

**DEED OF NOVATION AND VARIATION
OF THE
FUNDING AGREEMENT FOR ST CLEMENT'S
CofE PRIMARY ACADEMY, NECHELLS**

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) **BIRMINGHAM DIOCESAN ACADEMIES TRUST**, a charitable company incorporated in England and Wales with registered company number 10729883 whose registered address is at 1 Colmore Row, Birmingham, West Midlands B3 2BJ ("**BDAT**"); and

(3) **ST CLEMENT'S CofE PRIMARY ACADEMY, NECHELLS**, a charitable company incorporated in England and Wales with registered company number 08165736 whose registered address is at Butlin Street, Nechells, Birmingham B7 5NS ("**St Clement's**"),

together referred to as the "Parties".

INTRODUCTION

- A. St Clement's CofE Academy, Nechells is an academy within the meaning of the Academies Act 2010 (the "academy") and is currently operated by St Clement's.
- B. The Secretary of State and St Clement's entered into a Funding Agreement on 1 October 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 September 2017 ("Transfer Date"), BDAT will assume responsibility for the management and operation of the academy in succession to St Clement's.
- D. The Parties wish to novate the Agreement to BDAT and the Secretary of State and BDAT 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

St Clement's under the Agreement and all references to St Clement's in the Agreement shall be read and construed as references to BDAT.

3. Not Used

4. With effect from the Transfer Date, BDAT 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 St Clement's.

5. 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 BDAT were the original party to it in place of St Clement's.

OBLIGATIONS AND LIABILITIES

6. With effect from the Transfer Date, St Clement's and the Secretary of State release each other from all future obligations to the other under the Agreement.

7. Each of St Clement's 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.

8. Each of BDAT 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 BDAT were the original party to the Agreement instead of St Clement's.

INDEMNITY

9. St Clement's agrees to indemnify BDAT against any losses, liabilities, claims, damages or costs that BDAT suffers or incurs under or in connection with the Agreement as a result of St Clement's failure to perform or satisfy its obligations under the Agreement on or before the Transfer Date.

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

VARIATION

11. The Secretary of State and BDAT 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.

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

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

14. 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

15. 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:-


.....

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

Date 30-8-17.....



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

Director .....

Print name S. HARTRES.....

Date 26/7/17.....


Witness .....


Print name Peter Frewer.....

Address 395 Waterloo Road.....

Occupation ASSISTANT DIRECTOR OF EDUCATION.....

EXECUTED as a deed by St
Clement's acting by one director in
the presence of a witness:

Director 
Print name D. RICKETTS
Date 20/7/2017

Witness 
Print name PETRA FRENCH
Address 395 WICKFIELD ROAD
Occupation ASSISTANT DIRECTOR OF EDUCATION