

**DEED OF VARIATION TO THE FUNDING AGREEMENT, THE SUPPLEMENTAL AGREEMENT AND THE DUNSWELL SUPPLEMENTAL AGREEMENT**

**THIS DEED** is made the 21 day of August 2016

**BETWEEN:-**

- (1) The **SECRETARY OF STATE FOR EDUCATION** (the "Secretary of State"); and
- (2) **SWANLAND EDUCATION TRUST** (formerly known as **SWANLAND PRIMARY SCHOOL ACADEMY TRUST** whose name was changed on 18 January 2016) (the "**Company**") a charitable company incorporated in England and Wales with registered number 07679051

(together the "**Parties**")

**INTRODUCTION:-**

- (A) The Parties entered into a master funding agreement dated 9 August 2013 as varied by a Deed of Variation dated 15 January 2013 (the "**Funding Agreement**") relating to the establishment, maintenance and funding of an Academy in accordance with the Funding Agreement.
- (B) The Parties also entered into a supplemental agreement dated 9 August 2013 in relation to the Academy Swanland Primary School Academy Trust (the "**Supplemental Agreement**") relating to the establishment, maintenance and funding of an Academy in accordance with the Supplemental Agreement.
- (C) The Parties also entered into a supplemental agreement dated 30 August 2013 in relation to the Academy, Dunswell Primary School (the "**Dunswell Supplemental Agreement**") relating to the establishment, maintenance and funding of an Academy in accordance with the Dunswell Supplemental Agreement.
- (D) The Parties now wish to vary and amend certain terms and conditions of the Funding Agreement, the Supplemental Agreement and the Dunswell Supplemental Agreement in accordance with the terms of this Deed so as to reflect the name change of the Company effected on 18 January 2016 and so as to insert new clauses required by the Education Funding Agency.
- (E) This Deed is supplemental to the Funding Agreement, the Supplemental Agreement and the Dunswell Supplemental Agreement.

**1 INTERPRETATION**

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, the Supplemental Agreement and the Dunswell Supplemental Agreement.

**2 VARIATION OF THE FUNDING AGREEMENT, THE SUPPLEMENTAL AGREEMENT AND THE DUNSWELL SUPPLEMENTAL AGREEMENT**

- 2.1 The Parties agree that with effect from the date of this Deed each and any reference in the Funding Agreement, the Supplemental Agreement and the Dunswell Supplemental Agreement (other than in the signatory sections at the end of each agreement) to "Swanland Primary School Academy Trust" shall be deleted and replaced with a reference to "Swanland Education Trust".
- 2.2 The Parties agree that with effect from the date of this Deed, the following headings and clause shall be inserted into both the Supplemental Agreement and the Dunswell Supplemental Agreement at 2.6 after 2.5:

***"RUNNING OF THE ACADEMY***

***Pupils***

- 2.6 *The relevant clauses in the Master Agreement and Annex B shall only apply insofar as the relevant provisions of the Children and Families Act 2014 relating to SEN and disability do not apply to Academies and Free Schools."*
- 2.3 The Parties agree that with effect from the date of this Deed, the following headings and clauses shall be inserted into both the Supplemental Agreement and the Dunswell Supplemental Agreement at 2.7 to 2.9 after 2.6:
- "School meals***
- Clauses 32 and 33 of the Master Agreement are disapplied and replaced with the following clauses 2.7, 2.8 and 2.9.*
- 2.7 *The Academy Trust must provide school lunches and free school lunches in accordance with the provisions of sections 512(3) and 512ZB(1) of the Education Act 1996 as if references in sections 512 and 512ZB to a local authority were to the Academy Trust and as if references to a school maintained by a local authority were to any of its Academies.*
- 2.8 *The Academy Trust must comply with school food standards legislation as if its Academies were maintained schools.*
- 2.9 *Where the Academy Trust provides milk to pupils, it must be provided free of charge to pupils who would be eligible for free milk if they were pupils at a maintained school."*
- 2.4 The Parties agree that with effect from the date of this Deed, the following headings and clauses shall be inserted into both the Supplemental Agreement and the Dunswell Supplemental Agreement at 2.10 to 2.15 after 2.9:

***"Curriculum***

- 2.10 *The Academy Trust must not allow any view or theory to be taught as evidence-based if it is contrary to established scientific or historical evidence and explanations. This clause applies to all subjects taught at an Academy.*

- 2.11 *The Academy Trust must provide for the teaching of evolution as a comprehensive, coherent and extensively evidenced theory.*
- 2.12 *The Academy Trust must ensure that principles are promoted which support fundamental British values, of: respect for the basis on which the law is made and applied in England; respect for democracy and support for participation in the democratic processes; support for equality of opportunity for all; support and respect for the liberties of all within the law; and respect for and tolerance of different faiths and religious and other beliefs.*

### **Governance**

- 2.13 *The Academy Trust must provide to the Secretary of State the names of all new or replacement members of the Academy Trust, stating the date of their appointment and, where applicable, the name of the member they replaced as soon as is practicable and in any event within 14 days of their appointment.*
- 2.14 *The Academy Trust must not appoint any new or replacement members until it has first informed them, and they have agreed, that their names will be shared with the Secretary of State to enable him to assess their suitability.*
- 2.14A *The Academy Trust must not amend or remove the provisions in its Articles relating to the appointment or election or the resignation or removal of Charity Trustees or members ("the Governance Articles") without the Secretary of State's consent.*
- 2.14B *Before any change to the Governance Articles is proposed the Academy Trust must give notice to the Secretary of State of:*
- a) *the proposed amendment or removal; and;*
  - b) *the reason for it.*
- 2.14C *If the Secretary of State consents to the proposed changes, the Academy Trust shall approve any changes to the Articles as soon as reasonably practicable and provide the Secretary of State with a copy of the amended Articles and the resolution(s) approving them.*

### **Pupil Premium**

- 2.15 *For each Academy Financial Year, the Academy Trust must publish, on the Academy's website, information about:*
- a) *the amount of Year 7 literacy and numeracy catch-up premium grant that it will receive during the Academy Financial Year;*
  - b) *what it intends to spend its Year 7 literacy and numeracy catch-up premium grant on;*
  - c) *what it spent its Year 7 literacy and numeracy catch-up premium grant on in the previous Academy Financial Year;*

- d) *the impact of the previous year's Year 7 literacy and numeracy catch-up premium grant on educational attainment, and how that effect was assessed.*"

2.5 The Parties agree that with effect from the date of this Deed, the following clauses shall be inserted into both the Supplemental Agreement and the Dunswell Supplemental Agreement at 5.9A to 5.9C after 5.9:

*"5.9A) If*

- a) *Any Charity Trustee or member of the Academy Trust refuses to consent to any checks required under this Agreement, or as otherwise requested by the Secretary of State; or*
- b) *The Secretary of State determines that any Charity Trustee or member of the Academy Trust is unsuitable,*

*the Secretary of State may:*

- i. *direct the Academy Trust to ensure that the Charity Trustee or member resigns or is removed within 42 days, failing which the Secretary of State may serve a Termination Notice; or*
- ii. *serve a Termination Notice.*

*5.9B) For the purposes of clause 5.9A a Charity Trustee or member of the Academy Trust will be "unsuitable" if that Charity Trustee or member:*

- a) *has been convicted of an offence;*
- b) *has been given a caution in respect of an offence;*
- c) *is subject to a relevant finding in respect of an offence; or*
- d) *has engaged in relevant conduct,*

*as a result of which, the Secretary of State considers that that Charity Trustee or member is unsuitable to take part in the management of the Academies.*

*5.9C) For the purposes of clause 5.9B:*

- a) *a Charity Trustee or member of the Academy Trust will be subject to a "relevant finding" in respect of an offence if:*
  - i. *that Charity Trustee or member has been found not guilty of the offence by reason of insanity;*
  - ii. *that Charity Trustee or member has been found to be under a disability and to have done the act charged against them in respect of the offence; or*
  - iii. *a court outside the United Kingdom has made a finding equivalent to that described in paragraphs (i) and (ii) above.*

- b) *“relevant conduct” is conduct by a Charity Trustee or member of the Academy Trust which is:*
- i. *aimed at undermining the fundamental British values of democracy, the rule of law, individual liberty and mutual respect and tolerance of those with different faiths and beliefs; or*
  - ii. *found to be in breach of professional standards by a professional body; or*
  - iii. *so inappropriate that, in the opinion of the Secretary of State, it makes that Charity Trustee or member unsuitable to take part in the management of the Academy.”*

2.6 The Parties agree that with effect from the date of this Deed, the following headings and clauses shall be inserted into both the Supplemental Agreement and the Dunswell Supplemental Agreement at 6.F to 6.H after 6.E:

***“Sharing the Land***

6.F *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 capacity,*

*the Secretary of State must consult with the Academy Trust to determine whether part of the Land could be demised or sublet 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.*

6.G *To the extent the Academy Trust and the Secretary of State agree to part of the Land being demised or sublet in accordance with clause 6.F, the Academy Trust must use its best endeavours to procure either the approval of the Landlord or any necessary amendments to the Lease 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.*

6.H *For the purposes of clause 6.F:*

- 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 capacity has the meaning given in clause 2.5."*

2.7 Except as varied by this Deed, the Funding Agreement, the Supplemental Agreement and the Dunswell Supplemental 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**

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  
**SWANLAND EDUCATION TRUST**  
acting by:-

  
.....  
Director

  
.....  
Director/Secretary

