

September 2018

Facility Hire Agreement
relating to
Facilities at St. Patricks and Christ the King Catholic Schools

NICHOLAS POSTGATE CATHOLIC ACADEMY TRUST ⁽¹⁾ and
[User] ⁽²⁾

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DATE []

PARTIES

- (1) Nicholas Postgate Catholic Academy Trust, a charity and company limited by guarantee (Registered Number: 09203984) whose registered office is situated at Trinity Catholic College, Saltersgill Avenue, Middlesbrough, TS4 3JW (**Trust**); and
- (2) **[Insert name]** [a company limited by guarantee/shares (Registered Number: [Insert number if a company])] whose registered office is situated at of] **[insert address]** (**User**).

BACKGROUND

The Department for Education encourages schools and academies to deliver sport and healthy living outcomes. Schools and academies are expected to offer community access to facilities including adult and family learning, ICT and sports facilities.

AGREED TERMS

1. DEFINITIONS AND INTERPRETATION

1.1 The definitions and rules of interpretation in Clause 1 apply:

Authorised Representatives	the persons respectively designated as such by the Trust and the User, the first such persons being: (a) Trust: [Insert representative] ; and (b) User: [Insert representative] ;
Commencement Date	[Insert date of first use of Facility] ;
Default Interest Rate	means two per cent (2%) above the base rate from time to time of Lloyds Bank plc;
Disclosure and Barring Scheme	means the disclosure and barring scheme operated by the Disclosure and Barring Service;
Disclosure and Barring Service	means the non-departmental public body established pursuant to the Protection of Freedoms Act 2012;
Dispute Resolution Procedure	the procedure set out in clause 7;
Facility	means the facility described at Schedule 2;

Fee	means the fees and charges listed at Schedule 5, which shall become due and payable in accordance with the terms of this Agreement;
Force Majeure	any cause affecting the performance by a party of its obligations under this Agreement arising from acts, events, omissions or non-events beyond its reasonable control, including acts of God, riots, war, acts of terrorism, fire, flood, storm or earthquake and any disaster;
Period of Use	has the meaning given to it in Schedule 4;
School	means [insert school] ;
Special Conditions	means the additional specific terms and conditions listed at Schedule 1 in respect of the Facility;
Termination Date	has the meaning given to it in clause 2;
Termination Payment Default	means failure by the User to pay any sum of money owed to the Trust;
Trust Policies	means the policies of the Trust listed at Schedule 3 and as amended from time to time;
User Related Party	means any employee, agent, visitor or guest of the User;
VAT	any tax chargeable under the Value Added Tax Act 1994 or any other tax that succeeds said Act or replaces said Act; and
Working Day	Monday to Friday, excluding any public holidays in England and Wales.

- 1.2 Clause, Schedule and paragraph headings shall not affect the interpretation of this Agreement.
- 1.3 A person includes a natural person, corporate or unincorporated body (whether or not having separate legal personality).
- 1.4 The Schedules form part of this Agreement and shall have effect as if set out in full in the body of this Agreement and any reference to this Agreement includes the Schedules.
- 1.5 A reference to a company shall include any company, corporation or other body corporate, wherever and however incorporated or established.
- 1.6 Words in the singular shall include the plural and vice versa.

- 1.7 A reference to one gender shall include a reference to the other genders.
- 1.8 A reference to a statute or statutory provision is a reference to it as it is in force for the time being, taking account of any amendment, extension, or re-enactment and includes any subordinate legislation for the time being in force made under it.
- 1.9 A reference to writing or written includes faxes but not e-mail.
- 1.10 Any obligation in this Agreement on a person not to do something includes an obligation not to agree or allow that thing to be done.
- 1.11 A reference to a document is a reference to that document as varied or novated (in each case, other than in breach of the provisions of this Agreement) at any time.
- 1.12 References to clauses and schedules are to the clauses and schedules of this Agreement; references to paragraphs are to paragraphs of the relevant schedule.
- 1.13 Where there is any conflict or inconsistency between the provisions of the Agreement, such conflict or inconsistency shall be resolved according to the following order of priority:
 - 1.13.1 Schedule 1 to this Agreement;
 - 1.13.2 the clauses of the agreement;
 - 1.13.3 the remaining Schedules to this Agreement.

2. TERM

This Agreement shall take effect on the Commencement Date and, unless terminated earlier in accordance with this Agreement, shall [terminate on [insert date] (“Termination Date”)]/[continue in force for a term of [words] ([number] [years][months])].

3. PAYMENT

- 3.1 In consideration of the non-exclusive licence granted to the User at clause 4, the User shall pay the Fee to the Trust in accordance with the provisions of this Agreement.
- 3.2 Subject to clause 3.3, the Trust shall one month prior to the Commencement Date issue to the User an invoice in respect of the Fee at clause 3.1. The User shall pay the Fee within fourteen [(14)] days of receipt of the invoice.¹
- 3.3 In the event that the Commencement Date is less than one month from the date of this Agreement, the Trust shall immediately issue to the User an invoice in

¹ Parties to agree whether all payments are to be made complete in advance or partially in advance (i.e. ongoing, monthly usage)

respect of the Fee and the Fee will become payable by the User on receipt of the invoice.

- 3.4 Interest shall be payable on the late payment of any Fee under this Agreement at the Default Interest Rate.
- 3.5 The Fee stated is exclusive of VAT, which shall be added at the prevailing rate as applicable and paid by the User following delivery of a valid VAT invoice.

4. LICENCE

- 4.1 The Trust hereby grants to the User a non-transferable, non-exclusive licence to occupy the Facility for the Periods of Use, together with the right to use such access ways, parking areas and toilet facilities as the Trust may specify.
- 4.2 The licence in clause 4.1 shall not confer on the User any rights to exclusive possession of any part of the Facility nor create the relationship of landlord and tenant.
- 4.3 The User may use the Facility during the Periods of Use for the [Insert purpose of the provision e.g. Childcare, Holiday Clubs, Extended Services Activities] (the **Permitted Use**).

5. USER'S OBLIGATIONS

- 5.1 The User agrees and undertakes:
- 5.1.1 not to make any alteration or addition whatsoever to the Facility without the prior written consent of the Trust;
- 5.1.2 not to display any advertisement, signboards, nameplate, inscription, flag, banner, placard, poster, signs or notices at the Facility without the prior written consent of the Trust;
- 5.1.3 not to do or permit to be done on the Facility anything which is illegal or which may be or become a nuisance (whether actionable or not), annoyance, inconvenience or disturbance to the Trust or any owner or occupier of any neighbouring property or which, in the opinion of the Trust, is incompatible with the Trust's Articles of Association or the use of the Facility as part of a school or which may cause damage to the reputation of the Trust;
- 5.1.4 not to cause or permit to be caused any damage to:
- (a) the Facility or any neighbouring property; or
- (b) any Trust property;
- and in the event of any such damage occurring to indemnify the Trust in respect of all loss, damage and expense caused;

- 5.1.5 not to obstruct any common parts, make them dirty or untidy or leave any rubbish on them;
 - 5.1.6 not bring onto the Facility any electrical equipment without the Trust's prior written consent (such consent only being given where the electrical apparatus has an up to date PAT certificate);
 - 5.1.7 not to take into or allow to be brought into the Facility any food or drink, except bottled water (unless agreed by the Trust);
 - 5.1.8 to not block the roads around the Facility, ensuring that they are left clear for emergency access;
 - 5.1.9 to observe the Trust and School Policies; and
 - 5.1.10 to observe and comply with the Special Conditions.
- 5.2 The User agrees and undertakes:
- 5.2.1 not to perform any copyright works at the Facility without the licence of the copyright owner and the User shall indemnify the Trust against any penalty or sanction for any copyright infringement which may occur as a result of a breach of this clause 5.2.1;
 - 5.2.2 not to use the Facility for any purpose or activity for which a licence or permission is necessary, unless such a licence or permission has been obtained;
 - 5.2.3 not to use the Facility for the sale or display of goods or services or for any public entertainment unless previously agreed in writing by the Trust;
 - 5.2.4 not to bring any alcoholic drinks onto the Facility except where the Trust agrees otherwise and where a licence has been obtained by the User; and
 - 5.2.5 not to show any film or video at the Facility or allow for any film or video to be taken in the Facility without the Trust's prior written consent.
- 5.3 The User shall indemnify the Trust against all and any expenses, liabilities, losses, claims and proceedings arising in respect of personal injury to or death of any person or damage to any property arising directly or indirectly from the use of the Facility by the User or any User Related Party, save to the extent caused by the negligence of the Trust.

6. SAFEGUARDING

- 6.1 If the User is hiring the Facility for activities involving children and/or vulnerable adults, the User shall provide to the Trust in advance of the Commencement Date copies of the following policies:
 - 6.1.1 Code of conduct and procedures;

- 6.1.2 Health and safety policy;
 - 6.1.3 Quality assurance policy; and
 - 6.1.4 Child protection/safeguarding policy (including the role of the welfare officer).
- 6.2 The User shall complete and provide to the Trust prior to the Commencement Date the Safeguarding Checks For Hirers declaration form at Schedule 6 together with appropriate coaching certificates.
- 6.3 The Trust reserves the right to refuse to admit to, or request the removal from, the Facility, any person, employed or engaged by the User or proposed to be at the Facility at the invitation of the User, whose admission or continued presence would, in the opinion of the Trust, present a risk to the Trust, any of its employees, staff, other workers, any pupils of the School or any person visiting the Facility or School at the invitation (express or implied) of the Trust, and the Trust shall not be obliged to give any reasons for such refusal.

7. DISPUTE RESOLUTION

- 7.1 No party may terminate this Agreement in reliance on, or initiate any court proceedings in respect of, any unresolved matter until it has attempted to settle the dispute by mediation and either the mediation has terminated or the other party has failed to participate in the mediation provided that the right to issue proceedings is not prejudiced by a delay.

8. LIMITATION OF LIABILITY

- 8.1 The User acknowledges that the Trust does not accept any responsibility for any articles of property left by the User or any User Related Party at the Facility.
- 8.2 Neither party shall be liable to the other party (as far as permitted by law) for indirect special or consequential loss or damage in connection with the Agreement which shall include, without limitation, any loss of or damage to profit, revenue, contracts, anticipated savings, goodwill or business opportunities whether direct or indirect.
- 8.3 Each party shall at all times take all reasonable steps to minimise and mitigate any loss or damage for which the relevant party is entitled to bring a claim against the other party pursuant to this Agreement.

9. INSURANCE

- 9.1 Where the User is not an individual entering into this Agreement for their own use, the User shall:
- 9.1.1 take out and maintain public liability insurance cover with a limit of indemnity that shall be a minimum of [five] million pounds (£[5,000,000]) for any one incident; and

- 9.1.2 provide evidence (as and when reasonably required by the Trust) satisfactory to the Trust of the public liability insurance (referred to in clause 9.1.1) being in full force and effect from the Commencement Date (such evidence to include details of the cover).

10. TERMINATION FOR BREACH

- 10.1 The Trust may terminate this Agreement in whole or part with immediate effect by the service of written notice on the User if the User is in breach of any obligation under this Agreement.
- 10.2 The Trust may terminate this Agreement in the event that the User commits a Termination Payment Default by giving five (5) days' written notice to the User. In the event that the User remedies the Termination Payment Default in the five (5) day notice period, the Trust's notice to terminate this Agreement shall be deemed to have been withdrawn.

11. CANCELLATION²

- 11.1 The Trust may terminate this Agreement at any time on [two] ([2]) [weeks'] written notice to the User and such termination shall be at no cost to either party.
- 11.2 The User may terminate this Agreement at any time on [two] ([2]) [weeks'] written notice to the Trust and such termination shall be at no cost to either party.
- 11.3 If the User terminates this Agreement giving less than [two] ([2]) [weeks'] written notice to the Trust, the User shall remain liable to pay 50% of the Fee.
- 11.4 The User shall not be entitled to serve a notice under clause 11.2 in circumstances where the Trust has previously served a notice under either clause 10.1 or 10.2 and the breach which is the subject of the service of such notice remains unremedied.

12. TEMPORARY UNAVAILABILITY OF FACILITY

- 12.1 The Trust may give verbal notice to the User that the Facility is temporarily unavailable in the following instances:
- 12.1.1 where the School is closed for any reason;
- 12.1.2 where the Facility is in the Trusts reasonable opinion unsafe to be used by the User; and
- 12.1.3 where there are emergency circumstances, which require the use by the Trust of the Facility.
- 12.2 The Trust may give one calendar months' notice in writing that the Facility is to be temporarily unavailable to the User where the Facility is required by the Trust and will state in such notice the period during which the Facilities are to be unavailable.

² To be reconsidered depending on how the payments are structured (all in advance or if monthly)

12.3 In situations where there is a temporary unavailability of Facility or an interruption in the use of the premises then the Trust are not liable to pay any compensation in respect of any losses, loss of profit or damages incurred by the User.

13. FORCE MAJEURE

13.1 Subject to the remaining provisions of this clause 12, neither party to this Agreement shall be liable to the other for any delay or non-performance of its obligations under this Agreement to the extent that such non-performance is due to a Force Majeure Event.

14. CONSEQUENCES OF TERMINATION

14.1 If this Agreement is terminated by the Trust pursuant to clauses 10.1 or 10.2, such termination shall be at no loss or cost to the Trust and, subject to clause 8, the User hereby indemnifies the Trust against any such losses or costs which the Trust may suffer as a result of any such termination.

14.2 The provisions of clause 8 (Limit on Liability), clause 9 (Insurance), and this clause 14 (Consequences of termination) shall survive termination or expiry of this Agreement.

15. WAIVER

No forbearance or delay by either party in enforcing its respective rights will prejudice or restrict the rights of that party, and no waiver of any such rights or of any breach of any contractual terms will be deemed to be a waiver of any other right or of any later breach.

16. CUMULATION OF REMEDIES

Subject to the specific limitations set out in this Agreement, no remedy conferred by any provision of this Agreement is intended to be exclusive of any other remedy except as expressly provided for in this Agreement and each and every remedy shall be cumulative and shall be in addition to every other remedy given thereunder or existing at law or in equity by statute or otherwise.

17. SEVERABILITY

If any of the provisions of this Agreement is judged to be illegal or unenforceable, the continuation in full force and effect of the remainder of them will not be prejudiced.

18. PARTNERSHIP OR AGENCY

Nothing in this Agreement shall be construed as constituting a partnership between the parties or as constituting either party as the agent of the other for any purpose whatsoever except as specified by the terms of this Agreement.

19. THIRD PARTY RIGHTS

No term of this Agreement is intended to confer a benefit on, or to be enforceable by, any person who is not a party to this Agreement.

20. NOTICES

Any notice, notification or other communication under or in connection with this Agreement shall be in writing and shall be delivered by hand or recorded delivery or sent by prepaid first class post to the relevant parties at the relevant address for service set out below, or to such other address in the United Kingdom as each party may specify by notice in writing to the other:

Party Trust
Address: Nicholas Postgate Catholic Academy Trust
 Trinity Catholic College, 6th Form
 Saltersgill Avenue
 Middlesbrough
 TS4 3JW

Attention: [Insert representative]

Party: User
Address: [TBC]

Attention: [TBC]

21. ENTIRE AGREEMENT

This Agreement, the Schedules and the documents annexed to it or otherwise referred to in it contain the whole agreement between the parties relating to the subject matter hereof and supersede all prior agreements, arrangements and understandings between the parties relating to that subject matter.

22. COUNTERPARTS

This Agreement may be executed in any number of counterparts, each of which when executed and delivered shall constitute an original of this Agreement, but all the counterparts shall together constitute the same agreement.

23. GOVERNING LAW AND JURISDICTION

23.1 This Agreement and any dispute or claim arising out of or in connection with it or its subject matter shall be governed by and construed in accordance with the law of England.

23.2 The parties irrevocably agree that the courts of England shall have exclusive jurisdiction to settle any dispute or claim that arises out of or in connection with this Agreement or its subject matter.

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

SCHEDULE 1 - SPECIAL CONDITIONS

1. [List and insert other Special Conditions]
2. Health and Safety Conditions
 - 2.1 Normal emergency procedures are followed
 - 2.2 Health and Safety requirements in relation to the Early Years and the Childcare Register are followed. [Delete as appropriate]
 - 2.3 Risk assessments are carried out, recorded and updated
 - 2.4 A First Aid Kit is provided
 - 2.5 A member of staff with a paediatric first aid/first aid certificate (delete as appropriate - paediatric first aid is only a requirement for childcare on the Early Years register) is on the premises at all times during opening hours
 - 2.6 Any equipment brought onto the School premises must be approved by the Trust
 - 2.7 All staff are familiar with emergency equipment, such as fire extinguishers, alarms, mobile telephone and first aid facilities
 - 2.8 An emergency evacuation procedure is established. This will detail who will be responsible for taking control, calling emergency services and where to assemble. Consideration must be given to the needs of disabled participants. Fire practice must be undertaken on a half-termly basis and records kept as evidence.
 - 2.9 Facilities and equipment (if made available) are used in a responsible manner, in an orderly way and for the purposes for which they are hired and do not compromise the safety of the users or the Facilities and equipment
3. This includes the User ensuring that:
 - 3.1 Alcohol is not consumed
 - 3.2 Emergency exits, fire extinguishers, alarm points are not obstructed
 - 3.3 Adequate walkways are available to allow free and easy access and egress
 - 3.4 No gas cylinders or canisters are used inside the Facility or on School grounds
 - 3.5 Combustible materials are not placed adjacent to heat sources
 - 3.6 Equipment is used for the purpose for which it was designed
 - 3.7 Electrical equipment is PAT tested and complies with the British standards then applicable
 - 3.8 Flammable or hazardous substances are not to be used

- 3.9 No open fires, candles or unauthorised electrical equipment will be used at the Facility
- 3.10 Furniture, instruments or equipment belonging to the User may be left or stored at the Premises if agreed by the Head Teacher
4. Safeguarding
 - 4.1 In addition to the User's liability in respect of health and safety concerns referred to above and elsewhere in this Agreement, the User specifically undertakes to ensure suitable arrangements are in place with regard to safeguarding children, vulnerable adults and child protection in line with the requirements of the Children Act 1989 & 2004, Education Act 2002, Safeguarding Vulnerable Groups Act 2006, and the guidance set out in the 'Safeguarding Children and Safer Recruitment in Education [as well as adhering to Middlesbrough Safeguarding Children's Board Procedures] and all other relevant legislation and any relevant legislation that supersedes this existing legislation
 - 4.2 For childcare provision all policies and procedures including safeguarding must be in line with the requirements of both the Early Years and Childcare Registers [as well as adhering to Middlesbrough Safeguarding Children's Board Procedures].
 - 4.3 For Extended Service Provision where the provider is working with a vulnerable group, the User must adhere to safeguarding and safer recruitment requirements and provide the Trust with evidence of safer recruitment checks i.e. identity, qualifications suitable for the activity, DBS enhanced check (number, date and clearing house), right to work in UK, safeguarding training certificate from a legitimate awarding body e.g. sporting bodies, safeguarding policies with procedures for providers working with Children and Young People the policies and procedures need to be ratified by the Trust
 - 4.4 For any service delivery Safer Recruitment practices must be in evidence and anyone in the organisation responsible for recruiting staff, students or volunteers must attend Safer Recruitment training
 - 4.5 There is also a requirement for childcare provision staff with Designated Person responsibility to follow the training pathway for the Designated Person Role in academies – 4 day training:
 - 4.5.1 Designated Person
 - 4.5.2 Introduction to Working Together to Safeguard Children
 - 4.5.3 Child Protection Conferences; and
 - 4.5.4 Effective Child Protection Planning

SCHEDULE 2 – FACILITY

1. [Insert description of Facility (including address and plan where possible)]

SCHEDULE 3 – TRUST’S POLICIES

1. Trust’s Policies:
 - 1.1 [Trust to List]

SCHEDULE 4 – PERIODS OF USE

1. [Insert Period of Use/Booking time]

SCHEDULE 5 – FEES

SCHEDULE 6 – SAFEGUARDING CHECKS FOR HIRERS

The Trust are required to ensure that all Users (and their employees) of the Facilities who come into contact with children or vulnerable adults have undergone appropriate safeguarding checks. You are therefore required to provide us with written confirmation that these checks have taken place by making the declaration below.

I confirm that all relevant safeguarding checks (including satisfactory enhanced Disclosure and Barring Check disclosures) have been carried out on all staff engaged by my organisation who will come into contact with children or vulnerable adults during the hire of the Facilities.

(Please give details below)

Signed

Date

Name of User/Hirer of Facilities:

.....

Name	DBS No	Date of DBS

SIGNED by)
duly authorised on behalf of the)
TRUST)
)

(Position)

SIGNED by)
duly authorised on behalf of the)
USER)
)

(Position)