

Dated

2020

**BARNET COUNCIL
AND
BARNET EDUCATION AND LEARNING SERVICE
LIMITED**

**SHAREHOLDERS' AGREEMENT
IN RELATION TO
BARNET EDUCATION AND LEARNING SERVICE
LIMITED**

Contents

Item		Page
1	DEFINITIONS AND INTERPRETATION	2
2	THE BUSINESS	4
3	BUSINESS PLAN	5
4	ACCESS TO INFORMATION RELATING TO THE COMPANY AND/OR THE BUSINESS	5
5	FINANCING THE COMPANY AND RETURNS	5
6	MANAGEMENT OF THE COMPANY	5
7	BOARD OF DIRECTORS	6
8	TRANSFER OF SHARES	7
9	NEW SHAREHOLDERS	7
10	TERMINATION	7
11	UNLAWFUL FETTER ON BARNET COUNCIL'S POWERS	8
12	ASSIGNMENT AND SUB-CONTRACTING	8
13	FURTHER ASSURANCE	8
14	REMEDIES AND WAIVERS	8
15	ENTIRE AGREEMENT	9
16	VARIATION	9
17	CONFLICT WITH THE ARTICLES	9
18	SEVERANCE	9
19	FREEDOM OF INFORMATION	10
20	PREVENTION OF BRIBERY	10
21	NOTICES	11
22	COSTS AND EXPENSES	12
23	SET-OFF	12
24	NO PARTNERSHIP OR AGENCY	12
25	COUNTERPARTS	12
26	CONTRACTS (RIGHTS OF THIRD PARTIES) ACT 1999	12
27	GOVERNING LAW AND JURISDICTION	12
	SCHEDULE 1 – PARTICULARS OF THE COMPANY	15
	SCHEDULE 2 – DEED OF ADHERENCE	16
	SCHEDULE 3 – RESERVED MATTERS	17
	SCHEDULE 4 – CONTACT DETAILS	19
	SCHEDULE 5 – APPOINTMENT LETTER	

BETWEEN:

- (1) **BARNET COUNCIL** of 2 Bristol Avenue, Colindale, London, NW9 (**BARNET**); and
- (2) **BARNET EDUCATION AND LEARNING SERVICE LIMITED** (company number 12724128) whose registered office is at 2 Bristol Avenue, Colindale, London, NW9 (the **Company**).

BACKGROUND

- (A) The Company is a wholly owned subsidiary of BARNET.
- (B) BARNET and the Company are entering into this Agreement to ensure that BARNET retains control over the strategic direction and key decisions of the Company.

IT IS AGREED as follows:

1 DEFINITIONS AND INTERPRETATION

- 1.1 In this Agreement, unless the context requires otherwise:

Accounting Reference Date means 31st March

Articles means the articles of association of the Company as amended or replaced from time to time in accordance with this Agreement

Board means the board of directors of the Company from time to time

Business has the meaning given in clause 2

Business Day means a day (other than a Saturday or Sunday) on which banks are open for business in England

Business Plan means the document setting out the approach the Company shall take in undertaking the Business for a Financial Year, and as the same may be varied or updated from time to time in accordance with the provisions of this Agreement

Companies Act means the Companies Act 2006

Deed of Adherence means a deed in the form or substantially in the form set out in Schedule 2

Director means a director of the Company

EIR means the Environmental Information Regulations 2004 and any subordinate legislation made under the Regulations from time to time, together with any guidance and/or codes of practice issued by the Information Commissioner or relevant government department in relation to such legislation

Encumbrance includes any mortgage, charge (fixed or floating), pledge, lien, hypothecation, guarantee, trust, right of set-off or other third party right or interest (legal or equitable) including any assignment by way of security, reservation of title or other security interest of any kind, howsoever created or arising, or any other agreement or arrangement (including a sale and repurchase agreement) having similar effect

Financial Year means each financial accounting period of 12 months ending on the Accounting Reference Date other than in relation to the first accounting reference period which shall run on and from the date of this Agreement to and including the Accounting

Reference Date in the following calendar year, or such longer or shorter period as BARNET shall from time to time determine

FOIA means the Freedom of Information Act 2000 and any subordinate legislation made under the Act from time to time, together with any guidance and/or codes of practice issued by the Information Commissioner or relevant government department in relation to such legislation

Intellectual Property means patents, inventions, registered designs, trademarks, applications for any of the foregoing or the right to apply therefor in any part of the world, design rights including community designs, database rights, copyrights, rights in the nature of copyright, topography rights, trade names, logos, get-up, domain names, know-how and trade secrets, and any similar or equivalent rights arising or subsisting anywhere in the world

Prohibited Act means any of the following acts:

- (a) to directly or indirectly offer, promise or give any person working for or engaged by BARNET a financial or other advantage to:
 - (i) induce that person to perform improperly a relevant function or activity; or
 - (ii) reward that person for improper performance of a relevant function or activity;
- (b) to directly or indirectly request, agree to receive or accept any financial or other advantage as an inducement or a reward for improper performance of a relevant function or activity in connection with this Agreement;
- (c) committing any offence:
 - (i) under the Bribery Act 2010;
 - (ii) under legislation creating offences concerning fraudulent acts;
 - (iii) at common law concerning fraudulent acts relating to this Agreement or any other contract with BARNET; or
 - (iv) defrauding, attempting to defraud or conspiring to defraud BARNET

Reserved Matters means the matters specified in Schedule 3

Working Hours means 9.00 a.m. to 5.00 p.m. on a Business Day

1.2 In this Agreement, unless the context requires otherwise:

1.2.1 references to clauses, paragraphs, recitals and Schedules are references to clauses and paragraphs of, and recitals and schedules to, this Agreement. The Schedules form part of this Agreement and shall have the same force and effect as if expressly set out in the body of this Agreement, and any reference to this Agreement shall include the Schedules. The recitals and headings to clauses and Schedules are for convenience only and shall not affect the construction or interpretation of this Agreement;

1.2.2 a reference to a statute or a statutory provision includes a reference to:

- (a) the statute or statutory provision as modified or re-enacted or both from time to time (whether before or after the date of this Agreement); and
 - (b) any subordinate legislation made under the statute or statutory provision (whether before or after the date of this Agreement), provided that any such modification, re-enactment or legislation made after the date of this Agreement does not materially change the relevant provision;
- 1.2.3 references to a **person** shall be construed so as to include any individual, firm, corporation, government, state or agency of a state or any joint venture, trust, association or partnership (whether or not having separate legal personality);
- 1.2.4 references to any gender shall include every gender, and the singular shall include the plural and vice versa;
- 1.2.5 a person shall be deemed to be **connected** with another if that person is connected with that other within the meaning of section 1122 Corporation Tax Act 2010;
- 1.2.6 words and expressions defined in the Companies Acts shall have the same meanings when used in this Agreement;
- 1.2.7 references to a **party** or the **parties** are to a party or the parties to this Agreement from time to time and any person who agrees to be bound by the provisions of this Agreement from time to time but, for the avoidance of doubt, shall not refer to any person who has ceased to have any obligations under this Agreement from time to time;
- 1.2.8 in construing this Agreement, the rule known as ejusdem generis rule shall not apply nor shall any similar rule or approach to the construction of this Agreement and accordingly general words introduced or followed by the word(s) **other** or **including** or **in particular** shall not be given a restrictive meaning because they are followed or preceded (as the case may be) by particular examples intended to fall within the meaning of the general words;
- 1.2.9 references to a **month** shall be construed as a reference to a period starting on one day in a calendar month and ending on the day immediately preceding the numerically corresponding day in the next calendar month or, if there is no numerically corresponding day in the next calendar month, the last day in the next calendar month;
- 1.2.10 any requirement upon BARNET to procure a particular matter or thing shall be deemed to include an obligation to exercise its powers as a shareholder of the Company, and to use its reasonable endeavours to procure that any Director appointed by it shall (subject to his fiduciary and other legal duties owed to the Company) exercise his powers as a director, to procure such matter or thing; and
- 1.2.11 references to a document in the **agreed form** are to a document in a form agreed by BARNET and initialled by or on behalf of each of them for the purpose of identification.

2 THE BUSINESS

- 2.1 The business of the Company (the **Business**) shall be:
- 2.1.1 to provide education and learning services primarily within the London Borough of Barnet
 - 2.1.2 to undertake the Business in accordance with Business Plan.

2.1.3 to undertake such other business(es) as BARNET may from time to time determine in accordance with Schedule 3; and

3 BUSINESS PLAN

3.1 Other than in respect of the first Financial Year, where the Business Plan will be in agreed form and approved by BARNET on or as soon as reasonably practicable after the date of this Agreement, the Company shall prepare a Business Plan for each Financial Year before the relevant Accounting Reference Date and in accordance with the timetable approved by the BARNET from time to time.

3.2 The Business Plan shall be embedded in the BARNET annual business planning process which is approved by the Children, Education and Safeguarding Committee on behalf of BARNET, and adopted by the Company, subject to any changes or revisions required by BARNET, in accordance with 6.1.

4 ACCESS TO INFORMATION RELATING TO THE COMPANY AND/OR THE BUSINESS

4.1 The Company shall promptly provide to BARNET:

4.1.1 any documents or information (including but not limited to board minutes, management accounts and annual accounts) relating to the Business of the Company;

4.1.2 draft annual accounts in accordance with BARNET's year end timetables as notified by BARNET;

4.1.3 final audited annual accounts in accordance with BARNET's year end timetables as notified by BARNET;

4.1.4 copies of Board meeting papers prior to the meeting of the Board to which they relate, and minutes of Board meetings five (5) Business Days after the relevant Board meeting to which they relate; and

4.1.5 any other information reasonably required by BARNET from time to time.

4.2 BARNET and its authorised representatives (including internal and external auditors and other inspection bodies) shall have the right, on giving to the Company reasonable advance notice, during normal Working Hours to inspect the books and records of the Company from time to time and to be supplied with all trading, financial management information, monthly reports, quarterly reports and minutes of any progress meetings and other information in such form as it or they may reasonably require to keep it properly informed about the business and affairs of the Company, and shall have the right (at its expense) to take copies of any such books and records or parts thereof.

5 FINANCING THE COMPANY AND RETURNS

5.1 The parties envisage that the initial working capital of the Company shall be made up of either equity subscribed by BARNET or loans made to it by BARNET.

5.2 If it requires any additional finance, BARNET may (at its entire discretion) provide a loan facility to the Company on terms to be agreed between the parties.

6 MANAGEMENT OF THE COMPANY

6.1 Subject to clause 6.2, BARNET and the Company agree that the Company shall not undertake a Reserved Matter without the approval of BARNET, which approval may be given either in writing or at a general meeting.

- 6.2 Any Reserved Matter specifically set out in a Business Plan shall be deemed approved via the approval of the Business Plan, and the Board shall have delegated authority to implement such Reserved Matters.
- 6.3 With the exception of the Reserved Matters, the Business and all affairs of the Company shall be managed by the Board in accordance with the Business Plan. To that end but subject to those exceptions, the Board shall have full and complete authority, power and discretion to direct, manage and control the Business and the affairs and properties of the Company, to make all decisions regarding those matters and to perform any and all other acts or activities customary or incidental to the management of the Business.
- 6.4 BARNET and the Company agree to maintain the Board for the duration of this Agreement and agree (and agree to procure) that the Board shall operate in accordance with the provisions of this Agreement.
- 6.5 BARNET shall procure that the Company from time to time, and in so far as it may legally do so, the Company agrees that it shall:
- 6.5.1 carry on and conduct its Business and affairs in accordance with:
- (a) its Articles;
 - (b) the Business Plan;
 - (c) all laws relating to companies as amended from time to time;
 - (d) sound governance and good business practice; and
 - (e) in a proper and efficient manner, for its own benefit; and
- 6.5.2 use all reasonable endeavours to obtain and, if necessary, maintain in full force and effect all licences (including statutory licences), consents and authorities necessary to own and operate its assets and to carry on its Business properly and effectively.

7 BOARD OF DIRECTORS

- 7.1 BARNET agrees to procure that the number of Directors of the Company shall not be less than 5 and not more than 10. BARNET shall determine the minimum and maximum number of Directors of the Company from time to time subject to compliance with the provisions of this Agreement and the Articles.
- 7.2 BARNET shall be entitled to appoint and remove Directors to the Board in accordance with the Articles and this Agreement.
- 7.3 The Board shall include at least 2 Directors who shall be officers of BARNET having suitable experience and skills,
- 7.4 In addition to those roles detail at clause 7.3, BARNET may allocate specific roles to the Directors including company secretary and such other roles as determined by BARNET from time to time.
- 7.5 BARNET may nominate a Director, and remove a Director whom it nominated, by giving notice to the Company. The appointment or removal takes effect on the date on which the notice is received by the Company or, if a later date is given in the notice, on that date. A person proposed as a Director shall not be appointed unless he has accepted and signed the letter of appointment in the form scheduled to this Agreement at Schedule 5 or such other terms as BARNET may determine from time to time, and has provided a signed and dated original thereof to the Company.

- 7.6 BARNET shall indemnify and keep indemnified the Company against any claim connected with a Director's removal from office by BARNET.
- 7.7 The Company may have a company secretary and if the Board so decides this BARNET may appoint and remove the company secretary from time to time by giving notice in writing to the Company. The appointment or removal takes effect on the date on which the notice is received by the Company or, if a later date is given in the notice, on that date.
- 7.8 The parties intend that meetings of Directors shall take place at least once each year.
- 7.9 The quorum at any meeting of the Board (or any committee of the Board) shall be 2 Directors appointed by BARNET. The parties shall use their respective reasonable endeavours to ensure that any meeting of the Board (or meeting of a committee of the Board) has the requisite quorum.

8 TRANSFER OF SHARES

- 8.1 BARNET and the Company shall not create any Encumbrance over, transfer, or otherwise dispose of or give any person any rights in or over any share or interest in any share in the Company unless it is (a) permitted under this Agreement (and in particular Schedule 3) or the Articles and (b) carried out in accordance with the terms of this Agreement and the Articles (as the case may be).

9 NEW SHAREHOLDERS

- 9.1 Admitting a person as a new shareholder of the Company is a Reserved Matter and shall also be subject to such person executing a Deed of Adherence.

10 TERMINATION

- 10.1 Subject to the provisions of clause 10.2, this Agreement shall continue in force until BARNET agrees to terminate it by serving written notice on the Company.
- 10.2 This Agreement shall, unless BARNET otherwise agrees, automatically terminate on the effective date of a winding up of the Company.
- 10.3 Termination of this Agreement in respect of BARNET for any reason shall not affect any accrued rights or liabilities of any person or any liability or obligation arising under or pursuant to the Articles or any other agreement or arrangement between any of the parties hereto and save where this Agreement expressly provides to the contrary, affect the provisions of:
- 10.3.1 clause 1 (*Definitions and Interpretation*);
 - 10.3.2 this clause 10 (*Termination*);
 - 10.3.3 clause 12 (*Assignment and Sub Contracting*);
 - 10.3.4 clause 14 (*Remedies and Waivers*);
 - 10.3.5 clause 15 (*Entire Agreement*);
 - 10.3.6 clause 17 (*Conflict with the Articles*);
 - 10.3.7 clause 18 (*Severance*);
 - 10.3.8 clause 21 (*Notices*);
 - 10.3.9 clause 22 (*Costs and Expenses*);

- 10.3.10 clause 23 (*Set-off*);
- 10.3.11 clause 24 (*No Partnership or Agency*);
- 10.3.12 clause 25 (*Counterparts*); and
- 10.3.13 clause 27 (*Governing Law and Jurisdiction*),

which shall continue in full force and effect after termination.

10.4 Where the Company is to be wound up and its assets distributed, the parties shall agree a suitable basis for dealing with the interests and assets of the Company and shall endeavour to ensure that:

- 10.4.1 all existing contracts of the Company are performed to the extent that there are sufficient resources;
- 10.4.2 the Company shall not enter into any new contractual obligations;
- 10.4.3 the Company is dissolved and its assets are distributed as soon as practical in accordance with clause 10.5; and
- 10.4.4 any other proprietary information or Intellectual Property Rights belonging to or originating from a party shall be returned to it by the other party and all such proprietary information or Intellectual Property Rights shall be erased from the computer systems (to the extent possible) of the party who is returning it.

10.5 In the event of the Company being wound up, the assets of the Company remaining after payment of all debts and liabilities of the Company and of all costs, charges and expenses of winding up the same, shall be distributed amongst the current shareholders of the Company as unanimously agreed between such shareholders, subject always to the final decision of any liquidator.

11 UNLAWFUL FETTER ON BARNET COUNCIL'S POWERS

11.1 Notwithstanding any other provision contained in this Agreement, BARNET shall not be bound by any provision of this Agreement to the extent that it would constitute an unlawful fetter on any statutory power of BARNET, but any such provision shall remain valid and binding as regards all other parties to which it is expressed to apply.

12 ASSIGNMENT AND SUB-CONTRACTING

12.1 This Agreement is personal to the parties and no party shall assign, transfer, subcontract or deal in any other manner with any of its rights and obligations under this Agreement without the prior written consent of the other party. Each party hereby undertakes and represents to the other party that it is entering into this Agreement only for its own benefit.

12.2 This Agreement shall be binding on and shall endure for the benefit of each party's successors.

13 FURTHER ASSURANCE

13.1 Each party shall at its own cost and expense, on being required to do so by another party now or at any time in the future, do or procure the doing of all such acts and things and/or execute or procure the execution of all such deeds and documents in a form satisfactory to such other party which such other party may reasonably consider necessary for giving effect to this Agreement.

14 REMEDIES AND WAIVERS

- 14.1 No delay by any party in exercising, or failure by any party to exercise, any right, power or remedy provided by law or under this Agreement or any document referred to in it shall:
- 14.1.1 operate as a waiver of that or any other right, power or remedy; or
 - 14.1.2 affect the other terms of this Agreement or any document referred to in it.
- 14.2 The single or partial exercise of any right, power or remedy provided by law or under this Agreement or any document referred to in it shall not preclude any other or further exercise of it or the exercise of any other right, power or remedy.
- 14.3 A waiver of any breach of or default under this Agreement or any document referred to in it shall not constitute a waiver of any other breach or default and will not prevent a party from subsequently requiring compliance with the waived obligation.
- 14.4 The rights, powers and remedies provided in this Agreement or any document referred to in it are in addition to and (subject as otherwise provided in this Agreement) not exclusive of any rights, powers and remedies provided by law.

15 ENTIRE AGREEMENT

- 15.1 This Agreement and the documents referred to in it (including the Articles and any Deed of Adherence) constitute the entire agreement between the parties relating to the Company and supersede all previous agreements between the parties relating to such matters.
- 15.2 Each of the parties acknowledges that in agreeing to enter into this Agreement it has not relied on any representation, warranty, collateral contract or other assurance (except those set out in this Agreement and/or the documents referred to in it) made by or on behalf of any other party before the signature of this Agreement. Each of the parties waives:
- 15.2.1 all rights and remedies which, but for this clause 15.2, might otherwise be available to it in respect of any such representation, warranty, collateral contract or other assurance; and
 - 15.2.2 all rights and remedies, other than remedies for breach of contract available in respect of a breach of this Agreement and/or the documents referred to in it, which, but for this clause 15.2, might otherwise be available to it in respect of the falsity of any representation or warranty set out in this Agreement and/or the documents referred to in it,
- provided that nothing in this clause 15.2 shall limit or exclude any liability for fraud or dishonesty on the part of any party.

16 VARIATION

- 16.1 No variation to the terms of this Agreement shall be effective unless made in writing and signed by each of the parties and any person who agrees to be bound by this Agreement.

17 CONFLICT WITH THE ARTICLES

- 17.1 If any provision of this Agreement is inconsistent with a provision of the Articles, then the terms of this Agreement shall prevail and BARNET agrees to procure the making of any amendment to the Articles at the next general meeting of the Company required in order to make them consistent with the provisions of this Agreement.

18 SEVERANCE

- 18.1 If any provision of this Agreement shall be found by any court or administrative body of competent jurisdiction to be invalid or unenforceable, such invalidity or unenforceability shall

not affect the other provisions of this Agreement which shall remain in full force and effect.

- 18.2 Without prejudice to the generality of clause 18.1, if any provision of this Agreement or the Articles shall be found by any court or administrative body of competent jurisdiction to be unenforceable against or by the Company, BARNET shall procure that the provision is nevertheless put into effect to the greatest extent possible.
- 18.3 If any provision of this Agreement is found to be invalid or unenforceable but would be valid or enforceable if some part of the provision were deleted, the provision in question shall apply with such deletions as may be necessary to make it valid or enforceable.
- 18.4 The parties agree, in the circumstances referred to in clause 18.1 and if clause 18.3 does not apply, to attempt to substitute for any invalid or unenforceable provision a valid or enforceable provision which achieves to the greatest extent possible the same effect as would have been achieved by the invalid or unenforceable provision but for such invalidity or unenforceability.

19 FREEDOM OF INFORMATION

- 19.1 BARNET and the Company acknowledge that each of them is subject to the requirements of the FOIA and the EIR and each Party shall, where reasonable, assist and co-operate (at its own expense) with the other Party for the provision of information to enable that Party to comply with these information disclosure obligations.
- 19.2 Where the Company receives a request for information under either the FOIA or the EIR in relation to information which it is holding on behalf of BARNET in relation to the Company, it shall:
- 19.2.1 transfer the request for information to BARNET as soon as practicable after receipt and in any event within two Business Days of receiving a request for information;
 - 19.2.2 provide BARNET with a copy of all information requested by BARNET, which is in its possession or power in the form that BARNET requires within ten Business Days (or such longer period as BARNET may specify) of BARNET requesting that information; and
 - 19.2.3 provide all necessary assistance as reasonably requested by BARNET to enable BARNET to respond to a request for information within the time for compliance set out in the FOIA or the EIR.
- 19.3 Where BARNET receives a request under FOIA or EIR which relates to the operations of the Company, it shall notify the Company and afford it an opportunity to make any comments or representations in respect of the disclosure of the information sought. The Company shall respond within five (5) Business Days of receipt of this notification. BARNET shall take into account any such comments or representations in so doing and shall not respond to the request until the five (5) day response period referred to above has passed.

20 PREVENTION OF BRIBERY

- 20.1 The Company:
- 20.1.1 shall not, and shall procure that any Director, officer, employee, adviser or representative of the Company shall not, in connection with this Agreement commit a Prohibited Act;
 - 20.1.2 warrants, represents and undertakes that it is not aware of any financial or other advantage being given to any person working for or engaged by BARNET, or that an agreement has been reached to that effect, in connection with the execution of this Agreement, excluding any arrangement of which full details have been disclosed in writing to BARNET before execution of this Agreement.

- 20.2 The Company shall:
- 20.2.1 if requested, provide BARNET with any reasonable assistance, at BARNET's reasonable cost, to enable BARNET to perform any activity required by any relevant government or agency in any relevant jurisdiction for the purpose of compliance with the Bribery Act;
 - 20.2.2 within five (5) Business Days of the date of this Agreement, and annually thereafter, certify to BARNET in writing (such certification to be signed by an officer of the Company) compliance with this clause 20 by the Company and all persons associated with it or other persons who are supplying goods or services in connection with this Agreement. The Company shall provide such supporting evidence of compliance as BARNET may reasonably request.
- 20.3 The Company shall have an anti-bribery policy (which shall be disclosed to BARNET) to prevent any Director, officer, employee, adviser or representative of the Company from committing a Prohibited Act and shall enforce it where appropriate. The Company shall also have an anti modern slavery policy.
- 20.4 If any breach of clause 20.1 is suspected or known, the Company must notify BARNET immediately.
- 20.5 If the Company notifies BARNET that it suspects or knows that there may be a breach of clause 20.1, the Company must respond promptly to BARNET's enquiries, co-operate with any investigation, and allow BARNET to audit books, records and any other relevant documentation.
- 20.6 BARNET may terminate this Agreement by written notice with immediate effect if the Company, Director, officer, employee, adviser or representative of the Company (in all cases whether or not acting with the Company's knowledge) breaches clause 20.1.
- 20.7 Any notice of termination under clause 20.6 must specify:
- 20.7.1 the nature of the Prohibited Act;
 - 20.7.2 the identity of the party whom BARNET believes has committed the Prohibited Act; and
 - 20.7.3 the date on which this Agreement will terminate.
- 20.8 Any dispute relating to:
- 20.8.1 the interpretation of clause 20; or
 - 20.8.2 the amount or value of any gift, consideration or commission;
- shall be determined by BARNET and its decision shall be final and conclusive.
- 20.9 Any termination under clause 20.6 will be without prejudice to any right or remedy which has already accrued or subsequently accrues to BARNET.

21 NOTICES

- 21.1 Any notice or other communication to be served under this Agreement shall be delivered or sent by first class post, or electronic communication to the party to be served at its address, or email address as set out in Schedule 4 or in any Deed of Adherence (as the case may be).
- 21.2 Subject to clause 21.3 and in the absence of earlier receipt, any notice or communication shall be deemed to have been served:

- 21.2.1 if delivered personally, at the time of delivery;
 - 21.2.2 if sent by first class post, two (2) Business Days after the date of posting; and
 - 21.2.3 if sent by email, twenty four (24) hours after the time of sending
- 21.3 Any notice or communication served under this Agreement outside Working Hours in the place to which it is addressed shall be deemed not to have been served until the start of the next period of Working Hours in such place.
- 21.4 In proving service of a notice or communication, it shall be sufficient to prove that delivery was made or that the envelope containing the notice or communication was properly addressed and posted as a prepaid first class letter, that the facsimile message was transmitted to the facsimile number of the recipient, or in the case of electronic communication, that it was sent in accordance with the guidance issued by the Institute of Chartered Secretaries and Administrators.

22 COSTS AND EXPENSES

- 22.1 All costs and expenses in relation to the negotiation, preparation, execution and carrying into effect of this Agreement and all other documents referred to in it shall be borne by BARNET, save for any private advice sought by the Company which shall be for the cost of the Company.

23 SET-OFF

- 23.1 All amounts falling due under this Agreement shall be paid in full without any set-off or counterclaim.

24 NO PARTNERSHIP OR AGENCY

- 24.1 Nothing in this Agreement is intended to or shall operate to create a partnership between the parties or any of them, or to authorise any party to act as agent for any other party, and no party shall have authority to act in the name or on behalf of or otherwise to bind any other party in any way.

25 COUNTERPARTS

- 25.1 This Agreement may be executed in any number of counterparts, and by the parties on separate counterparts, but shall not be effective until each person who is a party at the date hereof has executed at least one counterpart.
- 25.2 Each counterpart shall constitute an original of this Agreement, but all the counterparts shall together constitute but one and the same instrument.

26 CONTRACTS (RIGHTS OF THIRD PARTIES) ACT 1999

- 26.1 The parties to this Agreement do not intend that any of its terms should be enforceable, by virtue of the Contracts (Rights of Third Parties) Act 1999, by any person who is not a party to this Agreement.

27 GOVERNING LAW AND JURISDICTION

- 27.1 This Agreement is governed by and shall be construed in accordance with the laws of England and each party submits to the exclusive jurisdiction of the courts of England for all purposes relating to this Agreement.
- 27.2 Each party irrevocably consents to any process in any legal action or proceedings arising out of or in connection with this Agreement being served on it in accordance with the provisions of

clause 21. Nothing contained in this Agreement shall affect the right to serve process in any other manner permitted by law.

AS WITNESS the hands of the parties or their duly authorised representatives the day and year first before written

DRAFT

THE COMMON SEAL of
THE MAYOR & BURGESSES OF
THE LONDON BOROUGH OF BARNET
Was hereunto affixed
In the presence of the following as
Authorised by Article 11.5 of the
Constitution
Published in January 2018

Chief Officer
Head of Governance

Officer with delegated authority of
Head of Governance

Monitoring Officer

.....
Signature

.....
Full Name

.....
Position

Executed as a deed by)
BARNET EDUCATION AND)
LEARNING SERVICE LIMITED

Acting by two directors)
) **Director**
)
)
) **Director**
)

SCHEDULE 1– PARTICULARS OF THE COMPANY

- 1 **Registered number:** 12724128
- 2 **Date of incorporation:** 6 July 2020
- 3 **Place of incorporation:** England and Wales
- 4 **Class of company:** Private company limited by shares
- 5 **Registered office:** 2 Bristol Avenue, Colindale, London, NW9
- 6 **Accounting Reference Date:** []

DRAFT

SCHEDULE 2 – DEED OF ADHERENCE

THIS DEED is made on

2020

(A) BY [] of [] (the **Covenantor**) in favour of the persons whose names are set out in the schedule to this deed and is SUPPLEMENTAL to the Shareholders' Agreement dated [] 2020 made by (1) Barnet Council, and (2) Barnet Education and Learning Service Limited (company number: 12724128) (the **Shareholders' Agreement**)

THIS DEED WITNESSES as follows:

- 1 The Covenantor confirms that it has been given and read a copy of the Shareholders' Agreement and covenants with each person named in the schedule to this deed to perform and be bound by all the terms of the Shareholders' Agreement, except Clauses [] and [], as if the Covenantor were a Shareholder who is party to the Shareholders' Agreement.
- 2 This deed is governed by the laws of England and Wales.

IN WITNESS WHEREOF this deed has been executed by the Covenantor and is intended to be and is hereby delivered on the date first above written.

[Parties to Shareholders' Agreement including those who have executed earlier deeds of adherence.]

Executed as a deed by affixing) Seal:
the common seal of)
BARNET EDUCATION AND)
LEARNING)
SERVICE LIMITED)
in the presence of)
)
)
.....)
Director)
)
)
.....)
Director/Secretary)
)

SCHEDULE 3 – RESERVED MATTERS

All Reserved Matters shall only be effective if approved by BARNET. BARNET can formally delegate this authority to a named officer or officers by notice in writing to the Company.

Any dispute relating to whether or not something is material under Reserved Matter 17 will be determined by BARNET and its decision shall be final and conclusive.

The following matters are Reserved Matters unless (where relevant) they have been approved in advance in writing by BARNET:

Constitution of the Company

1. Varying in any respect the Articles or the rights attaching to any of the shares in the Company.

Officers and Shareholders of the Company

2. Agreeing the appointment of all BARNET Directors.
3. Agreeing the removal of all BARNET Directors (including any terms on which Directors are removed from their office as Directors).
4. Approving the admission of further shareholders to the Company or agreeing any rights or restrictions attaching to any shares allocated to such new shareholders.

Future direction and development of the Company

5. Agreeing to enter into or entering into any debt facility or loan agreement.
6. Forming any subsidiary or acquiring shares in any other company or amalgamating or merging with or otherwise forming legal participatory arrangements in any partnership or joint venture or any other company or business undertaking (incorporated or not) that reduces BARNET's control of the Company.
7. Selling or disposing of any part of the Business.
8. Entering into any arrangement, contract or transaction that involves any spending that is not in accordance with approved spending by BARNET's Executive Director of Children's Services in the exercise of statutory officer functions and in accordance with BARNET's Financial Regulations.
9. Passing any resolution for its winding up or presenting any petition for its administration (unless it has become insolvent).
10. Apply for the listing or trading of any shares in its issued capital or debt securities on any stock exchange or market.

Management of the business of the Company

11. Changing the Company's registered office.
12. Changing the Company's name.

13. Creating or agreeing to create a charge, security or Encumbrance over the Company's assets, shares or income.
14. Adopting or agreeing changes to remuneration and redundancy policies of the Company.
15. Establishing or amending any pension scheme.
16. Changing the nature of the Business or commencing any new business which is not ancillary or incidental to the Business.
17. Appointing and changing the Company's auditors.
18. Agree to make or making any loan (otherwise than by way of a deposit with a bank or other institution, the normal business of which includes the acceptance of deposits or in the ordinary course of business) or granting any credit (other than in the normal course of trading or giving any guarantee (other than in the normal course of trading) or indemnity (other than in the normal course of trading).
19. Changing the financial year end of the Company.
20. Increasing or reducing the amount of its issued share capital, granting any option or other interest over or in its share capital, redeeming or purchasing any of its own shares or otherwise altering, or effecting any reorganisation of, its share capital.
21. Declaring a dividend and adopting the Company's dividend policy and any replacement of or alteration thereto.

DRAFT

SCHEDULE 4 – CONTACT DETAILS

BARNET COUNCIL

Address: 2 Bristol Avenue, Colindale, London, NW9
For the attention of: Ben Thomas
Email address: Ben.Thomas@Barnet.gov.uk

BARNET EDUCATION AND LEARNING SERVICE LIMITED

Address: 2 Bristol Avenue, Colindale, London, NW9
For the attention of: Ben Thomas
Email address: Ben.Thomas@Barnet.gov.uk

or, in each case, such other address/or email address as may be notified by the relevant party to the other parties from time to time.

DRAFT

SCHEDULE 5 – BARNET DIRECTOR APPOINTMENT LETTER

[Date]

Dear [],

BARNET EDUCATION AND LEARNING SERVICE LIMITED (the “Company”)

1. This letter contains the terms which we have discussed and agreed for your appointment as a Director of the Company. By accepting this appointment, you agree that this letter is a contract for services and is not a contract of employment and you confirm that you are not subject to any restrictions which prevent you from holding office as a Director.
2. Similarly we confirm that we have obtained confirmation from Barnet Council that notwithstanding any provision in your employment contract with them they agree to your taking on this role as Director and are taking it on at their request and that the appointment will not affect your salary from Barnet Council and Barnet Council recognises that you will need to spend the hours necessary to properly perform your duties as a Director.
3. Your appointment is made pursuant to and is subject to the Company's articles of association and the terms and conditions set out in the shareholders' agreement dated on or around the date hereof and made between (i) Barnet Council, and (ii) the Company (**Shareholders' Agreement**). Save where expressly given another meaning in this letter, the defined terms in this letter shall bear the meanings given to them in the Shareholders' Agreement.
4. Your appointment shall commence on the date hereof and, subject to the remaining terms of this letter, shall continue unless or until terminated by either party giving the other not less than one (1) months' notice in writing. Your appointment shall be reviewed by the Company on or around the first anniversary of your appointment.
5. Subject to receiving the prior written authorisation of Barnet Council (**Authorisation**) you shall be paid a fee for:
 - 5.1 each Board meeting and/or committee meeting and/or shareholders' meeting including telephone meetings (**Meetings**) which you attend; and
 - 5.2 for the performance of such lawful tasks as may reasonably be requested of you by the Board (and which you agree to and do perform),

(Authorised Work)
6. The Company shall reimburse you for all reasonable and properly documented expenses that you incur in performing the duties of your office. The procedure and other guidance in respect of expense claims is available from the Company.
7. On termination of your appointment, you shall only be entitled to such fees as may have accrued to the date of termination, together with reimbursement in the normal way of any expenses properly incurred before that date.
8. The Board as a whole is collectively responsible for the success of the Company. The Board's role is to:
 - provide entrepreneurial leadership of the Company within a framework of prudent and effective controls which enable risk to be assessed and managed;
 - set the Company's strategic aims, ensure that the necessary financial and human resources are in place for the Company to meet its objectives, and review management performance; and

- set the Company's values and standards and ensure that its obligations to its shareholders and others are understood and met.
9. The Company shall keep you fully informed of all activities of the Company and shall supply you with full management accounts and accounting information relating to the Company on a monthly basis by email and hold regular meetings of the Board. Further, the Company shall ensure it provides secretarial services to the Company and advises the Board on legal matters and risks as they arise. The Company confirms it has had permission from Barnet Council to use and will use its policies in areas such as anti-bribery and other legal risk areas to ensure the Company operates properly under the law and to reduce risk to Directors.
 10. You will be expected to prepare for (by amongst other things reading the relevant board papers) and attend the Meetings. You will receive details of all Meetings in advance. There will be not less than two Board meetings per year, and it is envisaged at the date hereof that there will be approximately 4 Board meetings per year.
 11. Unless the Board specifically authorises you to do so, you shall not enter into any legal or other commitment or contract on behalf of the Company.
 12. You will not, whether during the appointment or after its termination, except in the proper course of your duties or as required by law, use or divulge, and shall use all reasonable endeavours to prevent the use or disclosure of, any trade or business secrets or any information concerning the business or finances of the Company or of any dealings, transactions, or affairs of the Company or any client, customer or supplier of the Company or which comes to your knowledge during the course of this appointment and will comply with the provisions of clause 21 (Freedom of Information) of the Shareholders' Agreement as if they applied to you. You will, however, be entitled to disclose such information to Barnet Council and to any party to whom Barnet Council is entitled to disclose information. The Company shall not publish any information about the Director (which is not otherwise a matter of public record) without letting the Director check the proposed disclosure or publicity. Before responding to an FOIA request the Company shall notify the Director in advance of any disclosure which names the Director.
 13. During the term of the Director's appointment with the Company and thereafter, the Company shall not take action which is intended, or would reasonably be expected, to harm the personal reputation of the Director or which would reasonably be expected to lead to unwanted or unfavourable publicity for the Director. Nothing herein shall prevent the Company making any truthful statement in connection with any actions or investigations by the Company or any other authorised regulatory body or in any legal proceedings. In the event that any damage is done to the reputation of the Director through the actions or omissions of the Company arising from his appointment as a Director in breach of this clause, the Company shall indemnify and hold harmless the Director for any costs, claims, liabilities or expenses incurred arising from such matters (including, without prejudice to the generality of the foregoing, for the costs of any reputation management and/or other similar advice).
 14. The Company has directors' and officers' liability insurance and is required to maintain such cover for the full term of your appointment. The indemnity limit is £1,000,000 (ONE MILLION POUNDS) (current at the date of this letter). A copy of the policy document is available from the Board.
 15. The Company hereby undertakes fully to indemnify you against all liabilities that may be incurred as a result of your office to the extent permitted by sections 232 and 234 of the Companies Act 2006.
 16. The appointment as a Director of the Company will automatically cease:-
 - in the event that you resign as a Director (by the service of one month's written notice upon the Company); or

- if you are an employee of Barnet Council, in the event that such employment ceases; or
- if you are disqualified from acting as a Director under the Company's articles of association or by law; or
- if you commit a material breach of your duties as a Director in respect of your obligations under this agreement; or
- upon the lodgement or delivery of a notice from Barnet Council removing you from the office of Director in accordance with the terms of the Shareholders' Agreement.

17. Without limitation to the paragraphs above, in signing this letter, you acknowledge that your office is subject to the terms of and you will comply with the Shareholders' Agreement. You acknowledge that your appointment may be determined as permitted under the terms of the Shareholders' Agreement. You acknowledge that upon cessation or determination (however arising) such termination you will vacate office in relation to the Company forthwith without raising any claim whatsoever against the Company or Barnet Council in relation to your vacation of office or removal from office.

18. On the cessation or determination of your appointment (howsoever arising), you agree that you will promptly return to the Company all papers and property of the Company which are in your possession or under your control.

Please indicate your acceptance and acknowledgement of these terms by signing the attached copy and returning it to me.

Yours sincerely

.....
 Signatory, duly authorised
 for and on behalf of **BARNET EDUCATION AND LEARNING SERVICE LIMITED**

I agree to and acknowledge the terms and conditions set out above relating to my appointment as a director of **BARNET EDUCATION AND LEARNING SERVICE LIMITED**

Signed

Dated