2 below, the Children and Families Act 2014 imposes duties directly on Academies in respect of pupils with special educational needs, including the admission of pupils with EHC plans. If an Academy Trust considers that a LA should not have named the Academy in an EHC plan, it may ask the Secretary of State to determine whether the LA has acted unreasonably, and to make an order directing the LA to reconsider. The Secretary of State's determination will be final, subject to any right of appeal which a parent of the child may have to the First Tier Tribunal (Special Educational Needs and Disability) or the Upper Tribunal Administrative Appeals Chamber.

1B. Not used

1C. Not used

1D. Not used

#### **2. ADMISSION OF PUPILS WITH SEN AND DISABILITIES**

2A. The Academy Trust must for the Ark Brunel Primary Academy (“the Academy”), subject to its right of appeal to the Secretary of State, admit all pupils with a statement of SEN naming the Academy.

2B. Where an LA proposes to name the Academy in a statement of SEN, it must give the Academy Trust written notice of this, stating why it considers that Academy to be suitable for the pupil in question. Within 15 days of receipt of the LA’s notice, the Academy Trust must consent to being named, except where admitting the child would be incompatible with the provision of efficient education for other children, and no reasonable steps could secure compatibility. In deciding whether a child’s inclusion would be incompatible with the efficient education of other children or the efficient use of resources, the Academy Trust must have regard to the relevant Guidance issued to maintained schools.

2C. If the Academy Trust decides that admitting the child would be incompatible with the provision of efficient education or the efficient use of resources, it must, within the 15 days, notify the LA in writing, giving its reasons for its decision.

2D. The Academy Trust must then seek to establish from the LA whether or not it agrees with this determination. If the LA does not agree with the Academy Trust’s response, and names the Academy in the child’s statement of SEN, the Academy Trust must admit the child to the school as specified in the statement or otherwise by the LA.

2E. If in such case, the Academy Trust considers that the LA should not have named the Academy in the statement, it may ask the Secretary of State to determine whether the LA has acted unreasonably, and to make an order directing the LA to reconsider. The Secretary of State’s determination will be final, subject only to any right of appeal which a parent of the child may have to the First-tier Tribunal (Special Educational Needs and Disability) or the Upper Tribunal Administrative Appeals Chamber.

2F. If a parent of a child for whom the LA maintains a statement appeals to the First-tier Tribunal (Special Educational Needs and Disability), either for or against the naming of the Academy in the child’s statement, then the Tribunal’s decision will be binding, even if it is different from that of the Secretary of State.

2G. Where it has been finally determined that the Academy be named in a child’s statement of SEN, the Academy Trust must admit the child to the Academy, notwithstanding any other admissions requirements in this Agreement.

2H. Clauses 2.A to 2.G only apply 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.