



Department  
for Education

# Ermine Street Church Academy

# Church supplemental agreement: multi model

June 2014

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## INTRODUCTION

- 1) This Agreement is being entered into in respect of Ermine Street Church Academy and the completion of a Supplemental Funding Agreement (the "Supplemental Funding Agreement") which, with its Master Funding Agreement (the "Master Funding Agreement") dated 26 February 2015 (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 The Diocese of Ely Multi-Academy Trust a company limited by guarantee registered at Companies House with company number 08464996 ("the Company").
- 2) Not used.
- 3) The Board of Education of the Diocese of Ely established pursuant to the Diocesan Boards of Education Measure 1991 and the Methodist Academies and Schools Trust, a company limited by guarantee registered at Companies House with company number 07881901 (each an "appropriate diocesan authority" for the Academy for the purposes of the Education Acts (which shall include the Academies Act 2010)) are also party to this Agreement in recognition of their respective roles and responsibilities in relation to the Academy (together, "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 Diocesan Authority 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 3.5 of the Master Funding Agreement;

“DfE” means Department for Education and any successor;

“Directors” means the directors of the Company appointed pursuant to the Articles of Association;

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**

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 **Ermine Street Church Academy** (“the Academy”) and having such characteristics as are referred to in clause 1.13 of the Master 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 Diocesan Authority as set out in this Agreement;

the Parties agree to be bound by 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) Not used.

## **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 Diocesan Authority's respective strategic roles in the provision of education through the families of Church of England and Methodist 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 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 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 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 joint Church of England and Methodist 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.

14) Not used.

15) Not used.

16) Not used.

17) Not used.

## **CAPITAL GRANTS**

18) Not used.:

19) Not used.

## **INTERVENTION AND SUPPORT**

20) The Diocesan Authority acknowledges 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 Diocesan Authority before taking any such action and in particular serving any Termination Warning Notice to notify the Diocesan Authority that he intends to take action giving his reasons for such action and to allow the Diocesan Authority a reasonable opportunity to make representations regarding such action, including any actions that 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 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 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 Diocesan Authority provided these do not occur any more often than once every three years.

23A) The parties acknowledge that clause 1.18 of the Funding Agreement applies to all new free schools and all new provision academies. It constitutes a specific contractual requirement to avoid unlawful discriminatory practice.



23B) The the Academy Trust acknowledges that the Academy Trust, as a public authority, is subject to the entirety of the Equality Act 2010 (the "Act"), including the Public Sector Equality Duty ("PSED") arising under section 149 of the Act. The PSED requires that in exercising its functions, the Academy Trust has due regard to the need to:

(a) eliminate discrimination, harassment, victimisation and any other conduct that is prohibited by or under the Act;

(b) advance equality of opportunity between persons who share a relevant protected characteristic and persons who do not share it;

(c) foster good relations between persons who share a relevant protected characteristic and persons who do not share it.

23C) The Secretary of State acknowledges that schools designated with a religious character have a number of freedoms in law, enabling them to express their distinctive character. These freedoms cover areas including the provision of religious education, collective worship, admissions and employment of staff.

23D) Notwithstanding the freedoms afforded by law to all schools designated with a religious character, the parties recognise that the Academy Trust remains bound by the provisions of the Act. The parties acknowledge that clause 1.18 of the Funding Agreement means that any new free school or new provision academy that is found to have failed to comply with the Act or to discharge its PSED, as it relates to faith, is likely also to have breached clause 1.18 and vice versa. For the avoidance of doubt, clause 1.18 of the Funding Agreement does not in itself change or extend the requirements placed on the Academy Trust by the Act/PSED.

23E) The parties acknowledge that clauses 2.24 and 2.25 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 2.24 and 2.25 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 Anglican and Methodist Churches, 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 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) Not used.

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 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 Diocesan Authority at its registered office or such other addressee/address as may be notified in writing from time to time by Diocesan Authority and, in the case of a notice or communication from the 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 neither the Company or the 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 11<sup>th</sup> July 2016

Executed on behalf of the Company by:

*Howard Delle*

.....  
**Director**

In the presence of:

Witness... *Karen Colborn*

Address... *THE SANCTUARY  
WESTMINSTER LONDON  
SW1P 3JT*

Occupation... *Secretary / PA*

Executed on behalf of Diocesan Authority:

Executed on behalf of Ely Diocesan Board of Education by  
affixing the Common Seal of the Ely Diocesan  
Board of Finance in the presence of

.....  
**Director**

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

This Agreement was executed as a Deed on 17<sup>th</sup> July 2016

Executed on behalf of the Company by:

.....  
**Director**

In the presence of:

Witness.....

Address.....

Occupation.....

Executed on behalf of Diocesan Authority:

Executed on behalf of Ely Diocesan Board of Education by affixing the Common Seal of the Ely Diocesan Board of Finance in the presence of



P. B. Mawren  
.....  
**Director**

*[Handwritten Signature]*  
.....  
**Director/Secretary**

Executed on behalf of the Methodist Academies and Schools Trust by:

.....  
Director

JAMES A G ROYAL

In the presence of:

Witness AR.....

Address 29 Fryant Close  
Blackwood  
Bathon BL6 5BL.

Occupation BUSINESS MANAGER

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

.....Maire Tebryan.....

Duly Authorised





Department  
for Education

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