

DATED 29th APRIL

2016

THE SECRETARY OF STATE FOR EDUCATION (1)

and

BELTHORN ACADEMY PRIMARY SCHOOL (2)

DEED OF VARIATION
relating to a Funding Agreement
dated 2016

THIS DEED OF VARIATION is made on

2016

BETWEEN:

- (1) The Secretary of State for Education ("**Secretary of State**"); and
 - (2) Belthorn Academy Primary School, a charitable company incorporated in England and Wales with registered number 07756219 ("**Company**")
- together referred to as the "Parties".

INTRODUCTION:

- (A) The Parties entered into a funding agreement dated 29/09/2011 ("**Funding Agreement**") relating to the establishment, maintenance and funding of a school known as Belthorn Academy Primary School.
- (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.

IT IS AGREED as follows:

1. The Secretary of State and the Company agree that with effect from the date of this Deed the Funding Agreement shall be amended and restated in the form set out at Schedule 1 to this Deed.
2. As varied by this Deed, the Funding Agreement shall remain in full force and effect.
3. This Agreement shall be governed by and interpreted in accordance with English law.

This document has been executed and delivered as a Deed on the date stated at the beginning of this Deed.

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




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.....

Duly Authorised by the Secretary of State
for Education

Executed as a deed by Belthorn Academy)

Primary School

)

acting by

)

a Director

.....

in the presence of:-

JASON
SLACK

Director

Witness

Signature:

EA Banyard

Witness

Name

ELIZABETH ALISON BANYARD.

Address:

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Occupation

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SCHEDULE 1 –

Clause 4 amended to read

- 4) In this Agreement these capitalised words and expressions will have the following meanings:

"Academies Financial Handbook" means the document with that title published by the EFA and amended from time to time, on behalf of the Secretary of State.

"Academy Financial Year" means the year from 1 September to 31 August, or a different period notified in writing by the Secretary of State.

"Articles" means the Academy Trust's articles of association.

"Business Day" means any day other than a Saturday, Sunday, Christmas Day, Good Friday or any day which is a bank holiday with the meaning given to that expression in the Banking and Financial Dealings Act 1971.

"Charity Trustees" means the directors of the Academy Trust, who are responsible for the general control and management of the administration of the Academy Trust.

"Chief Inspector" means Her Majesty's Chief Inspector of Education, Children's Services and Skills.

"Coasting" has the meaning given in regulations made under section 60B of the Education and Inspections Act 2006

"Control" means the power of an organisation or individual ('A') to ensure that the affairs of another organisation are conducted in accordance with A's wishes, whether through share ownership or voting power, by agreement, because of powers conferred by articles of association or any other document, or otherwise; and **"Controls"** will be construed accordingly.

"DfE" and the expression **"Department"** means the Department for Education or any successor Department which has responsibility for schools"

"EFA" means the Education Funding Agency.

"Guidance" means guidance issued by or on behalf of the Secretary of State, as amended from time to time.

"Independent School Standards" means the independent school standards prescribed under section 157 of the Education Act 2002.

"LA" means a local authority.

"National Minimum Standards" *[This definition should be removed if the academy or free school does not provide boarding]*¹ means the National Minimum Standards for Boarding Schools published by the Secretary of State under

¹ Throughout document remove instructions set out in bold, italics

section 87C(1) of the Children Act 1989 as amended by the Care Standards Act 2000.

"Parents" means parents or guardians.

"Predecessor School" means the school which the Academy has replaced, where applicable.

"Publicly Funded Assets" means (a) assets or property funded wholly or partly using payments made by or on behalf of the Secretary of State, and (b) publicly funded land as defined in paragraph 22(3) of Schedule 1 to the Academies Act 2010.

"Pupil Premium" means an amount equivalent to the pupil premium as defined in the School and Early Years Finance (England) Regulations 2013.

Any reference to **"Secretary of State"** includes a reference to the EFA acting on the Secretary of State's behalf.

"Secretary of State's consent" means the Secretary of State's specific, prior written consent, which will not be unreasonably withheld or delayed.

"SEN" means Special Educational Needs and the expressions **"special educational needs"** and **"special educational provision"** have the meaning set out in sections 20(1) and 21(2) of the Children and Families Act 2014.

"Start-Up Period" *[This definition should be removed if all pupil cohorts relevant to the age-range of the academy will have some pupils present on the academy opening date. It will normally apply to free schools with the exception of free schools which had previously been independent schools who are not expanding their capacity and will not be in receipt of start-up/post opening grant]* means up to [X] Academy Financial Years and covers the period up to [and including] the first Academy Financial Year in which all age groups are present at the Academy (that is, all the pupil cohorts relevant to the age range of the Academy will have some pupils present).

"Teaching Staff" means teachers and the principal or head teacher employed at the Academy.

"Termination Notice" means a notice sent by the Secretary of State to the Academy Trust, terminating this Agreement on the date specified in the notice.

"Termination Warning Notice" means a notice sent by the Secretary of State to the Academy Trust, stating his intention to terminate this Agreement.

Clause 17 amended to read

17) The age range of the academy is 3 - 11 with a planned capacity of 207 pupils age 5 -11 and a nursery unit of 30 places. The Academy will be an all ability inclusive school whose requirements for:

a) the admission of pupils to the Academy are set out in Annex B to this

Agreement;

- b) the admission to the Academy of and support for pupils with SEN and with disabilities (for pupils who have and who do not have statements of SEN) are set out in Annex C to this Agreement;
- c) pupil exclusions are set out in Annex D to this Agreement.

The following clauses have been added:

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 ensure that so far as is reasonably practicable and consistent with [clause 9(c) of Annex B] clause 26 of this Agreement and the Equality Act 2010, the policies and practices adopted by the Academy (in particular regarding curriculum, uniform and school food) enable pupils of all faiths and none to play a full part in the life of the Academy, and do not disadvantage pupils or parents of any faith or none. For the avoidance of doubt, this requirement applies irrespective of the proportion of pupils of any faiths or none currently attending or predicted to join the school.

14D) 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.

14E) 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.

14F) 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.

15A) The Academy Trust must ensure that so far as is reasonably practicable and consistent with [clause 9(c) of Annex B] clause 26 of this Agreement and the Equality Act 2010, the policies and practices adopted by the Academy (in particular regarding curriculum, uniform and school food) enable pupils of all faiths and none to play a full part in the life of the Academy, and do not disadvantage pupils or parents of any faith or none. For the avoidance of doubt, this requirement applies irrespective of the proportion of pupils of any faiths or none currently attending or predicted to join the school.

17A) The relevant clauses in this Agreement and Annex C shall 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.

The previous Clause 17A is amended to 17B

The following clauses have been added:

23A) 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.

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

23C) The Academy Trust must ensure that principles are promoted which support fundamental British values, of: respect for the basis on which the law is made and applied in England; respect for democracy and support for participation in the democratic processes; support for equality of opportunity for all; support and respect for the liberties of all within the law; and respect for and tolerance of different faiths and religious and other beliefs.

31A) In relation to a pupil who is himself or whose parents are in receipt of benefits mentioned in section 512ZB of the Education Act 1996 (or equivalent provision governing the entitlement to free school lunches of pupils at maintained schools), the Academy Trust shall ensure that a school lunch is provided for such a pupil free of charge to be funded out of the Academy Trust's GAG.

B) 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.

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

D) 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.

Pupil Premium

32) For each Academy Financial Year the Academy Trust must publish, on the Academy's website, information about:

A) the amount of Pupil Premium allocation that it will receive during the Academy Financial Year;

B) what it intends to spend its Pupil Premium allocation on;

- C) what it spent its Pupil Premium allocation on in the previous Academy Financial Year; and
- D) the impact of the previous year's Pupil Premium allocation on educational attainment.

For each Academy Financial Year the Academy Trust must, where applicable, publish, on the Academy's website, information about:

1. the amount of year 7 literacy and numeracy catch-up premium grant that it will receive during the Academy Financial Year;
2. what it intends to spend its year 7 literacy and numeracy catch-up premium grant on;
3. what it spent its year 7 literacy and numeracy catch-up premium grant on in the previous Academy Financial Year; and
4. 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.

Termination Warning Notice

90A) 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 Trust has not improved sufficiently following the service of a Coasting Notice.

90B) The Secretary of State will serve a Coasting Notice where the Academy Trust is found to be coasting. A Coasting Notice will specify:

- a) that the Academy Trust must submit a plan to the Secretary of State setting out the actions to be taken to improve the school sufficiently; and
- b) the date by which the plan must be submitted.

99A) If

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

the Secretary of State may:

- i. direct the Academy Trust to ensure that the Governor 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.

99B) For the purposes of clause 99A a Governor or member of the Academy Trust will be “unsuitable” if that Governor 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 Governor or member is unsuitable to take part in the management of the Academy.

99C) For the purposes of clause 99B:

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

Land

Restrictions on Land transfer

115A) The Academy Trust must:

- a) within 28 days of the signing of this Agreement in circumstances where the Land is transferred to the Academy Trust prior to the date of this Agreement, or otherwise within 28 days of the transfer of the Land to the Academy Trust, apply to the Land Registry using Form RX1 for the following restriction (the "Restriction") to be entered in the proprietorship register for the Land:

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 3BT;

- b) take any further steps reasonably required to ensure that the Restriction is entered on the proprietorship register;
- c) promptly confirm to the Secretary of State when the Restriction has been registered;
- d) if it has not registered the Restriction, permit the Secretary of State to do so in its place; and
- e) not, without the Secretary of State's consent, apply to disapply, modify, cancel or remove the Restriction, whether by itself, a holding company, a subsidiary company, or a receiver, administrator or liquidator acting in the name of the Academy Trust.

Obligations of the Academy Trust

115B) The Academy Trust must keep the Land clean and tidy and make good any damage or deterioration to the Land. The Academy Trust must not do anything to lessen the value or marketability of the Land without the Secretary of State's consent.

115C) The Academy Trust must not, without the Secretary of State's consent:

- a) grant any consent or licence; or
- b) create or allow any encumbrance; or
- c) part with or share possession or occupation; or
- d) enter into any onerous or restrictive obligations,

in respect of all or part of the Land.

Option

115D) The Academy Trust grants and the Secretary of State accepts an option (the "Option") to acquire all or part of the Land at nil consideration. The Secretary of State may exercise the Option in writing on termination of this Agreement. If the Option is exercised, completion will take place 28 days after the exercise date in accordance with the Law Society's Standard Conditions of Sale for Commercial Property in force at that date.

Option notice

115E) The Academy Trust:

- a) must, within 14 days after acquiring the Land or, if later, after signing this Agreement, apply to the Land Registry on Form AN1 (including a

copy of this Agreement) for a notice of the Option (the “**Option Notice**”) to be entered in the register, taking any further steps required to have the Option Notice registered and promptly confirming to the Secretary of State when this has been done;

- b) if it has not registered the Option Notice, agrees that the Secretary of State may apply to register it using Form UN1;
- c) must not, without the Secretary of State’s consent, apply to disapply, modify or remove the Option Notice, whether by itself, a holding company, a subsidiary company, or a receiver, administrator or liquidator acting in the name of the Academy Trust, and
- d) must, in the case of previously unregistered land, within 14 days after acquiring the Land or, if later, after signing this Agreement, apply to register a Class C(iv) land charge in the Land Charges Registry, and send the Secretary of State a copy of the relevant entry within 7 days after the registration has been completed. If the Secretary of State considers that the Academy Trust has not complied with this clause, he may apply to secure the registration.

Property notices

115F) 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.

Sharing the Land

115G) 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 leased 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.

115H) To the extent the Academy Trust and the Secretary of State agree to part of the Land being demised or leased in accordance with clause 5.7, the Academy Trust must use its best endeavours to procure all necessary consents 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.

115I) For the purposes of clause 5.7:

- 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 2.10.

- (E) Following the novation of the Supplemental Funding Agreements, the Parties agree to terminate the Master Funding Agreement with effect from with effect from 00.01 1 May 2016 (the "**Termination Date**") on the terms set out in this deed of termination (the "**deed**").

AGREED TERMS

1. DEFINITIONS

In this deed, unless the context otherwise requires, expressions defined in the Master Funding Agreement and used in this deed shall have the meaning set out in the Master Funding Agreement. The rules of interpretation set out in the Master Funding Agreement apply to this deed.

2. CONDITIONS PRECEDENT

This Deed is conditional upon the Supplemental Funding Agreements having been novated to the Incoming Trust on or by the Termination Date. This Deed shall not have effect if any of the Supplemental Agreements have not been novated on or by the Termination Date.

3. TERMINATION OF THE MASTER FUNDING AGREEMENT

- 3.1 The Secretary of State and the Company agree that, with effect from the Termination Date, the Master Funding Agreement shall be determined and the Parties' obligations in connection with the Agreement will cease to have effect from that date.
- 3.2 All provisions of the Master Funding Agreement, including any which are expressly stated in the Master Funding Agreement as surviving its termination, or which might otherwise have done so by implication, are terminated.

4. RELEASE AND WAIVER

Termination of the Master Funding Agreement shall not affect or prejudice any claim or demand that either party may have against the other under or in connection with the Master Funding Agreement arising before the Termination Date.

5. COUNTERPARTS

This deed 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 deed.

6. GOVERNING LAW

This deed 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.

7. JURISDICTION


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 deed or its subject matter or formation (including non-contractual disputes or claims).

This document has been executed as a deed and is delivered and takes effect on the date stated at the beginning of it.

Executed on behalf of the Company by:


.....
Director

In the presence of:

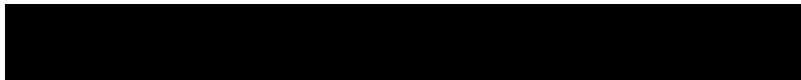

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Witness

Witness Name: ABI SMITH

Occupation:



Address:



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




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Duly-Authorised