

THE MCAULEY CATHOLIC HIGH SCHOOL

SUPPLEMENTAL AGREEMENT

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1/7/2014

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INTRODUCTION

- 1) This Agreement is being entered into in acknowledgement of the consent hereby given by the Trustees to the conversion of The McAuley Catholic High 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 McAuley Catholic High School a company limited by guarantee registered at Companies House with company number 8936511 ("the Company").
- 2) This Agreement is made between the Secretary of State and the Diocese of Hallam Trustee as trustee of Roman Catholic Diocese of Hallam Trust, an unincorporated charitable trust registered with the Charity Commission with number 512021 ("the Trustee").
- 3) The Bishop of the Diocese of Hallam (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 Bishop").
- 4) The Company is also a party to this Agreement and acknowledges the commitments made by both the Secretary of State and the Trustee 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 Funding Agreement;

"DfE" means Department for Education and any successor;

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

"Institute Trustees" means the Trustees of the Institute of Our Lady of Mercy of the Generalate, Convent of Mercy, Cemetery Road, Yeadon, Leeds LS19 7UR a body corporate under Part 12 of the Charities Act 2011 and the trustees for the time being

of the Institute of Our Lady of Mercy, a registered charity (charity registration number: 290544);

“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 Trustee insures against from time to time (including, but not limited to, such insurance as may be necessary to meet its obligations under the Lease) 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) of which the Trustee is either the freehold or the leasehold proprietor situated at and known as The McAuley Catholic High School, a Catholic Voluntary Academy, Cantley Lane, Doncaster, South Yorkshire, DN3 3QF and registered under freehold title number SYK557296 and leasehold title number SYK370970 from which the Academy operates and references to Freehold Land and Leasehold Land shall be construed accordingly; and

“Lease” means the lease of the Leasehold Land granted by the Institute Trustees to the Trustee dated 31 May 1996 as varied by a Consent to Licence and Deed of Variation dated 1 May 2014 (“Consent to Licence and Deed of Variation”).

“LTA 1954” means the Landlord and Tenant Act 1954.

“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 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 The McAuley Catholic High School, a Catholic Voluntary Academy ("the Academy") and having such characteristics as are referred to in clause 12 of the Funding Agreement and in the Articles of Association;
- b) the Company undertaking to the Trustee to observe and perform all the covenants and conditions on the part of the Lessee (as defined in the Lease) contained in the Lease; and
- c) 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 Trustee and the Diocesan Bishop as set out in this Agreement;

the Trustee undertakes to the Secretary of State:

- i. to make the Freehold Land available for use by the Company; and
- ii. to make the Leasehold Land available for use by the Company whilst the Lease subsists and, for the avoidance of doubt, this obligation will terminate automatically in the event that the Lease terminates Provided That it is hereby agreed that in relation to the expiry of the term of the Lease the obligation shall cease one day before the date that is the last day of the term of the Lease

in a manner consistent with any restrictions imposed on the Trustee at law and pursuant to the Lease and any trust deed governing the Trustee's ownership of the Land and with the terms of this Agreement; and

The parties confirm that:

- i. the Trustee served a notice on the Company, as required by section 38A(3)(a) of the LTA 1954, applying to the tenancy created by this Agreement, before this Agreement was entered into;
- ii. Catherine Brown who was duly authorised by the Company to do so made a declaration dated 30 April 2014 in accordance with the requirements of section 38A(3)(b) of the LTA 1954; and

there is no agreement for lease to which this Agreement gives effect.

The Trustee and the Company (with the acknowledgement of the Secretary of State) agree that the provisions of sections 24 to 28 of the LTA 1954 are excluded in relation to the tenancy created by 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 Trustee's and the Diocesan Bishop'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)), 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 Trustee and the Diocesan Bishop; 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 Trustee and the Diocesan Bishop 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 Trustee and the Diocesan Bishop 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.

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 Trustee 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 Trustee 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 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 Freehold Land by the Company in the joint names of the Company and the Trustee and at the Company's expense the maintaining of the insurance of the Leasehold Land in accordance with the terms of the Lease 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 Freehold Land from time to time and in respect of the Leasehold Land is sufficient to cover the Lessee's (as defined in the Lease) obligations in respect of insurance under clause 2(6) of the Lease;
 - 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 Freehold 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 Freehold Land by the Company (provided that this clause should be satisfied if the Company and/or the Trustee 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. following the incidence of damage to or destruction of the Leasehold Land the application of the proceeds of the policy of the insurance received in accordance with the terms of the Lease;
 - 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 Freehold Land insured in the joint names of the Company and the Trustee with a reputable insurance office against loss or damage by the Insured Risks;

e) keep the Leasehold Land insured in the joint names of the Company the Trustee and the Institute Trustee in accordance with the terms of the Lease and the terms of the Consent to Licence and Deed of Variation

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

g) following the incidence of damage to or destruction of the Freehold 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;

h) following the incidence of damage to or destruction of the Leasehold Land apply the proceeds of the policy of insurance received in accordance with the terms of the Lease and the Consent to Licence and Deed of Variation;

g) produce to the Secretary of State, the Trustee and the Institute Trustees 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; and

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 Trustee 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 Trustee), 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 Funding Agreement without first consulting the Trustee and the Diocesan Bishop and having due regard to any concerns expressed by the Trustee and the Diocesan Bishop
- 18) In relation to the Lease the Company shall observe and perform the covenants and conditions on the part of the Trustee contained therein and indemnify the Trustee from and against all liability arising from any breach non-performance or non-observance thereof.

CAPITAL GRANTS

- 19) The Trustee acknowledges the Secretary of State's power to pay Capital Grant to the Company and in recognition of the Trustee'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 Trustee's right and the Institute Trustees' rights 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 Trustee's interest and the Institute Trustees' interests in ensuring that any works to Land are carried out properly and that the Trustees and the Diocesan Bishop may be procuring or providing support to the Company 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 the Trustee allowing the Land to be used for the purposes of the Academy, then the Secretary of

State may require the Company and the Trustee 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) The Trustee and the Diocesan Bishop 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 Bishop before taking any such action and in particular serving any Termination Warning Notice to notify the Trustee and the Diocesan Bishop that he intends to take action giving his reasons for such action and to allow the Trustee and the Diocesan Bishop a reasonable opportunity to make representations regarding such action, including any actions that the Trustee and the Diocesan Bishop 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) Not used.
- 23) In the spirit of partnership, where the Trustee and/or the Diocesan Bishop 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.
- 24) The Secretary of State agrees to meet the costs of any relevant statutory denominational inspection proposed by the Trustee and/or the Diocesan Bishop provided these do not occur any more often than once every three years.

TERMINATION

- 25) The Trustee may give not less than two years written notice to the Company and the Secretary of State to terminate this Agreement.
- 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 the Trustee and/or the Diocesan Bishop 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 25 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 the Trustee and the Diocesan Bishop at their registered office or such other addressee/address as may be notified in writing from time to time by the Trustee and the Diocesan Bishop and, in the case of a notice or communication from the Trustee and the Diocesan Bishop 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 Company, Trustee or the Diocesan Bishop 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.
- 32) The Trustee hereby assigns to the Company the benefit of the provisions of clause 3(2) of the Lease (for the avoidance of doubt as originally made) insofar only as it relates to improvements enlargements or the provision of new buildings on the demised premises after the date of this deed

This Agreement was executed as a Deed on

117 / 2014

Executed on behalf of The McAuley Catholic High School by:

CU Brown
Director

Adrian
Director/Secretary

Executed on behalf of the Trustee by:

John Rawsthorne
Director

E. Whitaker
Director/Secretary

Executed by the Right Reverend John Rawsthorne, Bishop of Hallam:

John Rawsthorne

Enochus

Apostolic
Administrators

In the presence of:

Name: CLARE THORPE

Address: S CLEEVE HILL GARDENS
SHEFFIELD S20 7NP.

Occupation: EDUCATION OFFICER

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

CLARE THORPE

Duly Authorised

