**ANNUAL MEMBERSHIP AGREEMENT**

This is an agreement (the "**Agreement**") between Magic Breakfast, a registered charity in England and Wales (number 1102510), a company limited by guarantee incorporated and registered in England and Wales with company number 04977015 whose registered address is 190 High Holborn, London, WC1V 7BH ("**Magic Breakfast**" or “**we**”) and the school detailed below (“**School**” or “**you**”):

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| --- | --- |
| Name of School (and name of single academy trust/multi-academy trust, if applicable) | School name: St Clare’s Catholic Primary School |
| Address of School | Robert Road  Birmingham  B20 3RT |
| Name and contact details of main School contact | Name: Janet Hynes-landau  Email: j.hynes-landau@stclare.bham.sch.uk  Phone number: |
| Duration of the Agreement | 12 months |
| Start Date of Agreement | April 1st 2023 |
| Annual Membership Fee | £1250+VAT |
| Preferred Payment Method | Invoice with BACS payment |
| Invoice contact name | Marie Naughton |
| Invoice contact email | m.naughton@stclare.bham.sch.uk |
| Legal name (if different) |  |
| PO required? | Yes |
| If PO required PO number | 5034 |

**The aim of Magic Breakfast is to ensure that no child or young person starts the day too hungry to learn.**  We value working together with schools to tackle child hunger, and to help schools move towards and maintain the optimum breakfast provision.

**Requirements of the membership School:**

1. You commit to ensuring that all children and young people are able to access a healthy breakfast without stigma or barrier and that children and young people at risk of hunger are identified and actively targeted to attend in school breakfast provision.
2. You will ensure payment of the above stated fee within 30 days of receipt of invoice.
3. You will ensure that all subsidised food supplied by Magic Breakfast will be used appropriately and with Magic Breakfast’s charitable purpose in mind. For the avoidance of doubt, this means that other than in exceptional circumstances you must not offer this food at break, lunch or for after school purposes.
4. Food must be ordered **for the named School only** – if you wish to join together to place a joint order, this must be agreed in advance by Magic Breakfast.
5. You will be solely responsible for running the breakfast provision, including ensuring that all necessary safeguarding measures are followed, and appropriate DBS checks are undertaken in relation to relevant staff and volunteers.  **To the fullest extent permissible in law, except as specified in the further terms set out below, Magic Breakfast accepts no responsibility for any loss or damage arising from the provision of the breakfast facility**.
6. You will be solely responsible for ensuring that all food provided to, and prepared for, children as part of the breakfast provision under this Agreement meets all relevant and applicable food safety and food preparation standards.
7. You agree to actively engage with us towards meeting the goals of the support including increasing reach and improving access to in school breakfast, and will meet Magic Breakfast staff on request, at reasonable intervals which shall be at least once per year.
8. You agree to supply all data required by us in the requested format within the timeframes specified with the request.
9. You agree to support the work of and help secure funding for Magic Breakfast by hosting visits (in person or virtual, as appropriate) with funders, potential funders, media and politicians, given reasonable notice, and will help Magic Breakfast provide corporate volunteering opportunities. A maximum of 2 additional visits per school per year will be requested.

**Requirements of Magic Breakfast:**

1. Magic Breakfast will provide the membership School with the ability to order enough **healthy breakfast food for the number of children being fed with regular deliveries straight to the school door**.
2. **Magic Breakfast will provide access to personal support** from a dedicated Magic Breakfast contact who covers your region. Magic Breakfast will provide tailored advice, any extra resources and new ideas and strategies we have seen working well in other schools.
3. Magic Breakfast will provide remote support but will also visit a minimum of once per year.
4. The membership School will be eligible to receive any other benefits that arise because of being a school supported by Magic Breakfast. This may include additional food items, products, services or offers of corporate support brokered by Magic Breakfast.
5. Magic Breakfast will monitor and discuss performance against our outcomes framework which will be shared with the membership School to ensure that there is optimization of our provision as well as support for any areas of improvement.

**Amendments to the Agreement during the Duration of the Agreement:**

Magic Breakfast can amend the terms of this Agreement subject to providing at least one months’ notice in writing of the changes to the email address provided on this Agreement.

If the membership School does not accept the amendments to the amended terms they are entitled to terminate the Agreement with 30 days’ notice in writing to [Servicedelivery@magicbreakfast.com](mailto:Servicedelivery@magicbreakfast.com) and a refund (pro rata) will be provided to cover the remainder of the duration of the Agreement that the provision will not be provided for.

**Annual renewals:**

The membership Agreement can be renewed each year with renewal being subject to Magic Breakfast having sufficient funding in place to be able to sustain this offer and the membership School meeting terms and conditions for renewal.

**Termination of the Agreement:**

Either party can cancel the Agreement at any time giving 30 days’ notice in writing. If the School chooses to give notice during the year (other than as a result of an amendment the school does not accept as set out above), then there will be no partial refund of the Annual Membership Fee.

We are fully committed to working with you to ensure that you can successfully run a breakfast provision and that all children can access a healthy breakfast without stigma or barrier. However, we may exercise our right to terminate your Annual School Membership in certain circumstances, including (but not limited to) if you commit a serious breach of this Agreement (for example, by not offering breakfast free of charge to target children, **or** by offering the subsidised food at break or lunch instead of at or before the start of the school day, **or** if your actions bring or are likely to bring Magic Breakfast’s name or reputation into disrepute, **or** for non-payment of our fees) or if you fail to remedy a breach in the timescale and manner notified by us to you, **or** failure to achieve baseline terms and conditions detailed in the outcome’s framework.

The full terms of this Agreement are set out in this document (including the end section headed “Further Terms of the School Annual Membership Scheme”) and accompanying outcomes framework.

By signing the School confirms that it has read all the terms of this Agreement and that the signatory below is duly authorised to commit to these terms as a representative of the School:

|  |  |  |  |
| --- | --- | --- | --- |
| Signed for and on behalf of **Magic Breakfast:** | | Signed for and on behalf of the School / Single Academy Trust / Multi Academy Trust | |
| Name: | Sue Cockcroft | Name: | Ciaran Murphy |
| Role: | Engagement Partner | Role: | Asst. head |
| Signature: | Text, letter  Description automatically generated | Signature: | C. Murphy |
| Date: | 1.3.23 | Date: | 6.4.23 |

**FURTHER TERMS OF ANNUAL SCHOOL MEMBERSHIP SCHEME**

1. **Defined Terms**

**"Data Protection Laws"** mean all applicable legislation and regulatory requirements in force from time to time in the UK relating to the use of personal data and the privacy of electronic communications, including (i) the Data Protection Act 2018, (ii) the retained EU law version of the General Data Protection Regulation (*(EU 2016/679*), and (iii) the Privacy and Electronic Communications Regulations 2003 (*SI 2003/2426*).

**"Force Majeure Event"** mean any cause affecting the performance by a party of its obligations under this Agreement arising from (a) acts of God, flood, drought, earthquake, storm or other natural disaster, (b) epidemic, pandemic or disease (including COVID-19), (c) terrorist attack, civil war, civil commotion or riots, war, threat of or preparation for war, armed conflict, impositions of sanctions, embargo, (d) nuclear, chemical or biological contamination or sonic boom and (e) collapse of buildings, fire, explosion or accident but excluding an event which a party could have prevented or to the extent it could have been mitigated by contingency planning.

"**Intellectual Property**" means any patents, trade marks, service marks, business names, copyrights, database rights, design rights, domain names, moral rights, inventions, confidential information, knowhow, utility models, plant variety rights and other intellectual property rights and interests (which may now or in the future subsist), whether registered or unregistered.

**"UK"** means the United Kingdom.

**"VAT"** means value added tax chargeable in the UK.

1. **Interpretation**
   1. Reference to legislation or a legislative provision is (a) a reference to it in force from time to time and (b) shall include all subordinate legislation made from time to time under that legislation or legislative provision.
2. **You agree and accept that:** 
   1. Magic Breakfast will use reasonable endeavours to ensure a high-quality delivery service. However, it is possible that on rare occasions we or our logistics partner may not be able to deliver breakfast items, for example as a result of a Force Majeure Event, extreme weather conditions or van breakdown. There cannot be any rebate of any part of the Fees as a result of non-delivery.
   2. Food delivery day and time cannot be guaranteed, as the flexible delivery time significantly reduces the cost of delivery for Magic Breakfast, which in turn allows us to offer this subsidised support.
   3. Magic Breakfast relies heavily on the goodwill of key partners in the food industry, who supply subsidised food and drink to us, which in turn we provide to schools. Food supply is subject to availability and the range on offer may change through the course of the year, either temporarily or permanently. We cannot guarantee that you will always receive all the breakfast items that you require to provide food for all children without disruption. In those occasional circumstances, you agree that you will make up the shortfall in breakfast items to ensure that all children who would be expected to benefit from the service are able to access a healthy breakfast.
   4. It is your sole responsibility to check that the breakfast items delivered to you match your order.
   5. Magic Breakfast will provide you with the ingredient and allergen information provided by the manufacturers of the products. It is your responsibility to ensure that each product is suitable for the children it is on offer to.
   6. Magic Breakfast’s intention is that the Annual Membership is an ongoing offer that can be renewed annually by mutual agreement, subject to us having sufficient funding to be able to offer this ongoing support. However, we do not guarantee this and we highly recommend that you develop a ‘back up plan’ that would support breakfast provision should we not have sufficient funding in place to renew this Agreement.
   7. Magic Breakfast intention is to provide food to schools that meet School Food Standards as set by the Department of Education. Should School Food Standards be revised, within the term of this Agreement, Magic Breakfast reserves the right to change the food offering if this is necessary to continue to meet School Food Standards.
3. **Payment**
   1. We shall submit an invoice for the Annual Membership Fee plus any applicable VAT following signature of this Agreement.
   2. If you anticipate that you will be unable to make any payment due to us under this Agreement, please contact your dedicated Magic Breakfast contact to discuss this as soon as possible. Notwithstanding this, if you fail to make the payment due to us under this Agreement by the due date for payment, we may contact you to discuss any payment issues. Without limiting our remedies under clause 10(Duration and end of this Agreement), we may suspend all services to you under this Agreement until payment has been made in full.
   3. All amounts due under this Agreement from you to Magic Breakfast shall be paid by in full without any set-off, counterclaim, deduction or withholding (other than any deduction or withholding of tax as required by law).
4. **Intellectual Property**
   1. All Intellectual Property relating to the Annual Schools Membership Scheme belongs to Magic Breakfast and shall remain in its ownership and control.

1. **Liability**
   1. To the extent permitted by law, our total liability in respect of all other losses arising under or in connection with this Agreement shall be capped at the amount paid or payable by you under this Agreement for the year in which the liability arises whether or not actually invoiced.
   2. Magic Breakfast accepts no liability or responsibility:
      1. to the fullest extent permitted by law, for any loss resulting from or in connection with food or drink that has been sold or donated to us.
      2. for any loss or damage of any kind arising directly or indirectly from your acts or omissions in connection with this Agreement.
      3. to the fullest extent permitted by law, for any losses arising from any act or omission by us other than in the case of fraud, wilful default, or gross negligence.
      4. Magic Breakfast accepts no liability for any indirect or consequential losses.
      5. Nothing in this Agreement limits any liability which cannot legally be limited, including liability for (a) death or personal injury caused by negligence and (b) fraud or fraudulent misrepresentation.
2. **Indemnity** 
   * 1. You shall indemnify Magic Breakfast against all liabilities, costs, expenses, damages and losses (including but not limited to any direct, indirect or consequential losses, loss of profit, loss of reputation and all interest, penalties and legal costs (calculated on a full indemnity basis) and all other reasonable professional costs and expenses suffered or incurred by Magic Breakfast arising out of or in connection with (a) your breach or negligent performance of this Agreement, (b) any claim made against Magic Breakfast by a third party arising out of or in connection with the supply of breakfast items, to the extent that such claim arises out of the breach, negligent performance or failure or delay in performance of this Agreement by you, your employees, agents or sub-contractors, or (c) any claim made against Magic Breakfast by a third party for death, personal injury or damage to property arising in connection with defective breakfast items, to the extent that the defect in the breakfast items is attributable to the acts or omissions of you, your employees, agents or sub-contractors.
     2. This indemnity shall not cover Magic Breakfast to the extent that a claim under it results from Magic Breakfast's fraud, gross negligence or wilful misconduct.
3. **Data protection**
   * 1. Each of Magic Breakfast and you shall comply at all times with all applicable Data Protection Laws in respect of any personal data processed by either of us pursuant to this Agreement. Magic Breakfast acknowledges, however, that data provided to by you in relation to children accessing the breakfast provision may be anonymised.
4. **Dispute Resolution, concerns, and complaints**
   1. If you receive any complaints relating to or arising in connection with the Annual School Membership scheme, you must promptly notify your dedicated Magic Breakfast contact and engage with us should we require further information.
   2. If either Magic Breakfast or you have any issues or concerns concerning this Agreement, they should be raised first with the School contact named at the start of this Agreement or dedicated Magic Breakfast contact, as appropriate, to be resolved informally.
   3. If the issue/concern/dispute cannot be resolved informally within 3 weeks of it being raised, the School contact or dedicated Magic Breakfast contact (as appropriate) may serve a written notice on the other notifying them of the dispute and providing sufficient information. If the points of contact are unable to resolve the dispute within 14 days of such written notice, the dispute shall promptly be referred by them to a more senior manager of the school and of Magic Breakfast who shall meet as soon as reasonably practicable to seek to resolve the dispute.
   4. If the senior managers of both parties are unable to resolve the dispute within 14 days the parties will make all reasonable effort to promptly settle it by mediation in accordance with the Centre for Effective Dispute Resolution (“**CEDR**”) Model Mediation Procedure. Unless otherwise agreed between the parties, the mediator will be nominated by CEDR. To initiate the mediation a party must give notice in writing to the other party (the "**ADR Notice**"). A copy of the request should be sent to CEDR. Unless otherwise agreed, the mediation will start not later than 28 days after the date of the ADR notice.
5. **Duration and end of this Agreement** 
   1. The Agreement shall commence at the start date and finish at the end date as advised on page 1 of this Agreement, subject to the following provisions relating to early termination.
   2. Either party may terminate this Agreement on 30 days’ written notice.
   3. Magic Breakfast may terminate this Agreement immediately by written notice if you:
      1. have committed a serious breach of this Agreement (including, but not limited to, non-payment of the Annual Membership Fee, failure to offer breakfast free of charge to target children, or if your actions bring or are likely to bring Magic Breakfast’s name or reputation into disrepute in our reasonable opinion);
      2. have not remedied a breach in accordance with the required action and timescale contained in a breach notice served on you by Magic Breakfast;
      3. have repeated a breach, or committed a series of breaches, which as a result of the repetition, or cumulatively, amount to a serious breach of this Agreement;
   4. Any provision of this Agreement that is expressly, or by implication, intended to have effect after termination shall continue in force for the intended period.
   5. Termination or expiry of this Agreement shall not affect any rights, remedies, obligations or liabilities of the parties that have accrued up to the date of termination or expiry, including the right to claim damages in respect of any breach of the Agreement which existed at or before the date of termination or expiry.
   6. On expiry of termination of this Agreement for whatever reason and unless otherwise agreed in writing between us, you shall immediately cease all use of Magic Breakfast’s name and logo.
6. **Force Majeure**
   1. Neither party shall be in breach of this Agreement nor liable for delay in performing, or failure to perform, any of its obligations under this Agreement if such delay results from a Force Majeure Event.
   2. A party experiencing a Force Majeure Event shall give the other party full particulars of the circumstances and use reasonable endeavours to resume performance as soon as possible. In such circumstances, the affected party shall be entitled to a reasonable extension of the time for performing such obligations.
   3. Notwithstanding clause 10 (Duration and end of this Agreement), if the period of delay or non-performance continues for 2 months, the party not affected may terminate this Agreement by giving 10 days' written notice to the affected party.
7. **General**
   1. A waiver of any right or remedy is only effective if given in writing. A delay or failure to exercise, or the single or partial exercise of, any right or remedy shall not waive that or any other right or remedy, nor shall it prevent or restrict the further exercise of that right or remedy.
   2. The rights and remedies provided under this Agreement are in addition to, and not exclusive of, any rights or remedies provided by law.
   3. If any provision or part-provision of this Agreement is or becomes invalid, illegal or unenforceable, it shall be deemed deleted, but that shall not affect the validity and enforceability of the rest of this Agreement.
   4. Nothing in this Agreement is intended to, or shall be deemed to, establish any partnership or joint venture between you and Magic Breakfast, constitute any party the agent of the other, or authorise you or Magic Breakfast to make or enter into any commitments for and on behalf of each other.
   5. You shall not assign, novate or transfer any or all of your rights and obligations under this Agreement without the prior written consent of Magic Breakfast.
   6. This Agreement may be executed in any number of counterparts, each of which shall constitute a duplicative original, but all the counterparts shall together constitute the one agreement.
   7. This Agreement does not give rise to any rights under the Contracts (Rights of Third Parties) Act 1999 to enforce any term of this Agreement.
   8. This Agreement and any dispute or claim (including non-contractual disputes or claims) arising out of or in connection with it or its subject matter or formation shall be governed by and construed in accordance with the law of England and Wales.
   9. Each party irrevocably agrees that the courts of England and Wales shall have exclusive jurisdiction to settle any dispute or claim (including non-contractual disputes or claims) arising out of or in connection with this Agreement.