

DATED

**MEMBERS AGREEMENT: ST. MARY'S CATHOLIC PRIMARY SCHOOL,
CHURCHDOWN**

between

BISHOP OF CLIFTON

and

THE CLIFTON CATHOLIC DIOCESAN EDUCATION FOUNDATION

and

BERNARD BARTON-ANCLIFFE

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THIS AGREEMENT is dated

1 August

2011

PARTIES

- (1) **THE RIGHT REVEREND DECLAN LANG, THE BISHOP OF CLIFTON** of St Ambrose, North Road, Leigh Woods, Bristol, BS8 3PW (the **Bishop of Clifton**);
- (2) **CLIFTON CATHOLIC DIOCESAN EDUCATION FOUNDATION¹** of Alexander House, 160 Pennywell Road, Bristol BS5 0TX² (the **Diocesan Education Foundation**);
- (3) **Bernard Barton-Ancliffe** of Cheltenham Road East, Churchdown, Gloucester, United Kingdom, GL3 1HU (the **Chair of Governors**);

together the "Members"

BACKGROUND

- (A) St. Mary's Catholic Primary School, Churchdown (**Company**) is a private company limited by guarantee incorporated and registered in England and Wales with company number 07696498 whose registered office is at Cheltenham Road East, Churchdown, Gloucester, United Kingdom, GL3 1HU. The guarantee provided by each Member is £10.
- (B) The Members have agreed to enter into this agreement for the purpose of controlling their capacity as Members of the Company and to ensure that the Company, being a Catholic school within the Diocese of Clifton, shall at all times remain a Catholic school conducted in conformity with any trust deed governing the use of land used by the Company and in conformity with canon law and with the teachings of the Catholic Church and with any advice or directive issued by the Bishop of Clifton.
- (C) The Members acknowledge that in being a Catholic school the Company shall at all times serve as a witness to the Catholic faith in Our Lord Jesus Christ.
- (D) The Members acknowledge the Diocesan Education Foundation's role in the strategic management of the education affairs of the Diocese, a role derived

¹¹ This is the current name of the umbrella trust, but other options being considered are the "Clifton Catholic Diocesan Education Board", the "Clifton Catholic Diocesan Education Foundation" or the "Clifton Catholic Diocesan Education Trustees". It would be preferable to make sure there is no confusion between the Education body and the Diocesan Trustees and the Corporate Trustee and so using the word "Trustees" may be unhelpful. Some restrictions are imposed by Companies House with regard to these options but once a preferred name is agreed by the Trustees, WS will make an application to Companies House to effect the change.

² Please confirm if you want this changed to the St Ambrose address.

from the responsibility delegated to it by the Bishop of Clifton and the Diocesan Trustees.

AGREED TERMS

1. INTERPRETATION

1.1 The following definitions shall apply in this agreement.

Business Day: a day (other than a Saturday, Sunday or public holiday in the United Kingdom) when banks in the City of London are generally open for business.

Diocesan School Director: means the officer appointed by the Bishop with principal responsibility for the schools in the Diocese.

Diocesan Trustees: the Clifton Catholic Diocesan Trustees Registered an unincorporated charitable trust registered with the Charity Commission with number 233977 of St Ambrose, North Road, Leigh Woods, Bristol BS8 3PW.

Diocese: the Catholic diocese of Clifton.

Funding Agreement: means the funding agreement made pursuant to section 1 of the Academies Act 2010 made between the Secretary of State and the Academy on or around the date of this Agreement (as may be amended from time to time).

Governors: the governors appointed or elected to undertake the business of the Company in accordance with the articles of association of the Company and any reference to any category of Governor shall be a reference to that category in the articles of association.

Member: each of the parties from time to time to this agreement (including any person who becomes a party by executing a deed of adherence pursuant to *clause 4.2*), together with their respective successors and assigns and **Members** means all of them together.

School: means the school run by the Company.

Secretary of State: means the Secretary of State for Education

1.2 Clause headings do not affect the interpretation of this agreement.

1.3 A reference to a **person** includes a natural person, a corporate or unincorporated body (whether or not having a separate legal personality).

1.4 A reference to a particular law is a reference to it as it is in force for the time being taking account of any amendment, extension, application or re-

enactment, and includes any subordinate legislation for the time being in force made under it.

- 1.5 A reference to **Writing** or **written** includes faxes but not e-mail.
- 1.6 Words in the singular include the plural and in the plural include the singular.

2. BUSINESS OF THE COMPANY

- 2.1 Each Member shall, for as long as he is a Member of the Company, procure (so far as is lawfully possible in the exercise of his rights and powers as a Member of the Company) that the business of the Company is carried on in accordance with the objects in the articles of association, as adopted by the Company for the time being.
- 2.2 The Bishop of Clifton and the Diocesan Education Foundation acknowledge that the Chair of Governors is a Member in his capacity as the Chair of Governors of the School and as a representative of the Governors. Any obligation on the Chair of Governors as a Member under this agreement will be deemed to be satisfied by the Chair of Governors making the contents of this agreement known to the Governors and by seeking their commitment to observe the terms of this agreement when appointed as a Governor and throughout their term of office.
- 2.3 In fulfilling the objects of the Company the Members agree that the business of the Company as a school shall be conducted in recognition of the following:

General Acknowledgements

- (a) The School shall be conducted in accordance with the terms of the trust of the Diocese of Clifton and, being a Catholic school within the Diocese of Clifton, the School shall at all times serve as a witness to the Catholic faith in Our Lord Jesus Christ and shall at all times remain a Catholic school conducted in conformity with any trust deed governing the use of land used by the Company and in conformity with canon law and with the teachings of the Catholic Church and with any advice or directive issued by the Bishop of Clifton.
- (b) The School is provided for the education of persons who are baptised members of the Catholic Church and the admittance of any others persons shall be made only in conformity with any direction of the Bishop of Clifton.
- (c) The School is part of a family of Catholic schools and shall work towards the common good of all Catholic schools in the Diocese of Clifton.

- (d) The provision of religious education of the highest standard and collective worship will be undertaken in accordance with the teachings, rites and liturgical norms of the Catholic Church and will be subject to the authority and direction of the Bishop of Clifton.
- (e) Land held by the Diocesan Trustees is used by the School at the discretion of the Bishop and must be used for purposes which are consistent with the objects of the trust.

Catholic Character

- (f) The School will maintain and develop the religious character of the School as a Catholic School and no alteration shall be made to the religious character of the School or conduct as a Catholic school without the consent of the Diocesan Education Foundation and the Bishop of Clifton.
- (g) The School will submit to the canonical inspections and visitations of the Bishop of Clifton and any person appointed by him for the purpose of monitoring the Catholic life of the School and ensuring that the School is being conducted in accordance canon law and is following the practices and teachings of the Catholic Church and in order to allow the Diocesan Education Foundation to assess how well the School is being managed in light of the additional responsibilities and expectations of schools which are academies.

Governance

- (h) The School will comply with all directives issued by the Bishop of Clifton.
- (i) The School will adopt and in so far as it is able will comply with all policies and practices of the Diocesan Education Foundation and the Bishop of Clifton communicated to the School from time to time.
- (j) All Governors of the School undertake to fulfil and observe the objects and purposes for which the School has been established.
- (k) All Governors have a duty to act independently and not as agents of those who may have appointed them and will act with integrity, objectivity and honesty in the best interests of the School and shall be open about decisions and be prepared to justify those decisions except in so far as any matter may be considered confidential.
- (l) The School will review its policies and practices on a regular basis, having regard to recommendations made by the Diocesan Education Foundation and any officer appointed by the Bishop of Clifton to exercise his jurisdiction in relation to the School, in order to ensure that the governance of the School is best able to adapt to the changing political and legal environment.

- (m) The School will consider on an ongoing basis the need for training and skills development of Governors as well as considering succession planning to ensure robust practices are maintained and supervised particularly in light of the increasing autonomy of schools, making recommendations to the Bishop of Clifton with regard to the nomination of Foundation Governors as may be appropriate.
- (n) The Chair of Governors will meet annually with appropriate officers of the Diocese and with other schools in the Diocese to assess threats to schools generally and Catholic schools in particular and to share best practice.
- (o) The School will not implement any proposals for a change in status or for the expansion or contraction of the School without the written consent of the Diocesan Education Foundation.
- (p) Unless the Diocesan Education Foundation otherwise agrees in writing, Governors will appoint the chair and vice chair from amongst the Foundation Governors.
- (q) Unless the Diocesan Education Foundation otherwise agrees in writing and except for principal or head teacher or the parish priest, Governors will not seek re-election or reappointment as a Governor if to do so would mean that they will be entering a 4th term of office.

Financial Management

- (r) The School acknowledges that neither the Bishop of Clifton nor the Diocesan Education Foundation nor the Diocesan Trustees has financial responsibility for the School in any situation.
- (s) The School will develop appropriate risk management strategies adopting financial prudence and will comply with both legal requirements and guidance issued by or on behalf of the Secretary of State for Education and any recommendations made by officers of the Diocese.
- (t) The School will provide to the Diocesan Education Foundation copies of any return provided to the Department for Education (or any body set up to oversee the finances of schools) including the Annual Report and Annual Return.
- (u) The School will notify the Diocesan Education Foundation of any significant financial liability that the School is contemplating taking on.
- (v) The School will inform and keep the Diocesan Education Foundation informed of any matter which is likely to be a cause for concern to the Diocesan Education Foundation, the Diocesan Trustees and/or the Bishop (generally but not exclusively this will involve matters affecting the Catholic life of the School, matters affecting key

personnel, financial matters, matters affecting buildings and the business plan for the School).

- (w) The School will inform the Diocesan School Director of any need for significant unplanned expenditure and will discuss with the officers of the Diocese options for identifying available funding.
- (x) The School will provide copies of minutes of all meetings of Governors including minutes of the meetings of the Finance and Premises sub-committees, to the Diocesan Education Foundation and will share with the Diocesan School Director following a reasonable request any educational and financial data which the School has, including the operation of any capital or revenue reserves.

Buildings Maintenance and Capital Expenditure

- (y) The Governors will ensure that at all times any land used by the School will not be used for purposes which would not be consistent with the teachings and practices of the Catholic Church and that any lettings of School premises shall be in accordance with any policy issued from time to time by the Diocesan Education Foundation.
- (z) The School will consult with the Diocesan Education Foundation and share information about any planned significant maintenance and replacement of buildings and facilities used by the School and will not undertake any capital works to the buildings or any part of the School site without first obtaining the written consent of the Diocesan Education Foundation .
- (aa) The School shall develop in conjunction with the Diocesan Education Foundation a 5 year estate management strategy that will identify the suitability of facilities in light of long term curriculum needs and the need for and availability of capital investment to meet the School's responsibility to ensure the buildings are maintained to a good standard.
- (bb) Where the Diocesan Trustees are not putting in place insurance for the School site, the Company will be required to and will be expected to adopt the Diocese's preferred insurer namely the Catholic Church Insurance Association. The School will obtain professional advice on the reinstatement value when such insurance is being renewed and will ensure that any insurance is taken out (in joint names with the Diocesan Trustees) in the full reinstatement value and will make up any shortfall from its own funds.

Admissions

- (cc) The School will not change its admissions criteria without the written consent of the Diocesan Education Foundation and the Bishop of Clifton.

Employment of the Principal and Key Teaching Staff

- (dd) The head teacher or principal of the School as well as the deputy head teacher, the head or co-ordinator of religious education and any chaplain or reserve post and (unless otherwise agreed in writing with the Diocesan Education Foundation) those with pastoral responsibilities in the School shall be practising Catholics in full communion with the Church.
- (ee) Governors will ensure that the employment of staff in the School shall be consistent with the policies from time to time notified to Catholic schools by the Catholic Education Service and the Bishop of Clifton.

Support for Other Schools

- (ff) The School will work in support and partnership with the other Catholic schools in the Diocese of Clifton on all aspects of school life.
- (gg) The School will work collaboratively with the other Catholic schools in the Diocese sharing resources and know how as may be appropriate with the following objectives in mind, to support each other to:
 - (i) achieve consistently high standards of learning and teaching;
 - (ii) develop cost effective curriculum design and collaboration which optimises opportunities for students and provides added value progress for them;
 - (iii) provide support building upon individual specialisms and/or areas of identified strength between the schools to improve key aspects of performance;
 - (iv) achieve best value in service delivery especially where partnership working can add value.

3. MATTERS REQUIRING CONSENT OF THE MEMBERS

Each Member shall, for as long as he is a Member, procure (so far as is lawfully possible in the exercise of his rights and powers as a Member of the Company) that the Company shall not, without the prior written consent of all Members:

- (a) cease to be a private company or change (by whatever means) the nature of the business conducted by the Company in accordance with clause 2; or

- (b) amend its articles of association or the objects contained in its articles of association; or
- (c) change the name of the Company; or
- (d) sell or otherwise dispose of the whole or any part of its undertaking, property, assets, or any interest in them or contract to do so whether or not for valuable consideration; or
- (e) conduct its business otherwise than in the ordinary course of business on an arm's length basis or otherwise except in accordance with its objects as a charity; or
- (f) do, permit or allow to be done any act or thing whereby the Company may be wound-up, or enter into any compromise or arrangement under the Insolvency Act 1986; or
- (g) merge or amalgamate with any other company or undertaking, or acquire directly or indirectly any interest in any shares or other security convertible into shares of any other company, or form or acquire any subsidiary; or
- (h) borrow any money in excess of any limits agreed in writing from time to time between the Members, or create any mortgage, debenture, pledge, lien or other encumbrances over the undertaking or assets of the Company, or factor, assign, discount or otherwise dispose of any book debts or other debts of the Company, acknowledging that the Company would also need to obtain the consent of the Secretary of State to such matters; or
- (i) give any guarantee, make any payment or incur any obligation or act as surety otherwise than in connection with the Company's ordinary business for the time being acknowledging that the Company would also need to obtain the consent of the Secretary of State to such matters; or
- (j) lend or agree to lend, grant any credit or make any advance to any person otherwise than in the ordinary course of the business of the Company; or
- (k) hold any meeting of the Members or purport to transact any business at such meeting, unless each Member is present, whether in person or by proxy.

4. APPOINTING NEW MEMBERS AND CEASING TO BE A MEMBER

- 4.1 No Member shall transfer or assign its membership of the Company and shall only agree to appoint new members in accordance with article 16 of the articles of association.

4.2 Any new member shall be required to enter into a deed of adherence agreeing to be bound by the terms of this agreement.

4.3 Any Member appointed in consequence of his post shall resign as a member on resignation of his post.

5. TERMINATION

5.1 This agreement terminates immediately upon the occurrence of any of the following events:

- (a) the passing of a resolution for the winding up of the Company; or
- (b) the appointment of a receiver, administrator or administrative receiver over the whole or any part of the assets of the Company or the making of any arrangement with the creditors of the Company for the affairs, business and property of the Company to be managed by a supervisor; or
- (c) the termination of the Funding Agreement.

5.2 Termination of this agreement shall be without prejudice to the rights or obligations of any Member accrued prior to such termination, or under any provision which is expressly stated not to be affected by such termination including in respect of any prior breach of this agreement.

5.3 Following the passing of a resolution for the winding-up of the Company, the Members shall endeavour to agree a suitable basis for dealing with the interests and assets of the Company and shall endeavour to ensure that:

- (a) all existing contracts of the Company are performed so far as resources permit;
- (b) no new contractual obligations are entered into by the Company; and
- (c) the Company is wound up as soon as practicable.

5.4 The following provisions of this agreement remain in full force after termination:

- (a) this *clause* 5;
- (b) *clause* 7 (No partnership);
- (c) *clause* 8 (Confidentiality);
- (d) *clause* 9 (Notices);
- (e) *clause* 13 (Whole agreement); and
- (f) *clause* 16 (Governing law and jurisdiction).

6. STATUS OF THIS AGREEMENT AND THE PARTIES' OBLIGATIONS

- 6.1 Each Member shall exercise all voting rights and other powers of control lawfully available to him as a Member of the Company so as to procure that, at all times during the term of this agreement, the provisions of this agreement are duly and promptly observed and given full force and effect according to its spirit and intention.
- 6.2 If any provisions of the articles of association of the Company (other than article 4) at any time conflict with any provisions of this agreement, this agreement shall prevail as between the parties to it and each of the Members shall, whenever necessary, exercise all voting and other rights and powers lawfully available to him as a Member of the Company so as to procure the amendment, waiver or suspension of the relevant provision of the articles of association to the extent necessary to permit the Company and its affairs to be administered as provided in this agreement.

7. NO PARTNERSHIP

The Members are not in partnership with each other, nor are they agents of each other.

8. CONFIDENTIALITY

Each Member undertakes that he shall not at any time after the date of this agreement (or, if later, the date he became a party to it) use, divulge or communicate to any person (except to his professional representatives or advisers or as may be required by law or any legal or regulatory authority) any confidential information concerning the terms of this agreement, the business or affairs of the other Members or the Company which may have (or may in future) come to his knowledge, and each of the Members shall use his reasonable endeavours to prevent the publication or disclosure of any confidential information concerning such matters.

9. NOTICES

- 9.1 Any notice given under this agreement shall be in writing and shall be delivered by hand, transmitted by fax, or sent by pre-paid first class post or recorded delivery post to the address of the party as set out above or to such other address notified to the other parties. A notice delivered by hand is deemed to have been received when delivered (or if delivery is not in business hours, 9.00 am on the first Business Day following delivery). A correctly addressed notice sent by pre-paid first class post or recorded delivery post shall be deemed to have been received at the time at which it would have been delivered in the normal course of post. A notice sent by fax

to the fax number of the relevant party shall be deemed to have been received at the time of transmission.

10. SEVERANCE

- 10.1 If any provision (or part of a provision) of this agreement is found by any court or administrative body of competent jurisdiction to be invalid, unenforceable or illegal, the other provisions shall remain in force.
- 10.2 If any invalid, unenforceable or illegal provision would be valid, enforceable and legal if some part of it were deleted, the provision shall apply with whatever modification is necessary to give effect to the commercial intention of the parties.

11. VARIATION AND WAIVER

- 11.1 Any variation of this agreement shall be in writing and signed by or on behalf of all the parties for the time being.
- 11.2 No failure or delay by a party to exercise any right or remedy provided under this agreement or by law shall constitute a waiver of that or any other right or remedy, nor shall it preclude or restrict the further exercise of that or any other right or remedy. No single or partial exercise of such right or remedy shall preclude or restrict the further exercise of that or any other right or remedy.
- 11.3 Unless specifically provided otherwise, rights and remedies arising under this agreement are cumulative and do not exclude rights and remedies provided by law.

12. ASSIGNMENT

- 12.1 No person may assign, or grant any encumbrance over, or deal in any way with, any of his rights under this agreement or any document referred to in it, or purport to do any of the same, without, in each case, the prior written consent of all the parties for the time being (such consent not to be unreasonably conditioned, withheld or delayed).
- 12.2 Each person that has rights under this agreement is acting on his own behalf.

13. ENTIRE AGREEMENT

- 13.1 This agreement constitutes the whole agreement between the parties and supersedes any previous arrangement, understanding or agreement between them relating to the subject matter they cover.
- 13.2 Each party acknowledges that, in entering into this agreement, he does not rely on, and shall have no remedy in respect of, any statement, representation, assurance or warranty of any person other than as expressly set out in this agreement or those documents.
- 13.3 Nothing in this *clause* 13 operates to limit or exclude any liability for fraud.

14. THIRD PARTY RIGHTS

A person who is not a party to this agreement shall not have any rights under the Contracts (Rights of Third Parties) Act 1999 to enforce any term of this agreement.

15. COUNTERPARTS

This agreement may be executed in any number of counterparts, each of which when executed and delivered shall constitute an original of that agreement, but all the counterparts shall together constitute the same agreement. No counterpart shall be effective until each party has executed at least one counterpart.

16. GOVERNING LAW AND JURISDICTION

- 16.1 This agreement and any disputes or claims arising out of or in connection with its subject matter or formation (including non-contractual disputes or claims) are governed by and construed in accordance with the laws of England.
- 16.2 The parties irrevocably agree that the courts of England have exclusive jurisdiction to settle any dispute or claim that arises out of or in connection with this agreement or its subject matter or formation (including non-contractual disputes or claims).

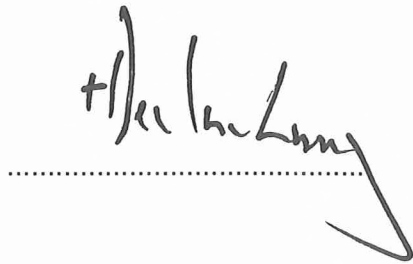
This agreement has been entered into on the date stated at the beginning of it.

Signed on behalf of [Clifton Catholic Diocesan Education Consortium] by:



Director

Signed by or on behalf of the **Bishop of Clifton**:



Signed by [], the **Chair of Governors**:

