

DRAFT HEADS OF TERMS: LEASEHOLD ACQUISITION

125 YEAR LEASE AT PEPPERCORN WITH PREMIUM

SUBJECT TO CONTRACT

Note: Although these heads of terms are not intended to be legally binding, once agreed, they will be distributed within the Department for Education and will inform the production of a number of documents between the school and the Secretary of State. It will therefore not be possible to agree variations to the commercial terms set out below once the heads of terms are agreed between the parties. In addition, a number of the provisions relate to policy requirements of the Department. Any derogations from the heads of terms would be considered on a case by case basis and the terms of other transactions would not necessarily be relevant.

1. **Landlord** Reading Borough Council acting in its capacity as sole managing trustee of the Recreation Ground Charity (registered charity number 304328) (the "Charity") at Mapledurham, Berkshire (and, to the extent necessary or relevant, the Official Custodian for Charities, which holds legal title to the Recreation Ground at Mapledurham, Berkshire)
2. **Landlord's Agent** Ian Mercer, Bruton Knowles
3. **Landlord's Solicitor** Jessica Booz, Veale Wasbrough Vizards LLP
4. **Tenant** THE SECRETARY OF STATE FOR COMMUNITIES AND LOCAL GOVERNMENT, 4th Floor, Fry Building, 2 Marsham Street, London, SW1P 4DF
5. **Tenant's Agent** David Roberts, JLL
6. **Tenant's Solicitor** Trowers & Hamlins LLP of 3 Bunhill Row London EC1Y 8YZ marked for the attention of Sangita Unadkat SUnadkat@trowers.com
7. **Property** 1.23 acres at Mapledurham Playing Fields, Woodcote Road, Caversham, Reading RG4 7EZ

A plan is attached showing the Property outlined in red

Note that the lease includes part only of the Landlord's ownership
8. **Form of Lease** EFA Model Free School Lease (in the form attached to these Heads of Terms)

Amended only in accordance with the agreed Heads of Terms

- 9.1 The Tenant may assign the lease to an Academy or proposed proprietor of an Academy without consent
9. **Assignments, Underleases and Sharing Possession**
- 9.2 **Underletting**
The Tenant can underlet the whole or part of the Property for terms of less than 10 years without Landlord's prior written consent and for longer terms with Landlord's prior written consent not to be unreasonably withheld or delayed
- 9.3 **Sharing**
The Tenant can share occupation of the Property with another Academy or proposed proprietor of an Academy or with any body or organisation providing services or facilities which are within the permitted use provided that no relationship of landlord and tenant is created
10. **Tenant's Rights**
- 10.1 The Tenant will have an appropriate pedestrian and vehicular right of access to its site, including for construction traffic (subject to formal licence being granted)
- 10.2 The Tenant will have the right to connect into service media on the Landlord's retained land, provided that if any improved services are required (or capacity increased) the Landlord can benefit from these improved services.
- 10.3 The Tenant will have the right to use the Landlord's retained car park for drop off/pick up purposes only between 7.30am and 9am and 3pm and 6pm during term time, subject to a Community Use Agreement
- Please note that all school staff parking will be within the Tenant's demise. Also use of the car park for drop off/pick up will be minimised as far as possible through the schools Travel Plan
- 10.4 The Tenant will have the right to use an enhanced sports pitch on the Landlord's retained land during school hours/term time, subject to a Community Use Agreement
- 10.5 Any specific rights required in relation to the Property which may need to be provided for in the lease as identified and agreed between the parties as necessary following completion of due diligence and as required by the Community Use Agreement

11. Landlord's Rights Reserved	<p>The community will be able to access the Tenant's school hall, new MUGA and car park outside of school hours/term time, subject to a Community Use Agreement (please refer to the note at the end of these heads of terms)</p> <p>Reciprocal rights to connect into services at the Property, at the Landlord's cost.</p>
12. Term	The lease will be for a term of 125 years beginning on the date on which the lease is completed
13. Rent	The rent under the lease will be one peppercorn per annum
14. Premium	Premium payable = £1,360,000 (one million, three hundred and sixty thousand pounds) upon completion of the lease.
15. Tenant's Break Clause	The Tenant will have the right to break the lease at the end of the 5th year of the term and every 5 years thereafter. To exercise the right to break the Tenant must give the Landlord 6 months' prior written notice. The break right is conditional on the Tenant returning the Property free of occupational interests and charges and in accordance with the repairing obligations under the lease.
16. Maintenance	<p>16.1 The Tenant will contribute towards its shared use of the access, Landlord car park and enhanced sports pitch. The amount will be calculated as a fair proportion of the total maintenance expenditure based on usage</p> <p>16.2 An appropriate annual maintenance cap to be agreed, to include if appropriate a sinking fund</p>
17. Charging	The Property can be charged to the DfE without Landlord's consent or otherwise, with the Landlord's prior written consent not to be unreasonably withheld or delayed
18. Early Access	<p>18.1 The Landlord will permit the Tenant to access the site prior to exchange of contracts and/or following exchange of contracts for the purposes of undertaking survey work</p> <p>18.2 The terms of the access will be as follows:- (a) The Tenant to provide reasonable prior notice to the Landlord to which the Landlord will need to consent (such consent not to be unreasonably withheld or delayed)</p>

- (b) the Tenant to make good any damage it causes to the reasonable satisfaction of the Landlord
- (c) subject to a formal licence being entered into.
- (d) subject to a reasonable licence fee being paid. If the value of the licence and its impact on the amenity value of the Property is nominal, then the licence fee would be nominal.

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| 19. Exchange & Completion | 19.1 | The parties will endeavour to exchange contracts by the end of March 2017 |
| | 19.2 | Completion will take place following satisfaction of all the conditions precedent for completion though the Tenant will be permitted to elect to complete earlier at its discretion. |
| | 19.3 | The Agreement for Lease will permit the Tenant to assign the Agreement for Lease to another school trust prior to completion without Landlord's consent being required |
| 20. Conditions Precedent for Exchange of Contracts | | Exchange of Contracts will be conditional upon:- |
| | 20.1 | Satisfactory completion of title investigation by the Tenant |
| | 20.2 | Receipt of satisfactory survey results by the Tenant |
| | 20.3 | Consultation by the Landlord with the beneficiaries of the Charity and the Management Committee of the Charity in relation to the proposed grant of the lease |
| | 20.4 | The consent of the Charity Commission for England and Wales to the grant of the Lease (without an appeal being made during the relevant appeal period) |
| | 20.5 | Landlord and Tenant approval |
| | 20.6 | The Landlord and Tenant agreeing a Community Use Agreement in relation to use of the Landlord and Tenant facilities |
| 21. Conditions Precedent for Completion | | Completion will be conditional upon:- |
| | 21.1 | Tenant obtaining planning permission (without a challenge being made during the JR period) for a new build 2FE primary school with appropriate pedestrian and vehicular access upon terms acceptable to the Tenant provided that the Landlord will approve the planning application before it is submitted in respect of the build area, access route and construction traffic plan and such other issues as shall in the Landlord's opinion acting reasonably have any effect upon the amenity value of the land retained by the Landlord as trustee of the Charity, such approval not to be unreasonably delayed (and in relation only to issues of amenity value specifically referred to in these Heads of Terms, such |

approval not to be unreasonably withheld) . The Tenant will apply for that planning permission and pursue that application with due diligence.

21.2 In the event that the planning application is refused and/or is subject to onerous conditions so as not to amount to an acceptable planning permission, the Tenant may appeal

21.3 The long-stop date for the satisfaction of the condition will be 24 months from the date of the Tenant's planning application

22. Costs

The Landlord's reasonable and proper legal and property costs (up to £27,500 excluding VAT) in relation to this transaction will be met by the Tenant. An additional undertaking in relation to the Landlord's costs will be subject to further discussion with the EFA (on behalf of the Tenant). In addition, should any access license be required, the Landlord's reasonable and proper legal costs in relation to these licenses will be met by the Tenant (up to a cap of £2000 excluding VAT per licence).

23. Use

The use permitted by the EFA Model Free School Lease

24. Landlord's Works

The Landlord will bring one of the pitches on its retained land up to Grass Pitch Quality Performance Standard, as adopted by Sports England. The School will be permitted to use that pitch at pre-agreed times during school hours / term time for a fee which equates to a reasonable proportion according to user of the costs of maintaining the pitch (see Clause 16 above) . The Tenant will be granted step-in rights by way of remedy for non-performance of this obligation.

25. Boundary treatment

The Tenant will provide and maintain a fence around its demise subject to the Landlord's approval of the size, style, design and placement of such a fence; such approval will only be required where in the Landlord's opinion (acting reasonably) it has an impact upon the amenity value of the land retained by the Landlord as trustee of the Charity (such approval not to be unreasonably withheld or delayed).

26. Shared access and Landlord car park

The Tenant will widen the shared access as required through the planning process and also improve the condition of the shared access to at least "highways grade" as required for delivery of the school and provide a tarmacadam finish to the Landlord's retained car park.

Note: Community Use Agreement

The Community Use Agreement will include provisions dealing with the following:

Making available the School hall for hire at reasonable times outside of school hours/term time at affordable rates;

Making available the School's car parking facilities for use by users of the Recreation Ground outside school hours/term time.

The School's MUGA will also be available for hire at affordable rates and at reasonable times outside of school hours/term time. The MUGA will include appropriate lighting (subject to planning);

The typical hours of operation for the school and its associated breakfast and after school clubs, which will help stagger the impact of arrival and departure times, will be 8am-6.30pm, Monday to Friday, for approx. 42 weeks of the year. Outside of these times, the school trust is willing to commit to the MUGA and the school hall being available for use by the community provided certain conditions are met. The full arrangements will need to be set out in a Community Use Agreement, but indicatively these could include:

To commit to appropriate terms and conditions of usage (typical community use agreements include things such as abide by appropriate health and safety legislation, insurance for the activities, agreed charges are paid etc.);

The type of usage and hours of operation do not contravene any planning conditions that may be imposed on the site/facilities e.g. late night usage, noise etc;

The full costs of the usage are met and contribute to the overall viability of the facilities e.g. if someone is needed to open and close the site late at night/weekends etc. these costs are met in full and it is possible to secure staff to undertake this work;

Facilities are returned in the appropriate state for school usage/the next user e.g. cleaning is paid for etc.

Community use agreements by schools are now common place. Sports England produce guidance on them at:

<http://www.sportengland.org/facilities-planning/planning-for-sport/planning-tools-and-guidance/community-use-agreements/>

In relation to charges, it is common place for schools to make distinctions in their charging regimes depending on the nature of the group, its ability to pay, the activity, the resourcing implications (e.g. cleaning, finding someone to open/close at the weekends) and an assessment of value to the community. It is also the case that costs will vary depending on days and hours of hire and resources to be used. This is because, for example, it is likely to cost more to employ someone to attend late evening at a weekend to open and close a venue etc. than say early evening during the week. We commit to engaging with the community about activities to be put on and the associated charging regime. The EFA and the school remain committed to contributing effectively to the community and fully plan for fees to be reasonable and relate to the ability of the group to pay any costs.

