

**SUPPLEMENTAL AGREEMENT FOR TAUHEEDUL ISLAM BOYS' HIGH
SCHOOL**

THIS AGREEMENT

BETWEEN

- (1) **THE SECRETARY OF STATE FOR EDUCATION**; and
- (2) **TAUHEEDUL EDUCATION TRUST ("the Company")**

IS SUPPLEMENTAL TO THE MASTER FUNDING AGREEMENT which was:

- (i) originally made between the same parties and dated 10 September 2012;
- (ii) replaced by a further Master Funding Agreement dated 19 August 2013;
- (iii) amended and restated by Deed of Variation dated 10 December 2013; and
- (iv) further amended and restated by Deed of Variation dated 22 July 2014

(the "**Master Agreement**").

1 DEFINITIONS AND INTERPRETATION

1.1 Except as expressly provided in this Agreement words and expressions defined in the Master Agreement shall have the same meanings in this Agreement as were ascribed to them in the Master Agreement.

1.2 The following words and expressions shall have the following meanings:

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“the Academy” means the Mainstream Free School, which is called the Tauheedul Islam Boys’ High School and which has been established at St Stephen’s Church of England School, Robinson Street, Blackburn BB1 5PE ;

“Chief Inspector” means Her Majesty’s Chief Inspector of Education, Children’s Services and Skills or his successor;

“Insured Risks” means fire, lightning, explosion, earthquake, storm, tempest, flood, subsidence, landslip, heave, impact, terrorism, bursting or overflowing of water tanks and pipes, earthquake damage by aircraft and other aerial devices or articles dropped there from, riot and civil commotion, labour disturbance and malicious damage and such other risks as the Company insures against from time to time, subject in all cases to any exclusions or limitations as may from time to time be imposed by the insurers or underwriters;

“the Lease” means the leasehold agreement between the Company and Blackburn with Darwen Borough Council (“the Landlord”) in respect of the Temporary Site;

“the Permanent Site” means any land in which the Company acquires a legal interest for the purposes of the permanent location of the Academy, which legal interest entitles the company to occupy the Permanent Site for at least 20 years;

“Rent” means a payment of £1500 per month made by the Company to the Landlord pursuant to the Lease but subject to the terms of clause 4A.1 of this Agreement;

“Start-up period” means up to a maximum of 5 Academy Financial Years and covers the period from the opening of the Academy up to 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);

“the Temporary Site” means the site known as the parts of Blakewater High School, Shadsworth Road, Blackburn BB1 2HT which are identified on the plans attached as Annex 3 to this Agreement and which are held under the Lease;

- 1.3 Reference in this Agreement to clauses and Annexes shall, unless otherwise stated, be to clauses and annexes of this Agreement.

2 THE ACADEMY

- 2.1 The Company has established and will maintain, and carry on or provide for the carrying on of the Academy in accordance with the Master Agreement and this Agreement.
- 2.2 The curriculum provided by the Academy to pupils up to the age of 16 shall be broad and balanced.
- 2.3 The requirements for the admission of pupils to the Academy are set out at Annex 1.

ACADEMY OPENING DATE

- 2.4 The Academy opened as a school on 3 September 2012.
- 2.5 The planned capacity of the Academy is 700 in the age range 11-18, including a sixth form of 200 places.

3 CAPITAL GRANT

- 3.1 Pursuant to clause 35 of the Master Funding Agreement, the Secretary of State may, in his absolute discretion provide Capital Expenditure funding in accordance with any arrangements he considers appropriate.

4 **GAG AND EAG**

4.1 The Secretary of State agrees to pay GAG and EAG to the Company in relation to the Academy in accordance with the Master Agreement.

4A **ADDITIONAL FUNDING**

4A.1 The Secretary of State shall meet the Company's costs arising from Rent payable by the Company under the Lease. Such costs shall include those costs arising from any rent rise payable by the Company under the terms of the Lease, so long as the relevant rent rise is properly evidenced in writing by the Company to the Department as soon as is reasonably practicable, but such costs shall not include any amount in respect of service charge payments or insurance premiums. Where the definition of rent in the Lease includes service charge payments or insurance premiums, the Secretary of State shall exclude from the total grant payable in respect of Rent an amount in respect of such service charge payments or insurance premiums.

4A.2 The Secretary of State may pay further grant in the Start-up period, as determined and specified by him, for costs which cannot otherwise be met from GAG.

4B **LEASE**

4B.1 If the Company is in material breach of the provisions of the Lease or if it is reasonably foreseeable that the Company will be in material breach of the Lease, the Company shall forthwith give written notice to the Secretary of State specifying the exact nature of the material breach or reasonably foreseeable material breach and such notice shall set out the steps taken or to be taken by the Company to remedy the material breach or reasonably foreseeable material breach and, where appropriate, shall include the timescales relating to any remedial action.

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- 4B.2 The Company will at its own cost provide all information reasonably required by the Secretary of State in respect of any material breach or reasonably foreseeable material breach.
- 4B.3 Following the receipt by the Secretary of State of the written notice under clause 4B.1, the Company shall permit the Secretary of State to take all such steps in conjunction with or instead of the Company as may be necessary to remedy or prevent the material breach referred to in the said notice. The Company shall, in such circumstances, use its best endeavours to assist the Secretary of State to remedy or prevent such material breach.
- 4B.4 The Company shall, within 14 days of receiving any order, notice, proposal, demand or any other requirement materially affecting the ability of the Company to use the Land or the Temporary Sites for the purposes of the Academy from any competent authority (including the Landlord), 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 Company intends to take in response to the order, notice, proposal, demand or other requirement affecting the Land or the Temporary Sites.
- 4B.5 The Company will at its own cost provide all information reasonably required by the Secretary of State in respect of an order, notice, proposal, demand or any other requirement affecting the Land or the Temporary Sites as referred to in clause 4B.4.
- 4B.6 Following the receipt by the Secretary of State of the written notice under clause 4B.4, the Company shall permit the Secretary of State to take all steps in conjunction with or instead of the Company as may be necessary to comply with any order, notice, proposal, demand or other requirement affecting the Land or the Temporary Sites referred to in

the said notice. The Company shall, in such circumstances, use all reasonable endeavours to assist the Secretary of State to take the appropriate required steps.

5 **TERMINATION**

- 5.1 Either party may give not less than seven Academy Financial Years' written notice to terminate this Agreement, such notice to expire on 31 August 2021 or any subsequent anniversary of that date.

Notice of Intention to Terminate by Company

- 5.2 The Secretary of State shall, at a date preceding the start of each Academy Financial Year, provide to the Company an indication of the level of funding to be provided by the Secretary of State to the Company by way of GAG and EAG in the next following Academy Financial Year (the "**Indicative Funding**"). If the Company is of the opinion that, after receipt of the Indicative Funding for the next following Academy Financial Year (the "**Critical Year**") and of the taking into account all other resources available and likely to be available to the Academy, including such funds as are set out in clause 73 of the Master Agreement and such other funds as are and likely to be available to the Academy from other academies operated by the Company ("**All Other Resources**"), it is likely that the cost of running the Academy during the Critical Year would cause the Company, on the basis of the Indicative Funding, to become insolvent (and for this reason only) then the Company may give notice of its intention to terminate this Agreement at the end of the then current Academy Financial Year.
- 5.3 Any notice given by the Company under clause 5.2 shall be in writing and shall be served on the Secretary of State not later than 28 February preceding the Critical Year or, if the Secretary of State shall not have given notice of the Indicative Funding to the Company on or

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before the date specified in clause 5.2 above, within six weeks after the Secretary of State shall have done so. The notice must specify:

- 5.3.1. the grounds upon which the Company's opinion is based and include the evidence of those grounds and any professional accounting advice the Company has received and including a detailed statement of steps which the Company proposes to take with a view to ensuring that as soon as reasonably practicable the costs of running the Academy are reduced sufficiently to ensure that such costs are less than the Indicative Funding and All Other Resources and the period of time within which such steps will be taken; and
 - 5.3.2. the shortfall in the Critical Year between the Indicative Funding and All Other Resources expected to be available to the Company to run the Academy and the projected expenditure on the Academy; and
 - 5.3.3. a detailed budget of income and expenditure for the Academy during the Critical Year (the "**Projected Budget**").
- 5.4 Both parties undertake to use their best endeavours to agree whether or not the cost of running the Academy during the Critical Year would cause the Company, on the basis of the Indicative Funding and All Other Resources, to become insolvent. Both parties recognise that they will need to engage in a constructive dialogue at the time about how best to provide education for the pupils at the Academy and undertake to use their best endeavours to agree a practical solution to the problem.
- 5.5 If no agreement is reached by 30 April (or such other date as may be agreed between the parties) as to whether the cost of running the Academy during the Critical Year on the basis of the Indicative Funding and All Other Resources would cause the Company to become

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insolvent, then that question shall be referred to an independent expert (the “**Expert**”) for resolution. The Expert’s determination shall be final and binding on both parties. The Expert shall be requested to specify in his determination the amount of the shortfall in funding (the “**Shortfall**”). The Expert shall be an insolvency practitioner with significant professional experience of educational institutions or academies. If the parties fail to agree upon the appointment of the Expert then the Expert shall be appointed by the President for the time being of the Institute of Chartered Accountants in England and Wales. The Expert’s fees shall be borne equally between the parties.

- 5.6 The Expert shall be required in reaching his determination to take account of advice from an educational specialist who is professionally familiar with the issues arising from the budget management of large schools. If the parties fail to agree upon the appointment of the educational specialist then the educational specialist shall be appointed by the Chairman for the time being of the Specialist Schools and Academies Trust. The educational specialist’s fees shall be borne equally between the parties.
- 5.7 If the Expert determines that the cost of running the Academy during the Critical Year would cause the Company, on the basis of the Indicative Funding and All Other Resources, to become insolvent, and the Secretary of State shall not have agreed to provide sufficient additional funding to cover the Shortfall, then the Company shall be entitled to terminate this Agreement, by notice expiring on 31 August prior to the Critical Year. Any such notice shall be given within 21 days after (a) the Expert’s determination shall have been given to the parties or (b), if later, the Secretary of State shall have given written notice of his refusal to provide sufficient additional funding for the Academy to cover the Shortfall.

Termination Warning Notice

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5.7A The Secretary of State shall be entitled to issue to the Company a written notice of his intention to terminate this Agreement (“Termination Warning Notice”) where he considers that:-

- a) the Academy is no longer meeting the requirements set out in clause 12 of the Master Agreement (subject to clause 5.11)
- b) the conditions and requirements set out in clauses 2.2 and 2.3 of this Agreement and clauses 13-34C of the Master Agreement (where applicable to a Mainstream Free School) are no longer being met;
- c) the standards of performance of pupils at the Academy are unacceptably low;
- d) there has been a serious breakdown in the way the Academy is managed or governed;
- e) the safety of pupils is threatened (whether by breakdown of discipline or otherwise); or
- f) the Company is otherwise in material breach of the provisions of this Agreement.

5.7B A Termination Warning Notice issued by the Secretary of State in accordance with clause 5.7A shall specify:

- a) reasons for the Secretary of State’s issue of the Termination Warning Notice;
- b) the remedial measures which the Secretary of State requires the Company to carry out, with associated deadlines, in order to rectify the defaults identified (“Specified Remedial Measures”); and;
- c) the date by which the Company must respond to the Termination Warning Notice providing its representations with regard thereto and/or confirm that it accepts and agrees to undertake the Specified Remedial Measures.

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5.7C The Secretary of State shall consider any response and representations from the Company which are received by the date specified in accordance with clause 5.7Bc) and shall confirm whether he considers that:

- a) in light of the Company's representations in response to the Termination Warning Notice, some or all of the Specified Remedial Measures are not required to be implemented (and if so which) and/or the Specified Remedial Measures are being or will be implemented with the specified timeframe; or
- b) subject to any further measures he reasonably requires ("Further Remedial Measures") being implemented by a specified date or any evidence he requires being provided, the implementation of such measures has been or will be successfully completed within the specified timeframes; or
- c) he is not satisfied that the Company will rectify the defaults identified in the Termination Warning Notice within the specified timeframes. (In such circumstances, the Secretary of State may notify the Company of his intention to terminate the Agreement on a specified date.)

5.7D The Secretary of State may by notice in writing terminate this Agreement with effect from a specified date in the event that:

- a) the Company has not by the date specified in clause 5.7Bc) responded to the Termination Warning Notice either confirming that it accepts and agrees to undertake the Specified Remedial Measures or providing its representations with regard to the Specified Remedial Measures; or
- b) the Company has not carried out the Specified Remedial Measures and/or Further Remedial Measures within the specified timeframes;

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provided that having considered any representations made by the Company pursuant to clause 5.7Bc), the Secretary of State remains satisfied that it is appropriate to terminate the Agreement

Notice of Intention to Terminate

5.7E The Secretary of State may at any time give written notice of his intention to terminate the Agreement where the Chief Inspector gives notice to the Company in accordance with section 13(3) of the Education Act 2005 stating that in the Chief Inspector's opinion:

- (a) special measures are required to be taken in relation to the Academy; or
- (b) the Academy requires significant improvement.

5.7F Any notice issued by the Secretary of State in accordance with clause 5.7E shall invite the Company to respond with any representations within a specified timeframe.

5.7G Where the Secretary of State has given notice of his intention to terminate this Agreement in accordance with clauses 5.7E and 5.7F and:

- (a) he has not received any representations from the Company within the timeframe specified in clause 5.7F; or
- (b) having considered the representations made by the Company pursuant to clause 5.7F, the Secretary of State remains satisfied that it is appropriate to terminate this Agreement

he may by notice in writing terminate this Agreement, such termination to take effect from the date of the notice.

Termination with Immediate Effect

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5.7H Not used.

5.7I If at any time after signing this Agreement and after the Academy has opened, the Secretary of State is of the opinion that, by virtue of low pupil numbers, the Academy is not financially viable, then the Secretary of State may:

- (a) give a Warning Notice to the Company; or
- (b) by written notice terminate this Agreement forthwith; or
- (c) by written notice provide such notice as he deems appropriate in the circumstances to terminate this Agreement.

For the purposes of this clause a "Warning Notice" means a notice in writing by the Secretary of State to the Company requiring the Company to procure the admission of a sufficient number of pupils by such date as he deems appropriate in the circumstances and setting out the consequences of not procuring the admission of a sufficient number of pupils by the date specified in such Warning Notice.

5.7J If at any time after signing this Agreement, the Parties agree that by virtue of low pupil numbers the Academy is not financially viable, then the Parties jointly may terminate this Agreement having agreed first the precise terms of termination.

5.8 If at any time after the signing of this Agreement but prior to the Academy's relocation to Permanent Site, the Secretary of State is of the view that:

- 1. the Academy would, on relocation to the Permanent Site, provide an unacceptably low standard of education; or
- 2. the safety of pupils or staff at the Academy would, on relocation to the Permanent Site, be threatened; or
- 3. the staff employed at the Academy are unsuitable;

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4. there is a serious breakdown in the way the Company is being managed or governed; or
5. the buildings and other structures on the Permanent Site are unsuitable or the Company has not obtained Building Regulation approval;

he may in writing either:

- (a) require the Company not to use any building or other structure on the Permanent Site until such time as the relevant matter or matters listed in 1. to 5. above has or have been resolved to the Secretary of State's satisfaction; or
- (b) terminate this Agreement by notice in writing to the Company such termination to take effect on the date of the notice.

5.9 If the Company has not acquired a legal interest in the Permanent site by 26 May 2018 with planning permission as required by the Secretary of State, or if the Company fails to comply with clause 10P) of this Agreement, the Secretary of State shall be entitled to terminate this Agreement by notice in writing such termination to take effect on the date specified in the notice.

5.10 If the Company exercises any break clause pursuant to the terms of Lease the Secretary of State may terminate this Agreement by notice in writing, such termination to take effect on the date specified in the notice.

5.11 If the Secretary of State has cause to serve a notice on the Company under section 165 of the Education Act 2002 and a determination (from which all rights of appeal have been exhausted) has been made that the Academy shall be struck off the Register of Independent Schools, he may terminate this Agreement by notice in writing to the Company such termination to take effect on the date of the notice.

6. EFFECT OF TERMINATION

- 6.1 In the event of termination of this Agreement however occurring, the school shall cease to be an Academy within the meaning of Sections 1 and 1A of the Academies Act 2010.
- 6.2 Subject to clause 6.3 and 6.4, if the Secretary of State terminates this Agreement pursuant to clause 5.1 of this Agreement, the Secretary of State shall indemnify the Company. If the Secretary of State terminates this Agreement other than pursuant to clause 5.1 of this Agreement, the Secretary of State may in his absolute discretion indemnify or (to such extent if any as he may in his absolute discretion consider appropriate) compensate the Company.
- 6.3 The amount of any such indemnity or compensation shall be determined by the Secretary of State having regard to any representations made to him by the Company, and shall be paid at such times and in such manner as the Secretary of State may reasonably think fit.
- 6.4 The categories of expenditure incurred by the Company in consequence of the termination of the Agreement in respect of which the Secretary of State shall (where the Secretary of State terminates this Agreement pursuant to clause 5.1) indemnify the Company and may (where the Secretary of State terminates this Agreement otherwise than pursuant to clause 5.1) in his absolute discretion indemnify or compensate the Company include (but not by way of limitation), staff compensation and redundancy payments, compensation payments in respect of broken contracts, expenses of disposing of assets or adapting them for other purposes, legal and other professional fees, and dissolution expenses.

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6.5 Subject to clause 6.6, on the termination of this Agreement however occurring, the Company shall in respect of any of its capital assets at the date of termination:

- (a) promptly transfer a proportion of the assets to a person nominated by the Secretary of State, if the Secretary of State considers that all or some of those assets need to be used for any educational purpose by that nominee. The proportion of the assets to be transferred shall be the same as the proportion of the capital contribution made by the Secretary of State to the original value of those assets, whether that contribution was made on the establishment of the Academy or later; or
- (b) if the Secretary of State confirms that a transfer under clause 6.5(a) is not required, promptly repay to the Secretary of State a sum equivalent to the percentage of the value of the assets at the date of termination, or, by agreement with the Secretary of State, at the date of subsequent disposal of those assets. Such percentage to be the same as the percentage of the capital contribution made by the Secretary of State to the original value of those assets, whether that contribution was made on the establishment of the Academy or later.

6.6 The Secretary of State may waive in whole or in part the repayment due under clause 6.5(b) if:

- a) The Company obtains his permission to invest the proceeds of sale for its charitable objects; or
- b) The Secretary of State directs all or part of the repayment to be paid to the LA.

- 6.7 The sale or disposal by other means of publicly funded land held for the purposes of an Academy is now governed by Part 3 of Schedule 1 to the Academies Act 2010..

7 ANNEXES

- 7.1 The Annexes to this Agreement form part of and are incorporated into this Agreement.

8 GENERAL

- 8.1 This Agreement shall not be assignable by the Company.
- 8.2 No delay, neglect or forbearance on the part of the Secretary of State in enforcing (in whole or in part) any provision of this Agreement or in exercising (in whole or in part) any right conferred on him by this Agreement shall be or be deemed to be a waiver of such provision or right or a waiver of any other provision or right or shall in any way prejudice any right of the Secretary of State under this Agreement or shall amount to an election not to enforce such provision or exercise such right (including, for the avoidance of doubt, any right to terminate this Agreement).
- 8.3 Termination of this Agreement, for any reason, shall not affect the accrued rights, remedies, obligations or liabilities of the parties existing at termination.
- 8.4 This Agreement 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 agreement.
- 9. THE MASTER AGREEMENT**
- 9.1 Except as expressly provided in this Agreement the Master Agreement shall continue in full force and effect.

10 ENGLISH LAW

- 10.1 This Agreement 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.
- 10.2 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 agreement or its subject matter or formation (including non-contractual disputes or claims).

LAND CLAUSES

Debt

10A) Not used.

Restrictions on Land transfer

10B) Not used.

Obligations of the Company

- 10C)(i) The Company shall keep the Temporary Site clean and tidy and make good any damage it causes to the Temporary Site and / or any deterioration to the condition of the Temporary Site 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 Temporary Site 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.

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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 Temporary Site or any part of it; and / or
- c) create or permit to arise or continue any encumbrance affecting the Temporary Site or any part of it; and / or
- d) part with or share possession or occupation of the Temporary Site or any part of it; and / or
- e) enter into any onerous or restrictive obligations affecting the Temporary Site 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 Temporary Site, 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:-

- a) keep the Temporary Site insured 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 Temporary Site 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 Temporary Site;

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- c) following the incidence of damage to or destruction of the Temporary Site 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 Temporary Site as appropriate (provided that this clause should be satisfied if the Company provides premises not necessarily identical to the Temporary Site 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 Temporary Site 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) Not used.

10F) Not used

Legal Charge

10G) Not used

Failure to use the Land for the purposes of the Academy

10H) Not used

Sharing of the Land

10I) Not used.

Exercise of Rights

10J)-108M) Not used.

Payment of Debt

10N)-10O) Not used.

Deed of Variation

10P) The Secretary of State and the Company acknowledge that it will be necessary for the Company to acquire a legal interest in the Permanent Site for use as the permanent site of the Academy. The Company agrees that in advance of the acquisition by the Company of any legal interest in the Permanent Site, the Company shall enter into negotiations in good faith with the Secretary of State in respect of agreeing a deed of variation to this Agreement in order to apply such additional clauses as the Secretary of State shall specify (including where requested clauses in substantially the same form as those appearing at Annex 2 to this Agreement) to the Permanent Site.

IN WITNESS whereof this Deed has been executed by the parties hereto and is intended to be and is hereby delivered on the last date listed below.

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



Kim Sibley
.....
Duly authorised by the Secretary of State for Education
Date..... *5 August 2014*

EXECUTED as a deed by **Tauheedul Education Trust** acting by:

@ Hamid Patel
.....
Director
Print name..... *Hamid Patel*

WITNESSED BY S. CHILDS
[Signature]

.....
Director/Secretary
Print name.....
Date.....