MORDIFORD CHURCH OF ENGLAND PRIMARY

SCHOOL

CHURCH SUPPLEMENTAL AGREEMENT

Relating to Mordiford Church of England Primary School

2013

MORDIFORD CHURCH OF ENGLAND PRIMARY SCHOOL

CHURCH SUPPLEMENTAL AGREEMENT

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INTRODUCTION

1) This Agreement is being entered into in acknowledgement of the consent hereby given by the Board of Education and the Trustees[1] to the conversion of Mordiford Primary School to an academy and the completion of a funding agreement (the "Funding Agreement") made under section 1 of the Academies Act 2010 between the Secretary of State for Education ("the Secretary of State") and Mordiford Church of England Primary School a company limited by guarantee registered at Companies House with company number 8738224 "the Academy Trust").

2) This Agreement is made between the Secretary of State and the Rector and Churchwardens of Mordiford an unincorporated charitable trust of The Rectory Fownhope, Herefordshire HR1 4PS ("the Trustees").[2]

3) The Board of Education of the Diocese of Hereford established pursuant to the Diocesan Boards of Education Measure 1991(the "appropriate diocesan authority" for the Academy for the purposes of the Education Acts (which shall include the Academies Act 2010)) is also a party to this Agreement in recognition of its role in relation to the Academy ("the Diocesan Authority").[3]

4) The Academy Trust is also a party to this Agreement and acknowledges the commitments made by both the Secretary of State and the Trustees as well as itself making certain commitments.[4]

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[1] It is intended that the party inserted here be the owner of the school site which could be the DBE (if a corporate body), or the DBF or it could be local site trustees. However if there are local site trustees, but the DBE is a corporate body then one might refer in this clause to both the DBE and the local trustees. Under the 2010 Act the consent of both may be required for the school to convert to an academy. The clause does not aim to state exhaustively the consents which a school might require to convert to an academy, but it does state for those who are a party to this agreement whether their consent is needed.

[2] Amend as appropriate, the trustees may be organised in many different ways. It is only the site trustees who are intended to be referred to in this clause other than the Secretary of State.

[3] Include where the Trustees are not the Board or the Diocese, but where they expect to continue to have a role in relation to the Academy equivalent to that they would have had as a maintained school. This clause then is intended to refer to the Diocesan Authority for the school/academy. For a C of E school this will always be the DBE. For a Catholic school it will be the Bishop/Archbishop.

[4] The Academy Trust should be a party to this Agreement. In circumstances where there is no lease or formal licence to occupy the school site between the Trustees and the Academy Trust, the Academy Trust will be relying on the commitment made by the Trustees to the SoS in this Agreement (as well as any express right in any trust deed relating to the land) to continue to make the land

5) In this Agreement the following words and expressions shall have the following meanings:-

"Articles of Association" means the Memorandum and Articles of Association of the Academy Trust for the time being in force;

"Capital Grant" has the meaning given to it in clause 36 of the Funding Agreement;

"DfE" means Department for Education;

"Governors" means governors of the Academy Trust appointed pursuant to the Articles of Association;

"Insured Risks" means fire, lightning, explosion, earthquake, storm, tempest, flood, subsidence, landslip, heave impact, terrorism, bursting or overflowing of water tanks and pipes, earthquake, damage by aircraft and other aerial devices or articles dropped there from, riot and civil commotion, labour disturbance and malicious damage and such other risks as the Academy Trust[5] insures against from time to time subject in all cases to any exclusions or limitations as may from time to time be imposed by the insurers or underwriters;[6]

"Land" means the land (including for the avoidance of doubt all buildings, structures landscaping and other erections) owned by the Trustees situated at and known as Mordiford Church of England Primary School, Mordiford, Hereford HR1 4LW and registered under title number HE49177 from which the Academy operates;

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available to the Academy in the same way that the Trustees did whilst the school was a maintained school. It may also be undertaking certain obligations in clause 14 which is when the words in square brackets at the end of this clause would be left in.

[5] See clause 14 to decide which party should be referred to here.

[6] The Trustees need to check firstly that there is buildings insurance in place for the school site and that such insurance covers the risks noted here. As the cost of insurance is expected to be met from the Academy's budget, the Trustees should expect the Academy to reimburse the cost of insurance. The DfE may require evidence of insurance before conversion.

"Termination Warning Notice" means any warning notice that may be served under and in accordance with the terms of the Funding Agreement.

6) The Interpretation Act 1978 shall apply for the interpretation of this Agreement as it applies for the interpretation of an Act of Parliament, and references to:

"party" means any party to this Agreement;

"persons" includes a body of persons, corporate or incorporate;

"school" shall where the context so admits be references to the Academy.

7) Expressions defined in this Agreement shall have the same meaning where used in any Annex to this Agreement.

LEGAL AGREEMENT FOR USE OF LAND

8) In consideration of:

a) the Academy Trust undertaking to the Secretary of State to establish and maintain, and to carry on or provide for the carrying on of, an independent school in England to be known as Mordiford Church of England Primary School ("the Academy") and having such characteristics as are referred to in clause 10 of the Funding Agreement and in the Articles of Association; and

b) the Secretary of State:

i. agreeing to make payments to the Academy Trust in accordance with the conditions and requirements set out in the Funding Agreement, and

ii. undertaking to the Trustees and Diocesan Authority as set out in this Agreement;

the Trustees undertake to the Secretary of State to make the Land available for use by the Academy Trust in a manner consistent with any restrictions imposed on the Trustees at law and pursuant to any trust deed governing the Trustees' ownership of the Land and with the terms of this Agreement.

9) This Agreement shall commence on the date hereof and shall subject to clause

10 (and except in respect of clause 16) continue in force until the earlier of:

a) the termination of the Funding Agreement; and

b) the date upon which any termination of this Agreement arises pursuant to clause 24.

10) The termination of this Agreement howsoever arising is without prejudice to the rights, duties and liabilities of any party hereto accrued prior to termination.

11) Clause 16 of this Agreement shall continue to apply for as long as the Secretary of State has power to exercise any discretion in relation to the Land pursuant to Schedule 1 of the Academies Act 2010.

PARTNERSHIP IN THE PROVISION OF EDUCATION

12) This Agreement recognises the desire of the parties to foster the development and provision of high quality education in particular at the Academy and in the area which it serves and the parties acknowledge the commitment being made by each to this aim. Recognising the Trustees' and the Diocesan Authority's respective strategic roles in the provision of education through the family of Church of England schools both in relation to the Academy and more generally (which role has been acknowledged in but is not derived from the Education Acts (as defined pursuant to the Education Act 1996)), the Secretary of State acknowledges the value of:

a) maintaining a good working relationship between the parties at all levels, and

b) the support (financial and otherwise) provided to the Academy Trust by the Trustees and Diocesan Authority; and

agrees:

(A) to consider the use of his termination powers as set out in the Funding Agreement if requested to do so in writing by the Diocesan Authority in consequence of (i) unacceptable standards as measured by the relevant statutory denominational inspection using criteria equivalent to those triggering the right to serve a Termination Warning Notice under the Funding

Agreement or (ii) a serious breakdown in the way the Academy is managed or governed such that the ethos requirements of designation or conditions set out in the Funding Agreement are no longer being complied with; and

(B) to maintain an open and frank dialogue with the Trustees and Diocesan Authority so that any matters that in the reasonable opinion of the parties may have a significant effect on the running of the Academy as a Church of England school shall be discussed in an appropriate manner recognising each party's viewpoint.

13) Provided that, whilst recognising the desire of the parties to work together in good faith and with mutual respect, nothing in this Agreement shall:

a) interfere with the right of each party to arrange its affairs in whatever manner it considers fit in order to perform its obligations under this Agreement in the manner in which it considers to be the most effective and efficient;

b) oblige any party to incur any additional cost or expense or suffer any undue loss in the proper performance of its obligations under this Agreement;

c) fetter the discretion of either party to meet or fulfil its legal obligations including any statutory obligations.

PROTECTION OF PUBLIC INVESTMENT IN LAND

14. Whilst the Academy operates from the Land otherwise than pursuant to a lease between the Trustees and the Academy Trust and in recognition of the funding provided by the Secretary of State to the Academy Trust for the running costs of the Academy, including, but not limited to, grant advanced for the purposes of enabling repairs, servicing, maintenance and arranging for appropriate insurance of any buildings on the Land and its grounds, provided that the Academy Trust meets the cost of such repairs, servicing, maintenance and insurance, the Trustees will:

a) facilitate any maintenance, upkeep or replacement of any buildings or facilities on the Land by the Academy Trust so that the Academy Trust may keep the Land

clean and tidy and may make good any damage it causes to the Land and / or any deterioration to the condition of the Land consequent upon its use of the same that may arise from the date of this Agreement;

b) facilitate the following:

i) at the Academy Trust's expense the maintaining of insurance of the land by the Academy Trust in the joint names of the Academy Trust and the Trustees with a reputable insurance office against loss or damage by the Insured Risks in the sum the Academy Trust is advised represents the reinstatement value of the Land from time to time;

ii) the payment of the premiums for insurance by the Academy Trust promptly as they become due and maintaining in force by the Academy Trust of the policies of insurance on the Land;

iii) following the incidence of damage to or destruction of the Land and subject to receipt of all necessary consents licences permissions and the like the application of the proceeds of the policy of the insurance received for those purposes in the rebuilding and reinstating of the Land by the Academy Trust (provided that this clause should be satisfied if the Academy Trust and/or the Trustees provides premises not necessarily identical to the Land as the same existing prior to such damage or destruction occurring) as soon as may be reasonably practicable;

iv) the production by the Academy Trust to the Secretary of State of a copy of the insurance policy whenever reasonably requested and the receipt for the last or other evidence of renewal and up to date details of the amount of cover (but no more often than once in any period of 12 months in both cases);

v) the Academy Trust insuring against liability in respect of property owners' and third party risks including occupiers liability;

c) together with the Academy Trust not knowingly do anything whereby any policy of insurance relating to the Land may become void or voidable; and

the Academy Trust will:

d) keep the Land insured in the joint names of the Academy Trust and the Trustees with a reputable insurance office against loss or damage by the Insured Risks in the sum the Academy Trust is advised represents the reinstatement value of the Land from time to time;

e) pay the premiums for insurance promptly as they become due and maintain in force the policies of insurance on the Land;

f) following the incidence of damage to or destruction of the Land and subject to receipt of all necessary consents licences permissions and the like apply the proceeds of the policy of the insurance received for those purposes in rebuilding and reinstating the Land (provided that this clause should be satisfied if the Academy Trust provides premises not necessarily identical to the Land as the same existing prior to such damage or destruction occurring) as soon as may be reasonably practicable;

g) produce to the Secretary of State a copy of the insurance policy whenever reasonably requested and the receipt for the last or other evidence of renewal and up to date details of the amount of cover (but no more often than once in any period of 12 months in both cases;

h) not knowingly do anything whereby any policy of insurance relating to the Land may become void or voidable;

i) insure against liability in respect of property owners' and third party risks including occupiers liability.

15) While the Academy operates from the Land or part of it pursuant to a lease between the Trustees and the Academy Trust in so far as clause 14 regulates occupation the terms of the lease shall prevail.

16) In the exercise of any discretion that the Secretary of State shall have either in relation to the Land as a consequence of this agreement or pursuant to Schedule 1 of the Academies Act 2010, the Secretary of State agrees to comply with any guidance issued by him in relation to the disposal of publicly funded land that is no longer to be used for the Academy.

17) In relation to any land owned or leased by the Academy Trust (excluding any land leased to the Academy Trust by the Trustees, the Secretary of State agrees not to give consent to any disposal or grant of security in respect of such land to the Academy Trust as envisaged in the Funding Agreement without first consulting the Trustees and the Diocesan Authority and having due regard to any concerns expressed by the Trustees and the Diocesan Authority.

CAPITAL GRANTS

18) The Trustees and the Diocesan Authority acknowledge the Secretary of State's power to pay Capital Grant to the Academy Trust and in recognition of the Trustees' and the Diocesan Authority's interest in any Capital Grant paid in relation to expenditure on Land, the Secretary of State commits to the following:

a) to acknowledging the Trustees' and the Diocesan Authority's right to consent to the carrying out of any works to Land which are to be paid for from any Capital Grant;

b) to recognise the Trustees' and the Diocesan Authority's interest in ensuring that any works to Land are carried out properly and that the Trustees or the Diocesan Authority may be procuring or providing support to the Academy Trust in the procurement of such works.

19) To the extent that the Secretary of State considers it necessary, in order to protect the value of any future public investment in the Land and in recognition of the Trustees and the Diocesan Authority allowing the Land to be used for the purposes of the Academy, then the Secretary of State may require the Academy Trust and the Trustees and the Diocesan Authority to enter into a further agreement in relation to such further public investment and Capital Grant. If the Secretary of State determines such further agreement is required, then the parties agree to negotiate in good faith with a view to reaching agreement to enable such Capital Grant, and future public investment, to be paid.

INTERVENTION AND SUPPORT

20) The Trustees and the Diocesan Authority acknowledge the Secretary of State's

right to terminate the Funding Agreement in the circumstances envisaged in the Funding Agreement. The Secretary of State agrees with the Trustees and the Diocesan Authority before taking any such action and in particular serving any Termination Warning Notice to notify the Trustees and the Diocesan Authority that he intends to take action giving his reasons for such action and to allow the Trustees and the Diocesan Authority a reasonable opportunity to make representations regarding such action, including any actions that the Trustees and the Diocesan Authority intend to take to remedy any failing of the Academy, which the Secretary of State will have due regard to before finally taking any action.

21) Not used.

22) In the spirit of partnership, where the Trustees and/or the Diocesan Authority puts forward a school improvement plan, whether or not in the circumstances envisaged in clause 20, the Secretary of State will consider any proposals within it and in good faith will consider any resource or funding implications, without, for the avoidance of doubt, being under any obligation pursuant to this Agreement to agree to fund such proposals.

23) The Secretary of State agrees to meet the costs of any relevant statutory denominational inspection proposed by the Trustees or Diocesan Authority provided these do not occur any more often than once every three years.

TERMINATION

24) The Trustees may give not less than two years written notice to the Academy Trust and the Secretary of State to terminate this Agreement.

25) In the event of any termination of the Funding Agreement in circumstances where the Academy would not otherwise be closing, the Secretary of State will have due regard to any wishes of the Trustees and/or the Diocesan Authority with regard to the future of the school as a “voluntary” maintained school for the purposes of the School Standards & Framework Act 1998.

26) Notwithstanding any termination or expiry of this Agreement the provisions of

clause 25 shall continue to apply.

MISCELLANEOUS

27) Any notice or other communication concerning this Agreement shall be sent, in the case of a notice or communication from the Secretary of State to the Trustees and Diocesan Authority at its registered office or such other addressee/address as may be notified in writing from time to time by the Trustees or Diocesan Authority and, in the case of a notice or communication from the Trustees or Diocesan Authority to the Secretary of State to Head of Academies Division, Department for Education, Sanctuary Buildings, Great Smith Street, London SW1P 3BT; or such other address as may be notified from time to time by the Secretary of State and where any such notice or communication is sent by post, unless the contrary is proved, it shall be deemed, subject to satisfactory proof of posting, to be effected at the time at which the letter would be received in the ordinary course of post.

28) No term of this Agreement is intended to give any entitlement as against any party to any person who is not a party to this Agreement and no term of this Agreement may be enforced by any person other than a party under the Contracts (Rights of Third Parties) Act 1999.

29) The obligations of the parties are several and for the avoidance of doubt none of the Academy Trust Trustees or Diocesan Authority shall be deemed to be liable in respect of the acts or omissions of the other as between these parties and the Secretary of State.

30) For the avoidance of doubt nothing in this Agreement is intended to vary or amend any provision of the Funding Agreement or any obligation arising under it.

This Agreement was executed as a Deed on 2013

Executed on behalf of Mordiford Church of England Primary School by:

....]
Director **Director/Secretary**

Executed on behalf of the Trustees by The Revd Dr Christopher Moore and Major James Newton Hereford two of their number under an authority
conferred pursuant to section 82 of the Charities
Act 1993

....

Executed on behalf of the Diocesan Authority by
affixing the Common Seal of the Hereford Diocesan Board of Finance in the presence of:[7]

....
Director/ Director/Secretary

The Corporate Seal of the Secretary of State for Education, hereunto affixed is authenticated by:

[7] This attestation clause is needed where the site trustees are either the corporate DBF, or individual trustees. In this case if the DBE is a corporate body it can execute by two directors or by a director and company secretary. It can affix its Common Seal also, but this is not necessary. If it is not a corporate body then the DBF would execute on behalf of the DBE

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Duly Authorised