

DATED \_\_\_\_\_

2019

**THE SECRETARY OF STATE FOR EDUCATION** (1)

AND

**THE SWAN TRUST (FORMERLY THE HORSELL VILLAGE SCHOOL)** (2)

AND

**BARNSBURY PRIMARY SCHOOL AND NURSERY** (3)

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**DEED OF NOVATION AND VARIATION**

relating to the funding agreement for Barnsbury Primary School and Nursery

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**THIS DEED** is made the

day of

2019

The parties to this Deed are:

(1) **THE SECRETARY OF STATE FOR EDUCATION** of Sanctuary Buildings, Great Smith Street, London SW1P 3BT (the "**Secretary of State**");

(2) **THE SWAN TRUST (FORMERLY THE HORSELL VILLAGE SCHOOL)**, a charitable company incorporated in England and Wales with registered company number 08622047, whose registered office is at Kirkland Avenue, Goldsworth Park, Woking, Surrey, GU21 3RG (the "**Incoming Party**"); and

(3) **BARNSBURY PRIMARY SCHOOL AND NURSERY**, a charitable company incorporated in England and Wales with registered company number 08798425 whose registered address is at Barnsbury Primary School Almond Avenue, Barnsbury, Woking, Surrey, GU22 0BB (the "**Outgoing Party**"),

together referred to as the "**Parties**".

## **INTRODUCTION**

- A. Barnsbury Primary School and Nursery is an academy within the meaning of the Academies Act 2010 (the "**Academy**") and is currently operated by the Outgoing Party.
- B. The Secretary of State and the Outgoing Party entered into a funding agreement for the Academy on 20 December 2013, which was subsequently amended by way of a Deed of Variation dated 24 August 2016 (the "**Funding Agreement**"), (copies of which are contained in Schedule 1).
- C. It is proposed that, with effect from 00.01 am on 1 September 2019 (the "**Transfer Date**"); the Incoming Party will assume responsibility for the management and operation of the Academy in succession to the Outgoing Party.
- D. The Parties wish to novate the Funding Agreement to the Incoming Party and the Secretary of State and the Incoming Party wish to vary the terms of the Funding Agreement in accordance with the provisions of this Deed.

## **LEGAL AGREEMENT**

- 1. Unless defined otherwise in this Deed, any word or phrase used in this Deed shall, if that word or phrase is defined in the Funding Agreement, bear the meaning given to it in the Funding Agreement.

## **NOVATION**

2. With effect from the Transfer Date:
  - a. the Outgoing Party transfers all its rights and obligations under the Funding Agreement to the Incoming Party;
  - b. the Incoming Party shall enjoy all the rights and benefits of the Outgoing Party under the Funding Agreement and all references to the Outgoing Party in the Funding Agreement shall be read and construed as references to the Incoming Party;
  - c. the Incoming Party agrees to perform the Funding Agreement and be bound by its terms in every way as if it were the original party to it in place of the Outgoing Party; and
  - d. the Secretary of State agrees to perform the Funding Agreement and be bound by its terms in every way as if the Incoming Party were the original party to it in place of the Outgoing Party.

#### **OBLIGATIONS AND LIABILITIES**

3. With effect from the Transfer Date:
  - a. the Outgoing Party and the Secretary of State release each other from all future obligations to the other under the Funding Agreement;
  - b. each of the Outgoing Party and the Secretary of State releases and discharges the other from all claims and demands under or in connection with the Funding Agreement arising after the Transfer Date; and
  - c. each of the Incoming Party and the Secretary of State shall have the right to enforce the Funding Agreement and pursue any claims and demands under the Funding Agreement against the other with respect to matters arising before, on or after the Transfer Date as though the Incoming Party were the original party to the Supplemental Funding Agreement instead of the Outgoing Party.

#### **VARIATION**

4. The Secretary of State and the Incoming Party agree that with effect from the Transfer Date the Funding Agreement shall be amended and restated so as to take effect in the form set out in Schedule 2 to this Deed.
5. As varied by this Deed, the Funding Agreement shall remain in full force and effect.

## **GOVERNING LAW**

6. This Deed shall be governed by and interpreted in accordance with the law of England and Wales.

## **JURISDICTION**

7. 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 Deed or its subject matter or formation (including non-contractual disputes or claims).

## **COUNTERPARTS**

8. 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 **THE SWAN  
TRUST (FORMERLY THE HORSELL  
VILLAGE SCHOOL)** acting by one director  
in the presence of a witness:

Director .....  
Print name.....

Witness .....  
Print name.....  
Address.....  
Occupation.....

EXECUTED as a deed by **BARNSBURY  
PRIMARY SCHOOL AND NURSERY**  
acting by one director in the presence of a  
witness:

Director ... MRS CLARE SPIRES .....  
Print name..... [Signature] .....

Witness ... [Signature] .....  
Print name... SARAH NEWMAN .....  
Address... BARNSBURY PRIMARY SCHOOL .....  
Occupation... SCHOOL BUSINESS  
MANAGER .....

**SCHEDULE 1  
Funding Agreement**



**SCHEDULE 2**  
**Amended and restated funding agreement**