

HEADS OF TERMS: LEASEHOLD ACQUISITION FS 828 Havering SEN

(125 YEAR LEASE AT PEPPERCORN WITHOUT PREMIUM) - SofS procuring the works with Agreement for Lease

Note: Although these heads of terms are not intended to be legally binding, once agreed, they will be distributed within the Department for Education (DfE) and will inform the production of a number of documents between the school and the Secretary of State for Education (SofS). 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 DfE. Any derogation 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.

Background/Structure

THE MAYOR AND BURGESSES OF THE LONDON BOROUGH OF HAVERING of Town Hall, Romford RM1 3BD owns the freehold interest in part land at St Edwards C of E Comprehensive School, London Road, Romford, RM7 9NX. It is proposed that this land will be the permanent site for a new free school Havering SEN.

THE MAYOR AND BURGESSES OF THE LONDON BOROUGH OF HAVERING of Town Hall, Romford RM1 3BD has agreed to enter into an Agreement for Lease with the SofS. THE MAYOR AND BURGESSES OF THE LONDON BOROUGH OF HAVERING of Town Hall, Romford RM1 3BD will grant a 125 year peppercorn lease of the school site to the free school trust or other party (at the direction of the SofS) on satisfaction of the conditions precedent set out in paras 18 & 19 of these heads of terms.

The lease will be granted before the main construction works begin. The intention is that the SofS will procure the construction works on the site. Following completion of these works, the free school trust will occupy and operate its school from this site in accordance with the terms of the lease.

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| 1. Landlord | THE MAYOR AND BURGESSES OF THE LONDON BOROUGH OF HAVERING of Town Hall, Romford RM1 3BD |
| 2. Landlord's Agent | London Borough of Havering Authorised Officer:
Jonathan Brown
Head of Property Services
Strategic Property Services
London Borough of Havering
E: jonathan.brown@onesource.co.uk |

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- 3. Landlord's Solicitor** London Borough of Havering Authorised Officer:
Lachlan Atcliff
Senior Lawyer (Property)
Legal and Governance
London Borough of Havering
E:Lachlan.atcliff@onesource.co.uk
- 4. Tenant** Unity Schools Partnership
Unity SP Offices, Park Road,
Haverhill, Suffolk, CB9 7YD.
Company Number 07400386.
- 5. Procuring Agent's Solicitor** Womble Bond Dickinson LLP of St Ann's Wharf, 112 Quayside,
Newcastle upon Tyne, NE1 3DX (marked for the attention of Barbara
Painter: Barbara.painter@wbd-uk.com)]
- 6. Procuring Agent** **Secretary of State for Education c/o Department for Education,
5th Floor, Sanctuary Buildings, Great Smith Street, London
SW1P 3BT**
- 7. Property** Part land at the site of St Edwards Academy contained within Title
Number [EGL27162]
An indicative plan showing the red line of the Property is attached. A
Land Registry compliant plan showing the extent of the lease demise
i.e. the school site edged in red will be provided following the
conclusion of the feasibility study.
- 8. Form of Lease** DfE Model 125 year peppercorn Free School Lease save where
amended only in accordance with the agreed Heads of Terms

Up-to-date version also available on GOV.uk website
(<https://www.gov.uk/government/publications/free-schools-utcs-and-studio-schools-model-lease>)
- 9. Tenant's Rights**
- 9.1 The tenant will have the right of access from the public
highway over the land owned by the London Borough of
Havering. If necessary, a separate Deed will be agreed for
this right.
- 9.2 Attached is a plan showing the full extent of any rights of way
required clearly shown shaded brown – The Right Way will
be subject to any areas not occupied by parking spaces and
subject to the Council's ability to reconfigure the car park

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layout in the future, provided the Tenant's access is not compromised in any way.

During the construction period, the Council will allow the Tenant's construction vehicles access over the car park through the land not marked out as parking bays, providing the Landlord's entrances and exits to and from the car park and adjoining playing fields are not obstructed in any way and subject to any damage caused by said construction vehicles being made good to the Landlord's satisfaction.

- 9.3 Shared use of adjacent playing fields owned by the Landlord. A separate agreement will be made with the Council for this use.
- 9.4 Any other rights to be agreed between the parties acting reasonably following completion of title due diligence

10. Insurance

The Tenant will insure the Property from the date of completion of the Lease. Where the Tenant is a member of the Risk Protection Arrangement such risks as are covered by the Risk Protection Arrangement

11. Procuring Agent's works

The Landlord will permit the Tenant to carry out the proposed development on the Property in accordance with the planning permission referred to below.

The Tenant's obligation in the Lease in respect of repair shall be suspended while these works are being carried out and the alterations clause will be amended to permit the proposed development without Landlord's prior consent.

12. Early Access

- 12.1 The Landlord will permit the Procuring Agent and/or its approved contractor(s) to access the Property (and if relevant other land belonging to the Landlord) prior to exchange of contracts and/or following exchange of contracts for the purposes of undertaking preparatory and enabling works and/or undertaking survey work.
- 12.2 The terms of the access will be as follows: -

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- (a) the Procuring Agent to provide reasonable prior notice to the Landlord.
- (b) the Procuring Agent to make good any physical damage it causes.

13. Exchange & Completion

- 13.1 The Landlord and Procuring Agent will endeavour to exchange conditional contracts by [31 October 2021]
- 13.2 Completion of the Lease will take place following satisfaction of all the Conditions Precedent for Completion though the Procuring Agent will be permitted to elect to complete earlier at its discretion .
- 13.3 The Agreement for Lease will permit the Procuring Agent to assign the Agreement for Lease to another Secretary of State or an entity controlled by the Procuring Agent or subsidiary of it or to an academy school trust or to a proposed proprietor of an academy school trust prior to completion without Landlord's consent being required.

- 13.4 There will be provision in the Agreement for Lease allowing the Procuring Agent to direct that on satisfaction of the Conditions Precedent for Completion of the Lease, the Landlord will grant the Lease to another Secretary of State or an entity controlled by the Procuring Agent or subsidiary of it or to the Tenant or to a publicly funded school trust nominated by the Procuring Agent (of which notice has been given to the Landlord) or to a proposed proprietor of an academy school trust.

The Landlord will be responsible for ensuring the Property is secure until completion of the Lease.

13.5

14. Conditions Precedent for Exchange of Contracts

- 14.1 Satisfactory completion of title investigation;
- 14.2 Receipt of satisfactory survey results;
- 14.2 SofS consent to the disposal of land as a consequence of this project.

Completion will be conditional upon: -

**15. Conditions Precedent for
Completion of the Lease**

- 15.1 Procuring Agent obtaining planning permission (without a challenge being made during the JR period) for 60 places (including 8 full time Early Years / nursery places) within the age range of 3-16 yrs for pupils with Special Educational Needs upon terms acceptable to the Procuring Agent. The Procuring Agent will apply for that planning permission and pursue that application with due diligence.
- 15.2 In the event that the planning application is refused or confirmed is unacceptable to the Procuring Agent, the Procuring Agent may appeal where planning counsel advises that there is a better than 75% chance of that appeal succeeding
- 15.3 The Landlord acquiring good title to the Property.
- 15.4 Termination of the existing Church Supplemental Agreement (CSA) between THE HORNCHURCH ROMFORD AND HAVERING FOUNDATION and St Edward's School.
- 15.5 Deed of Right of Way over the Landlord's car park land and Licence of the Landlord's playing field land for use by the Tenant.
- 15.6 The long-stop date for the satisfaction of the planning Condition Precedent will be 18 months from the date the planning application is submitted.
- 15.7 The long-stop date for the satisfaction of any other Conditions Precedent will be 12 months from the date of agreed HOTs.
- 15.8 If any of the Conditions Precedent are not met by their relevant Long Stop Dates either party may determine the Agreement for Lease upon giving notice to the other.
- 15.9 The Procuring Agent may at its discretion waive any or all of the Conditions Precedent.

- 16. Costs** Each party is responsible for its own costs.
- 17. O & M** The Landlord will provide DfE staff, or their representatives access to and obtain a copy of the site's health and safety files and the Operational and Maintenance Manuals including Planned, Preventative Maintenance Schedules and full site drawings and schematics. This information will include, but not limited to the 5 year electrical certificate, the asbestos management plan, survey, register and risk assessment, the L8 Water Risk Assessment including all associated documentation (i.e. 5 year water temperature records) and the Fire Risk Assessment.
- 18. Agreement on Environmental Liability** Clause 7 of the Free School Model Lease is to apply as drafted and will provide that any liability under Environmental Law (including, without limitation, any liability under the Contaminated Land Regime) arising in respect of Hazardous Substances in, on, under or emanating from the Property, on or before the date of this Lease, shall be the sole responsibility of the Landlord.
- 19. Acquisition of School Land and Termination of CSA at St Edward's Academy** The Landlord has agreed to a land swap with THE HORNCHURCH ROMFORD AND HAVERING FOUNDATION in order to acquire ownership of the Property. THE HORNCHURCH ROMFORD AND HAVERING FOUNDATION has agreed to the termination the CSA with St Edward's Academy prior to transfer of the Property to the Landlord.