Department for Education

Church supplemental agreement: multi model

June 2014

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INTRODUCTION

1) This Agreement is being entered into in acknowledgement of the consent hereby given by Manchester Diocesan Board of Education to the conversion of Rivington and Backrod High School, Bolton to an academy and the completion of a Supplemental Funding Agreement (the "Supplemental Funding Agreement") which, with its Master Funding Agreement (the "Master Funding Agreement") dated 2017 (together (the “Funding Agreement”) are made under section 1 of the Academies Act 2010 each between the Secretary of State for Education (“the Secretary of State”) and LEVERHULME ACADEMY CHURCH OF ENGLAND AND COMMUNITY TRUST a company limited by guarantee registered at Companies House with company number 10514293 (“the Company”).

2) This Agreement is made between the Secretary of State and Manchester Diocesan Board of Education established pursuant to the Diocesan Boards of Education Measure 1991 a company limited by guarantee registered at Companies House with company number 00618201 of Church House, 90 Deansgate, Manchester M3 2GH and a charity registered with the Charity Commission with number 530002 (“the Board”).

3) In addition to its trusteeship of the land the Board is also the “appropriate diocesan authority “ for the Academy for the purposes of the Education Acts (which shall include the Academies Act 2010) in recognition of its role in relation to the Academy (“the Diocesan Authority”).

4) The Company is also a party to this Agreement and acknowledges the commitments made by both the Secretary of State and the Board as well as itself making certain commitments.

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 Company for the time being in force;

"Capital Grant" has the meaning given to it in clause 37 of the Master Funding Agreement;

"DfE" means Department for Education and any successor;

"Trustees" means the Trustees of the Company 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, 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 Company 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;

"Land" means the land (including for the avoidance of doubt all buildings, structures landscaping and other erections) owned by the Board situated at and known as Rivington and Blackrod High School, Rivington Lane, Horwich, Bolton, Lancashire, BL6 7RU and registered under title numbers LAN61286, LAN614489, GM881642 and MAN103993 from which the Academy operates.

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 Company 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 Rivington and Blackrod High School ("the Academy") and having such characteristics as are referred to in clause 2M of the Supplemental Funding Agreement and in the Articles of Association; and

   b) the Secretary of State:

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

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

   the Board undertakes to the Secretary of State to make the Land available for use by the Company in a manner consistent with any restrictions imposed on the Board at law and pursuant to any trust deed governing the Board's ownership and use 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 Supplemental 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 Board's and the Diocesan Authority's respective strategic roles in the provision of education through its 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 Company by the Board and Diocesan Authority and

agrees:

(A) to consider the use of his intervention powers as set out in the Funding Agreement if requested to do so in writing by the Board or 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 as reflected in the Funding Agreement are no longer being complied with; and

(B) to maintain an open and frank dialogue with the Board 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 Board and the Company and in recognition of the funding provided by the Secretary of State to the Company 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 Company meets the cost of such repairs, servicing, maintenance and insurance,
the Board will:

a) facilitate any maintenance, upkeep or replacement of any buildings or facilities on the Land by the Company so that the Company 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 Company's expense the maintaining of insurance of the land by the Company in the joint names of the Company and the Board with a reputable insurance office against loss or damage by the Insured Risks in the sum the Company is advised represents the reinstatement value of the Land from time to time;

ii) the payment of the premiums for insurance by the Company promptly as they become due and maintaining in force by the Company 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 Company (provided that this clause should be satisfied if the Company and/or the Board 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 Company 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 Company insuring against liability in respect of property owners' and third party risks including occupiers liability;

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

the Company will:

d) keep the Land insured in the joint names of the Company and the Board with a reputable insurance office against loss or damage by the Insured Risks in the sum the Company 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 Company 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 and the Board 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 Board and the Company 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 Company (excluding any land leased to the Company by the Board), the Secretary of State agrees not to give consent to any disposal or grant of security in respect of such land to the Company as envisaged in the Supplemental Funding Agreement without first consulting the Board and the Diocesan Authority and having due regard to any concerns expressed by the Board and the Diocesan Authority.

CAPITAL GRANTS

18) The Board and the Diocesan Authority acknowledges the Secretary of State's power to pay Capital Grant to the Company and in recognition of the Board's 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 acknowledge the Board's 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 Board's and the Diocesan Authority's interest in ensuring that any works to Land are carried out properly and that the Board and Diocesan Authority may be procuring or providing support to the Company 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 Board and the Diocesan Authority allowing the Land to be used for the purposes of the Academy, then the Secretary of State may require the Company and the Board 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 Board and the Diocesan Authority acknowledge the Secretary of State's right to terminate either the Supplemental Funding Agreement or the Master Funding Agreement in the circumstances envisaged in the Funding Agreement. The Secretary of State agrees with the Board and the Diocesan Authority before taking any such action and in particular serving any Termination Warning Notice to notify the Board and the Diocesan Authority that he intends to take action giving his reasons for such action and to allow the Board and the Diocesan Authority a reasonable opportunity to make representations regarding such action, including any actions that the Board 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.

20A) Without prejudice to the generality of clause 20 above, to the extent the Secretary of State has concerns as to the suitability of any person appointed as a Trustee or a member of the Company (the Relevant Appointee), the Secretary of State will notify the Diocesan Authority of his concerns before exercising any available remedies in respect of the Relevant Appointee under the Funding Agreement.

20B) As soon as possible following the Secretary of State providing notification under clause 20A, the Secretary of State and the Diocesan Authority will meet to discuss the Secretary of State's concerns. The Diocesan Authority agrees to provide any further information on the Relevant Appointee which is reasonably requested by the Secretary of State and:

(a) the Diocesan Authority acknowledges that the Secretary of State may, in his absolute discretion, carry out any additional due diligence on the Relevant Appointee and agrees to act reasonably in co-operating with any requests for assistance by the Secretary of State; and

(b) the Secretary of State agrees to share any information of concern with the Diocesan Authority and to consult with the Diocesan Authority as to what remedial action should be taken in respect of the Relevant Appointee.

20C) To the extent the Diocesan Authority agrees that the Secretary of State's concerns regarding a Relevant Appointee have merit, the Secretary of State acknowledges that the Diocesan Authority may, in the first instance, determine what remedial action to take in respect of that Relevant Appointee before the Secretary of State exercises any available remedies under the Funding Agreement.

20D) If the Diocesan Authority does not agree with the Secretary of State's concerns regarding a Relevant Appointee, or the Diocesan Authority (in the Secretary of State's opinion) unreasonably delays taking remedial action or does not otherwise (in the Secretary of State's opinion) take appropriate remedial action,

the Secretary of State shall issue a notice under the Funding Agreement requesting that the Diocesan Authority reconsiders its approach, together with any further supporting information of concern.

20E) To the extent the Diocesan Authority does not reconsider its approach, or otherwise does not take remedial action to the Secretary of State's satisfaction, the Secretary of State reserves the right to exercise any available remedies available to him under the Funding Agreement.

20F) Notwithstanding clauses 20D and 20E, the Secretary of State acknowledges and agrees that the decision to remove a Relevant Appointee is the sole responsibility of the Diocesan Authority.

21) Not used.

22) In the spirit of partnership, where the Board 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 Board and the Diocesan Authority provided these do not occur any more often than once every three years.

23E) The parties acknowledge that clauses 2.24 and 2.25 of the Master Funding Agreement apply to all academies. They explicitly require that pupils are taught about the theory of evolution, and prevent academy trusts from teaching 'creationism' as scientific fact.

23F) 'Creationism', for the purposes of clauses 2.24 and 2.25 of the Master Funding Agreement and clause 23E above, is any doctrine or theory which holds that natural biological processes cannot account for the history, diversity, and complexity of life on earth and therefore rejects the scientific theory of evolution. The parties acknowledge that Creationism, in this sense, is rejected by most

mainstream Churches and religious traditions, including the major providers of state funded schools such as the Church of England, as well as the scientific community. It does not accord with the scientific consensus or the very large body of established scientific evidence; nor does it accurately and consistently employ the scientific method, and as such it should not be presented to pupils at the Academy as a scientific theory.

23G) The parties recognise that the teaching of creationism is not part of prevailing practice in the English education system, but acknowledge that it is however important that all schools are clear about what is expected in terms of the curriculum which they need to provide. The parties further recognise that the requirement on every academy and free school to provide a broad and balanced curriculum, in any case prevents the teaching of creationism as evidence based theory in any academy or free school.

23H) The Secretary of State acknowledges that clauses 2.24 and 2.25 of the Master Funding Agreement, and clauses 23E and 23G above do not prevent discussion of beliefs about the origins of the Earth and living things, such as creationism, in Religious Education, as long as it is not presented as a valid alternative to established scientific theory.

TERMINATION

24) The Board may give not less than two years' written notice to the Company and the Secretary of State to terminate this Agreement.

25) In the event of any termination of either the Supplemental Funding Agreement or the Master 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 Board 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 Board Diocesan Authority at its registered office or such other addressee/address as may be notified in writing from time to time by the Board/Diocesan Authority and, in the case of a notice or communication from the Board/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 Company, Board 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 2017

Executed on behalf of the Company by:

Director

In the presence of:

Witness:

Address:

Occupation:

Executed on behalf of the Trustees by

Authorised Signatory **Authorised Signatory**

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

Duly Authorised

Execution by the Company as one of the parties to this deed can be either by a single director in the presence of a witness, or by two directors, or a director and company secretary

Executed on behalf of Manchester Diocesan Board of Education by affixing its Common Seal in the presence of:

Trustee

Trustee/Secretary

Department for Education

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