

## DEED OF VARIATION TO THE FUNDING AGREEMENT

THIS DEED is made the *18* day of *December* 2018

### BETWEEN

- 1) **The Secretary of State for Education** (the "**Secretary of State**"); and
- 2) **Prospere Learning Trust** (the "**Company**") a charitable company incorporated in England and Wales with registered number 10872612, together the "**Parties**".

### INTRODUCTION

- A. Further to a Deed of Novation and Variation dated 25 August 2017 the Parties entered into a funding agreement (the "**Funding Agreement**") relating to the maintenance and funding of Piper Hill High School 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:

- 2.1.1 Clause 2.C shall be deleted and replaced with the following:

2.B The planned number of places at the Academy is 220 in the age range 11 - 19.

- 2.1.2 At the beginning of clause 4 the definitions of "Land" and Property Notice" shall be deleted and replaced with the following:

"**Land**" means, in relation to clauses 4.A to 4.L, the land at Piper Hill High School, Firbank Road, Manchester M23 2YS, being the land registered with title number MAN244098 and demised by the Lease.

"**Property Notice**" means, in relation to clauses 4.A to 4.L, any order, notice, proposal, demand or other requirement issued by any competent authority (including the Landlord) which materially affects the Academy Trust's ability to use the Land for the purposes of the Academy.

2.1.3 After clause 4.L the following wording shall be inserted:

#### **Freehold land**

“**Land**” means, in relation to clauses 4.M to 4.U, the freehold land at Newall Green High School, Greenbrow Road, Manchester M23 2SX, being part of the land registered with title number MAN245682, which is to be the permanent site of the Academy.

“**Property Notice**” means, in relation to clauses 4.M to 4.U, any order, notice, proposal, demand or other requirement issued by any competent authority which materially affects the Academy Trust’s ability to use the Land for the purposes of the Academy.

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

4.M 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**

4.N 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.

4.O 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**

4.P 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**

4.Q 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**

4.R 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**

4.S 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 number of places,

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.

4.T 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 4.S, 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.

4.U For the purposes of clause 4.S:

- 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 number of places has the meaning given in clause 2.C.

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:-



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



EXECUTED as a deed by **Prosper Learning Trust** acting by:



**Director**

In the presence of:

W	Sign	[Redacted]
I	Name	[Redacted]
T	Address	[Redacted]
N	Occupation	SCHOOL BUSINESS MANAGER