SAMPFORD PEVERELL CHURCH OF ENGLAND

ACADEMY

SUPPLEMENTAL AGREEMENT

1 NOVEMBER 2011

SAMPFORD PEVERELL CHURCH OF ENGLAND

ACADEMY

SUPPLEMENTAL AGREEMENT

CONTENTS:

SECTION	CLAUSE NO
INTRODUCTION	1 – 7
LEGAL AGREEMENT FOR USE OF LAND	8 – 11
PARTNERSHIP IN THE PROVISION OF EDUCATION	12 - 13
PROTECTION OF PUBLIC INVESTMENT IN LAND	14 - 18
CAPITAL GRANTS	19 - 20
INTERVENTION AND SUPPORT	21 – 24
TERMINATION	25 – 27
MISCELLANEOUS	27 - 31

INTRODUCTION

1) This Agreement is being entered into in acknowledgement of the consent hereby given by The Exeter Diocesan Trust to the conversion of Sampford Peverell Church of England 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 The Primary Academies Trust a company limited by guarantee registered at Companies House with company number [ ] ("the Academy Trust").

2) This Agreement is made between the Secretary of State The Exeter Diocesan Trust a company limited by guarantee registered with Companies House with number 00144227 of The Old Deanery, The Cloisters, Exeter, Devon, EX1 1HS, as trustees of Sampford Peverell Church of England Primary School ("EDT").

3) The Exeter Diocesan Board of Education 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").

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

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

"Additional Governors" means Governors who may be appointed by the Secretary of State under the Articles of Association;

"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;

"Further Governors" means Governors who may be appointed by the Secretary of State under the Articles of Association if a Special Measures Termination Event occurs;

"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[1] 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 EDT situated at and known as Sampford Peverell Church of England Primary School of Sampford Peverell, Tiverton, Devon, EX16 7BR which is party registered at the Land Registry under Title Number DN333544 whilst the remaining land is unregistered 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 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 the Sampford Peverell 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 EDT and the Diocesan Authority as set out in this Agreement;

EDT 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 EDT at law and pursuant to any trust deed governing EDT's 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 17) 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 25.

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 17 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 EDT 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 Academy Trust by EDT and the Diocesan Authority; and

agrees:

(A) to consider the use of his intervention powers as set out in Articles 60, 61, 62, 62A and 64 of the Articles of Association 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 set out in Article 62A of the Articles of Association 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 Articles of Association are no longer being complied with; and

(B) to maintain an open and frank dialogue with EDT 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 EDT 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,

EDT 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 EDT 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 EDT 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 EDT 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 EDT and the Academy Trust in so far as clause 14 regulates occupation the terms of the

lease shall prevail.

16) In so far as any Land qualifies as "publicly funded land" within the meaning of the Academies Act 2010 EDT hereby agree, for a period of 2 years from the date of this Agreement, not, without the prior written consent of the Secretary of State (such consent not to be unreasonably withheld), to dispose of all or part of the Land.

17) 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.

18) In relation to any land owned or leased by the Academy Trust (excluding any land leased to the Academy Trust by EDT, 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 EDT and the Diocesan Authority and having due regard to any concerns expressed by EDT and the Diocesan Authority.

CAPITAL GRANTS

19) EDT acknowledges the Secretary of State's power to pay Capital Grant to the Academy Trust and in recognition of EDT's interest in any Capital Grant paid in relation to expenditure on Land, the Secretary of State commits to the following:

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

20) 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 EDT allowing the Land to be used for the purposes of the Academy, then the Secretary of State may require the Academy Trust and EDT 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

21) EDT and the Diocesan Authority acknowledge the Secretary of State's right to terminate the Funding Agreement or to take action to appoint Further Governors or Additional Governors of the Academy Trust in the circumstances envisaged in the Funding Agreement and Articles of Association. The Secretary of State agrees with EDT and the Diocesan Authority before taking any such action to notify EDT and the Diocesan Authority that he intends to take action giving his reasons for such action and to allow EDT and the Diocesan Authority a reasonable opportunity to make representations regarding such action, including any actions that EDT 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.

22) Before taking any action to appoint Further Governors or Additional Governors, the Secretary of State will consider a request made by EDT and the Diocesan Authority that any Further Governors or Additional Governors the Secretary of State may appoint should include persons suggested to him by EDT and the Diocesan Authority.

23) In the spirit of partnership, where EDT and/or the Diocesan Authority puts forward a school improvement plan, whether or not in the circumstances envisaged in clause 21, 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.

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

TERMINATION

25) EDT may give not less than two years written notice to the Academy Trust and the Secretary of State to terminate this Agreement, such notice to expire on 31st August 2014 or any subsequent anniversary of that date.

26) 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 EDT 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.

27) Notwithstanding any termination or expiry of this Agreement the provisions of clause 26 shall continue to apply.

MISCELLANEOUS

28) 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 EDT and the Diocesan Authority at its registered office or such other addressee/address as may be notified in writing from time to time by EDT or the Diocesan Authority and, in the case of a notice or communication from EDT or 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.

29) 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.

30) The obligations of the parties are several and for the avoidance of doubt none of the Academy Trust, EDT 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.

31) 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 2011

Executed on behalf of THE PRIMARY ACADEMIES TRUST by:

Either

.....
Director

In the presence of:

Witness.....

Address.....

Occupation.....

Or

.....
Director

.....
Director/Secretary

Executed on behalf of THE EXETER DIOCESAN TRUST by affixing its Common Seal in the presence of:

+ Richard Exon:

.....

Authorised signatory

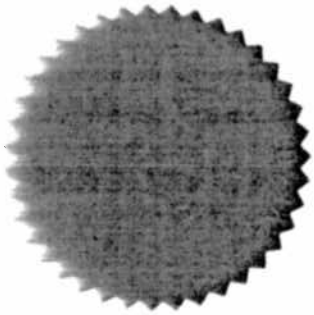
.....

Authorised signatory

Executed on behalf of THE EXETER DIOCESAN BOARD OF FINANCE LIMITED by affixing its Common Seal in the presence of:

.....
Authorised signatory

.....
Authorised signatory



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

.....

Duly Authorised