

DEED OF VARIATION TO THE FUNDING AGREEMENT

THIS DEED is made the 27 day of July 2016

BETWEEN

- 1) The Secretary of State for Education (the "**Secretary of State**"); and
- 2) Bradfield School, (the "**Company**") [a charitable company incorporated in England and Wales, with registered number 8265058 together, the "**Parties**".

INTRODUCTION

- A. The Parties entered into a funding agreement dated on or about 1/12/2012 (the "**Funding Agreement**") (subsequently amended on or about 14/6/2013 by a deed of variation) relating to the establishment, maintenance and funding of an Academy in accordance with the Funding Agreement.
- B. The Parties now wish to vary and amend certain terms and conditions of the Funding Agreement in accordance with the terms of this Deed.
- C. This Deed is supplemental to the Funding Agreement.

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 Funding Agreement.

2. Variation of the Funding Agreement

- 2.1 The Parties agree that with effect from the date of this Deed the following amendments will be made to the agreement:

2.1.1 Clauses 14A to 14E will be inserted as follows:

14A) The Academy Trust must provide to the Secretary of State the names of all new or replacement members of the Academy Trust, stating the date of their appointment and, where applicable, the name of the member they replaced as soon as is practicable and in any event within 14 days of their appointment.

14B) The Academy Trust must not appoint any new or replacement 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.

14C) The Academy Trust must not amend or remove the provisions in its Articles relating to the appointment or election or the resignation or removal of Charity Trustees or members ("the Governance Articles") without the Secretary of State's consent.

14D) Before any change to the Governance Articles is proposed the Academy Trust must give notice to the Secretary of State of:-

- a) the proposed amendment or removal; and
- b) the reason for it.

14E) If the Secretary of State consents to the proposed changes, the Academy Trust 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.

2.1.2 The opening paragraph of clause 17 will be revised to read (amendments in bold):

The planned capacity of the Academy is **1250** in the age range 11-18, including a sixth form of **200** places. The Academy will be an all ability inclusive school whose requirements for:.....

2.1.3 Clauses 23B to 23F and 25A will be inserted as follows:

23B) The Academy Trust 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.

23C) The Academy Trust must provide for the teaching of evolution as a comprehensive, coherent and extensively evidenced theory.

23D) The Academy Trust must prevent political indoctrination, and secure the balanced treatment of political issues, in line with the requirements for maintained schools set out in the Education Act 1996, and have regard to any Guidance.

23E) The Academy Trust must ensure the Academy actively promotes the fundamental British values of democracy, the rule of law, individual liberty, and mutual respect and tolerance of those with different faiths and beliefs.

23F) The Academy Trust must ensure the Academy promotes principles that support equality of opportunity for all.

25A) The Academy Trust must comply with section 71(1)-(6) and (8) of the School Standards and Framework Act 1998 as if the Academy were a community, foundation or voluntary school, and as if references to "religious education" and "religious worship" in that section were references to the religious education and religious worship provided by the Academy in accordance with clause 26.

2.1.4 Clauses 31 and 32 will be replaced with clauses 31,32 and 32A as follows:

31) The Academy Trust 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 Academy Trust and as if references to a school maintained by the local authority were to the Academy.

32) The Academy Trust must comply with school food standards legislation as if it were a maintained school.

32A) Where the Academy Trust 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.

2.1.5 Clause 33C will be re-numbered as clause 33D.

2.1.6 Clause 33C will be inserted as follows:

33C For each Academy Financial Year the Academy Trust must, where applicable, 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; and
- 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.

2.1.7 Clause 46(b) will be revised to read (amendments in bold):

....the total number of pupils as measured in the Schools Census which is used to fund maintained schools for the financial year overlapping with the Academy Financial Year in question is less than 90% of the planned final size of the Academy, which is **1250**, and has not at any previous time been greater than 90% of that number.14A)

2.1.8 The wording of Clauses 90 and 91 will be replaced with the following:

90) The Secretary of State may serve a Termination Warning Notice where he considers that:

- a) the Academy Trust has breached the provisions of this Agreement; or
- b) the standards of performance of pupils at the Academy are unacceptably low; or
- c) there has been a serious breakdown in the way the Academy is managed or governed; or
- d) the safety of pupils or staff is threatened, including by a breakdown of discipline; or
- e) the Academy is coasting provided he has notified the Academy Trust that it is coasting.

91) A Termination Warning Notice served under clause 90 will specify:

- a) the action the Academy Trust must take;
- b) the date by which the action must be completed; and
- c) the date by which the Academy Trust must make any representations, or confirm that it agrees to undertake the specified action.

2.1.9 Clauses 100A to 100C will be inserted as follows:

100A) If

- a) Any Charity Trustee or member of the Academy Trust 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 Charity Trustee or member of the Academy Trust is unsuitable,

the Secretary of State may:

- i. direct the Academy Trust to ensure that the Charity Trustee 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.

100B) For the purposes of clause 100A a Charity Trustee or member of the Academy Trust will be "unsuitable" if that Charity Trustee 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 Charity Trustee or member is unsuitable to take part in the management of the Academy.

100C) For the purposes of clause 100B:

- a) a Charity Trustee or member of the Academy Trust will be subject to a "relevant finding" in respect of an offence if:
 - i. that Charity Trustee or member has been found not guilty of the offence by reason of insanity;
 - ii. that Charity Trustee 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 Charity Trustee or member of the Academy Trust 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 Charity Trustee or member unsuitable to take part in the management of the Academy.

2.1.10 Clauses 115B to 115D will be inserted as follows:

115B) If the Academy Trust receives a Property Notice, it must:

- a) send a copy of it to the Secretary of State within 14 days, stating how the Academy Trust 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 Academy Trust, to comply with it, and
- d) use its best endeavours to help the Secretary of State in connection with it.

115C) If the Academy Trust is, or if it is reasonably foreseeable that it will be, in material breach of the Lease, the Academy Trust must immediately give written notice to the Secretary of State stating what the breach is and what action the Academy Trust has taken or proposes to take to remedy it, including timescales where appropriate.

115D) After notifying the Secretary of State under clause 5.8, the Academy Trust 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 Academy Trust, to remedy or prevent the breach, and
- c) use its best endeavours to help the Secretary of State to remedy or prevent the breach.

2.1.11 Clauses 115E to 115G will be inserted as follows:

115E) Where:

a) the Secretary of State identifies basic or parental need for additional places in the area in which the Academy is situated; 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 Academy Trust to determine whether part of the Land could be demised or sublet 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 the Land.

115F) To the extent the Academy Trust and the Secretary of State agree to part of the Land being demised or sublet in accordance with clause 115E, the Academy Trust must use its best endeavours to procure either the approval of the Landlord or any necessary amendments to the Lease in order to enable it to share occupation of the Land with the incoming Academy trust and to provide the incoming Academy Trust with security of tenure over the Land occupied by it, and shall enter into any legal arrangements which the Secretary of State requires for this purpose. The Secretary of State shall meet the necessary and reasonable costs incurred by the Academy Trust in connection with this clause.

115G) For the purposes of clause 115E:

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

c) planned capacity has the meaning given in clause 17.

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

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).

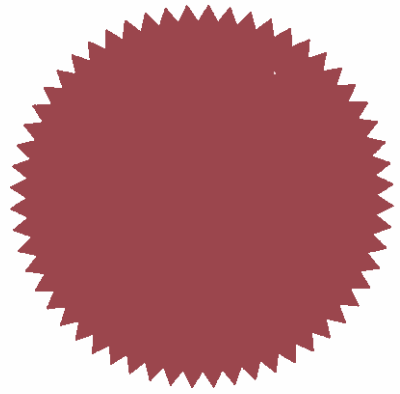
4. Counterparts

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.

EXECUTED as a deed by affixing the corporate seal of the Secretary of State for Education authenticated by:-)
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.....
Duly authorised by the Secretary of State for Education



EXECUTED as a deed by acting by:


.....
Director


.....
Director/Secretary