



**DEED OF VARIATION  
OF FUNDING AGREEMENT**

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) **The Waverley Education Foundation Limited , (the "Academy Trust") a charitable company incorporated in England and Wales with registered number 08331922;**

together referred to as the "**Parties**".

## **INTRODUCTION**

- A. The Parties entered into a Master Funding agreement dated on 25 July 2013 (the "**Master Funding Agreement**") relating to the establishment, maintenance and funding of one or more academies. The Parties entered into a supplemental funding agreement dated 25 July 2013 (the "**Supplemental Funding Agreement**") in relation to the establishment, maintenance and funding of the Academy- Waverley Studio School.
- B. The Parties now wish to vary and amend certain terms and conditions of the Supplemental Funding 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 Master Funding Agreement.

## **2. VARIATION OF THE FUNDING AGREEMENT**

- 2.1 The Parties agree that with effect from the date of this Deed the Supplemental Funding Agreement shall be amended as follows:

The following clauses shall be deleted and replaced with:-

"Clause 1.2

"Land" means the land (including for the avoidance of doubt all buildings, structures landscaping and other erections) situated at and

known as Belcher's Lane, Bordesley Green, Birmingham currently and previously used as playing fields and incorporating a cricket pitch and football pitch, as illustrated edged red on the attached plan at Annex 2.

Clause 10A-0 shall be replaced with

10A Not Used.

#### **Restrictions on Land transfer**

10B) In consideration that it has or will be obtaining a legal interest in the Land, the Company:

- a) shall, within 28 days from the acquisition of the legal interest in the Land or the signing of this Agreement, whichever is the latter, apply to the Land Registry for restrictions in the proprietorship register (under section 43(1)(a) of the Land Registration Act 2002 in Form RX1 as prescribed by Rule 91 and Schedule 4 of the Land Registration Rules 2003) ('LRR 2003')) in the following terms:

*No disposition of the registered estate by the proprietor of the registered estate is to be registered without a written consent signed by the Secretary of State for Education of Sanctuary Buildings, Great Smith Street, London SW1P.*

- b) shall take any further steps reasonably required to ensure that the restriction referred to in clause 10B(a) is entered on the proprietorship register,
- c) shall provide the Secretary of State with confirmation of the entry of the restriction referred to in clause 10B(a) as soon as reasonably practicable after it receives notification from the Land Registry,
- d) in the event that it has not registered the restriction referred to in clause 10B(a), hereby consents to the entering of the restriction referred to in 10B(a) in the register by the Secretary of State

(under s. 43(1)(b) of the Land Registration Act 2002); and

- e) shall not, without the consent of the Secretary of State, apply to dis-apply, modify or remove (by cancellation or otherwise) a restriction entered in accordance with clause 10B(a) or 10B(d) above, whether by itself, a holding company, a subsidiary company, or a receiver, administrator or liquidator acting in the name of the Company.

### **Obligations of the Company**

10C) (i) The Company shall keep the Land clean and tidy and make good any damage it causes to the Land and / or any deterioration to the condition of the Land 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 Land 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 Land or any part of it; and / or
- c) create or permit to arise or continue any encumbrance affecting the Land or any part of it; and / or
- d) part with or share possession or occupation of the Land or any part

of it; and / or

- e) enter into any onerous or restrictive obligations affecting the Land or any part of it.

10C) iv) The Company agrees that prior to taking any steps, including but not limited to the service of any notice or waiver of any condition, under any contractual arrangement entered into in respect of the acquisition of the legal interest in the Land, it shall seek and obtain the written consent of the Secretary of State, not to be unreasonably withheld or delayed.

#### **Insurance**

10D) The Company shall, save where the terms of the Lease provide for the Landlord to obtain insurance in respect of the Land:-

- a) keep the Land insured as in accordance with the terms of the Lease and in any event with a reputable insurance office against loss or damage by the Insured Risks in the sum the Company is advised represents the reinstatement value of the Land from time to time;
- b) pay the premiums for insurance promptly as they become due and maintain in force the policies of insurance on the Land;
- c) following the incidence of damage to or destruction of the Land and subject to receipt of all necessary consents licences permissions and the like apply the proceeds of the policy of the insurance received for those purposes in rebuilding and reinstating the Land (provided that this clause should be satisfied if the Company provides premises not necessarily identical to the Land as the same existing prior to such damage or destruction occurring) as soon as may be reasonably practicable;
- 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 Land 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) In consideration that it has or will be obtaining a legal interest in the Land, 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 said Land or any part thereof at nil consideration subject to obtaining the Landlord's consent to do so. 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 Agreement for whatever cause or in circumstances where the Company is unable to use all or part of the Land as the permanent site of the Academy in accordance with clauses 10H or 10K. 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) In consideration that it has or will be obtaining a legal interest in the Land, the Company:

- a) shall, within 14 days from the transfer to it of the Land or the signing of this Agreement, whichever is the latter, apply to the Land Registry in Form AN1 as prescribed by Rule 81 of the Land Registration Rules 2003 for a notice to be entered in the register (under

section 34(3)(a) of the Land Registration Act 2002) to protect the option granted under clause 10E and including a copy of this Agreement as evidence of that option,

b) shall take any further steps required to ensure that the notice referred to in clause 10F(a) is entered on the proprietorship register,

c) shall provide the Secretary of State with confirmation of the entry of the notice referred to in clause 10F(a) as soon as practicable after it receives notification from the Land Registry,

d) in the event that it has not registered the notice referred to in clause 10F(a), hereby consents to the entering of the notice referred to in 10F(a) in the register by the Secretary of State (by application in Form UN1 under s. 34(3)(b) of the Land Registration Act 2002),

e) shall not, without the consent of the Secretary of State, apply to dis-apply, modify or remove (by cancellation or otherwise) a notice entered in accordance with clause 10F(a) or 10F(d) above, whether by itself, a holding company, a subsidiary company, or a receiver, administrator or liquidator acting in the name of the Company, and

f) in the case of previously unregistered land, for the further protection of the option granted in Clause 10E the Company shall within 14 days of the acquisition of the legal interest in the Land or the signing of this Agreement, whichever is the latter, make application to register a Class C (iv) land charge in the Land Charges Registry and a Caution against First Registration in the Land Registry and shall provide the Secretary of State with copies of the entries secured thereby within 7 days of completing each registration, respectively. If the Secretary of State is of the view that the Company has failed to perform the registration obligations in this sub-clause he shall be at liberty to make his own applications to secure these registrations.

**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 Land or any part thereof as the permanent site of the Academy but the Secretary of State agrees not to terminate this Agreement on that basis, the Secretary of State may give notice to the Company that:-

- a) he intends to exercise the option granted under clause 10E) to transfer the Land or the relevant part thereof for nil consideration to himself or his nominee;

**Sharing of the Land**

10I) The Company agrees that if:

- a) the Academy does not reach its planned capacity over a period of 3 Academy Funding Years; or
- b) notice of termination is served by either the Company or the Secretary of State in accordance with clause 5.1 of this Agreement; or
- c) in the reasonable opinion of the Secretary of State the operation of the Academy at planned capacity does not require the use of the full extent of the Land,
  - i. it will share occupation of the Land with such other Academy as the Secretary of State deems appropriate in the circumstances and enter into such legal arrangements in respect of the same as are required by the Secretary of State; or
  - ii it will dispose of part of the Land as required by the Secretary of State.



providing that the Company may not be required to act in breach of the terms of the Lease.

### **Exercise of Rights**

10J) Not Used.

10K) On the Company applying to the Secretary of State for consent to the disposal of all or part of the Land during the lifetime of this Agreement, the Secretary of State shall, should he agree that the Land is no longer required or cannot be used for the purposes of the Academy, subject to clause 5.7C

- a) exercise the option granted to him pursuant to clause 10E to transfer the relevant part of the Land to him or his nominee for nil consideration.

10L- 10O) Not Used."

2.2 Except as varied by this Deed, the Supplemental 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:- )



*David Mulla*  
.....

Duly authorised by the Secretary of State for Education

Date..... *3/12/14* .....

**EXECUTED** as a deed by

**The Waverley Education  
Foundation Limited**

acting by:

*Kamal Hanif*  
.....  
Director

Print name..... *Kamal Hanif* .....

Date..... *28/11/14* .....

Witness

Full name

Address

Occupation

