

MODEL CHURCH SUPPLEMENTAL AGREEMENT

**GOOD SHEPHERD CATHOLIC PRIMARY AND NURSERY SCHOOL**

**CHURCH SUPPLEMENTAL AGREEMENT**

**Relating to Good Shepherd Catholic Primary and Nursery School**

29 January 2016

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**MODEL CHURCH SUPPLEMENTAL AGREEMENT**

**GOOD SHEPHERD CATHOLIC PRIMARY AND NURSERY SCHOOL**

**CHURCH SUPPLEMENTAL AGREEMENT**

**CONTENTS:**

<b>SECTION</b>	<b>CLAUSE NO</b>
<b>INTRODUCTION</b>	<b>1 – 7</b>
<b>LEGAL AGREEMENT FOR USE OF LAND</b>	<b>8 – 11</b>
<b>PARTNERSHIP IN THE PROVISION OF EDUCATION</b>	<b>12 - 13</b>
<b>PROTECTION OF PUBLIC INVESTMENT IN LAND</b>	<b>14 - 17</b>
<b>CAPITAL GRANTS</b>	<b>18 - 19</b>
<b>INTERVENTION AND SUPPORT</b>	<b>20 – 23</b>
<b>TERMINATION</b>	<b>24 – 26</b>
<b>MISCELLANEOUS</b>	<b>27 - 30</b>

## MODEL CHURCH SUPPLEMENTAL AGREEMENT

“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 Trustees 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;<sup>1</sup>

“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 Good Shepherd Catholic Primary and Nursery School, Dunley Drive, New Addington, Croydon CR0 0RG and registered under title numbers SY185751 and SGL22861 from which the Academy operates;

“Scheme for Raising Achievement” means a scheme agreed between the Academy Trust and the Umbrella Trust, to be applied by the Umbrella Trust for the purposes of maintaining and improving standards of performance of the Academy;

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

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<sup>1</sup> 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.

## MODEL CHURCH SUPPLEMENTAL AGREEMENT

### INTRODUCTION

- 1) This Agreement is being entered into in acknowledgement of the consent hereby given by the Archbishop of Southwark and the Trustees to the conversion of Good Shepherd Catholic Primary and Nursery School to 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 Good Shepherd Catholic Primary and Nursery School a company limited by guarantee registered at Companies House with company number 09918358 ("the Academy Trust").
- 2) This Agreement is made between the Secretary of State and the Southwark Roman Catholic Diocesan Corporation (a company registered with Companies House no. 00393665, being the corporate body which is the Custodian Trustee of the lands and properties of the Roman Catholic Diocese of Southwark Diocesan Trust (established by a deed dated 21 October 1927 and registered as a charity with the Charity Commission, no 235468) (together, "the Trustees").
- 3) The Archbishop of Southwark of Archbishop's House, 150 St George's Road, London SE1 6HX (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 his role in relation to the Academy ("the Diocesan Authority").
- 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.
- 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;

"Archbishop" means the Archbishop of Southwark and includes any person or office exercising ordinary jurisdiction in his name;

## MODEL CHURCH SUPPLEMENTAL AGREEMENT

“Umbrella Trust” means The Croydon Catholic Primary Schools Umbrella Trust the charitable trust established by the Archbishop and other diocesan officers pursuant to which the Academy Trust and other local Catholic academy trusts who have agreed or who have been required by the Archbishop to be beneficiaries of the Umbrella Trust, shall collaborate together in order to maintain and where necessary improve standards.

- 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 Good Shepherd Catholic Primary and Nursery 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

## MODEL CHURCH SUPPLEMENTAL AGREEMENT

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 its family of Catholic 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) and which is supported by the Umbrella Trust), 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, the Diocesan Authority and the Umbrella Trust; and

agrees:

## MODEL CHURCH SUPPLEMENTAL AGREEMENT

- (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 Catholic school shall be discussed in an appropriate manner recognising each party's viewpoint.

12AA) The Academy Trust hereby commits to be a beneficiary of the Umbrella Trust and acknowledges the implications and responsibilities involved in that, which are reflected in the Articles of Association of the Umbrella Trust and this Agreement, and are subject to any direction or guidance issued from time to time by the Archbishop or the Secretary of State in relation to maintaining and improving standards of performance at the Academy. The Academy Trust acknowledges its responsibility to the Archbishop as a beneficiary of the Umbrella Trust and as a Catholic school in the Diocese to commit in particular and, without prejudice to the generality of its commitments as such a beneficiary, to the Scheme for Raising Achievement adopted by the Umbrella Trust. This is in recognition of the goal shared by all the parties to this Agreement (and the other beneficiaries of the Umbrella Trust) that the Academy Trust (and its fellow beneficiaries) will provide and secure a high quality education for all pupils within all Academies supported by the Umbrella Trust.

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:

## MODEL CHURCH SUPPLEMENTAL AGREEMENT

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



## MODEL CHURCH SUPPLEMENTAL AGREEMENT

rebuilding and reinstating the Land (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;

- e) 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);
- f) not knowingly do anything whereby any policy of insurance relating to the Land may become void or voidable; and
- g) 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 acknowledges the Secretary of State's power to pay Capital Grant to the Academy Trust and in recognition of the Trustees' interest in any Capital

## MODEL CHURCH SUPPLEMENTAL AGREEMENT

Grant paid in relation to expenditure on Land, the Secretary of State commits to the following:

- a) to acknowledging the Trustees' 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' interest in ensuring that any works to Land are carried out properly and that the Trustees and 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 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 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 Umbrella Trust, 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.

20A) Without prejudice to the generality of clause 20 above, to the extent the Secretary of State has concerns as to the suitability of a Trustee or a member of

## MODEL CHURCH SUPPLEMENTAL AGREEMENT

the Academy Trust (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,

## MODEL CHURCH SUPPLEMENTAL AGREEMENT

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 Trustees and/or the Diocesan Authority puts forward a school improvement plan, whether or not in the circumstances envisaged in clause 20 if advanced by the Umbrella Trust or pursuant to the Scheme for Raising Achievement, 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 and/or Diocesan Authority provided these do not occur any more often than once every three years.

23A-D) Not used

23E) The parties acknowledge that clauses 2.43 and 2.44 of the 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 2.43 and 2.44 of the 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 Catholic Churches, as well as the scientific community. It does not accord with the scientific consensus or the very large

## MODEL CHURCH SUPPLEMENTAL AGREEMENT

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 2.43 and 2.44 of the 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 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 at its registered office or such other addressee/address as may be notified in

## MODEL CHURCH SUPPLEMENTAL AGREEMENT

writing from time to time by the Trustees and, in the case of a notice or communication from the Trustees 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, the 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.

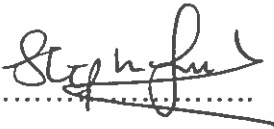
30) For the avoidance of doubt nothing in this Agreement is intended to vary or amend any provision of the Funding Agreement or any obligation arising under it.

This Agreement was executed as a Deed on *29 January* 2016

MODEL CHURCH SUPPLEMENTAL AGREEMENT

Executed on behalf of Academy Trust by:

  
.....  
**Director**

  
.....

**Witness**

**Name:** STEPHEN SMITH.

**Address:** 87 HUNBER ROAD,  
CHESHAM (UK)  
CM1 7PF.

MODEL CHURCH SUPPLEMENTAL AGREEMENT

Executed on behalf of the Trustees by [                      ] and  
[                      ] two of their number under an authority  
conferred pursuant to section 333 of the Charities  
Act 2011

  
.....  
Authorised Signatory

  
.....  
Authorised Signatory

Executed on behalf of Diocesan Authority by

  
.....  
**Archbishop or representative**



## MODEL CHURCH SUPPLEMENTAL AGREEMENT

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

A handwritten signature in black ink, appearing to read "JCCap", is written over a horizontal dotted line.

**Duly Authorised**

