

**Deed of Novation and Variation of the Funding Agreement for Cosby Primary**

Schedule 1 – original Funding Agreement

Schedule 2 – replacement Supplemental Funding Agreement

Note: DfE sign the Deed of Novation not schedule 2

**DEED OF NOVATION AND VARIATION  
OF THE  
FUNDING AGREEMENT FOR COSBY PRIMARY SCHOOL**

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) **SUCCESS ACADEMY TRUST**, a charitable company incorporated in England and Wales with registered company number 08135389 whose registered address is at Station Road, Broughton Astley, Leicestershire, LE9 6PT (“**Success Academies Trust**”); and

(3) **COSBY PRIMARY SCHOOL**, a charitable company incorporated in England and Wales with registered company number 8137451 whose registered address is at Portland Street, Cosby, Leicestershire, LE9 1TE (the “**Company**”), together referred to as the “Parties”.

## **INTRODUCTION**

- A. Cosby Primary School is an academy within the meaning of the Academies Act 2010 (the “academy”) and is currently operated by the Company (a single academy trust).
- B. The Secretary of State and the Company entered into a Funding Agreement on 01 September 2012 (the “**Agreement**”) for the maintenance and funding of the academy (attached as Schedule 1).
- C. It is proposed that, with effect from 00.01 am on 1 February 2017 (“Transfer Date”), Success Academy Trust will assume responsibility for the management and operation of the academy in succession to the Company.
- D. The Parties wish to novate the Agreement to Success Academy Trust and the Secretary of State and Success Academy Trust wish to vary the terms of the Agreement subject to the provisions of this Deed.

## **LEGAL AGREEMENT**

1. Any word or phrase used in this Deed shall, if that word or phrase is defined in the Agreement, bear the meaning given to it in the Agreement.

## **NOVATION**

2. The Company transfers all its rights and obligations under the Agreement to Success Academy Trust with effect from the Transfer Date. With effect from the Transfer Date, Success Academy Trust shall enjoy all the rights and benefits of the Company under the Agreement and all references to the Company in the Agreement shall be read and construed as references to Success Academy Trust.

3. With effect from the Transfer Date, Success Academy Trust agrees to perform the Agreement and be bound by its terms in every way as if it were the original party to it in place of the Company.

4. With effect from the Transfer Date, The Secretary of State agrees to perform the Agreement and be bound by its terms in every way as if Success Academy Trust were the original party to it in place of the Company.

## **OBLIGATIONS AND LIABILITIES**

5. With effect from the Transfer Date, the Company and the Secretary of State release each other from all future obligations to the other under the Agreement.

6. Each of the Company and the Secretary of State release and discharge the other from all claims and demands under or in connection with the Agreement arising after the Transfer Date.

7. Each of Success Academy Trust and the Secretary of State will have the right to enforce the Agreement and pursue any claims and demands under the Agreement against the other with respect to matters arising before, on or after the date of this

Deed as though Success Academy Trust were the original party to the Agreement instead of the Company.

## **INDEMNITY**

8. The Company agrees to indemnify Success Academy Trust against any losses, liabilities, claims, damages or costs that Success Academy Trust suffers or incurs under or in connection with the Agreement as a result of the Company's failure to perform or satisfy its obligations under the Agreement on or before the Transfer Date.

9. Success Academy Trust agrees to indemnify the Company against any losses, liabilities, claims, damages or costs the Company suffers or incurs under or in connection with the Agreement as a result of Success Academy Trust's failure to perform or satisfy its obligations under the Agreement on or after the Transfer Date.

## **VARIATION**

10. The Secretary of State and Success Academy Trust agree that with effect from the Transfer Date the Agreement shall be amended and restated so as to take effect in the form set out in Schedule 2 to this Deed.

11. As varied by this Deed, the Agreement shall remain in full force and effect.

12. This Deed shall be governed by and interpreted in accordance with English law.

13. 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**

14. 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 last date listed below.

EXECUTED as a deed by affixing the corporate seal )  
of **THE SECRETARY OF STATE FOR EDUCATION** )  
authenticated by:- )



*D.L. Oshenwood*

Duly authorised by the **SECRETARY OF STATE FOR EDUCATION**

Date *30 January 2017*

EXECUTED as a deed by  
**Success Academy Trust**  
acting by one director in the  
presence of a witness:

Director *David Marcus* .....  
Print name DAVID MARCUS .....  
Date 10.01.17 .....  
Witness *John Walker* .....  
Print name JOHN ANTHONY WALKER .....  
Address 14 Forsells End, Houghton .....  
Leicestershire .....  
Occupation Solicitor .....

EXECUTED as a deed by **the**  
**Company** acting by one  
director in the presence of a  
witness:

Director *Melvyn Booley* .....  
Print name Melvyn Booley .....  
Date 10/1/17 .....  
Witness *John Walker* .....  
Print name JOHN ANTHONY WALKER .....  
Address 14 Forsells End, Houghton .....  
Leicestershire .....  
Occupation Solicitor .....