

Multi Mainstream Free School Model

**SUPPLEMENTAL AGREEMENT FOR NISHKAM SCHOOL WEST LONDON**

**THIS AGREEMENT** made

2013

**BETWEEN**

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

(2) **NISHKAM SCHOOL TRUST("the Company")**

**IS SUPPLEMENTAL TO THE MASTER FUNDING AGREEMENT** made between the same parties and dated on or about 1 September 2012 and amended and restated on 2013 (the "**Master Agreement**").

**1 DEFINITIONS AND INTERPRETATION**

1.1 Except as expressly provided in this Agreement words and expressions defined in the Master Agreement shall have the same meanings in this Agreement as were ascribed to them in the Master Agreement.

1.2 The following words and expressions shall have the following meanings:

"the Academy" means the Mainstream Free School called Nishkam School West London, to be established initially at 390 London Road, Isleworth, London, TW7 5XB;

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

"Insured Risks" means fire, lightning, explosion, earthquake, storm, tempest, flood, subsidence, landslip, heave, impact, terrorism, bursting or overflowing of water tanks and pipes, earthquake damage by aircraft and other aerial devices or articles dropped there from, riot and civil commotion, labour disturbance and malicious damage and such other risks as the Company insures against from time to time, subject in all cases to

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### **ACADEMY OPENING DATE**

- 2.4 The Academy shall open as a school on 1 September 2013.
- 2.5 The planned capacity of the Academy is 1,400 in the age range 4-19, including a sixth form of 200 places.

### **3 CAPITAL GRANT**

- 3.1 Pursuant to clause 35 of the Master Funding Agreement, the Secretary of State may, in his absolute discretion provide Capital Expenditure funding in accordance with any arrangements he considers appropriate.

### **4 GAG AND EAG**

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

### **4A ADDITIONAL FUNDING**

- 4A.1 The Secretary of State shall meet the Company's costs arising from Rent payable by the Company under the Lease. Such costs shall include those costs arising from any rent rise payable by the Company under the terms of the Lease, so long as the relevant rent rise is properly evidenced in writing by the Company to the Department as soon as is reasonably practicable, but such costs shall not include any amount in respect of service charge payments or insurance premiums. Where the definition of rent in the Lease includes service charge payments or insurance premiums, the Secretary of State shall exclude from the total grant payable in respect of Rent an amount in respect of such service charge payments or insurance premiums.
- 4A.2 The Secretary of State may pay further grant in the Start-up period, as determined and specified by him, for costs which cannot otherwise be met from GAG.

### **4B LEASE**

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- 4B.5 The Company will at its own cost provide all information reasonably required by the Secretary of State in respect of an order, notice, proposal, demand or any other requirement affecting the Land as referred to in clause 4B.4.
- 4B.6 Following the receipt by the Secretary of State of the written notice under clause 4B.4, the Company shall permit the Secretary of State to take all steps in conjunction with or instead of the Company as may be necessary to comply with any order, notice, proposal, demand or other requirement affecting the Temporary Site referred to in the said notice. The Company shall, in such circumstances, use all reasonable endeavours to assist the Secretary of State to take the appropriate required steps.

### **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 2020 or any subsequent anniversary of that date.

#### **Notice of Intention to Terminate by Company**

- 5.2 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)

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- 5.5 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.
- 5.6 The Expert shall be required in reaching his determination to take account of advice from an educational specialist who is professionally familiar with the issues arising from the budget management of large schools. If the parties fail to agree upon the appointment of the educational specialist then the educational specialist shall be appointed by the Chairman for the time being of the Specialist Schools and Academies Trust. The educational specialist's fees shall be borne equally between the parties.
- 5.7 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.

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5.7C The Secretary of State shall consider any response and representations from the Company which are received by the date specified in accordance with clause 5.7Bc) and shall confirm whether he considers that:

- a) in 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 with 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.)

5.7D 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 5.7Bc) 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 5.7Bc), the Secretary of State remains satisfied that it is appropriate to terminate the Agreement

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managed or governed; or

5. the buildings and other structures on the Temporary Site are unsuitable or the Company has not obtained Building Regulation approval;

he may in writing either:

- (a) require the Company (i) not to open the Academy; and/or (ii) not to admit pupils of a particular age range, to be determined by the Secretary of State; and/or (iii) not to use any building or other structure on the Temporary Site until such time as the relevant matter or matters listed in 1. to 5. above has or have been resolved to the Secretary of State's satisfaction; or
- (b) terminate this Agreement by notice in writing to the Company such termination to take effect on the date of the notice.

5.9 If the Company has not entered into the Lease for the Temporary Site by 30/08/2013 , the Secretary of State may terminate this Agreement by notice in writing to the Company such termination to take effect on the date of the notice.

5.9A If at any time after the opening of the Academy but prior to the Academy relocating to a permanent site, the Secretary of State is of the view that:

1. the safety of pupils or staff at the Academy would, on use of the permanent site, be threatened; or
2. the buildings and other structures on the permanent site are unsuitable,

he may in writing either:

- (a) require the Company not to use any building or other structure on the permanent site until such time as the relevant matter or matters listed in 1.

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- 6.2 Subject to clause 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 other 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 purpose 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

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Agreement shall be or be deemed to be a waiver of such provision or right or a waiver of any other provision or right or shall in any way prejudice any right of the Secretary of State under this Agreement or shall amount to an election not to enforce such provision or exercise such right (including, for the avoidance of doubt, any right to terminate this Agreement).

- 8.3 Termination of this Agreement, for any reason, shall not affect the accrued rights, remedies, obligations or liabilities of the parties existing at termination.
- 8.4 This Agreement 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. THE MASTER AGREEMENT

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

### 10 ENGLISH LAW

- 10.1 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.
- 10.2 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).

### LAND



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### Debt

10A) Not used.

### Restrictions on Land transfer

10B) Not used.

### Obligations of the Company

10C) (i) The Company shall keep the Temporary Site clean and tidy and make good any damage it causes to the Temporary Site and / or any deterioration to the condition of the Temporary Site that may arise from the date of this Agreement, save that the Company shall ensure that any actions undertaken in compliance with this clause shall be consistent with the terms of the Lease. In compliance with this clause, the Company shall not do or cause or permit to be done anything to lessen the value or marketability of the Temporary Site save with the express written consent of the Secretary of State.

10C)(ii) The Company shall observe and comply with its obligations under the Lease and shall promptly enforce its rights against the Landlord.

10C)(iii) The Company agrees it shall seek and obtain the prior written consent of the Secretary of State, not to be unreasonably withheld or delayed before taking any steps to:

- a) terminate, vary, surrender or dispose of the Lease; and / or
- b) grant any consent or licence in respect of the Temporary Site or any part of it; and / or
- c) create or permit to arise or continue any encumbrance affecting the Temporary Site or any part of it; and / or
- d) part with or share possession or occupation of the Temporary Site or any

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- d) produce to the Secretary of State a copy of the insurance policy whenever reasonably requested and the receipt for the last premium or other evidence of renewal and up to date details of the amount of cover (but no more often than once in any period of 12 months in both cases);
- e) not knowingly do anything whereby any policy of insurance relating to the Temporary Site may become void or voidable.
- f) insure against liability in respect of property owners' and third party risks including occupiers liability.

### **Transfer of Land**

10E) The Company hereby grants and the Secretary of State hereby accepts an option, exercisable by the Secretary of State or his nominee, to acquire the Temporary Site or any part thereof at nil consideration. The option hereby granted shall be exercisable (by notice in writing by or on behalf of the Secretary of State) on the termination of this Funding Agreement for whatever cause or in circumstances where the Company is unable to use all or part of the Temporary Site of the Academy in accordance with clauses 10H. On the exercise of this option, the Law Society's Standard Conditions of Sale for Commercial Property in force at the date of such exercise shall apply to the transaction and completion shall take place 28 days after such exercise.

10F) Not used.

### **Legal Charge**

10G) Not used.

### **Failure to use the Land for the purposes of the Academy**

10H) If the Company is unable to use the Temporary Site or any part thereof but the Secretary of State agrees not to terminate this Agreement on that basis, the

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This Agreement was executed as a Deed on ..... 2013

Executed on behalf of Nishkam School Trust by:

.....  
**Director**

.....  
**Director/Secretary**

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

.....  
**Duly Authorised**