

DEED OF VARIATION TO THE FUNDING AGREEMENT

THIS DEED is made the 24 day of AUGUST 2014

BETWEEN

- 1) The Secretary of State for Education (the "**Secretary of State**"); and
- 2) Maharishi School Trust Ltd (the "**Company**"), a charitable company incorporated in England and Wales with registered number 01902341, together, the "**Parties**".

INTRODUCTION

- A. The Parties entered into a funding agreement dated 9 August 2011 (the "**Funding Agreement**") 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 Funding Agreement shall be amended as follows:

In Clause 4:

After the definition of "Control" insert the following:

"Debt" means the amount equal to:

- (i) *the Redemption Amount; or*
- (ii) *a sum equivalent to 42% of the Land Value;*

After the definition of "DfE" insert the following:

"Discharge Process"

means the removal of:-

- i. *the Legal Charge registered with Companies House as against the Academy Trust;*

- ii. *the Legal Charge from the charges register at the Land Registry against the title for the Land; and*
- iii. *the restriction in the proprietorship register as referred to in 108B(a)(iii).*

The definition of "the Land" shall be deleted and replaced with:

"the Land" means the land (including for the avoidance of doubt all buildings, structures, landscaping and other erections) situated at and known as Ashtons Farm, Cobbs Brow Lane, Lathom and registered under Title number LA535358 making up the permanent site of the Academy or the part remaining in the ownership of the Academy Trust, following any disposal in accordance with clause 108G;

After the definition of "the Land" insert the following:

"Land Value" means, at any time:-

- (a) where there has been a disposal of the Land as a result of the enforcement of the Legal Charge by the Secretary of State, the proceeds of that disposal after payment of any necessary and reasonable costs incurred by the seller in connection with such disposal; or*
- (b) in any other case, the Market Value of the Land;*

The definition of "the Lease" shall be deleted and replaced with:

"the Lease" means the leasehold agreement between the Academy Trust and the Maharishi Foundation ("the Landlord") for the 99 year lease of the land (including for the avoidance of doubt all buildings, structures, landscaping and other erections) known as the land on the north side of Ashmead Road, Skelmersdale and registered under title number LAN122868;

After the definition of "the Lease" insert the following:

"Legal Charge" means the legal charge to be entered into on or around the date of this Agreement in respect of the Land by the Academy Trust in favour of the Secretary of State over the Land, in a form and substance satisfactory to the Secretary of State;

"Market Value" means the market value of the relevant part of the Land (as that term is defined or referred to in the RICS Appraisal and Valuation Manual (current edition) published by RICS), as determined by a professionally qualified independent valuer;

After the definition of "Principal Regulator" insert the following:

"the Redemption Amount" means the monies advanced by the Secretary of State to the Academy Trust to discharge in full the outstanding obligations of the Academy

Trust to Barclays Bank PLC, which are secured by the Mortgage;

Clause 17 shall be deleted and replaced with

17) The planned capacity of the Academy is 216 in the age range 4 - 16. The Academy will be an all ability inclusive school whose requirements for:

Clauses 43 – 43D shall be deleted and replaced with:

43) Subject to clause 43AA, the basis of the pupil number count for the purposes of determining GAG for an Academy Financial Year will be the Academy Trust's most recent estimate provided in accordance with clause 43A.

43A) The Secretary of State shall in advance of each Academy Financial Year for the Academy, at such time or times as he shall determine, request that the Academy Trust provides an estimate of the number of pupils on roll in the following September for the Academy for the purposes of determining GAG for an Academy Financial Year, and the Academy Trust shall provide the requested estimate (such estimate to be based on an objective assessment of numbers) to the Secretary of State as soon as reasonably practicable.

43AA) Once the condition specified in clause 43B has been satisfied with respect to the Academy for the Academy Financial Year for which funding is being calculated, the basis of the pupil number count for the purpose of determining GAG for the Academy will be:

- a) for the pupil number count for pupils in Year 11 and below, the Schools Census for the relevant month (determined at the discretion of the Secretary of State) preceding the Academy Financial Year in question; and*
- b) for the pupil number count for pupils in Year 12 and above, the formula which for the time being is in use for maintained schools for the calculation of pupil numbers for pupils in Year 12 and above for the purpose of calculating their level of funding.*

43B) For the purpose of clause 43AA, the condition is satisfied at the end of academic year 14/15 (for the avoidance of doubt, the academy should be funded in accordance with clause 43AA in 15/16 and thereafter).

43C) For any Academy Financial Year in which GAG for the Academy has been calculated in accordance with clauses 43 and 43A, an adjustment may be made to the following Academy Financial Year's formula funding element of GAG for the Academy to recognise any variation from that estimate. The Secretary of State may for the purpose of calculating any adjustment to the formula funding element of GAG under this clause, use the Census for the relevant month (determined at the discretion of the Secretary of State) for the Academy Financial Year in question as a means of determining pupil numbers in an Academy Financial Year. The additional or clawed-back grant will be only that amount relevant to the number of pupils above or below that estimate.

43D) For any Academy Financial Year in which GAG for the Academy is calculated in accordance with clause 43AA, no adjustment will be made to the equivalence funding element in the following Academy Financial Year's equivalence funding element of GAG unless the Academy Trust demonstrates to the satisfaction of the Secretary of State that there has been a significant impact on balances. For any other element of GAG the Secretary of State may make adjustments to recognise a variation in pupil numbers from that used to calculate the element of grant in question; the basis of these will be set out in the Annual Letter of Funding or its equivalent.

Clause 65 be deleted and replaced with:

65) At the beginning of any Academy Financial Year the Academy Trust may hold unspent GAG from previous Academy Financial Years amounting to such percentage (if any) as for the time being specified in the Academies Financial Handbook or otherwise as the Secretary of State may specify by notice in writing to the Academy Trust prior to the beginning of that Academy Financial Year of the total GAG payable for the Academy in the Academy Financial Year just ended or such higher amount as may from time to time be agreed. The Academy Trust shall use such carried forward amount for such purpose, or subject to such restriction on its use, as for the time being specified in the Academies Financial Handbook or otherwise as the Secretary of State may specify by notice in writing to the Academy Trust.

After Clause 105C insert the following:

105D)(i) The Academy Trust shall, within 14 days of receiving any order, notice, proposal, demand or any other requirement materially affecting the ability of the Academy Trust to use the School Premises for the purposes of the Academy from any competent authority (including the Landlord in respect of the land held under the Lease), give full particulars by written notice to the Secretary of State and deliver to the Secretary of State copies of such documents as he may require. Such notice shall state what steps, if any actions are required, the Academy Trust intends to take in response to the order, notice, proposal, demand or other requirement affecting the School Premises.

105D) (ii) The Academy Trust will at its own cost provide all information reasonably required by the Secretary of State in respect of order, notice, proposal, demand or any other requirement affecting the School Premises as referred to in clause 105D(i).

105E) Following the receipt by the Secretary of State of the written notice under clause 105D)(i), the Academy Trust shall permit the Secretary of State to take all steps in conjunction with or instead of the Academy Trust as may be necessary to comply with any order, notice, proposal, demand or other requirement affecting the School Premises referred to in the said notice. The Academy Trust shall, in such circumstances, use all reasonable endeavours to assist the Secretary of State to take the appropriate required steps.

Clauses 108A o 108I shall be deleted and replaced with the following:

Debt

108A) a) The Secretary of State has agreed to make payments of Capital Grant to the Academy Trust pursuant to Clause 37 in order to discharge in full the outstanding obligations of the Academy Trust to Barclays Bank PLC, secured by the Mortgage;

108A) b) The payments referred to at 108A(a) are made available to the Academy Trust on an interest free basis;

108A) c) In consideration of the Secretary of State making the payments referred to at 108A(a) and providing the monies to enable the Academy Trust to discharge its outstanding obligations to Barclays Bank PLC, the Academy Trust shall pay the Debt upon termination of this Agreement or in accordance with clauses 108H(b) or

108K(a) or upon any disposition by way of sale of the whole or part of the Land, whether or not such sale has been consented to by the Secretary of State; and

108A) d) The Debt shall be secured by the Legal Charge.

Restrictions on Land transfer

108B) The Academy Trust:

a)(i) shall, within 28 days from the transfer to it of the Additional Permanent Site, 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.

a)(ii) shall within 28 days from entry into the Lease, 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.

a)(iii) shall, within 28 days from date of the Legal Charge apply to the Land Registry to amend the restrictions entered 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 accordance with 108B(a)(i) in the following terms:

No disposition of the registered estate by the proprietor of the registered estate or by the proprietor of any registered charge, not being a charge registered before the entry of this restriction, is to be registered without a written consent signed by the proprietor for the time being of the charge dated [date]¹ in favour of The Secretary of State for Education referred to in the charges register or, its conveyancer.

b) shall take any further steps reasonably required to ensure that the restrictions referred to in clause 108B(a) are entered on the proprietorship register,

c) shall provide the Secretary of State with confirmation of the entry of the restrictions referred to in clause 108B(a) as soon as reasonably practicable after it receives notification from the Land Registry,

d) in the event that it has not registered the restrictions referred to in clause 108B(a), hereby consents to the entering of the restrictions referred to in 108B(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,

¹ Date to be inserted should be date charge is entered into. This is not inserted into the clause in the Funding Agreement, but sets out what the restriction should be when registered with the Land Registry.

modify or remove (by cancellation or otherwise) a restriction entered in accordance with clause 108B(a) or 108B(d) above, 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

108C) (i) The Academy Trust shall keep the School Premises clean and tidy and make good any damage it causes to the School Premises and / or any deterioration to the condition of the School Premises that may arise from the date of this Agreement, save that the Academy Trust 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 Academy Trust shall not do or cause or permit to be done anything to lessen the value or marketability of the School Premises save with the express written consent of the Secretary of State.

108C)(ii) The Academy Trust shall observe and comply with its obligations under the Lease and shall promptly enforce its rights against the Landlord.

108C)(iii) The Academy Trust 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 School Premises or any part of it; and / or*
- c) create or permit to arise or continue any encumbrance affecting the School Premises or any part of it; and / or*
- d) part with or share possession or occupation of the School Premises or any part of it; and / or*
- e) enter into any onerous or restrictive obligations affecting the School Premises or any part of it.*

Insurance

108D) The Academy Trust shall, save where the terms of the Lease provide for the Landlord to obtain such insurance:-

- a) keep the School Premises insured with a reputable insurance office against loss or damage by the Insured Risks in the sum the Academy Trust is advised represents the reinstatement value of the School Premises from time to time, as in respect of the land held under the Lease in accordance with the terms of the Lease;*
- b) pay the premiums for insurance promptly as they become due and maintain in force the policies of insurance on the School Premises;*
- c) following the incidence of damage to or destruction of the School Premises 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 School Premises (provided that this clause should be*

satisfied if the Academy Trust provides premises not necessarily identical to the School Premises 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 School Premises may become void or voidable.

f) insure against liability in respect of property owners' and third party risks including occupiers liability.

Legal Charge

108E) In further consideration of the Secretary of State making the payments referred to at 108A(a) and providing the monies to enable the Academy Trust to discharge its outstanding obligations to Barclays Bank PLC, the Academy Trust:

- a. shall enter into the Legal Charge upon entry into of this Agreement;
- b. shall, within 21 days from the entry into of the Legal Charge, register the Legal Charge with Companies House or if required by the Secretary of State shall use all reasonable endeavours to assist the Secretary of State to register the Legal Charge at Companies House, including signing and executing any documents, deeds and/or forms as required;
- c. shall, within 28 days from the date of the Legal Charge, apply to the Land Registry for the Legal Charge to be entered on the charges register, using forms AP1 (Rule 13 LRR 2003) and CH1 (Rule 103 LRR 2003) or such form as may be required by the Secretary of State;
- d. shall take any further steps required to ensure that the Legal Charge is entered on the charges register;
- e. shall provide the Secretary of State with confirmation of the registration of the Legal Charge as soon as reasonably practicable after it receives notification from the Land Registry; and
- f. in the event that it has not registered the Legal Charge, hereby consents to the registration of the Legal Charge by the Secretary of State. To enable the Secretary of State to do so, the Academy Trust shall use all reasonable endeavours to assist the Secretary of State to register the Legal Charge, including signing and executing any documents, deeds and/or forms as required, specifically but not limited to providing the Secretary of State with the executed Legal Charge and completed AP1/CH1 forms, and dealing with any requisitions raised by the Land Registry.

Exercise of Rights

108F) On the termination of this Agreement, the Secretary of State may give notice of his intention to exercise the rights conferred upon the Secretary of State pursuant to clause 101, 102, and the Legal Charge:

- a) any such notice shall be in writing and shall confirm which clause of this Agreement the Secretary of State intends to exercise without prejudice to the Secretary of State's right to exercise all and any other rights available to him;
- b) in the event that upon termination of this Agreement for whatever reason the Secretary of State enforces the Legal Charge, the Academy Trust's obligation to pay the Debt shall be deemed to have been satisfied in full following the realisation of the Debt by any receiver, the obligation on the Academy Trust to pay a proportion of the proceeds of sale of the Land to the Secretary of State under clause 101(b) shall be deemed to have been complied with, and the Secretary of State shall take all steps reasonably required to carry out the Discharge Process;
- c) in the event that upon termination of this Agreement for whatever reason, the Secretary of State exercises his rights under clause 101, the Academy Trust's obligations to pay the Debt shall be deemed to have been satisfied in full and the Secretary of State shall take all steps reasonably required to carry out the Discharge Process; and
- d) in the event that upon termination of this Agreement for whatever reason, the Secretary of State agrees that pursuant to clause 102 the Academy Trust may invest the proceeds of the sale of the Land for its charitable objects or directs the Academy Trust to pay all or part of the proceeds of sale of the Land to the LA, the Academy Trust's obligations to pay the Debt shall be deemed to have been satisfied in full and the Secretary of State shall take all steps reasonably required to carry out the Discharge Process.

108G) On the Academy Trust 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 76, consent to the disposal subject to any one or a combination of the following conditions:-

- a) that (notwithstanding the provisions of clause 78) the Academy Trust pays the Debt in full or, in the event of a proposed disposal of part, repays to the Secretary of State the Market Value;
- b) that pursuant to clause 78, the Academy Trust may retain some or all proceeds of the disposal for its charitable purposes, subject to the Academy Trust accounting to the Secretary of State for any remaining proceeds of sale that the Secretary of State does not agree that the Academy Trust may retain for such charitable purposes; or
- c) that pursuant to clause 79, the Academy Trust pays all or some of the proceeds of sale to the LA and / or may reinvest all or some of the proceeds of sale for its charitable purposes,

and any such notice of consent and conditions shall be in writing.

108H) In the event that the Secretary of State consents to the disposal of the Land during the lifetime of this Agreement, subject to any of the conditions set out in clause 108G:

- a) if the Secretary of State enforces the Legal Charge, the Academy Trust's obligation to pay the Debt shall be deemed to have been satisfied in full following the realisation of the Debt by any receiver, the obligations on the Academy Trust

to pay a proportion of the proceeds of sale of the Land to the Secretary of State under clause 78 shall be deemed to have been complied with, and the Secretary of State shall take all steps reasonably required to carry out the Discharge Process;

- b) if the Secretary of State agrees that the Academy Trust may retain some or all proceeds of the disposal for its charitable purposes, subject to the Academy Trust accounting to the Secretary of State for any remaining proceeds of sale that the Secretary of State does not agree that the Academy Trust may retain for such charitable purposes, the Academy Trust's obligations to pay the Debt shall be deemed to have been satisfied in full, the obligations on the Academy Trust to pay a proportion of the proceeds of sale of the Land to the Secretary of State under clause 78 shall be deemed to have been complied with and the Secretary of State shall take all steps reasonably required to carry out the Discharge Process, provided that in the event of a disposal of part of the Land, the Academy Trust's obligation to pay the Debt shall be deemed to have been satisfied to the extent of the Market Value, the Academy Trust's obligation under clause 78 shall be deemed to have been satisfied in relation to the relevant part of the Land, the Legal Charge shall be released and the restriction and the notice shall be removed in relation to such part and the Legal Charge, the restriction and the notice shall remain in place in relation to the balance of the Land; and*
- c) if the Secretary of State directs the Academy Trust to pay all or part of the proceeds of sale of the Land to the LA pursuant to clause 79 or agrees that the Academy Trust may reinvest the proceeds of the sale for its charitable purposes, the Secretary of State shall take all steps reasonably required to carry out the Discharge Process, provided that in the event of a disposal of part of the Land the restriction and notice shall remain in place in relation to the balance of the Land.*

Payment of Debt

108I) In the event that the Academy Trust pays all the Debt, upon termination of this Agreement or at any other time, the Secretary of State shall take all steps reasonably required to carry out the Discharge Process.

108J) Should the Academy Trust:

- (a) dispose of any or all parts of the School Premises, such disposal being undertaken with the consent of the Secretary of State, or*
- (b) dispose of any or all parts of the Land, in accordance with clause 108G, or*
- (c) make payment to the Secretary of State to pay the Debt in full, it shall enter into negotiations with the Secretary of State in respect of a deed of variation for this Agreement.*

108K) Upon termination of this Agreement, the Secretary of State shall take all steps reasonably required to enable the Academy Trust to apply to the Land Registry to remove the restrictions under 108B(a)(i) and 108B(a)(ii) from the proprietorship register.

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 Maharishi School Trust Ltd,
acting by:


.....
Director

In the presence of:


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Sign

Name

Address

Occupation

RICHARD SCOTT

" " " "
" " " "
Executive

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


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

